



Strasbourg, 8 September 1997

CAHMEC(97)6
Addendum

**AD HOC COMMITTEE ON THE IMPLEMENTATION MECHANISM
OF THE FRAMEWORK CONVENTION FOR THE
PROTECTION OF NATIONAL MINORITIES**

(CAHMEC)

**Final Activity Report containing draft resolution with rules of
the Committee of Ministers on the monitoring arrangements under
Articles 24-26 of the framework Convention for the
Protection of National Minorities**

Introduction:

The Ad Hoc Committee on the implementation mechanism of the framework Convention for the Protection of National Minorities (CAHMEC), under the terms of reference it was given by the Ministers' Deputies at their 593rd meeting and which appear at the appendix, held two meetings (1-4 July 1997 and 2-5 September 1997).

At the end of its second meeting, under these terms of reference, the CAHMEC adopted a draft Resolution with rules of the Committee of Ministers on the monitoring arrangements under Articles 24-26 of the framework Convention for the Protection of National Minorities. This text appears below.

DRAFT
RESOLUTION 97/..

**RULES ADOPTED BY THE COMMITTEE OF MINISTERS ON THE MONITORING
ARRANGEMENTS UNDER ARTICLES 24-26 OF THE FRAMEWORK
CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES**

adopted by the Ministers' Deputies at their ...th meeting on 1997

**I. THE ADVISORY COMMITTEE PROVIDED FOR BY ARTICLE 26 OF THE FRAMEWORK
CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES: COMPOSITION,
ELECTION AND APPOINTMENT**

A. MEMBERSHIP OF THE ADVISORY COMMITTEE

§1. Members

1. Members of the Advisory Committee shall be appointed in accordance with these rules. They shall sit either as ordinary or additional members.
2. The number of ordinary members of the Advisory Committee shall be a minimum of 12 and a maximum of 18. [This shall not prohibit the Advisory Committee from commencing its work in accordance with Rule 28.]*
3. Members of the Advisory Committee may not be substituted.
4. There shall not be more than one member in respect of any Contracting Party.

§2. Qualifications and capacity of the members

5. The members of the Advisory Committee shall have recognised expertise in the

* While the Committee recognised that the text appearing between square brackets is outside the terms of reference given by the Ministers' Deputies, the CAHMEC considered that it might be useful to make provision in the Rules for the eventuality that Contracting Parties might not, or not immediately, nominate persons for elections. In this case, strict adherence to the rule that the Advisory Committee commences its work once twelve ordinary members (Ministers' Deputies Decision No. CM/674/280597, Appendix, guideline ii) have been appointed could delay or prevent the start of this work.

In order to prevent this situation arising, the CAHMEC stressed the desirability for the Committee of Ministers to encourage States to ratify the framework Convention and to submit nominations for the Advisory Committee in accordance with Rule 8; such an invitation could be addressed by the Committee of Ministers to Contracting Parties.

field of the protection of national minorities.

6. The members of the Advisory Committee shall serve in their individual capacity, shall be independent and impartial, and shall be available to serve the Committee effectively.

B. PROCEDURE FOR ELECTION AND APPOINTMENT

§1. General

7. The Committee of Ministers shall elect experts to the List of Experts Eligible to Serve on the Advisory Committee (hereafter referred to as: the List) and appoint ordinary and additional members in accordance with the following rules.

§2. Election of experts to the List

8. Each Contracting Party may submit to the Secretary General the names and the curricula vitae, in one of the official languages of the Council of Europe, of at least two experts who have the required qualifications and capacity to serve on the Advisory Committee. The Secretary General shall transmit these documents to the Committee of Ministers.

9. The Committee of Ministers shall elect one of these experts to be entered on the List in respect of that Contracting Party.

10. Elections shall be held in the chronological order in which the names and curricula vitae submitted by Contracting Parties have been received.

11. The same procedure shall apply when entries on the List expire or lose their validity. For the sake of continuity, elections may be held during the six month period preceding the expiry or loss of validity of the current entry on the List in respect of a Contracting Party.

12. [The entry on the List shall remain valid until one of the following cases arises:

- the expert concerned requests the Secretary General to delete the entry on the List;
- the Committee of Ministers finds that the expert concerned no longer has the required capacity;
- the expert concerned dies;
- the ordinary membership of the Advisory Committee of the expert concerned expires or ends in accordance with rule 16]** .

** Guideline V. in CAHMEC (97)1 provides that "an entry on the list will normally remain valid

13. The Secretary General shall act as the depositary of the List.

§3. *Ordinary members*

a. Appointment of ordinary members

14. As long as the number of entries on the List does not exceed 18, each expert whose name has been entered on the List shall be appointed as an ordinary member of the Advisory Committee by the Committee of Ministers. Appointments shall follow the chronological order of the elections.

15. Once the number of entries on the List exceeds the number of 18, the Committee of Ministers shall in filling vacant seats in the Advisory Committee give priority to appointing, in the following order, experts on the List from the Contracting Parties in respect of which no ordinary member has been appointed:

- a. at two or more consecutive rounds of appointment immediately preceding the current one;
- b. at the round of appointment immediately preceding the current one;

followed by experts on the List from other Contracting Parties in respect of which there is currently no ordinary member.

For each of these categories, the rule shall apply that if the number of experts entitled to appointment exceeds the number of vacant seats, ordinary members shall be selected by the Committee of Ministers through the drawing of lots.

b. Term of office of ordinary members

16. The term of office of an ordinary member of the Advisory Committee shall be four years. The Committee of Ministers shall specify the exact date on which the term of office begins. No one may be appointed to serve as ordinary member more than twice.

for [4][6] years". After discussion CAHMEC formed the view that it would not be appropriate to provide for a fixed period of validity of an entry on the list. To do so might require re-nomination and election to the List during a term of office with the possibility that a candidate is selected to the List who is not the serving member. It also leaves open the possibility that an expert elected to the List never serves a term of office as an ordinary member. Rule 12 as drafted has the effect of allowing all persons on the List to serve as ordinary members at some stage. Until there are 18 entries on the List there will be no delay in taking up office after election. Once the List exceeds the number of 18 entries the rotation system will operate. The Secretariat estimates that the longest period between election and commencement of term of office will be six years (in the event that there are a very large number of State Parties, all of which nominate experts). During this period the member in waiting may serve as an additional member.

Ordinary membership will end at an earlier date in the following cases:

- at the request of the ordinary member to the Secretary General;
- when the Committee of Ministers finds that an ordinary member no longer has the required capacity;
- when the ordinary member dies.

However, the term of office of half of the number of ordinary members as it stands two years after the commencement of work of the Advisory Committee, shall be extended by two years. These members shall be identified at that time by the drawing of lots by the Committee of Ministers. They may also be re-appointed once, in accordance with the preceding paragraph.

17. In order to ensure that, as far as possible, one half of the ordinary membership of the Advisory Committee shall be renewed every two years, the Committee of Ministers may decide, before proceeding to any subsequent appointment, that the term or terms of office of one or more members to be appointed shall be for a period other than four years but not more than six and not less than two years.

18. An ordinary member appointed to fill a casual vacancy shall hold the seat for the remainder of the predecessor's term. Casual vacancies will be filled by experts entered onto the List in respect of the same Contracting Party, unless the Committee of Ministers decides otherwise.

§4. Additional members

19. During consideration of a State Report from a Contracting Party in respect of which there is no ordinary member of the Advisory Committee, the expert who is on the List in respect of that Contracting Party shall be invited to sit as an additional member. The additional member shall perform her or his functions in accordance with Rules 33 and 34.

II. THE PROCEDURE TO BE FOLLOWED IN PERFORMING THE MONITORING FUNCTIONS

§1. Transmission and publicity of State-reports

20. State-reports shall be transmitted by the Contracting Party to the Secretary General who will transmit them to the Committee of Ministers. The State-reports shall be made public by the Council of Europe upon receipt by the Secretary General, without prejudice to the right of the State to make the report public at an earlier date.

21. The periodical basis for transmission of State-reports mentioned in Article 25 paragraph 2 of the framework Convention is set at five years, calculated from the date on which the previous report was due.

§2. *Consideration of State-reports by the Advisory Committee*

22. The Committee of Ministers shall transmit the State-reports to the Advisory Committee.

23. The Advisory Committee shall consider the State-reports and shall transmit its opinions to the Committee of Ministers.

§3. *Consideration of State-reports by the Committee of Ministers*

24. Following receipt of the opinion of the Advisory Committee, the Committee of Ministers shall consider and adopt its conclusions concerning the adequacy of the measures taken by the Contracting Party concerned to give effect to the principles of the framework Convention. It may also adopt recommendations in respect of the Contracting Party concerned, and set a date-limit for the submission of information on their implementation.

§4 *Publicity*

25. The conclusions and recommendations of the Committee of Ministers shall be made public upon adoption.

26. The opinion of the Advisory Committee concerning the report of a Contracting Party shall be made public at the same time as the conclusions and recommendations of the Committee of Ministers, unless in a specific case the Committee of Ministers decides otherwise.

27. Comments of the Contracting Parties in relation to the opinion of the Advisory Committee shall be made public together with the conclusions and recommendations of the Committee of Ministers and the opinion of the Advisory Committee.

§5. *Working methods of the Advisory Committee*

28. The Advisory Committee shall commence its work once twelve ordinary members have been appointed [or at an earlier stage if the Committee of Ministers so decides and in any event not later than one year after the entry into force of the framework Convention]^{***}.

*** While the Committee recognised that the text appearing between square brackets is outside the terms of reference given by the Ministers' Deputies, the CAHMEC considered that it might be useful to make provision in the Rules for the eventuality that Contracting Parties might not, or not immediately, nominate persons for elections. In this case, strict adherence to the rule that the Advisory Committee commences its work once twelve ordinary members (Ministers' Deputies Decision No. CM/674/280597, Appendix, guideline ii) have been appointed could delay or prevent the start of this work.

In order to prevent this situation arising, the CAHMEC stressed the desirability for the Committee of Ministers to encourage States to ratify the framework Convention and to submit nominations for the Advisory Committee in accordance with Rule 8; such an invitation could be addressed by the Committee of Ministers to Contracting Parties.

29. The Advisory Committee may request additional information from the Contracting Party whose report is under consideration.

30. The Advisory Committee may receive information from sources other than State-reports.

31. Unless otherwise directed by the Committee of Ministers, the Advisory Committee may invite information from other sources after notifying the Committee of Ministers of its intention to do so.

32. The Advisory Committee may hold meetings with Representatives of the Government whose report is being considered and shall hold a meeting if the Government concerned so requests.

A specific mandate shall be obtained from the Committee of Ministers if the Advisory Committee wishes to hold meetings for the purpose of seeking information from other sources.

These meetings shall be held in closed session.

33. Additional members of the Advisory Committee shall only participate in the work of the Advisory Committee in respect of the report of the Contracting Party in respect of which they have been elected to the List.

34. Additional members shall sit in an advisory capacity; they shall not have the right to take part in a possible vote. The same shall apply to ordinary members regarding the report of the Contracting Party in respect of which they have been elected to the List.

§6. *Ad hoc reports*

35. The Advisory Committee may invite the Committee of Ministers to request an *ad hoc* report from a Contracting Party.

§7. *Follow-up*

36. The Advisory Committee shall be involved in the monitoring of the follow-up to the conclusions and recommendations on an *ad hoc* basis, as instructed by the Committee of Ministers.

§8. *Rules of procedure and periodic reports*

37. The Advisory Committee shall draft its rules of procedure which shall be submitted to the Committee of Ministers for approval. The same procedure shall apply to any subsequent modification to the rules of procedure.

38. The Advisory Committee shall periodically inform the Committee of Ministers on the state of its work.

III. PARTICIPATION IN THE COMMITTEE OF MINISTERS BY CONTRACTING PARTIES WHICH ARE NOT MEMBERS OF THE COUNCIL OF EUROPE

39. The Committee of Ministers shall invite a representative from each non-member Contracting Party to attend the meetings of the Committee of Ministers whenever it exercises its functions under the framework Convention, without the right to participate in the adoption of decisions.

* * *

APPENDIX 1

593rd meeting - 27-28 May 1997

(item 4.3)

DECISION No. CM/674/280597

Ad hoc terms of reference

1. Name of the Committee: AD HOC COMMITTEE ON THE IMPLEMENTATION MECHANISM OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES (CAHMEC)
2. Source of terms of reference: Committee of Ministers
3. Type of committee Ad hoc committee
4. Text of the terms of reference:
to draft, on the basis of
 - (i) the elements agreed to by the Ad Hoc Working Party of the Deputies on the Implementation Mechanism of the Framework Convention for the Protection of National Minorities (GT-MIN);
 - (ii) the appended additional guidelines on the composition and related aspects of the advisory committee,the necessary regulations and procedures to enable the Committee of Ministers to meet the requirement of Articles 24-26 of the framework Convention.
5. Membership:
 - a. Each member State may designate experts on the subject of protection of national minorities and human rights implementation mechanisms. The Council of Europe's budget bears travelling and subsistence for one representative per member State (two in the case of member States whose expert is elected as Chairman);
 - b. The Parliamentary Assembly is entitled to designate one representative;
 - c. The European Commission may send a representative without the right to vote or to defrayal of expenses;

- d. The following observers of the Council of Europe (Canada, the Holy See, Japan and the United States of America) may send a representative without the right to vote or to a refund of expenses to meetings of the committee.
 - e. The OSCE High Commissioner on National Minorities and the Venice Commission are each invited to designate an observer.
6. Completion date: 30 September 1997

Appendix to the terms of reference of CAHMEC

Additional guidelines of the Ministers' Deputies for the Ad Hoc Committee on the Implementation Mechanism of the framework Convention for the Protection of National Minorities (CAHMEC)

Composition and related aspects of the advisory committee to be set up under Article 26 of the framework Convention

- i. The members of the advisory committee shall sit in an individual capacity and shall be independent and impartial;
- ii. The advisory committee will be of limited composition; the number of its ordinary members might develop from a minimum of 12 to a maximum of 18;
- iii. The 19th ratification will trigger off a rotation system so as to allow all Contracting Parties a fair and equal opportunity to see experts elected in respect of their country participate as ordinary members of the advisory committee over a reasonable period of time;
- iv. As concerns nominations, each Contracting Party may put forward a list of candidates, which must contain at least two names;
- v. The Committee of Ministers will elect one person from each of the lists submitted by the Contracting Parties. This will constitute the list of experts who can be called upon to serve on the advisory committee. An entry on the list will normally remain valid for [4] [6] years;
- vi. Once the rotation system has been triggered off, the Committee of Ministers will select from this list, by the drawing of lots, those experts who will serve as ordinary members;
- vii. An ordinary member of the advisory committee will sit in an advisory capacity (ie he or she will not have the right to take part in a possible vote) whenever the advisory committee considers a report of the Party in respect of which that expert was elected;

- viii. An expert elected in accordance with v. above but not selected under the procedure set out under vi. above (ie a person on the "waiting list" for rotation) will serve as an additional member of the advisory committee whenever it considers the report of the Party in respect of which that expert was elected. The additional member shall sit in an advisory capacity (ie she or he will not have the right to take part in a possible vote);
- ix. As a general rule, the term of office of ordinary members of the advisory committee will be [4] [6] years;
- x. When considering a report of a Contracting Party, the advisory committee shall hold a meeting with (a) representative(s) of the government concerned if the latter so requests.

Further guidance as to the details of some of the features set out above can be found in documents GT-MIN(96)1 and GT-MIN(97)3.

