

Pamphlet No. 8

THE COUNCIL OF EUROPE'S FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Summary: The European Framework Convention for the Protection of National Minorities is the most comprehensive multilateral treaty devoted to minority rights. Adopted under the auspices of the Council of Europe, it sets forth a number of principles according to which States are to develop specific policies to protect the rights of minorities.

The Council of Europe

The Council of Europe is an inter-governmental organization whose aims are to:

- protect human rights, pluralist democracy, and the rule of law
- promote awareness and encourage the development of Europe's cultural identity and diversity
- seek solutions to problems facing European society, including discrimination against minorities, xenophobia, intolerance, environmental protection, human cloning, HIV-AIDS, drugs, organized crime, etc.
- help consolidate democratic stability in Europe by backing political, legislative, and constitutional reform

Based in Strasbourg, France, the Council is composed of 43 states: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, The Former Yugoslav Republic of Macedonia, Turkey, Ukraine, and the United Kingdom of Great Britain and Northern Ireland. The Council of Europe is governed by an inter-governmental *Committee of Ministers* and an indirectly elected *Parliamentary Assembly*. As of May 2001, Bosnia-Herzegovina and the Federal Republic of Yugoslavia are non-member states whose parliaments have special guest status with the Parliamentary Assembly.

The Council of Europe should not be confused with the European Union, although all of the 15 European Union States are also members of the Council of Europe.

The Framework Convention for the Protection of National Minorities

The Framework Convention for the Protection of National Minorities (Convention) was adopted by the Committee of Ministers of the Council of Europe in 1994 and entered

into force in 1998. It is the first legally binding multilateral instrument devoted to the protection of minorities and is regarded as the most comprehensive international standard in the field of minority rights so far. To a large extent, it transforms the political commitments of the 1990 Copenhagen Document of the Organization for Security and Cooperation in Europe (OSCE) into legal obligations.

The Framework Convention may be ratified by member States of the Council of Europe, and non-member States may join at the invitation of the Committee of Ministers. Accession to the Convention is obligatory, at least politically, for States that apply for membership in the Council of Europe. As of May 2001, the Convention had been ratified by 33 countries: Albania, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina (non-member State), Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Ireland, Italy, Liechtenstein, Lithuania, Malta, Moldova, Norway, Poland, Romania, Russian Federation, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Ukraine, and the United Kingdom of Great Britain and Northern Ireland.

Nature of the Convention

Minority situations differ greatly from country to country and consequently require different approaches. Therefore, the drafters of the Convention opted for “programmatic” provisions that establish principles and objectives that should guide States in protecting their minority populations. For this reason, the Convention is largely constructed as a series of States’ obligations rather than as a detailed list of rights of persons belonging to national minorities. Realization of these principles and objectives must take place at the national level, notably through the adoption of legislation and policies. States can, to some extent, use their discretion in designing legislation and policies that are appropriate to their own circumstances. This is why the Convention is called a “Framework” Convention.

The programmatic provisions are worded in general terms and often contain qualifying phrases such as “substantial numbers”, “a real need”, “where appropriate”, and “as far as possible”. While this level of generality might seem to weaken the rights guaranteed under the Convention, it gives States Parties the flexibility to translate the Convention’s objectives into national laws and policies that are most appropriate. However, this flexibility does not release States from their obligation to implement the Convention’s provisions in good faith and in a manner that results in the effective protection of national minorities.

Two of the key principles contained in the Convention are Article 1, which states that the protection of national minorities is an integral part of the protection of human rights, and Article 22, which specifies that the Convention may not be used to reduce existing standards of protection. Since the Convention was intended as an addition to existing human and minority rights protections, it must be read in relation to other human rights instruments, such as the European Convention on Human Rights (see Pamphlet No. 7).

Definition

The Convention does not define “national minority”, so you must first determine to whom the Convention applies. Several parties, including Austria, Denmark, Estonia, Germany, Poland, Slovenia, Sweden, Switzerland, and The Former Yugoslav Republic of Macedonia, set out their own definition of “national minority” when they ratified the Convention. Many of these declarations exclude non-citizens and migrants from protection under the Convention, and some identify the specific groups to whom the Convention will apply. Liechtenstein, Luxembourg, and Malta are parties to the Convention, but each declared that there are no national minorities within their respective territories.

Although States can exercise some discretion in deciding to whom the Convention applies, it is expected that this issue will also be assessed through the international monitoring process created for the Convention. But a first step for any non-governmental organization (NGO) that wishes to participate in the monitoring process should be to determine whether the State concerned has made a declaration concerning the groups to which it will apply the Convention. A current list of such declarations may be found on the web site devoted to the Convention (www.humanrights.coe.int/minorities).

However the term is defined, the Convention applies only to “national” minorities, in contrast to, for example, the 1992 UN Declaration on the Rights of Persons Belonging to Minorities, which applies both to “national” and to “ethnic, religious and linguistic” minorities. It is not yet clear how much difference this distinction will make, but it appears that the Convention’s scope is deliberately narrower than that of the UN Declaration.

The Substantive Provisions of the Convention

Article 4.1 of the Convention proclaims the fundamental principles of non-discrimination and equality. Article 4.2 makes it clear that a State’s obligations may also require affirmative action on the part of the government and not merely abstention from discrimination. States are to adopt, “where necessary”, measures to promote “full and effective equality between persons belonging to a national minority and those belonging to the majority” taking “due account of the specific conditions” of national minorities. Article 4.2 is a key provision, since it provides the basis for the succeeding provisions that spell out in greater detail the measures that States should take in specific areas. Article 4.3 clarifies that any measures taken to promote effective equality are not to be considered as discrimination themselves.

The remaining substantive provisions of the Convention cover a wide range of issues, many of which may require that States adopt special measures. Ratifying States agree to:

- promote the conditions necessary for minorities to maintain and develop their culture and identity (Article 5)

- encourage tolerance, mutual respect, and understanding among all persons living on their territory (Article 6)
- protect the rights to freedom of assembly, association, expression, thought, conscience, and religion (Articles 7, 8, and 9)
- facilitate access to mainstream media and promote the creation and use of minority media (Article 9)
- recognize the right to use a minority language in private and in public and display information in the minority language (Articles 10 and 11)
- recognize officially surnames and first names in the minority language (Article 11)
- “endeavour to ensure” the right to use the minority language before administrative authorities and to display bilingual topographical indications in the minority language in areas inhabited by national minorities “traditionally” or “in substantial numbers” (Articles 10 and 11)
- foster knowledge of the culture, history, language, and religion of both majority and minorities (Article 12)
- recognize the rights of minorities to set up and manage their own educational establishments and learn their own language (Articles 13 and 14)
- “endeavour to ensure” that there are adequate opportunities to be taught in the minority language, in areas traditionally inhabited by national minorities or where they live in “substantial numbers” (Article 14)
- “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 15)
- refrain from measures that alter the proportions of the population in areas inhabited by minorities (Article 16)
- not interfere with the rights to maintain contacts across frontiers and participate in the activities of national and international NGOs (Article 17)

Implementation and Monitoring

Articles 24-26 of the Convention set out the monitoring mechanism of the Convention. Essentially, States are obliged to submit periodic reports for examination. Ultimate responsibility for examining the reports rests with the Committee of Ministers of the Council of Europe, but an Advisory Committee of experts assists the Committee of Ministers. Unlike in the European Convention on Human Rights, there is no procedure that allows for individual complaints.

The specific monitoring arrangements are detailed in the Committee of Ministers Resolution 97(10) (the text of which is available on the Council of Europe's minorities web site: www.humanrights.coe.int/minorities). State reports are examined first by the Advisory Committee, which evaluates the adequacy of the measures taken by States and gives its “opinions” on the reports. The Committee of Ministers, in turn, considers the State reports and the opinions of the Advisory Committee before adopting its own conclusions on the Convention's implementation. Where appropriate, the Committee may also adopt recommendations. The Advisory Committee's opinions are confidential until the Committee of Ministers issues its conclusions, at which time both committees' observations are published.

Advisory Committee

The Advisory Committee is composed of up to 18 members elected by the Committee of Ministers from candidates proposed by States Parties. Not all countries can have one of their nominees serve on the Committee, so those candidates who are not elected are placed on a reserve list of additional members. On the basis of a rotation system, the composition of the Advisory Committee will change over time.

Advisory Committee members are recognized experts in the field of minority protection. They serve in their individual capacities and are independent and impartial. The fact that they do not represent their governments is important, since the Committee of Ministers is a political body of government representatives. The involvement of an impartial expert body in assessing minority issues may facilitate the task of the Committee of Ministers; indeed, the Committee of Ministers, the highest decision-making body in the Council of Europe, has many other duties, and so relies heavily on the work of the Advisory Committee.

Examination of State Reports

States that have ratified the Convention must file their first report within one year and every five years thereafter, or whenever requested to do so by the Committee of Ministers. The Advisory Committee may invite the Committee of Ministers to request ad hoc reports addressing situations that may arise in the interval between a State Party's periodic reports. Once received, the reports are made public by the Council of Europe and are available on the Council's web site (www.coe.int).

The initial reports should contain full information on legislative and other measures adopted by the State to realize the principles of the Convention. The Committee of Ministers adopted detailed guidelines for State reports in 1998, specifying the information to be provided by States related to each of the articles in the Convention. Interested NGOs and individuals should evaluate whether the State report provides all the information requested in the guidelines.

The Advisory Committee is authorized to receive information from sources other than State reports, for example, it may also organize meetings with government representatives and independent sources. The Advisory Committee conducts on-site visits to States when considering their reports, during which the Committee meets with the government, NGOs, minority communities, academics, and other interested parties.

These visits require an invitation from the State concerned, but they are quickly becoming standard procedure for the Committee. This practice enables the Committee to assess better the situation of minorities in the States Parties and provides an opportunity to publicize the Committee's work in the State. The Committee may request additional written information from the State. NGOs and minority communities are free to submit information on their own initiative.

Role of NGOs

NGOs are essential to the full realization of the principles of the Convention through their involvement in both the implementation and monitoring process.

At the Domestic Level

NGOs can encourage changes in domestic legislation and practice in accordance with the principles set forth in the Convention. They can present their own ideas concerning the interpretation of the Convention and raise public awareness about the government's obligations under the Convention. Public awareness can be increased, for example, by translating and disseminating the text of the Convention and related documents. The latter should include the official State report, any comments by NGOs, and, once they are available, the opinions of the Advisory Committee and the conclusions and recommendations of the Committee of Ministers. By raising public awareness, NGOs can help create a climate in which the State is expected to take steps to comply with its obligations.

It also may be possible for NGOs and minority communities to be directly involved in the preparation of the State report. You should find out which government body is responsible for preparing the report and contact it to see if you can submit information or comments while the report is still in draft form. States may even want to involve NGOs in drafting the report.

NGOs should consider the degree to which they want to cooperate in the official reporting process, as opposed to the possibility of submitting comments or alternative reports to the Advisory Committee. By participating in the preparation of State reports, NGOs can help interpret the Convention's provisions in the context of the country concerned. However, NGOs may fear that their involvement might be used to give unwarranted credibility to a State report, even if the report does not sufficiently reflect NGO views. Yet participating in the preparation of a report and commenting on it later are not mutually exclusive activities, and you may choose to do both.

If your State is not yet a party to the Convention, publicity and lobbying can focus on the need to ratify the Convention. Given the rapid pace of ratification thus far, it should be relatively easy to encourage States to join other Council of Europe members as parties, in the same way that all members of the Council are expected to ratify the European Convention on Human Rights.

International Monitoring

To be effective, the monitoring process must ensure that the Advisory Committee receives information and analysis from a variety of sources, including NGOs and minority communities. This will enable the Advisory Committee to obtain a more complete understanding of the situation in the countries about which they are to formulate an opinion.

NGOs can send information at any time to the Secretariat of the Framework Convention at the Council of Europe. The Secretariat will forward the information to members of the Advisory Committee. However, it is most effective to submit such information when the Advisory Committee is actively considering a State's report. Therefore, NGOs should study the report, which is made public as soon as the Committee receives it, if it is not made public earlier by the State itself, decide what information provided by the government should be supplemented or challenged, and submit their comments to the Advisory Committee in time for them to be considered when the Committee examines the State report. Information about when State reports are due and when they have been received can be obtained through the Council of Europe's web site (www.coe.int). The Secretariat will tell you the deadline for receipt of NGO comments so they can be considered by the Advisory Committee. If possible, NGOs should submit their information in either French or English, the working languages of the Committee.

If you have sufficient time and resources, you could also prepare a full alternative report that systematically addresses all of the issues discussed in the State report.

Whether you submit comments or a full alternative report, you should, whenever possible, refer to any specific information that might be missing or incorrect in the State report. The information you submit should be factual, complete, and detailed, and it should refer, whenever possible, to specific articles of the Convention. You also may include documents from other national or international NGOs, research institutes, and international organizations, such as the OSCE High Commissioner on National Minorities and, where they are directly relevant, the UN's treaty bodies or special rapporteurs. Information also may be obtained from other Council of Europe bodies, such as the European Commission against Racism and Intolerance (ECRI), the Committee of Experts of the European Charter for Regional or Minority Languages, and the Monitoring Committee of the Parliamentary Assembly. Demographic and statistical information is very valuable, especially if it is not included in the State report, and it may help the Committees to compare the situation of minorities at different times. NGOs may also present their own recommendations for actions the government should take to implement the Convention.

If you would like to submit a full alternative or "shadow" report, you should consider cooperating with other national or international NGOs. This will minimize duplication of work and may provide more representative and comprehensive information, which, in turn, may give your report greater credibility. At a minimum, it is important to be aware of what other NGOs are doing to avoid presenting conflicting information.

After the conclusions and recommendations of the Committee of Ministers are made public, NGOs can publicize them and generate a discussion on minority rights

throughout the country. NGOs should also monitor the response of the government to the conclusions and recommendations, including any follow-up information that the State is to submit at the request of the Committee of Ministers.

To date, no Advisory Committee opinions or conclusions by the Committee of Ministers had been published. It is thus too early to assess the comprehensiveness or usefulness of the reporting system established under the Convention. However, at the very least, the Advisory Committee appears to have created an atmosphere that encourages communication among governments, NGOs and minority communities.

Further Information and Contacts

All communications about the Framework Convention should be addressed to the Secretariat:

Secretariat of the Framework Convention for the Protection of National Minorities
Directorate General of Human Rights - DG II
Council of Europe
F-67075 Strasbourg Cedex
France
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The home page of the Council of Europe is <http://www.coe.int>. The home page for information on minorities, including the Framework Convention, is <http://www.humanrights.coe.int/minorities>. On this latter site you can find

- the text of the Framework Convention
- information on signatures, ratifications, declarations, and reservations to the Convention
- timetables setting out when State reports are due or have been received and the status of monitoring activities
- the composition of the Advisory Committee
- rules on the monitoring arrangements under Articles 24 to 26 and the Rules of Procedure of the Advisory Committee
- Activity Reports of the Advisory Committee
- full texts of State reports
- opinions, conclusions, and recommendations of the Advisory Committee and Committee of Ministers, once they are made public

Printed texts also may be obtained from the Council of Europe, including:

- Framework Convention for the Protection of National Minorities and Explanatory report, H(95)10
- Outline for the Reports to be submitted pursuant to Article 25 Paragraph 1 of the Framework Convention for the Protection of National Minorities, ACFC/INF(98)1

- Resolution (97)10, Rules adopted by the Committee of Ministers on the Monitoring Arrangements under Articles 24 to 26 the Framework Convention for the Protection of National Minorities
- Rules of Procedure of the Advisory Committee on the Framework Convention for the Protection of National Minorities, ACFC/INF (98)2

Finally, a useful practical guide is *The Framework Convention for the Protection of National Minorities: A Guide for Non-Governmental Organizations*, published in 1999 by the London-based Minority Rights Group International.