Strasbourg, February 1995

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FRAMEWORK CONVENTION FOR THE PROECTION OF NATIONAL MINORITIES AND EXPLANATORY REPORT

Introduction:

The Framework Convention for the Protection of National Minorities, drawn up within the Council of Europe by Ad Hoc Committee for the Protection of National Minorities (CAHMIN) under the authority of the Committee of Ministers, was adopted by the Committee of Ministers of the Council of Europe on 10 November 1994 and opened for signature by the member States of the Council of Europe on 1 February 1995. Non-member States may also be invited by the Committee of Ministers to become Party to this instrument.

This publication contains the text of the Framework Convention for the Protection of National Minorities as well as the explanatory report.

Framework Convention for the Protection of National Minorities

The member States of the Council of Europe and the other States, signatories to the present framework Convention,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Wishing to follow-up the Declaration of the Heads of State and Government of the member States of the Council of Europe adopted in Vienna on 9 October 1993;

Being resolved to protect within their respective territories the existence of national minorities;

Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent;

Considering that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity;

Considering that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society;

Considering that the realisation of a tolerant and prosperous Europe does not depend solely on co-operation between States but also requires transfrontier co-operation between local and regional authorities without prejudice to the constitution and territorial integrity of each State;

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto;

Having regard to the commitments concerning the protection of national minorities in United Nations conventions and declarations and in the documents of the Conference on Security and Co-operation in Europe, particularly the Copenhagen Document of 29 June 1990;

Being resolved to define the principles to be respected and the obligations which flow from them, in order to ensure, in the member States and such other States as may become Parties to the present instrument, the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of states;

Being determined to implement the principles set out in this framework Convention through national legislation and appropriate governmental policies,

Have agreed as follows:

Section I

Article 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.

Article 2

The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States.

Article 3

1 Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.

2 Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

Section II

Article 4

1 The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

2 The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

3 The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

Article 5

1 The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

2 Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

Article 6

1 The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

2 The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

Article 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

Article 9

1 The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.

2 Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.

3 The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall

ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.

4 In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.

Article 10

1 The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.

2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.

3 The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

Article 11

1 The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.

2 The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.

3 In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.

Article 12

1 The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

2 In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

3 The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

Article 13

1 Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.

2 The exercise of this right shall not entail any financial obligation for the Parties.

Article 14

1 The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.

2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.

3 Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

Article 16

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.

Article 17

1 The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

2 The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels.

Article 18

1 The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.

2 Where relevant, the Parties shall take measures to encourage transfrontier co-operation.

Article 19

The Parties undertake to respect and implement the principles enshrined in the present framework Convention making, where necessary, only those limitations, restrictions or derogations which are provided for in international legal instruments, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms flowing from the said principles.

Section III

Article 20

In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.

Article 21

Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.

Article 22

Nothing in the present framework Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party or under any other agreement to which it is a Party.

Article 23

The rights and freedoms flowing from the principles enshrined in the present framework Convention, in so far as they are the subject of a corresponding provision in the Convention for the Protection of Human Rights and Fundamental Freedoms or in the Protocols thereto, shall be understood so as to conform to the latter provisions.

Section IV

Article 24

1 The Committee of Ministers of the Council of Europe shall monitor the implementation of this framework Convention by the Contracting Parties.

2 The Parties which are not members of the Council of Europe shall participate in the implementation mechanism, according to modalities to be determined.

Article 25

1 Within a period of one year following the entry into force of this framework Convention in respect of a Contracting Party, the latter shall transmit to the Secretary General of the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention.

2 Thereafter, each Party shall transmit to the Secretary General on a periodical basis and whenever the Committee of Ministers so requests any further information of relevance to the implementation of this framework Convention.

3 The Secretary General shall forward to the Committee of Ministers the information transmitted under the terms of this Article.

Article 26

1 In evaluating the adequacy of the measures taken by the Parties to give effect to the principles set out in this framework Convention the Committee of Ministers shall be assisted by an advisory committee, the members of which shall have recognised expertise in the field of the protection of national minorities.

2 The composition of this advisory committee and its procedure shall be determined by the Committee of Ministers within a period of one year following the entry into force of this framework Convention.

Section V

Article 27

This framework Convention shall be open for signature by the member States of the Council of Europe. Up until the date when the Convention enters into force, it shall also be open for signature by any other State so invited by the Committee of Ministers. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 28

1 This framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which twelve member States of the

Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 27.

2 In respect of any member State which subsequently expresses its consent to be bound by it, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 29

1 After the entry into force of this framework Convention and after consulting the Contracting States, the Committee of Ministers of the Council of Europe may invite to accede to the Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, any non-member State of the Council of Europe which, invited to sign in accordance with the provisions of Article 27, has not yet done so, and any other non-member State.

2 In respect of any acceding State, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 30

1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories for whose international relations it is responsible to which this framework Convention shall apply.

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 framework Convention to any other territory specified in the declaration. In respect of such territory the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 31

1 Any Party may at any time denounce this framework Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 32

The Secretary General of the Council of Europe shall notify the member States of the Council, other signatory States and any State which has acceded to this framework Convention, of:

a. any signature;

b. the deposit of any instrument of ratification, acceptance, approval or accession;

c. any date of entry into force of this framework Convention in accordance with Articles 28, 29 and 30;

d. any other act, notification or communication relating to this framework Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this framework Convention.

Done at Strasbourg, this 1st day of February 1995, 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 and to any State invited to sign or accede to this framework Convention.

Explanatory report

BACKGROUND

1. The Council of Europe has examined the situation of national minorities on a number of occasions over a period of more than forty years. In its very first year of existence (1949), the Parliamentary Assembly recognised, in a report of its Committee on Legal and Administrative Questions, the importance of "the problem of wider protection of the rights of national minorities". In 1961, the Assembly recommended the inclusion of an article in a second additional protocol to guarantee to national minorities certain rights not covered by the European Convention on Human Rights (ECHR). The latter simply refers to "association with a national minority" in the non-discrimination clause provided for in Article 14. Recommendation 285 (1961) proposed the following wording for the draft article on the protection of national minorities:

"Persons belonging to a national minority shall not be denied the right, in community with the other members of their group, and as far as compatible with public order, to enjoy their own culture, to use their own language, to establish their schools and receive teaching in the language of their choice or to profess and practise their own religion."

2. The committee of experts, which had been instructed to consider whether it was possible and advisable to draw up such a protocol, adjourned its activities until a final decision had been reached on the Belgian linguistics cases concerning the language used in education (European Court of Human Rights. Judgment of 27 July 1968, Series A No. 6). In 1973 it concluded that, from a legal point of view, there was no special need to make the rights of minorities the subject of a further protocol to the ECHR. However, the experts considered that there was no major legal obstacle to the adoption of such a protocol if it were considered advisable for other reasons.

3. More recently, the Parliamentary Assembly recommended a number of political and legal measures to the Committee of Ministers, in particular the drawing up of a protocol or a convention on the rights of national minorities. Recommendation 1134 (1990) contains a list of principles which the Assembly considered necessary for the protection of national minorities. In October 1991, the Steering Committee for Human Rights (CDDH) was given the task of considering, from both a legal and a political point of view, the conditions in which the Council of Europe could undertake an activity for the protection of national minorities, taking into account the work done by the Conference on Security and Co-operation in Europe (CSCE) and the United Nations, and the reflections within the Council of Europe.

4. In May 1992, the Committee of Ministers instructed the CDDH to examine the possibility of formulating specific legal standards relating to the protection of national minorities. To this end, the CDDH established a committee of experts (DH-MIN) which, under new terms of reference issued in March 1993, was required to propose specific legal standards in this area, bearing in mind the principle of complementarity of work between the Council of Europe and the CSCE. The CDDH and the DH-MIN took various texts into account, in particular the proposal for a European Convention for the Protection of National Minorities drawn up by the European Commission for Democracy through Law (the so-called Venice Commission), the Austrian proposal for an additional protocol to the ECHR, the draft additional protocol to the ECHR included in Assembly Recommendation 1201 (1993) and other proposals. This examination culminated in the report of

the CDDH to the Committee of Ministers of 8 September 1993, which included various legal standards which might be adopted in this area and the legal instruments in which they could be laid down. In this connection, the CDDH noted that there was no consensus on the interpretation of the term "national minorities".

5. The decisive step was taken when the Heads of State and Government of the Council of Europe's member States met in Vienna at the summit of 8 and 9 October 1993. There, it was agreed that the national minorities which the upheavals of history have established in Europe had to be protected and respected as a contribution to peace and stability. In particular, the Heads of State and Government decided to enter into legal commitments regarding the protection of national minorities. Appendix II of the Vienna Declaration instructed the Committee of Ministers:

- 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;

- 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.

6. On 4 November 1993, the Committee of Ministers established an ad hoc Committee for the Protection of National Minorities (CAHMIN). Its terms of reference reflected the decisions taken in Vienna. The committee, made up of experts from the Council of Europe's member States, started work in late January 1994, with the participation of representatives of the CDDH, the Council for Cultural Co-operation (CDCC), the Steering Committee on the Mass Media (CDMM) and the European Commission for Democracy through Law. The High Commissioner on National Minorities of the CSCE and the Commission of the European Communities also took part, as observers.

7. On 15 April 1994, CAHMIN submitted an interim report to the Committee of Ministers, which was then communicated to the Parliamentary Assembly (Doc. 7109). At its 94th session in May 1994, the Committee of Ministers expressed satisfaction with the progress achieved under the terms of reference flowing from the Vienna Declaration.

8. A certain number of provisions of the framework Convention requiring political arbitration as well as those concerning the monitoring of the implementation were drafted by the Committee of Ministers (517bis meeting of Ministers' Deputies, 7 October 1994).

9. At its meeting from 10 to 14 October 1994, CAHMIN decided to submit the draft framework Convention to the Committee of Ministers, which adopted the text at the 95th Ministerial Session on 10 November 1994. The framework Convention was opened for signature by the Council of Europe's member States on 1 February 1995.

GENERAL CONSIDERATIONS

Objectives of the framework Convention

10. The framework Convention is the first legally binding multilateral instrument devoted to the protection of national minorities in general. Its aim is to specify the legal principles which States undertake to respect in order to ensure the protection of national minorities. The Council of Europe has thereby given effect to the Vienna Declaration's call (Appendix II) for the political commitments adopted by the Conference on Security and Co-operation in Europe (CSCE) to be transformed, to the greatest possible extent, into legal obligations.

Approaches and fundamental concepts

11. In view of the range of different situations and problems to be resolved, a choice was made for a framework Convention which contains mostly programme-type provisions setting out objectives which the Parties undertake to pursue. These provisions, which will not be directly applicable, 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 particular circumstances into account.

12. It should also be pointed out that the framework Convention contains no definition of the notion of "national minority". It was decided to adopt a pragmatic approach, based on the recognition that at this stage, it is impossible to arrive at a definition capable of mustering general support of all Council of Europe member States.

13. The implementation of the principles set out in this framework Convention shall be done through national legislation and appropriate governmental policies. It does not imply the recognition of collective rights. The emphasis is placed on the protection of persons belonging to national minorities, who may exercise their rights individually and in community with others (see Article 3, paragraph 2). In this respect, the framework Convention follows the approach of texts adopted by other international organisations.

Structure of the framework Convention

14. Apart from its Preamble, the framework Convention contains an operative part which is divided into five sections.

15. Section I contains provisions which, in a general fashion, stipulate certain fundamental principles which may serve to elucidate the other substantive provisions of the framework Convention.

16. Section II contains a catalogue of specific principles.

17. Section III contains various provisions concerning the interpretation and application of the framework Convention.

18. Section IV contains provisions on the monitoring of the implementation of the framework Convention.

19. Section V contains the final clauses which are based on the model final clauses for conventions and agreements concluded within the Council of Europe.

COMMENTARY ON THE PROVISIONS OF THE FRAMEWORK CONVENTION

PREAMBLE

20. The Preamble sets out the reasons for drawing up this framework Convention and explains certain basic concerns of its drafters. The opening words already indicate that this instrument may be signed and ratified by States not members of the Council of Europe (see Articles 27 and 29).

21. The Preamble refers to the statutory aim of the Council of Europe and to one of the methods by which this aim is to be pursued: the maintenance and further realisation of human rights and fundamental freedoms.

22. Reference is also made to the Vienna Declaration of Heads of State and Government of the member States of the Council of Europe, a document which laid the foundation for the present framework Convention (see also paragraph 5 above). In fact, the text of the Preamble is largely inspired by that declaration, in particular its Appendix II. The same is true of the choice of undertakings included in Sections I and II of the framework Convention.

23. The Preamble mentions, in a non-exhaustive way, three further sources of inspiration for the content of the framework Convention: the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and instruments which contain commitments regarding the protection of national minorities of the United Nations and the CSCE.

24. The Preamble reflects the concern of the Council of Europe and its member States about the risk to the existence of national minorities and is inspired by Article 1, paragraph 1, of the United Nations 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).

25. Given that the framework Convention is also open to States which are not members of the Council of Europe, and to ensure a more comprehensive approach, it was decided to include certain principles from which flow rights and freedoms which are already guaranteed in the ECHR or in the protocols thereto (see also in connection with this, Article 23 of the framework Convention).

26. The reference to United Nations conventions and declarations recalls the work done at the universal level, for example in the International Covenant on Civil and Political Rights (Article 27) and in the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. However this reference does not extend to any definition of a national minority which may be contained in these texts.

27. The reference to the relevant CSCE commitments reflects the desire expressed in Appendix II of the Vienna Declaration that the Council of Europe should apply itself to transforming, to the greatest possible extent, these political commitments into legal obligations. The Copenhagen Document in particular provided guidance for drafting the framework Convention.

28. The penultimate paragraph in the Preamble sets out the main aim of the framework Convention: to ensure the effective protection of national minorities and of the rights of persons belonging to those minorities. It also stresses that this effective protection should be ensured within the rule of law, respecting the territorial integrity and national sovereignty of States.

29. The purpose of the last recital is to indicate that the provisions of this framework Convention are not directly applicable. It is not concerned with the law and practice of the Parties in regard to the reception of international treaties in the internal legal order.

SECTION I

Article 1

30. The main purpose of Article 1 is to specify that the protection of national minorities, which forms an integral part of the protection of human rights, does not fall within the reserved domain of States. The statement that this protection "forms an integral part of the international protection of human rights" does not confer any competence to interpret the present framework Convention on the organs established by the ECHR.

31. The article refers to the protection of national minorities as such and of the rights and freedoms of persons belonging to such minorities. This distinction and the difference in wording make it clear that no collective rights of national minorities are envisaged (see also the commentary to Article 3). The Parties do however recognise that protection of a national minority can be achieved through protection of the rights of individuals belonging to such a minority.

Article 2

32. This article provides a set of principles governing the application of the framework Convention. It is, inter alia, inspired by the United Nations Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly Resolution 2625 (XXV) of 24 October 1970). The principles mentioned in this provision are of a general nature but do have particular relevance to the field covered by the framework Convention.

Article 3

33. This article contains two distinct but related principles laid down in two different paragraphs.

Paragraph 1

34. Paragraph 1 firstly guarantees to every person belonging to a national minority the freedom to choose to be treated or not to be treated as such. This provision leaves it to every such person to decide whether or not he or she wishes to come under the protection flowing from the principles of the framework Convention.

35. This paragraph does not imply a right for an individual to choose arbitrarily to belong to any national minority. The individual's subjective choice is inseparably linked to objective criteria relevant to the person's identity.

36. Paragraph 1 further provides that no disadvantage shall arise from the free choice it guarantees, or from the exercise of the rights which are connected to that choice. This part of the provision aims to secure that the enjoyment of the freedom to choose shall also not be impaired indirectly.

Paragraph 2

37. Paragraph 2 provides that the rights and freedoms flowing from the principles of the framework Convention may be exercised individually or in community with others. It thus recognises the possibility of joint exercise of those rights and freedoms, which is distinct from the notion of collective rights . The term "others" shall be understood in the widest possible sense and shall include persons belonging to the same national minority, to another national minority, or to the majority.

SECTION II

Article 4

38. The purpose of this article is to ensure the applicability of the principles of equality and non-discrimination for persons belonging to national minorities. The provisions of this article are to be understood in the context of this framework Convention.

Paragraphs 1 and 2

39. Paragraph 1 takes the classic approach to these principles. Paragraph 2 stresses that the promotion of full and effective equality between persons belonging to a national minority and those belonging to the majority may require the Parties to adopt special measures that take into account the specific conditions of the persons concerned. Such measures need to be "adequate", that is in conformity with the proportionality principle, in order to avoid violation of the rights of others as well as discrimination against others. This principle requires, among other things, that such measures do not extend, in time or in scope, beyond what is necessary in order to achieve the aim of full and effective equality.

40. No separate provision dealing specifically with the principle of equal opportunities has been included in the framework Convention. Such an inclusion was considered unnecessary as the principle is already implied in paragraph 2 of this article. Given the principle of non-discrimination set out in paragraph 1 the same was considered true for freedom of movement.

Paragraph 3

41. The purpose of paragraph 3 is to make clear that the measures referred to in paragraph 2 are not to be regarded as contravening the principles of equality and non-discrimination. Its aim is to ensure to persons belonging to national minorities effective equality along with persons belonging to the majority.

Article 5

42. This article essentially aims at ensuring that persons belonging to national minorities can maintain and develop their culture and preserve their identity.

Paragraph 1

43. Paragraph 1 contains an obligation to promote the necessary conditions in this respect. It lists four essential elements of the identity of a national minority. This provision does not imply that all ethnic, cultural, linguistic or religious differences necessarily lead to the creation of national minorities (see in this regard the report of the CSCE meeting of experts, held in Geneva in 1991, section II, paragraph 4).

44. The reference to "traditions" is not an endorsement or acceptance of practices which are contrary to national law or international standards. Traditional practices remain subject to limitations arising from the requirements of public order.

Paragraph 2

45. The purpose of paragraph 2 is to protect persons belonging to national minorities from assimilation against their will. It does not prohibit voluntary assimilation.

46. Paragraph 2 does not preclude the Parties from taking measures in pursuance of their general integration policy. It thus acknowledges the importance of social cohesion and reflects the desire expressed in the preamble that cultural diversity be a source and a factor, not of division, but of enrichment to each society.

Article 6

47. This article is an expression of the concerns stated in Appendix III to the Vienna Declaration (Declaration and Plan of Action on combating racism, xenophobia, anti-Semitism and intolerance).

Paragraph 1

48. Paragraph 1 stresses a spirit of tolerance and intercultural dialogue and points out the importance of the Parties' promoting mutual respect, understanding and co-operation among all who live on their territory. The fields of education, culture and the media are specifically mentioned because they are considered particularly relevant to the achievement of these aims.

49. In order to strengthen social cohesion, the aim of this paragraph is, inter alia, to promote tolerance and intercultural dialogue, by eliminating barriers between persons belonging to ethnic, cultural, linguistic and religious groups through the encouragement of intercultural organisations and movements which seek to promote mutual respect and understanding and to integrate these persons into society whilst preserving their identity.

Paragraph 2

50. This provision is inspired by paragraph 40.2 of the Copenhagen Document of the CSCE. This obligation aims at the protection of all persons who may be subject to threats or acts of discrimination, hostility or violence, irrespective of the source of such threats or acts.

Article 7

51. The purpose of this article is to guarantee respect for the right of every person belonging to a national minority to the fundamental freedoms mentioned therein. These freedoms are of course of a universal nature, that is they apply to all persons, whether belonging to a national minority or not (see, for instance, the corresponding provisions in Articles 9, 10 and 11 of the ECHR), but they are particularly relevant for the protection of national minorities. For the reasons stated above in the commentary on the preamble, it was decided to include certain undertakings which already appear in the ECHR.

52. This provision may imply for the Parties certain positive obligations to protect the freedoms mentioned against violations which do not emanate from the State. Under the ECHR, the possibility of such positive obligations has been recognised by the European Court of Human Rights.

53. Some of the freedoms laid down in Article 7 are elaborated upon in Articles 8 and 9.

Article 8

54. This article lays down more detailed rules for the protection of freedom of religion than Article 7. It combines several elements from paragraphs 32.2, 32.3 and 32.6 of the CSCE Copenhagen Document into a single provision. This freedom of course applies to all persons and persons belonging to a national minority should, in accordance with Article 4, enjoy it as well. Given the importance of this freedom in the present context, it was felt particularly appropriate to give it special attention.

Article 9

55. This article contains more detailed rules for the protection of the freedom of expression than Article 7.

Paragraph 1

56. The first sentence of this paragraph is modelled on the second sentence of Article 10, paragraph 1, of the ECHR. Although the sentence refers specifically to the freedom to receive and impart information and ideas in the minority language, it also implies the freedom to receive and impart information and ideas in the majority or other languages.

57. The second sentence of this paragraph contains an undertaking to ensure that there is no discrimination in access to the media. The words “in the framework of their legal systems” were inserted in order to respect constitutional provisions which may limit the extent to which a Party can regulate access to the media.

Paragraph 2

58. This paragraph is modelled on the third sentence of Article 10, paragraph 1, of the ECHR.

59. The licensing of sound radio and television broadcasting, and of cinema enterprises, should be non-discriminatory and be based on objective criteria. The inclusion of these requirements, which are not expressly mentioned in the third sentence of Article 10, paragraph 1, of the ECHR, was considered important for an instrument designed to protect persons belonging to a national minority.

60. The words "sound radio", which also appear in paragraph 3 of this article, do not appear in the corresponding sentence in Article 10 of the ECHR. They are used in order to reflect modern terminology and do not imply any material difference in meaning from Article 10 of the ECHR.

Paragraph 3

61. The first sentence of this paragraph, dealing with the creation and use of printed media, contains an essentially negative undertaking whereas the more flexibly worded second sentence emphasises a positive obligation in the field of sound radio and television broadcasting (for example the allocation of frequencies). This distinction reflects the relative scarcity of available frequencies and the need for regulation in the latter field. No express reference has been made to the right of persons belonging to a national minority to seek funds for the establishment of media, as this right was considered self-evident.

Paragraph 4

62. This paragraph emphasises the need for special measures with the dual aim of facilitating access to the media for persons belonging to national minorities and promoting tolerance and cultural pluralism. The expression "adequate measures" was used for the reasons given in the commentary on Article 4, paragraph 2 (see paragraph 39), which uses the same words. The paragraph complements the undertaking laid down in the last sentence of Article 9, paragraph 1. The measures envisaged by this paragraph could, for example, consist of funding for minority broadcasting or for programme productions dealing with minority issues and/or offering a dialogue between groups, or of encouraging, subject to editorial independence, editors and broadcasters to allow national minorities access to their media.

Article 10

Paragraph 1

63. The recognition of the right of every person belonging to a national minority to use his or her minority language freely and without interference is particularly important. The use of the minority language represents one of the principal means by which such persons can assert and preserve their identity. It also enables them to exercise their freedom of expression. "In public" means, for instance, in a public place, outside, or in the presence of other persons but is not concerned in any circumstances with relations with public authorities, the subject of paragraph 2 of this article.

Paragraph 2

64. This provision does not cover all relations between individuals belonging to national minorities and public authorities. It only extends to administrative authorities. Nevertheless, the latter must be broadly interpreted to include, for example, ombudsmen. In recognition of the possible financial, administrative, in particular in the military field, and technical difficulties associated with the use of minority languages in relations between persons belonging to national minorities and the administrative authorities, this provision has been worded very flexibly, leaving Parties a wide measure of discretion.

65. Once the two conditions in paragraph 2 are met, Parties shall endeavour to ensure the use of a minority language in relations with the administrative authorities as far as possible. The existence of a "real need" is to be assessed by the State on the basis of objective criteria. Although contracting States should make every effort to apply this principle, the wording "as far as possible" indicates that various factors, in particular the financial resources of the Party concerned, may be taken into consideration.

66. The Parties' obligations regarding the use of minority languages do not in any way affect the status of the official language or languages of the country concerned. Moreover, the framework Convention deliberately refrains from defining "areas inhabited by persons belonging to national minorities traditionally or in substantial numbers". It was considered preferable to adopt a flexible form of wording which will allow each Party's particular circumstances to be taken into account. The term "inhabited ... traditionally" does not refer to historical minorities, but only to those still living in the same geographical area (see also Article 11, paragraph 3, and Article 14, paragraph 2).

Paragraph 3

67. This paragraph is based on certain provisions contained in Articles 5 and 6 of the European Convention on Human Rights. It does not go beyond the safeguards contained in those articles.

Article 11

Paragraph 1

68. In view of the practical implications of this obligation, the provision is worded in such a way as to enable Parties to apply it in the light of their own particular circumstances. For example, Parties may use the alphabet of their official language to write the name(s) of a person belonging to a national minority in its phonetic form. Persons who have been forced to give up their original name(s), or whose name(s) has (have) been changed by force, should be entitled to revert to it (them), subject of course to exceptions in the case of abuse of rights and changes of name(s) for fraudulent purposes. It is understood that the legal systems of the Parties will, in this respect, meet international principles concerning the protection of national minorities.

Paragraph 2

69. The obligation in this paragraph concerns an individual's right to display "in his or her minority language signs, inscriptions and other information of a private nature visible to the public". This does not, of course, exclude persons belonging to national minorities from being

required to use, in addition, the official language and/or other minority languages. The expression "of a private nature" refers to all that is not official.

Paragraph 3

70. This article aims to promote the possibility of having local names, street names and other topographical indications intended for the public also in the minority language. In implementing this principle the States are entitled to take due account of the specific circumstances and the framework of their legal systems, including, where appropriate, agreements with other States. In the field covered by this provision, it is understood that the Parties are under no obligation to conclude agreements with other States. Conversely, the possibility of concluding such agreements is not ruled out. It is also understood that the legally binding nature of existing agreements remains unaffected. This provision does not imply any official recognition of local names in the minority languages.

Article 12

71. This article seeks to promote knowledge of the culture, history, language and religion of both national minorities and the majority population in an intercultural perspective (see Article 6, paragraph 1). The aim is to create a climate of tolerance and dialogue, as referred to in the preamble to the framework convention and in Appendix II of the Vienna Declaration of the Heads of State and Government. The list in the second paragraph is not exhaustive whilst the words "access to textbooks" are understood as including the publication of textbooks and their purchase in other countries. The obligation to promote equal opportunities for access to education at all levels for persons belonging to national minorities reflects a concern expressed in the Vienna Declaration.

Article 13

Paragraph 1

72. The Parties' obligation to recognise the right of persons belonging to national minorities to set up and manage their own private educational and training establishments is subject to the requirements of their educational system, particularly the regulations relating to compulsory schooling. The establishments covered by this paragraph may be subject to the same forms of supervision as other establishments, particularly with regard to teaching standards. Once the required standards are met, it is important that any qualifications awarded are officially recognised. The relevant national legislation must be based on objective criteria and conform to the principle of non-discrimination.

Paragraph 2

73. The exercise of the right referred to in paragraph 1 does not entail any financial obligation for the Party concerned, but neither does it exclude the possibility of such a contribution.

Article 14

Paragraph 1

74. The obligation to recognise the right of every person belonging to a national minority to learn his or her minority language concerns one of the principal means by which such individuals

can assert and preserve their identity. There can be no exceptions to this. Without prejudice to the principles mentioned in paragraph 2, this paragraph does not imply positive action, notably of a financial nature, on the part of the State.

Paragraph 2

75. This provision concerns teaching of and instruction in a minority language. In recognition of the possible financial, administrative and technical difficulties associated with instruction of or in minority languages, this provision has been worded very flexibly, leaving Parties a wide measure of discretion. The obligation to endeavour to ensure instruction of or in minority languages is subject to several conditions; in particular, there must be "sufficient demand" from persons belonging to the relevant national minorities. The wording "as far as possible" indicates that such instruction is dependent on the available resources of the Party concerned.

76. The text deliberately refrains from defining "sufficient demand", a flexible form of wording which allows Parties to take account of their countries' own particular circumstances. Parties have a choice of means and arrangements in ensuring such instruction, taking their particular educational system into account.

77. The alternatives referred to in this paragraph - "opportunities for being taught the minority language or for receiving instruction in this language" - are not mutually exclusive. Even though Article 14, paragraph 2, imposes no obligation upon States to do both, its wording does not prevent the States Parties from implementing the teaching of the minority language as well as the instruction in the minority language. Bilingual instruction may be one of the means of achieving the objective of this provision. The obligation arising from this paragraph could be extended to pre-school education.

Paragraph 3

78. The opportunities for being taught the minority language or for receiving instruction in this language are without prejudice to the learning of the official language or the teaching in this language. Indeed, knowledge of the official language is a factor of social cohesion and integration.

79. It is for States where there is more than one official language to settle the particular questions which the implementation of this provision shall entail.

Article 15

80. This article requires Parties to create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them. It aims above all to encourage real equality between persons belonging to national minorities and those forming part of the majority. In order to create the necessary conditions for such participation by persons belonging to national minorities, Parties could promote - in the framework of their constitutional systems - inter alia the following measures:

- consultation with these persons, by means of appropriate procedures and, in particular, through their representative institutions, when Parties are contemplating legislation or administrative measures likely to affect them directly;

- involving these persons in the preparation, implementation and assessment of national and regional development plans and programmes likely to affect them directly;

- undertaking studies, in conjunction with these persons, to assess the possible impact on them of projected development activities;

- effective participation of persons belonging to national minorities in the decision-making processes and elected bodies both at national and local levels;

- decentralised or local forms of government.

Article 16

81. The purpose of this article is to protect against measures which change the proportion of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms which flow from the present framework Convention. Examples of such measures might be expropriation, evictions and expulsions or redrawing administrative borders with a view to restricting the enjoyment of such rights and freedoms ("gerrymandering").

82. The article prohibits only measures which are aimed at restricting the rights and freedoms flowing from the framework Convention. It was considered impossible to extend the prohibition to measures having the effect of restricting such rights and freedoms, since such measures may sometimes be entirely justified and legitimate. One example might be resettlement of inhabitants of a village in order to build a dam.

Article 17

83. This article contains two undertakings important to the maintenance and development of the culture of persons belonging to a national minority and to the preservation of their identity (see also Article 5, paragraph 1). The first paragraph deals with the right to establish and maintain free and peaceful contacts across frontiers, whereas the second paragraph protects the right to participate in the activities of non-governmental organisations (see also in this connection, the provisions on freedom of assembly and of association in Article 7).

84. The provisions of this article are largely based on paragraphs 32.4 and 32.6 of the Copenhagen Document of the CSCE. It was considered unnecessary to include an explicit provision on the right to establish and maintain contacts within the territory of a State, since this was felt to be adequately covered by other provisions of the framework Convention, notably Article 7 as regards freedom of assembly and of association.

Article 18

85. This article encourages the Parties to conclude, in addition to the existing international instruments, and where the specific circumstances justify it, bilateral and multilateral agreements for the protection of national minorities. It also stimulates transfrontier co-operation. As is emphasised in the Vienna Declaration and its Appendix II, such agreements and co-operation are important for the promotion of tolerance, prosperity, stability and peace.

Paragraph 1

86. Bilateral and multilateral agreements as envisaged by this paragraph might, for instance, be concluded in the fields of culture, education and information.

Paragraph 2

87. This paragraph points out the importance of transfrontier co-operation. Exchange of information and experience between States is an important tool for the promotion of mutual understanding and confidence. In particular, transfrontier co-operation has the advantage that it allows for arrangements specifically tailored to the wishes and needs of the persons concerned.

Article 19

88. This article provides for the possibility of limitations, restrictions or derogations. When the undertakings included in this framework Convention have an equivalent in other international legal instruments, in particular the ECHR, only the limitations, restrictions or derogations provided for in those instruments are allowed. When the undertakings set forth in this framework Convention have no equivalent in other international legal instruments, the only limitations, restrictions or derogations allowed are those which, included in other legal instruments (such as the ECHR) in respect of different undertakings, are relevant.

SECTION III

Article 20

89. Persons belonging to national minorities are required to respect the national constitution and other national legislation. However, this reference to national legislation clearly does not entitle Parties to ignore the provisions of the framework Convention. Persons belonging to national minorities must also respect the rights of others. In this regard, reference may be made to situations where persons belonging to national minorities are in a minority nationally but form a majority within one area of the State.

Article 21

90. This provision stresses the importance of the fundamental principles of international law and specifies that the protection of persons belonging to national minorities must be in accordance with these principles.

Article 22

91. This provision, which is based on Article 60 of the ECHR, sets out a well-known principle. The aim is to ensure that persons belonging to national minorities benefit from whichever of the relevant national or international human rights legislation is most favourable to them.

Article 23

92. This provision deals with the relationship between the framework Convention and the Convention for the Protection of Human Rights and Fundamental Freedoms, reference to which is included in the Preamble. Under no circumstances can the framework Convention modify the rights and freedoms safeguarded in the Convention for the Protection of Human Rights and Fundamental

Freedoms. On the contrary, rights and freedoms enshrined in the framework Convention which are the subject of a corresponding provision in the Convention for the Protection of Human Rights and Fundamental Freedoms must be interpreted in accordance with the latter.

SECTION IV

Articles 24-26

93. To provide for overseeing the application of the framework Convention, the Committee of Ministers is entrusted with the task of monitoring the implementation by the Contracting Parties. The Committee of Ministers shall determine the modalities for the participation in the implementation mechanism by the Parties which are not members of the Council of Europe.

94. Each Party shall transmit to the Secretary General on a periodical basis and whenever the Committee of Ministers so requests information of relevance to the implementation of this framework Convention. The Secretary General shall transmit this information to the Committee of Ministers. However, the first report, the aim of which is to provide full information on legislative and other measures which the Party has taken to give effect to the undertakings set out in the framework Convention, must be submitted within one year of the entry into force of the framework Convention in respect of the Party concerned. The purpose of the subsequent reports shall be to complement the information included in the first report.

95. In order to ensure the efficiency of the monitoring of the implementation of the framework Convention, it provides for the setting up of an advisory committee. The task of this advisory committee is to assist the Committee of Ministers when it evaluates the adequacy of the measures taken by a Party to give effect to the principles set out in the framework Convention.

96. It is up to the Committee of Ministers to determine, within one year of the entry into force of the framework Convention, the composition and the procedures of the advisory committee, the members of which shall have recognised expertise in the field of the protection of national minorities.

97. The monitoring of the implementation of this framework Convention shall, in so far as possible, be transparent. In this regard it would be advisable to envisage the publication of the reports and other texts resulting from such monitoring.

SECTION V

98. The final provisions contained in articles 27 to 32 are based on the model final clauses for conventions and agreements concluded within the Council of Europe. No article on reservations was included; reservations are allowed in as far as they are permitted by international law. Apart from Articles 27 and 29 the articles in this section require no particular comment.

Articles 27 and 29

99. The framework Convention is open for signature by the Council of Europe's member States and, at the invitation of the Committee of Ministers, by other States. It is understood that

"other States" are those States which participate in the Conference on Security and Co-operation in Europe. These provisions take account of the Vienna Declaration, according to which the framework Convention should also be open for signature by non-member States (see Appendix II to the Vienna Declaration of the Council of Europe Summit).

Link to Treaty site:
http://conventions.coe.int/treaty/EN/WhatYouWant.asp?NT=157&CM=8&DF=31/05/01