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A GUIDE TO THE RIGHTS OF MINORITIES AND LANGUAGE

F e r n a n d d e V a r e n n e s

COLPI Paper No. 4

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NOVEMBER 2001



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Printed in Hungary November 2001

ISBN: 963 7316 84 1

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1. GENERAL INTRODUCTION

The relevant international obligations and commitments constitute international minimum standards. It would be contrary to their spirit and intent to interpret these obligations and commitments in a restrictive manner.¹

This booklet attempts to provide a comprehensive description of the human rights of minorities in the area of language use. It is intended first and foremost as a legal guide. It contains information on the main provisions from treaties and other documents which deal with the rights of minorities and has a section which provides details on organisations and programmes that might be helpful for those wishing to have additional information or assistance. Additionally, there are quick reference charts to detail the content of the rights of minorities and the relevant treaty provisions.

A large number of documents in Europe (Council of Europe, OSCE, European Union) and internationally acknowledge that the speakers of minority or regional languages have rights - human rights - that must be respected. Yet because of the generality or complexity of these rights, it is not always easy to have a clear picture as to what exactly they involve in a practical sense.

This booklet hopes to be able to guide readers by providing a short and clear enumeration of the specific rights of minorities in the linguistic field, based on international and European treaties and documents, as well as where individuals may submit their cases in order to have these rights respected by their governments.

2. HUMAN RIGHTS, DEMOCRACY AND MINORITIES

It is not an exaggeration to say that European countries operate today on the basis of shared, common values. These comprise the rule of law, democracy, human rights, including the rights of persons belonging to minorities, tolerance and a pluralistic society. They are values that are widely accepted from OSCE documents to Council of Europe treaties, as well as part of the political criteria for admission of new States to the European Union. The observance of these values is no longer a matter of choice, but a political and - in the case of human and minority rights - legal imperative. As stated in the 1990 Charter of Paris for a New Europe "the rights of persons belonging to national minorities must be fully respected as part of universal human rights". The promotion of tolerance and pluralism is also an important component of these shared values.

Linking peace, security and human rights to the desirability of accommodating and using a minority's language, these rights and political commitments represent constructive means for reconciling the moral side of human rights with a more practical concern: how minorities can be included and made part of the wider society represented by the State. They represent new and developing forms of inclusion, accommodation and respect that also take into account the interests and resources at the disposal of the State. As was confirmed in one OSCE document, "friendly relations among our peoples, as well as peace, justice, stability and democracy, require that... linguistic... identity be protected and conditions for the promotion of that identity be created".²

3. LEGAL OBLIGATIONS, POLITICAL COMMITMENTS AND MINORITY RIGHTS

Minorities - both citizens and non-citizens – have numerous rights in relation to language.³ They can be based on international or European treaties which are legally binding documents. A number of rights found in international law and in Council of Europe treaties are also contained in politically binding documents from the OSCE and other organisations. While these latter examples do not for the most part involve legally binding documents, they do at the very least represent political and moral obligations. Perhaps more importantly, they reflect a generalised consensus as to what are the human rights of minorities and on the standards that are applicable in the area of language.⁴

There are also a large number of bilateral treaties, treaties between two States, which have been concluded between European and Central Asian States which are legally binding and which recognise to minorities a number of minority rights. Most of them do not provide for any mechanism to guarantee compliance nor to permit individuals to seek redress if these rights are violated. Nevertheless, a treaty which has been ratified is still legally binding in most European legal systems, and individuals can in some of these States make a claim before a court of law based on the violation of such a treaty.⁵

In addition to legal obligations, governments in Europe have at the very least a moral obligation to take other measures related to safeguarding and promoting the languages of minorities. For example, the European Parliament reminded member States of the need to "recognise their linguistic minorities in their laws and thus create the basic condition for the preservation and development of regional and minority cultures and languages".⁶

Yet, despite these expressions of support, a problem often facing minorities in their attempts to ensure that their rights are respected is that many human rights standards tend to be rather vague or general. This means that it not always clear what is the exact content of a particular right in concrete situations is, or what exactly governments may have to do in order to fulfil their legal obligations.

This booklet will attempt to provide some answers. It is not intended to be an academic discussion of the rights of minorities, but tries to present a summary of what these rights are.

It is however necessary to caution readers in the use of this booklet. While the content of some rights may be clear and widely agreed upon, there is not always unanimous understanding or agreement in legal circles as to some other rights. For reasons of brevity, a number of generalisations have been made which some may feel are controversial.

The various rights of minorities relating to language use are often presented in the booklet in a rather clear and unambiguous way, but in the real world the specific circumstances of each individual case can vary enormously. While there tends to be a fairly unanimous view as to what would constitute a violation of the rights of a minority in private activities, it is a more difficult matter to determine what is a discriminatory practice or unjustified denial of a minority's right to have their language used by public authorities. In the latter case, a large number of factors may have to be considered in order to determine if it is unreasonable or unjustified to reject an individual's request for public authorities to offer their services in his or her language.

The next two sections will consider how, in concrete terms, minorities have rights as to the use of their language. The basis for the exercise of each right will also be explained very briefly, outlining whether a specific use of a minority language is clearly recognised in international law at the universal or the regional (i.e. European) level. The decisions from international or European bodies that support such a conclusion will also be identified where they exist.

4. Private Use of Minority Language

If public authorities prevent the use of a minority language in private activities, this would breach a number of rights that are well established in international law and increasingly recognised in bilateral and multilateral treaties and other documents. Attempts by public authorities to regulate the language used in the private sphere - be they in commercial activities, in publications, in meetings or cultural events etc - could involve a number of violations of human rights, such as the right to private and family life, freedom of expression, non-discrimination or the right of persons belonging to a linguistic minority to use their language with other members of their group if it prevents them from using their language of choice.

Most international treaties and other documents which deal with the rights of minorities or language tend to contain general provisions, often based on the wording used in Article 27 of the International Covenant on Civil and Political Rights, such as "persons belonging to minorities have the right to use his or her language freely, in public as well as in private". These provisions can be said to protect most examples of the private use of a minority language. There is widespread, even unanimous, agreement that this is a legally binding obligation, one of the many "human rights standards" in relation to the right to use a minority language. What follows is a description of the actual application of this right in a number of specific situations of particular relevance for minorities.

4.1 Private Use of a Minority Language in Written and Oral Forms

Persons who are members of a minority (and all individuals) have the right to use their language among themselves in private activities. If public authorities forbid or restrict the ability to use a minority language in private, whether in written or oral forms, this would be a violation of freedom of expression, as well as be discriminatory. It would also breach Article 27 of the International Covenant on Civil and Political Rights (ICCPR), since individuals who are members of a linguistic minority could also claim they are entitled not to be denied the right to use their language with other members of their group.⁷

To give an example of what would be a violation of this right to use a minority language, to ban individuals from having a private conversation in their language in public streets would breach freedom of expression, Article 27 of the ICCPR, and be discriminatory. Many international treaties and other documents dealing with human rights or the rights of minorities have a provision where this right is expressly recognised.⁸

The same applies to cases of the written use of a minority language, or using such a language as a means of communication. Public authorities must not prevent individuals from writing in or using a minority language in private correspondence or communications, and this would include the use of a

minority language in private business or commercial correspondence, by telephone, electronic means, etc. To prevent the use of a minority language in these circumstances would violate international law, including freedom of expression, non-discrimination, and a person's right to use his or her own language with other members of the minority in the case of a linguistic minority in provisions such as Article 27 of the International Covenant on Civil and Political Rights.⁹

One decision dealing specifically with language restrictions in the area of private correspondence or communications was in 1993 handed down by the United Nations' Human Rights Committee. In *Ballantyne, Davidson and McIntyre v. Canada*, the Committee indicated without hesitation that public authorities cannot ban the use of a particular language in private correspondence or communication, though the Committee did suggest that it may be permissible for public authorities to require that an official language be used in addition to, but not excluding or obstructing, the individual's language of preference in these private activities.

There are no known cases in international law or under Council of Europe treaties identifying situations where public authorities could ban the use of a minority language in private correspondence or communication. In theory, the only situations where this might be possible is if such a restriction would be necessary in order to protect the reputation of others, or for the protection of national security, public order or public morality, or to prevent incitement to racial hatred or violence. In practice, it would seem difficult to imagine a case where a ban on a minority language would fit any of these categories.

There is widespread agreement on this right in treaties and other international and European documents. They all agree on the appropriate "standard" which governments have a legal and political obligation to comply with.¹⁰ To quote from only one of these instruments, Article 10 of the Framework Convention on the Protection of National Minorities indicates that:

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.

There is controversy as to the right to use a minority language in private cultural or musical activities. If public authorities were to make it illegal to play a song, present a play, opera, etc., either in private or in public, because it is in a minority language, this would be a violation of rights such as freedom of expression, non-discrimination, and Article 27 of the International Covenant on Civil and Political Rights. In addition to being implied in treaties and other documents which recognise the right of members of a minority to use their own language in private and in public, it is identified more explicitly in a few instruments.¹¹

CHART A: Writing and Speaking a Minority Language in Private Activities

Public authorities who restrict or forbid the private use of minority languages in written or oral forms would be in violation of a number of basic human rights and go against treaties and political commitments from the United Nations, the Council of Europe and the OSCE. As such, public authorities would be violating international law and Council of Europe legal obligations. Minorities may therefore bring cases to their own national courts - where permitted - and/or use the judicial or other mechanisms under the United Nations and Council of Europe. The column on the left gives a series of specific situations which would be protected by the provisions of the treaties and other documents identified in the right column.

Right to Write or Speak Language	Human Right Guarantees Protecting Rights
<ul style="list-style-type: none"> · Private letters and other written documents in minority language · Songs using minority language used in private functions or by individuals in their private capacity · Minority language used in private radio, televisions or Internet broadcasts · Minority language used in private posters, banners, signs (includes for political, cultural or business purposes) · Minority language use on labels of commercial products · Use of minority language in documents or activities of non-governmental organisations, social clubs, etc. 	<p>Freedom of expression (Articles 19 of the ICCPR and 10 of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms)</p> <ul style="list-style-type: none"> · Article 27 of ICCPR · Non-discrimination (Article 26 of the ICCPR and the new Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms) · Paragraph 32.5 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension · Article 11 of the Framework Convention for the Protection of National Minorities

4.2 Names and Topographical Indications in a Minority Language

Individuals are free to have their name or surname in their own language.¹² This right is clearly recognised in international law as a part of the right to private life. In one of its decisions, the United Nations' Human Rights Committee has made it clear that the notion of privacy includes:

...the sphere of a person's life in which he or she can freely express his or her identity, be it by entering into relationships with others or alone. The Committee is of the view that a person's surname [and name] constitutes an important component of one's identity and that the protection against arbitrary or unlawful interference with one's privacy includes the protection against arbitrary or unlawful interference with the right to choose and change one's own name.¹³

Public authorities cannot interfere with this right arbitrarily or unlawfully, and the Committee has indicated that a restriction on the right to choose one's name would have to be reasonable to satisfy this requirement.

It is part of the rights of ethnic and linguistic minorities under Article 27 of the International Covenant on Civil and Political Rights. It is also contained in an increasing number of international and regional treaties and other documents dealing either with national minorities, linguistic minorities or ethnic minorities.¹⁴ A State cannot prevent an individual from having a name or surname which is not in an official language or not contained on a prescribed list. Names and surnames constitute a means of identifying persons within their families and the community, and as such are an inseparable part of private life.

However, it is not absolutely clear whether the right to private life necessarily means in itself, in the European context, that a State is obliged to officially recognise or use an individual's preferred name or surname. As long as individuals are not prevented by public authorities from using their preferred names or surnames privately, there may not be a violation of the right to private life.¹⁵

But it is still possible that the refusal of public authorities to officially recognise or use a person's name in a minority language could be discriminatory. This is

an area of the use of a minority language by public authorities and therefore not involving, strictly speaking, private matters. This aspect is dealt with separately from the private use of language in specific treaties and other documents, as shown in section 5.4.

But the name or surname of individuals is not the only area of "designation" where minorities may have a right to use their language. It would appear clear that public authorities cannot ban the private use of topographical or locality names in a minority language. Individuals have the right to designate and use privately local names and topographical designations in their own language. If public authorities were to ban such private use, this would constitute a violation of freedom of expression and Article 27 of the International Covenant on Civil and Political Rights. This right is additionally recognised in a number of treaties and other international or regional documents.¹⁶

This right does not mean that public authorities must in all cases officially adopt local designations in minority languages. The issue of official topographical designations deals with the use of a minority language by public officials, and is therefore considered in section 5 of this booklet.

If public authorities fail to respect the above rights involving the private use of a minority language, individuals may be able to seek redress from courts and other bodies.

CHART B: Private Use of Names, Surnames and Designations in Minority Languages

To prevent the private use of an individual's or an organisation's name in a minority language would violate a number of basic human rights in international law and in Europe, as might similar restrictions related to the private use of topographical designations. Minorities may therefore bring cases involving examples described in the column on the left, which would be protected by the provisions of the treaties and other documents identified in the right column.

<p>Private Names and Other Designations in Minority Language</p>	<p>Human Right Guarantees Protecting Rights</p>
<ul style="list-style-type: none"> · private use of name or surname in minority language · name/designation of a non-governmental organisation, corporate, social or political entity in a minority language · non-official use of local names, street names and other topographical indications in a minority language 	<ul style="list-style-type: none"> · Right to private Life · Freedom of Expression · Article 27 of ICCPR · Non-discrimination · Article 11 of the Framework Convention for the Protection of National Minorities · Article 11 of the Central European Initiative for the Protection of Minority Rights · Paragraph 32 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension · Recommendation 1 of the Oslo Recommendations · Freedom of expression · Article 27 of ICCPR · Article 11 of the Framework Convention for the Protection of National Minorities · Paragraph 33 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension · Recommendation 3 of the Oslo Recommendations

4.3 Public Displays in a Minority Language

Freedom of expression includes the right to linguistic expression in international law. This means that every individual, including members of a minority, has the right to use their language of choice in private "expression" activities. This applies to the language used in the private display of signs, posters, etc. of a commercial, religious, social, cultural or even political nature which is in public view.¹⁷ Public authorities may require that an official language be used in addition to the minority language in some cases, but only if it does not interfere with the right to use a minority language in these displays.¹⁸

In a general sense, individuals have complete linguistic freedom in these private matters. Public authorities may only intervene on a handful number of grounds recognised in international law, such as when it is necessary and proportionate for reasons of public morality or public order. But even this permissible intervention by public authorities would have to be strictly limited. What this means is that States are not entitled to impose the exclusive use of the official language in private affairs. At most, public authorities may decree that an official language also be used in conjunction with an individual's language of choice. But the additional use of an official language may not exclude in private activities the freedom to express oneself in a language of one's choice.¹⁹

Members of a minority may therefore be required to jointly use the official language in addition to the minority's language of preference on private posters and signs. However, and this point must be clearly understood, public authorities may never prohibit the use of minority languages in these private activities, nor can any requirement to using the official language jointly with other languages become so burdensome as to in effect restrict an individual's freedom to use their language of choice in private posters, signs, etc.

A few documents make direct reference to this right,²⁰ and in particular Article 11(2) of the Framework Convention for the Protection of National Minorities:

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.

As part of these rights, minorities have the right to use a particular script (such Cyrillic, Greek, Latin, Hebrew, etc.) in their private activities. This is protected under freedom of expression in international law, and may also be a right under Article 27 of the ICCPR, since a script is a language component, although there are not many documents which state this clearly.²¹ What appears clear is that any attempts by public authorities to ban the private use of a particular script would be a violation of fundamental rights contained in international law and in European treaties.

**CHART C: Public Displays
in Minority Languages**

The private use of a minority language may be public, in the sense that members of the general public may be able to read or hear this language. Public authorities cannot ban or make it an offence to have public displays in a minority language. This would, among others, violate freedom of expression and other fundamental rights as shown below.

Public Displays in Minority Language	Human Right Guarantees Protecting Rights
<ul style="list-style-type: none"> · private posters, signs publicly visible with text in minority language · use of minority language in commercial banners, ads, signs, etc. seen by public · use of minority language in literature, brochures, posters distributed by political and other organisations before or during elections · use of minority alphabet in signs, posters, banners, etc. of a private nature seen by public 	<ul style="list-style-type: none"> · Freedom of expression · Non-discrimination · Article 27 of ICCPR · Article 11 of the Framework Convention for the Protection of National Minorities · Paragraph 32.1 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension

**4.4 Private Media
and Minority Language Use**

Individuals are free to publish books or newspapers privately in a minority language. If public authorities attempted to prohibit such activities because they are done in an unrecognised or banned language, this would be a violation of freedom of expression guaranteed under international law and in the European Convention on Human Rights. It is also protected under Article 27 of the International Covenant on Civil and Political Rights and similar provisions in the case of minorities generally. Members of a minority cannot be prevented from publishing privately in their own language.

There is no general obligation, from a legal point of view, for public authorities to provide financial assistance or resources to make publishing in a minority language possible. However, if public authorities provide financial or material assis-

tance to private publication activities, members of a minority must also be entitled to such assistance in conformity with the right to equality and non-discrimination.

Recognition of this right is found in a fairly large number of treaties and other documents.²²

As for private broadcasting, it is generally guaranteed in international law and Council of Europe treaties under freedom of expression and of the press. A prohibition on the use of a minority language in private broadcasting would therefore be a violation of freedom of expression. This has been confirmed by the United Nations' Human Rights Committee in a number of comments to reports from States such as the following:

7. The Committee expresses its concern over the inadequate protection of the rights of ethnic, religious and linguistic minorities in the Dominican Republic. In this regard, the Committee notes that the prohibition of broadcasting in a language other than Spanish is not in conformity with article 19 [freedom of expression] of the Covenant.²³

To ban private broadcasting in a minority language would in addition constitute a form of discrimination and a violation of Article 27 of the International Covenant on Civil and Political Rights. Many legal and political documents also recognise this minority right.²⁴

CHART D: Private Media and Broadcasting in Minority Languages

Restricting or prohibiting the use of a minority language in private media and broadcasting is an extremely serious violation of human rights since it clearly conflicts with one of the most fundamental components of democracy, international law and European standards: freedom of expression and of the press. In addition, such attempts by public authorities could be in violation of other basic human rights of minorities.

Right to Private Media Use of Minority Language	Human Right Guarantees Protecting Rights
<ul style="list-style-type: none"> · Printing or distribution of book, newspaper, newsletter, magazine, etc. written in a minority language · Use of minority language in private radio or television broadcasts, news bulletin or in musical/programming content · Refusal to provide licence or permit for publication of newspaper, magazine, or radio or television stations 	<ul style="list-style-type: none"> · Freedom of expression · Non-discrimination · Article 27 of ICCPR · Article 9 of the Framework Convention for the Protection of National Minorities · Article 11(2) of the European Charter for Regional or Minority Languages · Paragraph 32.5 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension · Recommendation 8 of the Oslo Recommendations · Article 9(2) of the Framework Convention for the Protection of National Minorities · Article 27 of ICCPR · Non-discrimination and freedom of expression · Recommendation 8 of the Oslo Recommendations

4.5 Private Education and Minority Languages

Public authorities cannot forbid the establishment or operation of private schools from teaching a minority language or using a minority language as the medium of instruction. This is a right which has been recognised in treaties even before the creation of the United Nations.²⁵ There is widespread recognition of this right in legal and political documents, despite some differences in the way it is formulated.²⁶ All legal and other documents usually add that public authorities may impose the obligation that all students learn the official language up to a reasonable level of fluency.²⁷

If public authorities provide assistance to private schools, minority educational facilities would also have to be treated in a non-discriminatory, though not necessarily identical, manner.²⁸ This means that public authori-

ties must either cease assisting all private schools, or provide assistance to private minority schools teaching in a minority language without discrimination.²⁹ This has been confirmed, indirectly, in a recent decision of the UN Human Rights Committee when it had to deal with a complaint from a religious minority in Canada:

...[T]he Committee notes that it is not possible for members of religious denominations other than Roman Catholic to have their religious schools incorporated within the public school system... [T]he Committee considers that the differences in treatment between the Roman Catholic religious schools, which are publicly funded as a distinct part of the public education system, and schools of the author's religion, which are private by necessity, cannot be considered reasonable and objective... [P]roviding funding for the schools of one religious group and not for another must be based on reasonable and objective criteria... [T]he Committee concludes that...the differential treatment between the Roman Catholic faith and the author's religious denomination is [not] based on such criteria. Consequently, there has been a violation of the author's rights under article 26 of the Covenant to equal and effective protection against discrimination.³⁰

CHART E: Private Education and Minority Languages

To ban the establishment or operation of minority schools using a minority language as medium of instruction is a long recognised right in international law, usually associated with provisions dealing with either non-discrimination or specific minority provisions. There are also other aspects to this right, such as official recognition of the diplomas received in such facilities.

Private Education and Minority Languages	Human Right Guarantees Protecting Rights
<ul style="list-style-type: none"> · Right to open and operate private educational facilities and teach using minority language as medium of instruction · Right to have degrees from minority educational facilities recognised by public authorities and other institutions (e.g. universities) · Right to seek and obtain private and outside assistance for operations of private minority education · Right to seek and obtain financial and other assistance from public authorities · Right to learn majority/official language 	<ul style="list-style-type: none"> · Article 27 of ICCPR · Right to education in combination with non-discrimination · Article 13 of the Framework Convention for the Protection of National Minorities · Paragraph 34 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension · Recommendations 4, 8 and 9 of the Hague Recommendations · Non-discrimination · Recommendation 10 of the Hague Recommendations · Non-discrimination · Recommendation 7 of the Oslo Recommendations · Recommendation 10 of the Hague Recommendations · Non-discrimination · Article 14 of the Framework Convention for the Protection of National Minorities · Paragraph 34 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension · Recommendations 12 and 13 of the Hague Recommendations

4.6 Use of Minority Languages in Religious and Cultural Activities

Minorities have the right to use their language in their religious activities. If public authorities were to declare the use of a minority language illegal during religious practices, this would be in breach of freedom of expression, freedom of religion, constitute a form of discrimination, and be inconsistent with the international obligations under Article 27 of the International Covenant on Civil and

Political Rights and similar provisions, such as Articles 7 and 8 of the Framework Convention for the Protection of National Minorities. There are some international documents that also refer specifically to the right to use a minority language in these circumstances.³¹

When a religious ceremony includes official acts, as can be the case in marriage rites, public authorities cannot prevent the use of the language of a minority language during the private part of the ceremony for the reasons described earlier, though they may require that the "official" part of the "private" rites be in an official language, in addition to but not excluding the minority language.³²

Similarly, in the area of culture, a prohibition making it illegal to play any song, theatre presentation, opera, etc., either in private or in public, in a minority language would clearly be in violation of rights such as freedom of expression, non-discrimination, and likely Article 27 of the International Covenant on Civil and Political Rights. It is implied in a large number of treaties and other documents which recognise the right of members of a minority to use their own language in private and in public. This right is also set out more explicitly in a few instruments.³³

A slightly more difficult situation involves when these private events must be translated into the official language, so that there is not a direct prohibition of the use of a minority language. In this latter case, the requirement of a bilingual format for all private cultural activities could still be a violation of international law and Council of Europe treaties, among others if one of the following issues arise:

(a) The translation/bilingual requirement is so onerous that it in effect prevents the free use of a minority language in cultural events. This would violate freedom of expression, Article 27 of the ICCPR and non-discrimination.

(b) While not entirely preventing holding private cultural activities, the translation/bilingual requirement does create a disadvantage, and costs, which only the members of the minority are subjected too. This type of disadvantage could in many cases be a breach of non-discrimination, even if there is not a violation of freedom of expression and Article 27 of the ICCPR.

CHART F: Religion, Culture and Minority Languages

Public authorities may sometimes try to restrict the use of minority languages in religious activities, especially if some of these involve ceremonies which may also have a civic dimension such as a marriage. Individuals who may be prevented from using a minority language in such situations may be able to claim a violation of the human rights described in the right-hand column.

Private Use of Minority Languages and Religious Activities	Human Right Guarantees Protecting Rights
<ul style="list-style-type: none"> · Right of clergy or celebrants to freely use minority language in religious activities · Use of minority language in civil rites (marriage, etc.) · Right to use minority language in private cultural events (opera, music concerts, theatre presentations, street theatre, etc.) · No unreasonable or arbitrary bilingualism requirement in private cultural activities 	<ul style="list-style-type: none"> · Freedom of religion (where language is intrinsically linked to religious practices) · Non-discrimination · Article 27 of the ICCPR · Article 12 of the Central European Initiative Instrument for the Protection of Minority Rights · Paragraph 32.4 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension · Recommendation 4 of the Oslo Recommendations · Non-discrimination · Articles 4 and 5 of the Framework Convention for the Protection of National Minorities · Article 12 of the European Charter for Regional or Minority Languages · Paragraph 32 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension

4.7 Language in the Context of Private Economic and Employment Activities

Minorities have the right to freely use their language in private business activities. Public authorities cannot prevent an individual or business from using their preferred language in the economic field. Legislation or restrictions that would prevent the use of a language between an employer and his or her employees, between a business owner and a client, or in written, visual or audio form for private commercial activities, would be a violation of freedom of expression.³⁴

It is possible - in some cases - for public authorities to require that an official or other language also be used in addition to a minority language³⁵ in private economic activities if it does not exclude or hamper the use of the minority language. It may for example be required that documents be made available in the official or national language for taxation purposes. As long as this requirement does not obstruct individuals from also using freely their language of choice, the need to have business documentation available in the official or national language would not constitute a breach of freedom of expression.

Another situation which minorities may encounter are restrictions on the type of economic or work-related employment which individuals may occupy. Typically, public authorities restrict some private employment categories or economic activities to individuals who have some degree of fluency in the official language. While some degree of bilingualism of this nature may be seen as justifiable in some cases of "public services" (eg. private transportation or health care providers), restrictions of this nature may still run the risk of violating basic human rights if they are too restrictive, greatly disadvantage large numbers of individuals, or are deemed unreasonable or unjustified given the legitimacy of the objectives sought and the means employed to reach these objectives. In other words, it could be a violation of the right of equality without discrimination based on language or origin to have such regulations, if the consequences seriously affect the livelihood of many individuals. For example, a requirement that all taxi drivers in a country be fluent in the official or national language would in all likelihood be a disproportionate and arbitrary requirement, and therefore discriminatory, if in fact a large segment of the population of that State is not fluent in this language.

Some documents specifically recognise this right to use a minority language in the private economic sphere.³⁶

CHART G: Employment, Economic Activities and Private Minority Language Use

Public authorities may not ban or severely restrict the use of minority languages in private economic activities. Individuals who may be prevented from using a minority language in such situations may be able to claim a violation of the human rights described in the right-hand column.

Private Use of Minority Languages in Economic and Employment Activities	Human Right Guarantees Protecting Rights
<ul style="list-style-type: none"> · Private use of minority language on labels of commercial products · Use of minority language in shop/work - ing environment by individuals in their private activities · Use of minority language in business material (advertisements, promotional material, posters, etc.) · Denial of permits, or prohibition from conducting private working activities or professions (taxi drivers, lawyers/solicitors, journalists, private doctors/nurses, etc.) because of lack of proficiency in official/majority language 	<ul style="list-style-type: none"> · Freedom of expression · Non-discrimination · Article 13 of the European Charter for Regional or Minority Languages · Recommendation 12 of the Oslo Recommendations · Non-discrimination · Article 4 of the Framework Convention for the Protection of National Minorities · Recommendation 12 of the Oslo Recommendations

4.8 Use of Minority Languages by Private Organisations; Registration of Minority Organisations

Private groups or organisations, such as cultural societies, minority associations, etc., have the right to use minority languages in their activities. This is protected in international law and in Council of Europe treaties which guarantee freedom of expression. If public authorities attempt to prevent the use of a minority language, it would also constitute discrimination and, in the case of a linguistic minority, a violation of Article 27 of the International Covenant on Civil and Political Rights, as would also any attempt by the State to prohibit the use of a minority language during meetings or other activities of private groups or organisations. This right is included in a number of documents and at least one treaty.³⁷

It may be possible for public authorities to require that a private group or organisation keep its financial records and other types of documentation in an official language, but this must not constitute a burdensome requirement nor prevent the group or organisation from also keeping these same documents in their own language.

Public authorities cannot prohibit the establishment or operation of private organisations for their use or identification with a minority language, nor can they refuse the registration of such an organisation when this is required by legislation. Such a refusal or prohibition would violate freedom of association, unless it is prescribed by law, in pursuit of a legitimate aim and necessary in a democratic society. This appears to have been confirmed indirectly in recent decisions by the European Court of Human Rights³⁸, and would similarly be the case in other human rights and minority treaties.³⁹

In the case of a refusal by public officials or government minister to register a minority organisation, or to interfere in its operations, this would be a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms if there is no law setting out clear criteria for registration. Since there are no procedural safeguards against the arbitrary exercise of discretion, the interference is not one that can be prescribed by law. Although the European Court of Human Rights was referring a violation of freedom of religion, it also indicated, *inter alia*, that the same reasoning would be applicable to freedom of association. In the case of linguistic minorities then, "if there is no law setting out clear criteria for registration and there are no procedural safeguards against arbitrary exercise of discretion", there would be a violation of Article 11(2) of the Convention in such a situation.⁴⁰

In addition, individuals, as well as political parties or associations, have the right to use a minority language in their own affairs. Their activities are private by nature, even during times of elections. A prohibition on the use of a minority language in private political activities or during events with a political character would therefore be in violation, at the very least, of freedom of expression, Article 27 of the International Covenant on Civil and Political Rights, and non-discrimination.

Finally, public authorities cannot forbid individuals from occupying positions in non-governmental organisation, including political parties, because of insuffi-

cient proficiency in the official or State language. Such interference by public authorities in what is of a private nature would breach freedom of association and constitute discrimination, both basic human rights.

CHART H: Private Organisations and Minority Languages

Non-governmental organisations, cultural societies, political parties and other social and similar groups enjoy the freedom to use minority languages in their activities if they so desire. This is an individual right which finds its basis in a series of basic human rights long-established in international law and in the treaties of the Council of Europe, as shown in the examples below.

Private Use of Minority Languages and Private Organisations	Human Right Guarantees Protecting Rights
<ul style="list-style-type: none"> · Right to use minority language as language of operations, work or meetings · Right to have organisation documents (meeting minutes, accounting books, etc.), publications, brochures in minority language · Right to occupy positions in non-governmental organisations, including political parties without linguistic restrictions such as official language proficiency 	<ul style="list-style-type: none"> · Freedom of expression · Non-discrimination · Article 27 of the ICCPR · Article 13 of the European Charter for Regional or Minority Languages · Paragraph 32.1 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension · Recommendation 6 of the Oslo Recommendations · Non-discrimination · Article 4 of the Framework Convention for the Protection of National Minorities · Recommendation 12 of the Oslo Recommendations

4.9 Transborder Contacts and Minority Languages

Increasingly, treaties and other documents both in Europe and at the international level include the right for minorities to maintain and develop their culture, including the right to preserve their identity. In more practical terms, a number of treaties have begun to recognise a minority's right to establish and maintain free and peaceful contacts across frontiers, in particular with individuals or organisations with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.⁴¹ Although not elaborated upon in any further detail, one could argue that this right also covers an individual's right to freely receive radio and television broadcasts in minority languages from abroad without interference by public authorities. This has in fact been recognised specifically in at least one document.⁴²

CHART I: Transborder Contacts and Minority Languages

Contacts from Abroad and Languages	Human Right Guarantees Protecting Rights
<ul style="list-style-type: none"> · Right to make contacts with transborder minority organisations · Right to receive without unreasonable restrictions transborder radio and television broadcasts in minority languages 	<ul style="list-style-type: none"> · Article 17 of the Framework Convention for the Protection of National Minorities · Recommendation 11 of the Oslo Recommendations

5. THE USE OF A MINORITY LANGUAGE BY PUBLIC AUTHORITIES

Public authorities have an obligation to use the language of minorities in appropriate circumstances, such as where numbers and geographic concentration of the speakers of a minority language make it a reasonable or justified arrangement. In some cases, individuals have the right to have a minority language regardless of this requirement. For example, every person facing criminal proceedings who does not understand the language used in these proceedings has the right to be informed promptly, in his or her minority language, 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.

These rights of minorities are now well accepted "European and international standards": from a legal point of view, they are contained in two treaties of the Council of Europe, the Framework Convention on the Protection of National Minorities and the European Charter for Regional or Minority Languages. The right to have public authorities use a minority language where reasonable or justified is also referred to in an increasingly large number of resolutions, declarations and other documents in the Council of Europe, the European Union (where respect for minority rights is now part of the political criteria for admission of new States to the EU), the Organisation on Security and Co-operation in Europe, and the United Nations. These confirm the widespread acceptance of these rights as fundamental political commitments in addition to their legal dimension.

Some experts also believe that the use of a minority language by public authorities is guaranteed in international law from the application of non-discrimination as to language, although this has not yet been firmly established.⁴³

The specific rights of minorities to have public authorities use their language is described in the next sections, with examples given to illustrate how these rights would apply in concrete terms.

5.1 Minority Language Use by Administrative and Public Authorities in General

Speakers of a minority language who are sufficiently numerous and concentrated at the national, regional or local levels have the right to have public authorities provide an appropriate degree of service in this language.

For example, in local administrative districts where speakers of a minority language are concentrated, local authorities must generally provide for an increasing level of services in their language as the number of speakers of a particular language increases. Beginning at the lower end of what will be called a "sliding-scale model", and moving to a progressively higher end, this could imply, as described for example in the European Charter for Regional or Minority Languages:

1. making available widely used official documents and forms for the population in the non-official or minority language or in bilingual versions;
2. the acceptance by authorities of oral or written applications in the non-official or minority language;
3. the acceptance by authorities of oral or written applications in the non-official or minority language, and response thereto in that language;
4. having a sufficient number of officers, who are in contact with the public, in place to respond to the use of the non-official or minority language;
5. being able to use the non-official or minority language as an internal and daily language of work within public authorities.

Treaties, international and European documents often embody this concept of a sliding-scale formula in order to determine the situations where persons belonging to linguistic minorities are entitled to have their language used by public authorities to an appropriate degree. The Central European Initiative Instrument for the Protection of Minority Rights describes the criterion in Article 13 as "whenever in an area the number of persons...reaches...a significant level"; the Framework Convention for the Protection of National Minorities refers in Article 10 to the situation involving "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 European Charter for Minority or Regional Languages essentially does the same in slightly different wording in Article 10 when it indicates that this is to occur "within the administrative districts...in which the number of residents...justifies the measures specified below and according to the situation of each language", while the Oslo Recommendations regarding the Linguistic Rights of National Minorities in Recommendation 13 uses the words "where persons belonging to a national minority are present in significant numbers and where the desire for it has been expressed".

What they all demonstrate is that minorities have a concrete right which they can claim against public authorities who fail to use a minority language when this would be justified or reasonable. Not to provide an appropriate, i.e. "sliding-scale", response would go against the "European and international standards" described in all of these various treaties and other documents, as well as constitute discrimination as to language.

Unfortunately, it is not possible to give a specific number or percentage when persons belonging to a minority can be said to have the right to use their language with public authorities, since every situation is unique. Factors that may be considered in determining the appropriate scale of use of a minority language by public authorities, or as to what is a sufficient number or is justified in a particular case, will depend on the circumstances involved. Prominent among these would be the number of speakers of a minority language, the level of demand for the use of a minority language, the territorial concentration of the minority, a State's available resources, and the type of service being requested in the minority language and the relative ease or level of difficulty in responding to the demand. There may also be other relevant considerations.⁴⁴

Despite the lack of a fixed percentage or number of speakers needed to be entitled to the use of a minority language by public authorities, there are concrete examples of State practices which are useful to illustrate when this might occur.

In Finland, the number or percentage of speakers required to entitle members of the Swedish minority to have their language used by public authorities has been summarised as follows:

In a bilingual municipality (commune) citizens have the right to be administered in Finnish or Swedish by both local and state authorities. The authorities are required to publish documents and announcements that affect the general public in both languages. The internal administrative language of a municipality is the language of the majority. In principle, state authorities should communicate with the municipalities in the principal language of the municipality. A municipality is considered unilingual - Finnish or Swedish - when the entire population speaks the same language or when the number of inhabitants who speak the minority language is less than eight percent. If the minority exceeds eight percent or numbers 3000 persons, the municipality is bilingual. A bilingual commune is not declared unilingual until the minority falls below six percent.⁴⁵

Another relevant example would be the situation involving the German-speaking minority concentrated in the region of Trentino/Alto Adige (Südtirol), which includes the province of Bolzano/Bozen, in Italy. Under a Special Statute adopted in 1972, the German language spoken by about 300,000 people in the region has equal status with Italian. The German language can be used in all dealings with police officers, public bodies and services which are located in the area or which have provincial responsibilities. Both languages can be used in the representative assemblies of the regional, provincial and local authorities. All administrative offices and bodies are required to use the language of the public in both oral and written communication. In the province of Bolzano/Bozen, government departments must use the German language in their dealings with members of the German-speaking minority. German can also be used in court.

As for public education, the Special Statute guarantees the right to education in the mother tongue for the German minority in the province (from nursery to higher level). Italian is taught as a second language starting from the second year of the elementary cycle.

The same general approach can also be found in public broadcasting. Italian public television service broadcasts German programmes about 11 hours per week. Italian public radio service broadcasts about 90 hours per week in German.

A final point that must be kept in mind is that the right to have a minority language used by public authorities covers all areas of State involvement, including the judiciary, police, public education and, where applicable, public broadcasting

and media. In every area of direct or delegated State activity, there are issues of the human rights of minorities which arise. The next sections deal with those areas of language use by public authorities which are of particular relevance for minorities.

**CHART J: Public Authorities
and Minority Languages**

Use of Minority Languages by Public Authorities	Human Right Guarantees Protecting Rights
<ul style="list-style-type: none"> · Right to the use of minority language in local (municipal), regional and national public services, and to have public authorities accept and respond in minority languages, "in proportion" to relative size and numbers of minority 	<ul style="list-style-type: none"> · Article 10 of the Framework Convention for the Protection of National Minorities · Article 10 of the European Charter for Regional or Minority Languages · Article 13 of the Central European Initiative Instrument for the Protection of Minority Rights · Recommendation 13 of the Oslo Recommendations · Non-discrimination

**5.2 Public Education
and Minority Languages**

Where "justified", "reasonable", or where the number of students in part of a territory is "substantial" or "sufficient", persons belonging to minorities have the right to an appropriate degree of use of their language as the medium of instruction in public schools. This can range from perhaps only one or two courses taught through a minority language to complete instruction in such a language.

The exact degree of use of a minority language as the medium of instruction required will vary according to the particular context of each situation: the extent of demand for such instruction, the degree of use of the medium of instruction, the State's ability to respond to these demands, etc.

A State which uses exclusively an official language in public education could also be acting in a discriminatory way if the disadvantage suffered by some individuals as compared to the advantage received by others is deemed unreasonable or unjustified given the circumstances.

It is increasingly accepted in treaties and other documents dealing with the human rights of minorities that where justified or reasonable, a minority language must be used to some degree as the medium of instruction in public schools.⁴⁶

Furthermore, these various documents all acknowledge that public education in a minority language must not exclude instruction of the official or majority language. Members of a minority must be able to learn the official language to a reasonable degree of fluency, since to do otherwise would run the risk of excluding minorities from employment or educational opportunities, as well as isolating them from participation in the wider society. This would in turn constitute a discriminatory policy under existing international human rights standards.

Members of a minority have, at minimum, the right to be taught their language in public schools where practical and justified, even if their numbers are not sufficient for the use of their language as the medium of instruction in public schools. This is also widely recognised in all of the various treaties and documents referred to earlier.

There is no clear guidance as to when such a right arises. The most detailed treaty in this area, the European Charter for Regional or Minority Languages, indicates simply that the numbers must be "sufficient" for this purpose. This could suggest that the mere presence of one or a handful of pupils in a region would not automatically give rise to a right to be taught a minority language in a public school. However, in light of the many international and European instruments which generally refer to a State's obligation to protect and promote the language (and culture) of minorities, it would seem that what is "sufficient" should be interpreted in a generous and flexible way, and that the number of pupils required in order to be able to claim the right to be taught the minority language should be quite small if a State's resources make it reasonably practical to accommodate them.

CHART K: Public Education and Minority Languages

Minority Languages	Human Right Guarantees Protecting Rights
<ul style="list-style-type: none"> · Right to learn minority language as part of curriculum of public schools where numbers and demand are sufficient · Right to have minority language used as medium of instruction in public schools in proportion to minority numbers and demand · Right to learn majority official/language in public schools, in addition to instruction in minority language 	<ul style="list-style-type: none"> · Article 14 of the Framework Convention for the Protection of National Minorities · Article 8 of the European Charter for Regional or Minority Languages · Article 4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities · Article 17 of the Central European Initiative Instrument for the Protection of Minority Rights · Paragraph 34 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension · Recommendations 11-16 of The Hague Recommendations

5.3 Judicial and Administrative Proceedings

Members of a minority have the right to use their language with judicial and administrative officials where this is appropriate given the number of speakers in a territory. This "sliding-scale" approach is described in Article 9 of the European Charter for Minority or Regional Languages as occurring where "the number of residents...justifies the measures" in criminal, civil and administrative proceedings. This right is also recognised in other treaties and documents.

The language used during proceedings is also an issue of State-endorsed "disadvantage" when it affects individuals who are not perfectly fluent in the language of proceedings. In some situations, because of the scale of this disadvantage, it may be discriminatory not to provide for some appropriate degree of use of the minority language in these proceedings. Once again, what this implies is the application of a sliding-scale model which takes into account these disadvantages and a State's resources and ability to respond in a reasonable or justified way.

But the rights of minorities are not limited to this situation in the case of judicial matters. It is well established in international law and human rights treaties in Europe that every accused person has the right to an interpreter in criminal proceedings, including translation of court documents, if s/he does not understand the language used in the proceedings. This is clearly indicated in treaty provisions such as Article 14(3)(f) of the International Covenant on Civil and Political Rights and Article 6(3)(a) of the Convention for the Protection of Human Rights and Fundamental Freedoms, amongst others.

Public authorities must therefore provide for this use of a minority language when an accused is a member of a linguistic minority who does not understand the language used by officials during the proceedings. A number of international decisions also confirm this right and give some indication of its scope and limitations.⁴⁷

This right does not depend on "practical" considerations, such as the number of speakers of a minority language or their territorial concentration in a State. The right exists once it has been established that an accused does not understand the language of proceedings.

Similarly, all persons have the right to be informed of the reasons for their arrest and/or detention and of the nature and cause of any accusation against them in a language s/he understands. In the case of a person who is a member of a linguistic minority, public authorities must therefore use the minority language in order to comply with this right. The right does not depend on the number of speakers involved or their territorial concentration, just as with the right to an interpreter in criminal proceedings.

This is another universally recognised right in international law contained in a large number of international and Council of Europe treaties and other documents.⁴⁸ The European Court of Human Rights has also described the extent of the right to be informed promptly of the nature and cause of a criminal accusation.⁴⁹

CHART L: Minority Languages in Judicial and Administrative Proceedings

Minority Languages	Human Right Guarantees Protecting Rights
<ul style="list-style-type: none"> · Right to interpretation and translation in criminal proceedings in minority language when accused does not understand the language of proceedings · Right to be informed in minority language of reasons for arrest/detention and nature of accusation when one does not understand language of public authorities · Right to use minority language in judicial/quasi-judicial proceedings in proportion to numbers and demand 	<ul style="list-style-type: none"> · Article 14(3)(f) of the ICCPR · Article 6(3)(a) of the European Convention for the Protection of Human Rights and Fundamental Freedoms · Article 10(3) of the Framework Convention for the Protection of National Minorities · Recommendation 17 of the Oslo Recommendations · Article 14(3)(a) of the ICCPR · Article 5(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms · Article 10(3) of the Framework Convention for the Protection of National Minorities · Recommendation 17 of the Oslo Recommendations · Article 10 of the Framework Convention for the Protection of National Minorities · Article 9 of the European Charter for Regional or Minority Languages · Non-discrimination · Recommendations 18 and 19 of the Oslo Recommendations

5.4 Official Use of Names and Topographical Designations

A person has the right to have his or her name or surname used and recognised by public authorities even if it is in a minority language. This is a right that is widely acknowledged in treaties and other instruments.⁵⁰ Recommendation 1 of the Oslo Recommendations regarding the Linguistic Rights of National Minorities describes the right in the following terms:

Persons belonging to national minorities have the right to use their personal names in their own language according to their own traditions and linguistic systems. These shall be given official recognition and be used by the public authorities.

As indicated earlier, when addressing the issue of topographical designations in the private sphere, minorities have the right to have topographical, street, town and local names used by public authorities in their language where "the number of users...justify" such a measure. Once again, there are a number of treaties and other documents which confirm this is considered a legitimate "European and international standard" in relation to the use of minority languages by governments.⁵¹

If public authorities refused to use or recognise an individual's name or surname if it is in a minority language, or if they only used officially topographical designations in the majority or official language, this could also constitute a violation of the general prohibition of discrimination in international law if deemed to be unreasonable or unjustified. In both cases there is a "benefit, advantage or privilege" which is being denied to individuals based on a language preference by public authorities. Whether or not the State preference is discriminatory depends on whether the reasons for not using the minority language are for a legitimate purpose, and are justified and proportional to the objectives sought and in relation to the effects on the individuals concerned.

In the case of names or surnames it would appear obvious that to deny to some individuals the right to use their own names or surnames with public authorities is disproportionate to any legitimate objective or practical obstacle, and this is generally the way it has been perceived in most documents and decisions. The issue of topographical designations is slightly more complex: there are practical considerations that obviously limit a State's ability to respond to all the demands of all minority groups. Nevertheless, it appears from the documents mentioned above that where there a minority is concentrated geographically or where it constitutes a substantial part of the population, there are no financial obstacles nor legitimate reasons not to have public authorities use the names of localities and streets, for example, in a minority language as well as the official or majority language. To refuse to use a minority language in such circumstances and deny to these individuals a privilege or benefit enjoyed by others would therefore appear to be unjustified or unreasonable, and therefore constitute discrimination.

**CHART M: Official Use/Recognition
of Names and Topographical Designations
in Minority Languages**

Right to have Minority Languages Used by Public Authorities	Human Right Guarantees Protecting Rights
<ul style="list-style-type: none"> · Right to have name/surname in minority language recognised and used by public authorities · Right to have official use of topographical designations (streets, towns, etc.) recognised and used by public authorities 	<ul style="list-style-type: none"> · Article 11 of the European Charter for Regional or Minority Languages · Article 2 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities · Non-discrimination · Recommendation 1 of the Oslo Recommendations · Article 11 of the Framework Convention for the Protection of National Minorities · Article 10(2)(g) of the European Charter for Regional or Minority Languages · Article 14 of the Central European Initiative Instrument for the Protection of Minority Rights · Recommendation 3 of the Oslo Recommendations · Non-discrimination

**5.5 Public Media and the Use
of Minority Languages**

Minorities have the right to have their language used by public media when public authorities are involved in this area to the degree that it is justified and reasonable in light of the number of speakers of a minority language in application of the sliding-scale approach. This involves all types of public media, whether public authorities are involved in public radio or television broadcasting, printed or electronic media.

In addition, as a specific right of minorities, this right involves the application of the right to non-discrimination: if public authorities control, operate or finance

any media, it must do so in a non-discriminatory fashion and, at the very least, reflect in the time and resources allocated to its public media activities the relative demographic importance of its linguistic minorities.

This right is identified in treaties and commitments contained in a variety of other documents.⁵²

CHART N: Public Media and Minority Languages

Use of Minority Languages by Public Media (publications, radio, tv)	Human Right Guarantees Protecting Rights
<ul style="list-style-type: none"> · Right to have use of minority language by public media "in proportion" to numbers and demand 	<ul style="list-style-type: none"> · Articles 9 and 10 of the Framework Convention for the Protection of National Minorities · Article 11(1) of the European Charter for Regional or Minority Languages · Non-discrimination · Article 1 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities · Recommendation 9 of the Oslo Recommendations

5.6 Political Activities, Electoral Process and Official Use of Minority Languages

Minorities have the right not to be excluded from running or holding political office at the local, regional or national level because of language requirements. A law or any other measure which excludes individuals from being candidates or from holding an elected position because they do not speak the official language would in most cases be an unreasonable restriction and therefore a violation of non-discrimination and/or a violation of the right to vote and to be elected, which is a fundamental human right in international law and Council of Europe treaties.

In light of the importance of a free and democratic process open to all citizens, the exclusion of individuals who may be members of a minority because of linguistic restrictions imposed by public authorities is an extremely grave exclusion.

Another right of minorities connected to the electoral process and language is the right not to be excluded from the right to vote by an official language requirement. Denying a person's right to vote because of insufficient fluency in the official or other prescribed language would be an "unreasonable restriction" to the right to vote inconsistent with the right as expressed in treaties,⁵³ and also amount to discrimination as to language in international law, since it excludes individuals who are only or mainly fluent in a minority language from the right to vote.⁵⁴

Official election materials, voting ballots, and other official activities linked to the electoral process and preparations involving the activities of public authorities must also be provided in minority languages where it is justified and reasonable, i.e. where there are sufficient or substantial numbers of speakers of a minority language. This principle is enshrined in the various treaty and other provisions dealing with the administrative activities of public officials and the "sliding-scale" approach.

It is important to distinguish here that what this right deals with is not an individual's private conduct, but the response of public authorities. When involving a private activity, freedom of expression and the other rights referred to in the private sphere would guarantee an individual's "linguistic freedom", but when demanding that public officials use a minority language for the purposes of an election, the matter involves public activities and services, not private actions.

This fundamental difference has been highlighted in a number of European decisions, where it was correctly shown that neither freedom of expression nor the (then) limited non-discrimination provision of the European Convention, guarantee a right to use any minority language in official activities connected to the electoral process. For example, the European Court of Human Rights has indicated there is no unqualified obligation for public authorities to accept the registration of a political party in a minority language⁵⁵

The European Court of Human Rights' decision could have been different had it been asked to apply the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages, or even the

general non-discrimination provision contained in Article 26 of the International Covenant on Civil and Political Rights or the new Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

The registration of a political party by public authorities is an example of an administrative activity. When dealing with a numerically important or territorially concentrated minority, it could be described as unjustified or unreasonable for public authorities not to use a minority language to some degree. This means that under the sliding-scale model, public authorities would have to use a minority language in the registration of parties and other aspects of the electoral process as may be required in consideration of what is non-discriminatory, justified or reasonable.

Finally, there is a right to use a minority language in the activities of elected governmental bodies (commune, municipality, local or regional legislative body, etc.) although this right is not one which arises in every situation, as the European Court of Human Rights has previously shown.⁵⁶

There must be a substantial, significant or sufficient number of speakers of a minority language for individuals to be entitled to use of their language in the activities of elected bodies. For example, to prohibit or prevent the use of a minority language during sessions of a municipal council (either by an elected politician or a member of the public) would be unjustified or unreasonable if a significant proportion of the population of this municipality are members of a linguistic minority. According to the sliding-scale approach which underlines non-discrimination as well as the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, it would be a violation of human rights not to respond to the exclusion or disadvantage suffered by individuals who are members of a minority, and not to accommodate the use of their language where this is practical and feasible. This is also reinforced in specific provisions recognising this right, such as Recommendation 15 of the Oslo Recommendations regarding the Linguistic Rights of National Minorities, which states:

In regions and localities where persons belonging to a national minority are present in significant numbers, the State shall take measures to ensure that elected members of regional and local governmental bodies can use also the language of the national minority during activities relating to these bodies.

Especially in view of the fundamental role and prominence of political activities in a democratic setting, it would seem that in international law and treaties of the Council of Europe, political institutions must be very generous and flexible in accommodating as far as possible the use of a minority language in order to respect their rights and ensure the effective participation of minorities in public affairs.⁵⁷

**CHART O: Electoral Process
and Minority Languages**

Minority Languages	Human Right Guarantees Protecting Rights
<ul style="list-style-type: none"> · Right to stand for elected office and to be elected without discrimination based on language knowledge · Right to vote without language restrictions · Right to have minority language used in elections by public authorities (election materials, voting ballots, etc.) "in proportion" to numbers and demand 	<ul style="list-style-type: none"> · Article 25(b) of the ICCPR (in combination with Article 2) · Article 3 of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms (in combination with Article 14) · Non-discrimination · Article 25(b) of the ICCPR (in combination with Article 2) · Non-discrimination · Article 3 of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms (in combination with Article 14) · Article 10 of the Framework Convention for the Protection of National Minorities · Article 10 of the European Charter for Regional or Minority Languages · Article 13 of the Central European Initiative Instrument for the Protection of Minority Rights · Recommendation 13 of the Oslo Recommendations · Non-discrimination · Freedom of association · Article 10 of the Framework Convention for the Protection of National Minorities

Minority Languages	Human Right Guarantees Protecting Rights
<ul style="list-style-type: none"> · Right to have political party/organisation using minority language officially registered and recognised by electoral officials · Right to official use of minority language in elected bodies (municipal council; local, regional or national assemblies) where numbers and demand are sufficient 	<ul style="list-style-type: none"> · Article 10 of the European Charter for Regional or Minority Languages · Article 13 of the Central European Initiative Instrument for the Protection of Minority Rights · Recommendation 13 of the Oslo Recommendations · Non-discrimination · Article 10 of the Framework Convention for the Protection of National Minorities · Article 10 of the European Charter for Regional or Minority Languages · Article 13 of the Central European Initiative Instrument for the Protection of Minority Rights · Recommendation 15 of the Oslo Recommendations · Non-discrimination

5.7 Citizenship, Language Requirements and the Exclusion of Minorities

There is currently in international law no general and automatic right to citizenship of a particular State. However, as with any other State activity, once a government decides to "act" or provide an "advantage" or "privilege", it must do so in a non-discriminatory way. In other words, once a government decides to grant citizenship to individuals through a naturalisation process or any other procedure, it must respect fundamental international human rights.

States are free to impose language requirements as part of its naturalisation process, since the decision on whether to grant citizenship or not is clearly a prerogative of the State. However, since the right to equality and non-discrimination is a basic human right in international law, it applies also to language requirements for citizenship purposes. If language requirements (or for that matter religious or racial requirements for

citizenship) are unreasonable or unjustified given the situation existing in a particular State, then it would be in violation of international law (more specifically, it would breach Article 26 of the International Covenant on Civil and Political Rights.

The issue of citizenship is particularly important for minorities and their rights since by denying citizenship to a large number of individuals, some States have been able to deny to large segments of their inhabitants a variety of rights and privileges. The Nuremberg laws in Germany from 1935 effectively resulted in the Jewish minority becoming less than second-class citizens - because of the loss of their citizenship. The conflict in the eastern part of the former Zaire has much to do with the removal of citizenship from large numbers of individual members of an ethnic minority which had been in the region for a century or more.

A State may thus exclude or make it much more difficult for minority individuals to be naturalised by using an official or prescribed language requirement. Members of a minority who are less or not fluent in the official language may not be able to surmount the disadvantage imposed by the naturalisation regulations in order to become citizens.

As confirmed in some international decisions,⁵⁸ it is possible to have linguistic naturalisation requirements that are "unreasonable", and therefore discriminatory if these requirements are unconnected to "the specific conditions of the society in which the people live". A naturalisation policy which shows a marked preference for the official language would generally not be in breach of non-discrimination. However, if a substantial percentage of the State's own inhabitants who belong to a minority, some aspects of the naturalisation laws could arguably be said to "operate in a vacuum" and therefore be unreasonable if they do not take into account the social, historical and demographic realities of the State.

Naturalisation policies that restrict the possibility of naturalisation to those who are fluent in the official language could be discriminatory if, for example, 30 or 20 percent of a State's inhabitants are members of a minority. A non-discriminatory approach in this kind of situation would mean that citizenship could be obtained with knowledge of either of the two languages spoken by the majority of the population of the State. This is in practice a reasonable or justified requirement where you have a minority language which has a numerically substantial presence in a State, and appears to be fairly widespread in one form or another in most democracies, like Canada, Switzerland, the United Kingdom, etc.

**CHART P: Right to Citizenship
and Minorities**

Citizenship and Language Requirement	Human Right Guarantees Protecting Right
<ul style="list-style-type: none"> · Right not to be denied citizenship through unreasonable or unjustified language requirements 	<ul style="list-style-type: none"> · Non-discrimination on the basis of language (Article 26 of ICCPR and Article 1 of Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms)

**6. REMEDIES AND MECHANISMS
IN CASE OF VIOLATIONS
OF MINORITY RIGHTS**

Individuals who believe their rights are not being respected may be able to obtain legal redress. The rights described in this booklet are human rights. Governments which have ratified⁵⁹ the relevant treaty have legal obligations to respect these rights. Depending on the legal system of the country involved, it may be possible to bring a case to court and obtain a decision in favour of the individual.

The legal systems in European countries differ in this area. In some countries, international treaties and the rights of minorities accepted once these treaties have been ratified are directly applicable, and in some countries these may even supersede existing national laws. In such a State individuals have at their disposal strong legal protection of their rights as described here, since they have the possibility to bring a case directly to court in their own country and have a judgment against the government law or practice which violates their rights.

However, this is not the case of all countries in Europe. In some cases the treaties containing provisions for the protection of the human rights of minorities are not directly applicable. This means, to put it simply, that while governments have an obligation in international law to comply with the obligations they have accepted by ratifying a treaty - and also those rights which are deemed to be part of what is called "customary international law" - these rights are not directly part

of the laws of the country, nor do they give individuals the right to use them directly in court.

Yet even if the human rights of minorities are not directly applicable in a particular country, individuals who decide to go to court should always make sure their lawyer(s) use all of the available legal arguments in their favour, including those of treaties that are ratified but not directly part of the national legal system. It is important to do so for two reasons: firstly, because even if the human rights of minorities are not directly applicable in the legal system of a country, they may still be indirectly applicable in the sense that judges have a legal obligation to consider these international obligations when applying existing national laws. In such a situation, judges may be sufficiently swayed by these international obligations - in combination with existing laws - to rule in favour of the rights of minorities. Secondly, and perhaps more importantly, individuals who consider going to court to have governments comply with their international obligations should always be ready to use any international mechanism should they not be successful in their own country.

While the use of an international mechanism means that in most cases individuals may have to spend years going through the national judicial system before being able to even reach the international level. For example, in order to seek a decision from either the United Nations' Human Rights Committee or the European Court of Human Rights, it may be in fact their best hope for a favourable decision. Furthermore, not to do so at the national level would be a serious mistake: in most cases, individuals must "exhaust internal remedies" before being allowed to use international mechanisms, meaning that they must first try to seek to have their case decided by national courts. If individuals fail to argue their rights at the national level - for example if they never argue that their right to non-discrimination, or their rights under Article 27 of the ICCPR have been violated - then neither the United Nations' Human Rights Committee nor the European Court of Human Rights will even consider their case, since the failure to argue in the national courts that these specific rights have been violated means that they have not exhausted their remedies in their own country. The matter might still have been resolved in the individual's favour by national courts.

The only exception to this rule is when there is obviously no effective remedy: in cases for example where there are no applicable laws on which an individual can bring a case, such as when freedom of expression is not recognised as a right

which exists in a country's legal system, and therefore it is impossible for an individual to claim the right or obtain a remedy, can someone possibly go directly to either the European Court of Human Right or the United Nations' Human Rights Committee. Even in this case, individuals will have to demonstrate that there are no effective remedies available to them.

To summarise, individuals who decide to proceed to court in order to have their minority rights respected by government should make sure they follow the following steps:

1. Identify all of the rights which may be involved under all international, OSCE and Council of Europe treaties and documents.
2. Consult with minority organisations or other interested NGOs (non-governmental organisations) in determining which of your rights may be involved. Many of these have expertise or contacts which may be able to assist individuals. Some of these are identified in the appendix to this booklet.
3. Find out which treaties your country has ratified, as well as which provisions of a treaty applies (not all sections of a treaty necessarily applies in all countries). This may require the help of a lawyer, expert or NGO.
4. If going to court, instruct lawyer(s) to use all legal arguments: use national laws that deal with the rights of minorities and other human rights as identified in this booklet. All international rights must also be used if they are even remotely relevant. Some lawyers who are unfamiliar with international law may sometimes suggest it is not necessary. Do not accept this. Failure to argue even just one relevant human right recognised in international law will mean that you may not be able to use it at a later time if you need to proceed to an international mechanism.
5. Be ready to exhaust internal remedies. It is very likely that individuals will lose court cases in their own country, so they should always keep in mind that they may have to go to the international level, and that years may go by before the matter is finally settled.

The next sections identify the specific international remedies that are available to individuals whose rights may be violated in Europe. The strongest remedy in Europe is the one provided by the European Court of Human Rights, which issues legally binding judgments, although its human rights provisions tend to be very general and not specifically aimed at minorities. There are two much more specific treaties that are directed towards minority matters, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. Unfortunately, these treaties are extremely weak in terms of implementation and have no actual remedies for individuals.

Finally, individuals should keep in mind that using the court system should never be considered as the only option, nor perhaps even the preferable one. There should always be attempts to negotiate with public authorities some amicable settlement of matters. Public authorities often operate under the mistaken belief that their conduct is in full compliance with international and European standards. Patient lobbying, discussion, exchange of information and even education of public officials may sometimes be just as effective - and certainly less antagonistic or expensive - than bringing a case to court and even to an international body in a confrontational battle of legal arguments.

In other words minorities should look at their situation and devise a strategy that combines long-term goals as well as short-term gains. Peaceful cooperation, tolerance and flexibility need to be developed in a way that is not only respectful of the rights of minorities, but also avoids the emergence of an antagonistic government and majority population.

6.1 European Court of Human Rights

The European Court of Human Rights⁶⁰ can receive complaints from persons claiming that their rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols have been violated.

If the State in which you live has ratified the Convention⁶¹ and violated one of these fundamental rights, you may complain to the Court. The Court can only deal with complaints relating to the rights listed in the Convention and protocols. It is not a court of appeal from national courts and cannot annul or modify their decisions.

The Court can only receive complaints if your State has ratified the treaty and it can only deal with complaints about events which have occurred since the ratification.

The Court can only hear complaints about matters which are the responsibility of a public authority (legislature, administration, courts of law, etc.). It cannot deal with complaints against private individuals or private organisations.

As indicated earlier, you must have tried all remedies in your State before addressing a complaint to the European Court. This includes bringing your complaint before the highest court which can deal with it.

After a decision of the highest competent national court or authority has been given, you have a six-month period within which you may apply to the Court. If your complaint relates to a court conviction or sentence, this period runs from the final court decision in the ordinary appeal process and not from the date of any later refusal to re-open your case. If you have not submitted details of your complaint within the six-month period, the Court will not be able to examine your case.

If you are ready to proceed with your complaint, you should first send a letter containing the information mentioned below to the Registrar of the Court at the following address:

The Registrar
European Court of Human Rights
Council of Europe
F-67075 STRASBOURG CEDEX
FRANCE

Your letter should contain the following:

- (a) give a brief summary of your complaints;
- (b) indicate which of your Convention rights you believe have been violated;
- (c) state what remedies you have used;

(d) list the official decisions in your case, giving the date of each decision, the court or authority which took it, and brief details of the decision itself.

(e) attach to your letter a copy of these decisions (submit copies only, not the originals, since no documents will be returned.)

You will receive a reply from the Registrar, who may ask for more information or documents or for further explanation of your complaints. You may be informed how the Convention has previously been interpreted in similar cases and if it appears that there is an obvious obstacle to your complaint, you may also be advised of this.

If your complaint can be registered as an application and you wish this to be done, the Registrar will send the necessary document on which to submit your formal application. After you have completed and submitted this, it will be brought to the Court.

You will be informed by the Registrar of the progress of your case. The proceedings are in writing at the initial stage. If possible, instruct a lawyer to present your case for you. At a later stage in the proceedings, if you have insufficient means to pay a lawyer's fees, you may be eligible for free legal aid.

6.2 UN Human Rights Committee

Instead of bringing a complaint to the European Court of Human Rights, individuals may prefer to proceed at the international level with the rights and mechanism available under the International Covenant on Civil and Political Rights.

There are a number of differences between the two mechanisms, each having its own strengths and weaknesses. The mechanism under the International Covenant on Civil and Political Rights involves the United Nations' Human Rights Committee, which is not a court of law such as the European Court of Human Rights. The Committee's decision, even though handed down by some of the world's leading experts, are not legally-binding judgments. In practice however, most States comply with the decisions handed down by the Committee. On the other hand, the International Covenant on Civil and Political Rights was often

preferred because it contains a specific provision recognising some rights of minorities - Article 27 - as well as a general prohibition of discrimination which did not exist under the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms or its protocols until very recently.⁶²

The UN Human Rights Committee can only consider communications involving States that are parties to the Protocol permitting individual complaints.⁶³ A communication should be submitted by the individual who claims that his or her rights have been violated by the State, or that person's representative.

The complaint cannot be considered if the same problem is being investigated under another international procedure, and all domestic remedies must have been exhausted before the Committee can take it up.

Before deciding whether a communication is admissible or not, the complainant or the State concerned may be asked for additional information or comments and a time limit may be set. If the State has anything to say at this stage, the person complaining receives a copy of its reply for comment.

Once a communication has been declared admissible, the Committee asks the State concerned to explain or clarify the problem and to indicate whether anything has been done to settle it. A time limit of six months is set for the State party's reply. Then the author of the complaint has an opportunity to comment on the State's reply. After that, the Committee expresses its final views and sends them to the State concerned and to the author.

The findings of the Committee - its views on communications which have been declared admissible and examined on their merits, as well as decisions declaring other communications inadmissible - are made public immediately after the session at which the findings were adopted.

Usually it takes about 12 to 18 months to declare a case admissible or inadmissible. The examination of the merits of the case may then take a year or two, depending on the degree of cooperation by States parties and the authors of complaints in submitting all the information needed by the Committee.

The Committee has no independent fact-finding functions, but considers all written information made available by the parties concerned.

To summarise some of the major points to consider before submitting a communication to the UN Human Rights Committee:

1. The communication must allege a violation of a human right contained in the ICCPR.
2. The communication must be in writing.
3. The communication must come from the complainant or from his/her authorised representative.
4. The communication must not be anonymous.
5. The violation referred to in the communication must not be under examination by another international investigation or settlement procedure.
6. All effective and available domestic remedies must be exhausted before making a communication.

If these conditions are met, the communication must be sent to:

The Human Rights Committee
c/o Centre for Human Rights
United Nations' Office
8-14 avenue de la Paix
1211 Geneve 10, SWITZERLAND
Telephone Number + 41 22-917-9000
Fax Number + 41 22-917-9016

A model communication to the Human Rights Committee is enclosed in Annex I.

6.3 Commission on Democratic Institutions and Human Rights, including the Rights of Persons belonging to Minorities of the Council of Baltic Sea States

Individuals living in a member State of the Council of the Baltic Sea States (CBSS)⁶⁴ have the right to make a complaint to the Commissioner of the CBSS if they believe one of their human rights has been violated by a member State. While the Commission can make recommendations and suggestions to governments if it is found that there has been a violation of one of the internationally recognised human rights of minorities, these are not legally-binding as in the case of the European Court of Human Rights, though they do carry weight in the Baltic Sea States and may convince governments to change some of their policies or conduct.

The Commissioner may examine complaints about violations of the human rights conventions of the United Nations and the Council of Europe, such as the Framework Convention and the European Charter, as well as other internationally accepted human rights instruments.

The Commissioner will not deal with a complaint if it is at the same time pending before a national court or before a national ombudsman or similar institution. Complaints are confidential, though the Commissioner will normally communicate with public authorities in your country about your case, if you agree. Anonymous complaints will not be examined, although individuals may request that they remain anonymous to the authorities in their country.

If the Commissioner is able to deal with your complaint, he will begin an inquiry with the relevant authorities in your country. If at the end of the process the Commissioner finds that a violation of your human rights have taken place, he will issue recommendations to the government to remedy the situation, or he may make suggestions to avoid similar situations from arising again.

A complaint can be written in any of the languages of the CBSS member States or in English and sent to the secretariat. This letter should contain the following information:

- Your name and address
- Which institution you want to complain against and a description of the grounds for your complaint
- A description of the events or problems you want to complain about
- If possible, copies of official letters or documents of importance to you complaint
- If possible, a reference number or file number with the authorities in your country, which you are complaining against.

Complaints can be sent to:

CBSS Commissioner
Amagertorv 14
Post box 1165
DK-1010 Copenhagen K
DENMARK
Telephone: (+ 45) 3391 2288
Fax: (+ 45) 3391 2296
Email: mail@cbss-commissioner.org

6.4 Framework Convention for the Protection of National Minorities

The Framework Convention does not have a complaint mechanism for individuals, nor is there any court or committee to hand down judgments or decisions on specific cases as there are with the Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights. While States that have ratified the Framework Convention still have an obligation - in international law - to respect, comply with and implement the rights contained in the Framework Convention, individuals have very little direct options if public authorities violate their rights.⁶⁵

The monitoring of the convention is based on the examination of State reports. The main monitoring body of the Framework Convention is the Committee of Ministers, which is assisted in this work by an Advisory committee of independent experts set up in 1998. The Advisory Committee adopts opinions on the implementation of the

Framework Convention in the States Parties, which it then submits for consideration to the Committee of Ministers. Subsequently, the Committee of Ministers adopts its conclusions and, if necessary, recommendations to the State concerned. The opinions of the Advisory Committee are to 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. This committee will adopt an opinion on each of the States that have ratified the Framework Convention.

Individuals cannot submit a complaint or seek a judgment or decision under the Framework Convention. At most, they may provide information to the Advisory Committee of Experts, which may then refer to this and other information in its own work. However, neither the Advisory Committee, nor the Committee of Ministers which is ultimately responsible with monitoring a State's implementation of the Framework Convention, will intervene or otherwise involve themselves directly in individual cases. Simply put, they do not have this power under the Framework Convention.

Nevertheless, despite these weaknesses as compared to the European Court of Human Rights and the United Nations' Human Rights Committee which can both issue decisions or rulings on violations, individuals may find that use of the Framework Convention can still be helpful in their claims for respect of their human rights.

There are in fact two possibilities that ought to be kept in mind. The Framework Convention can be used in conjunction with either efforts at the European Court of Human Rights or the United Nations' Human Rights Committee.⁶⁶

1. From a legal point of view, individuals can still claim before their own courts that an international legal obligation under the Framework Convention has been violated.

2. Information on claimed violations can be sent to the Framework Convention's Advisory Committee (via the Secretariat) at:

Council of Europe

Directorate General of Human Rights - DG II

Secretariat of the Framework Convention for the Protection of National Minorities and of the DH-MIN

F - 67075 Strasbourg Cedex, FRANCE

Tel + 33 (0) 3 88 41 29 63

Fax + 33 (0) 3 88 41 27 93

It may also be better if individuals submit this information through a non-governmental organisation (NGO) in their country rather than by themselves. What the Advisory Committee is interested in is how a country generally respects the rights protected under the Framework Convention, and that information of a pattern or number of violations of the rights of minorities can often best be collected with the help of a local NGO. Furthermore, it is clear that as part of its mandate the Advisory Committee can in preparing its opinions obtain information on the situation of minorities by setting up meetings with representatives of governments, civil society and non-governmental organisations. It is not clear whether the Advisory Committee can work with individuals. Opinions adopted by the Advisory Committee will generally be made public.

The role of the Advisory Committee is therefore to consider the reports submitted by the State Parties, collect and consider relevant information on the conduct of State Parties, and then to adopt an opinion on each of them. These opinions are transmitted to the Committee of Ministers who consider and adopt its conclusions concerning a State's compliance with its obligations to protect the rights of minorities under the Framework Convention.

6.5 European Charter for Regional or Minority Languages

As with the Framework Convention, States which have ratified the European Charter for Regional or Minority Languages have a legal obligation to respect the rights contained in the treaty.⁶⁷ However, very few governments have ratified this treaty, and individuals must in addition carefully consider if their situation involves provisions which have been accepted by their own country in order to determine if there has been a violation of rights.

In addition, while it seems individual can present information to the Advisory Committee under the Framework Convention, this is clearly not possible under the European Charter. Only "bodies and associations" legally established in the country which is being examined by the European Charter's Advisory Committee of Experts can submit information to it, which would in theory exclude individuals from sending any information on a violation of their rights under the European Charter directly to the Committee.

There is a simple reason for this more restrictive approach to individuals than to other mechanisms. While the Framework Convention, the ICCPR and the Convention for the Protection of Human Rights and Fundamental Freedoms deal with individuals and their rights, the focus of the European Charter is language, and not individuals. Rather than grant rights to individuals, it looks at the preservation and promotion of regional or national minority languages in Europe. Thus, the situation of the individual is not of central concern, but rather how governments "treat" these languages.

Yet this difference in approach is probably more illusory than real. Individuals could still send the same information via a "legally established" minority or human rights organisation in his or her country, which could in turn submit it to the Advisory Committee of Experts.

Once again, as with the Framework Convention, individuals should not look at the mechanism under the European Charter as a system which will provide much help in their individual case. That is simply not part of the mandate received by the Advisory Committee of Experts or Committee of Ministers. Individuals should probably consider the information mechanism under the European Charter as part of a long-term "lobbying and education" effort to get governments to improve its respect for and protection of the rights of minorities.

The European Charter should therefore be used in combination with other mechanisms that have much more direct consequences for individuals. Individuals should submit both a complaint to the European Court of Human Rights or the United Nations' Human Rights Committee, as well as at the same time use the information procedures under the European Charter (and/or the Framework Convention if applicable), as part of a strategy to correct a violation of that individual's rights, and also to change the legislation and the approach of governments in their treatment of minorities.

As with the Framework Convention, every State which has ratified the European Charter must submit a report every three years. The Advisory Committee of Experts examines these State reports and other information submitted to it by legally established bodies and associations. The Committee then prepares a report on that State's attempts at implementing the European Charter. This report is sent to the Committee of Ministers, with the comments of the States concerned. The Committee of Ministers decides whether to publish the reports or not.

Information from legally-established bodies and associations on a government's compliance with its obligations under the European Charter can be sent to the address below, as well as requests for clarifications on the work of the Advisory Committee:

Regina Jensdottir
Administrator
European Charter for Regional or Minority Languages
Council of Europe
Strasbourg CEDEX 67075
FRANCE
Telephone: + 33 3 88 41 22 25
Fax: + 33 3 88 41 27 84
Email: regina.jensdottir@coe.int

6.6 Council of Europe Commissioner for Human Rights

The Office of the Council of Europe Commissioner for Human Rights was recently established to promote the concept of human rights and to ensure effective respect and full enjoyment of these rights in Council of Europe member States.

The objectives of the Commissioner for Human Rights are to promote education in and awareness of human rights in the member States; identify possible shortcomings in the law and practice of member States with regard to compliance with human rights; and finally help promote the effective observance and full enjoyment of human rights, as embodied in the various Council of Europe instruments.

However, the Commissioner is not a judicial institution and cannot take up individual complaints. He cannot, therefore, accept any requests to present individual complaints before national or international courts, nor before national administrations of member States of the Council of Europe. Nevertheless, he can draw conclusions and take initiatives of a general nature which are based on individual complaints.

Although the Commissioner may not take up individual complaints, he may act on any relevant information concerning general aspects of the protection of human rights, as enshrined in Council of Europe treaties. This information and requests may be addressed to the Commissioner by governments, national parliaments, national ombudsmen or similar institutions, as well as by individuals and organisations.

The Commissioner can also provide advice and information on the protection of human rights and prevention of human rights violations.

The Commissioner submits an annual report on his work to the Committee of Ministers and the Parliamentary Assembly of the Council of Europe and takes into account views expressed by these institutions concerning the Commissioner's activities. The Commissioner may also issue recommendations, opinions and reports on any matters within his competence.

The Commissioner may be contacted at:

Office of the Commissioner for Human Rights
Council of Europe
F-67075 STRASBOURG CEDEX
FRANCE
Fax : 33 (0) 3 90 21 50 53
Email : commissioner.humanrights@coe.int

6.7 OSCE Mechanisms and Institutions

The Organization on Security and Cooperation in Europe (formerly the Conference for Security and Cooperation) has been playing a prominent role in relation to the rights of minorities. To a large extent this is due to the recognition that many conflicts in Europe - past and present - have been linked to real or perceived mistreatment of minority groups serving as a background to tensions between States.

The OSCE thus became involved in what is known as "the human dimension" which deals with the full respect for human rights as well as the strengthening

of the rule of law and the promotion of the principles of democracy. The main document which contains references to the rights of minorities is the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension, though the roots of the human dimension commitments can be found in the Helsinki Final Act. From this point on, human rights, including the rights of minorities, become matters of concern to all participating OSCE States and no longer belong exclusively to the internal matters of a given State.

By the early 1990s, the OSCE had established a number of mechanisms and institutions to implement these human dimension commitments, including those relating to efforts to define more clearly, understand and comply with minority rights.

6.7.1 High Commissioner on National Minorities

The OSCE's main institution dealing with minorities is undoubtedly the High Commissioner on National Minorities (HCNM). The High Commissioner has the mandate of identifying - and seeking early resolution of - ethnic tensions that might endanger peace, stability or friendly relations between the participating States of the OSCE. Because of the prominence of minority issues in this regard, the Office of the High Commissioner has had to play a critical function in many parts of Eastern Europe and Central Europe in the last ten years.

Strictly speaking, the Office of the High Commissioner does not deal with individual cases nor is it particularly focused on minority rights as such. Its mandate falls under conflict prevention and security in Europe, and for this reason the Office of the High Commissioner does not act as a national minorities ombudsman or as an investigator of individual human rights violations. Rather, the High Commissioner's task is to provide "early warning" and "early action in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgement of the High Commissioner, have the potential to develop into a conflict within the OSCE area."

What this means in relation to the rights of minorities is that if international and European standards, including the human dimension commitments, are not

respected, the High Commissioner will ask the government concerned to change its legislation and policy since all participating States of the OSCE have agreed that stability and conflict prevention are often threatened by lack of respect of the rights of persons belonging to minorities. Instead of being a minority "referee" or "ombudsman", the High Commissioner is rather a diplomat involved in discussions with concerned governments to find ways of avoiding conflicts by fully respecting the rights of minorities. The High Commissioner's role is not to be a commissioner "for" minorities, but "on" minorities, and this needs to be emphasised because the activities of the Office are centred around preventing ethnic conflicts and tensions, and not as the protector of minorities directly. Furthermore, the OSCE has acknowledged that in order to be an effective third party, the High Commissioner has to play an impartial role at all times. On the one hand, it may seem that this institution is weak since it does not provide for any direct means by which a person belonging to a minority may have his or her rights considered. Yet on the other hand it does establish a powerful political/diplomatic tool in order to pressurise governments and bring about changes in the law and policies by stringing institutional pressure from the OSCE to conform to minority rights standards.

In addition to conducting on-site missions and of being involved in diplomatic negotiations with governments, the Office of the High Commissioner collects information on the treatment of minorities and how States are applying the human dimension commitments and complying with the various legal obligations dealing with the rights of minorities. The Office of the High Commissioner therefore conducts studies on the situation in specific countries and offers expert advice on what in practical terms the various international and European legal standards for minority rights represent. The HCNM may in his work also decide to submit recommendations on how legislation or policies should be modified or applied by a government in order to comply with these standards.

The High Commissioner is actively involved in minority situations in many European countries.⁶⁸ In addition to organising seminars, publishing reports and various information documents, providing recommendations and conducting negotiations with various governments, the High Commissioner has initiated specific projects in the area of education, monitoring systems, legal aid and institution-building.

For more information please contact:

Walter Kemp
Senior Adviser
OSCE High Commissioner on National Minorities
P.O. Box 20062
2500 EB, The Hague, The Netherlands
tel.: (+ 31-70) 312 55 00 o fax: (+ 31-70) 363 59 10
e-mail: hcnm@hcnm.org

*6.7.2 Office for Democratic Institutions
and Human Rights*

The Office for Democratic Institutions and Human Rights is one of the OSCE's main institutions working on monitoring the implementation of human dimension commitments which deals with human rights in general, but which also include minority rights. Although not as active as the High Commissioner on National Minorities, the Monitoring Section of the Office for Democratic Institutions and Human Rights still has primary responsibility for determining how well States are complying with the human dimension commitments that deal with the rights of minorities that are contained, for the most part, in the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension. It also organises training and technical assistance that can deal with minority rights, as well as supporting education projects and disseminates information on the human dimension that can include these rights.

For more information please contact:

Office for Democratic Institutions and Human Rights (ODIHR)
Aleje Ujazdowskie 19
PL-00 557 Warsaw
Poland
tel: + 48-22 520 06 00
fax: + 48-22 520 06 05
E-Mail: office@odihhr.osce.waw.pl

6.7.3 *Human Dimension Mechanisms*

The OSCE has a number of "mechanisms" by which the various documents containing statements on the human dimension made by participating States can be followed up. There are two human dimension mechanisms: the first is the Vienna Mechanism which involves mainly an exchange of information on questions relating to the human dimension such as the rights described earlier, which are contained in the 1990 Document. Participating States have an obligation to respond to requests for information on the rights of minorities which other countries may present under this mechanism, as well as to hold bilateral meetings on these issues with the requesting State. Slovakia could, for example, request information on the treatment of the Slovak minority in the Czech Republic, and especially in Paragraph 32 of the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension is complied with in the area of language use, request the holding of bilateral meetings with Czech authorities on this matter, as well as bring this situation and specific cases to the attention of other participating States.

The Moscow Mechanism adds the possibility of sending OSCE missions of experts to a country to help with issues of minority rights under the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension. The Moscow Mechanism operates at the request of a government which wants the assistance of such a team of experts, or of a group of six or more participating States.

Two things should be pointed out about both mechanisms: first, they do not involve legal obligations. The mechanisms involve not legally binding obligations under a treaty, but rather politically binding commitments between States in the OSCE. This in turn raises the second observation: the mechanisms do not involve individuals, members of minorities, or even minority organisations directly. These mechanisms involve State governments trying to settle a difference between themselves, and are therefore more akin to diplomatic negotiations - and dispute resolution between States.

Finally, it should be said that these mechanisms have not proven popular, since they have been used only once since 1990.

6.7.4 OSCE Missions and Field Activities

OSCE missions and field activities also play a role in the promotion of human rights since the human dimension commitments are integrated in them.⁶⁹ In fact, it can be said that the central task of these missions and field activities, though they do vary with each country, involves human dimension issues, democracy and building the rule of law. For example, the OSCE Mission in Croatia has the mandate to assist with and monitor how Croatian authorities comply with the various agreements and commitments it has made. In this regard, the Mission has a role to play in ensuring the protection of persons belonging to national minorities.

Missions and field activities also interact and cooperate with other international and non-governmental organisations dealing with human and minority rights. They are often the first contact point between the OSCE and various minority situations, and should be considered as a valuable conduit to inform and provide helpful information to the OSCE, which, after all, is one of the most proactive organisations in Europe in the area of minority rights.

6.8 Other Lobbying and Information Measures

Using a formal legal or treaty mechanism is not the only approach to seeking respect of the rights of minorities in the area of language. Attempts at lobbying and informing intergovernmental organisations such as the United Nations, the OSCE, the Council of Europe, the European Union, the Council of Baltic Sea States, etc. may prove to have a longer term effect on the conduct of governments, since they have a degree of influence on member States through more diplomatic or political pressures. These organisations include, for example:

- Council of Europe Human Rights Directorate, Minorities Unit
- European Parliament Intergroup on Minority Languages
- European Bureau for Lesser Used Languages
- Southeast European Stability Pact - WT1 Human Rights and National Minorities

All of these organisations have special bodies dealing with human rights and/or the rights of minorities which would welcome information on how States respect - or not - European and international standards on the human rights of minorities.

As part of a long-term approach to the problems of minorities, information that is relevant to these intergovernmental and similar bodies should systematically be provided to them directly. Although individuals may not receive any formal responses beyond an acknowledgment of the material received, the important aspect of these measures is to circulate as widely as possible information on the behaviour of States with regard to their obligations in relation to minority rights, and not to seek a direct intervention in an individual case.

Addresses and other contact information are provided in the accompanying annex.

7. CONCLUSION

This guide has attempted to summarise the rights of minorities in the area of language, and to clarify, in relatively straightforward language, the content of these rights in precise situations.

The rights of minorities, as has been the case with the rights of particularly vulnerable groups such as women and children, are now the object of specific treaties and other instruments, especially in Europe. However, this phenomenon of clarification and elucidation is still a relatively recent one. This means that there is still a great degree of misinformation and uncertainty as to how exactly certain rights are to be understood and applied. It is hoped that this guide will be a useful reference tool for individuals, groups and public authorities who may wish to better understand the nature and extent of the rights involved and ensure that these are effectively implemented.

Although written from the point of view of the rights of individuals, public authorities and governments can also benefit from this guide. Most governments do not intentionally violate the rights of minorities. In many cases, governments

may not comply with the linguistic rights of minorities more by inadvertence or ignorance of their exact obligations under European or international treaties rather than "bad faith" or intentional desire of breaching these human rights. This document can therefore assist governments in their linguistic policies and legislation.

Finally, although the guide refers to minority rights, it is to be noted that most of these rights derive from international human rights treaties. This means that they could potentially apply to a majority, whose linguistic rights may be ignored by public authorities, as well as to other types of minorities.

Notes

¹ The Hague Recommendations Regarding the Education Rights of National Minorities, Foundation on Inter-Ethnic Relations, The Hague, 1997.

² Report of the Meeting of Experts on National Minorities, CSCE (now OSCE), 1990.

³ The United Nations in General Comment No. 23 indicated that non-citizens as well as citizens were entitled to the human rights of minorities guaranteed under Article 27 of the International Convention on Civil and Political Rights. The text of the General Comment is reproduced in section 8.6.

⁴ Probably the most noteworthy of these, non-legal but politically binding documents, is the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (now OSCE). It contains a number of paragraphs dealing with the rights of minorities, reproduced in the appendix.

⁵ These bilateral treaties include: Agreement about the Basic Principles of Bilateral Relations, Friendship and Cooperation between the Russian Federation and the Uzbekistan Republic; Agreement between the Czech Republic and the Slovak Republic on Cooperation and Good Neighbourly Relations; Agreement between Finland and Sweden Relating to Guarantees in the Law of 7 May 1920 on the Autonomy of the Åland Islands; Agreement on the Foundations of Relations between the Republic of Finland and the Russian Federation; Agreement between the Ministry of National Education of the Republic of Poland and the Ministry of Culture and Education of the Republic of Lithuania Regarding the Educational System and University Education; Convention on Providing Special Rights for the Slovenian Minority Living in the Republic of Hungary and for the Hungarian Minority Living in the Republic of Slovenia; Germany-Russian Federation Protocol of Collaboration on the Gradual Restoration of Citizenship to Russian Germans; Mémorandum

d'accord entre les gouvernements de l'Italie, du Royaume-Uni, des États-Unis d'Amérique et de la Yougoslavie; State Treaty for the Re-Establishment of an Independent and Democratic Austria; Statement on the Principles of Cooperation between the Republic of Hungary and the Russian Federation in the Field of Assurance of the Rights of National or Ethnic, Religious and Linguistic Minorities; Traité sur les bases des relations entre la RSFS de Russie et la RSS d'Ukraine; Treaty concerning the Protection of Minorities in Greece; Treaty between the Federal Republic of Germany and the German Democratic Republic on the Establishment of German Unity; Treaty between the Federal Republic of Germany and Romania concerning Friendly Cooperation and Partnership in Europe; Treaty on the Foundations of Good Neighbourly Relations and Cooperation between the Republic of Hungary and Ukraine; Treaty on the Foundations of Intergovernmental Relations between the Russian Soviet Federative Socialist Republic and the Lithuanian Republic; Treaty on Friendly Relations and Cooperation between the Republic of Croatia and the Republic of Hungary; Treaty on Friendship and Cooperation between the Lithuanian Republic and Ukraine; Treaty on Friendship, Cooperation and Good Neighbourliness between the Republic of Bulgaria and Romania; Treaty on Friendship, Good Neighbourliness and Cooperation between the Russian Federation and the Republic of Georgia; Treaty of Good Neighbourliness and Friendly Cooperation between the Czech and Slovak Federal Republic and the Federal Republic of Germany; Treaty of Good Neighbourliness and Friendly Cooperation between the Slovak Republic and the Republic of Hungary; Treaty on Good Neighbourly Relations, Friendship and Cooperation between Ukraine and the Republic of Moldova; Treaty of Peace with Austria; Treaty of Peace with Italy; Treaty of Peace with Turkey; Treaty between the Republic of Lithuania and the Republic of Poland on Friendly Relations and Good Neighbourly Cooperation; Treaty between the Republic of Poland and the Czech and Slovak Federal Republic on Good Neighbourliness, Solidarity and Friendly Cooperation; Treaty between the Republic of Poland and the Republic of Belarus on Good Neighbourliness and Friendly Cooperation; Treaty between the Republic of Poland and the Republic of Estonia on Friendly Cooperation and Baltic Good Neighbourliness; Treaty between the Republic of Poland and the Republic of Latvia on Friendship and Cooperation; Treaty between the Republic of Poland and Romania on Friendly Relations and Cooperation; Treaty between the Republic of Poland and the Russian Federation on Friendly and Good Neighbourly Cooperation; Treaty between the Republic of Poland and Ukraine on Good Neighbourliness, Friendly Relations and Cooperation; Treaty between the Russian Federation and the Republic of Kazakhstan on Friendship, Cooperation and Mutual Assistance; Treaty between the Russian Federation and the Republic of Kyrgyzstan on Friendship, Cooperation and Mutual Assistance; Treaty between Ukraine and the Republic of Belarus; Treaty on Good Neighbourliness, Partnership and Cooperation between Germany and the USSR; Treaty between Germany and Poland on Good Neighbourliness and Friendly Cooperation; Treaty between Germany and Hungary on Friendly Cooperation and Partnership in Europe.

⁶ Paragraph 2, Resolution on the Languages and Cultures of Regional and Ethnic Minorities in the European Community, Doc. A 2-150/87.

⁷ See **Ballantyne, Davidson and McIntyre v. Canada** , United Nations' Human Rights Committee Communications Nos. 359/1989 and 385/1989, 31 March 1993 and **Lovelace v. Canada** , United Nations' Human Rights Committee Communication 24/1977, UN Document A/36/40.

⁸ These include, among others, Article 9(1) of the **Framework Convention for the Protection of National Minorities** and Article 2 of the **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities** .

⁹ In addition to the UN Human Rights Committee's views in **Ballantyne, Davidson and McIntyre v. Canada** , see the comments of the European Commission on Human Rights in **Charlent v. Belgium** (1963) 6 Yearbook of the European Convention on Human Rights 445, at pp. 454-456.

¹⁰ Article 10 of the **Framework Convention for the Protection of National Minorities** and Paragraph 32.5 of the **Document of the Copenhagen Meeting of the Conference on the Human Dimension** , though this latter is non-binding from a legal point of view.
Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities .

¹¹ Article 11 of the **Framework Convention for the Protection of National Minorities**; Article 12 of the **European Charter for Regional or Minority Languages** and Article 2 UN

¹² **Coeriel and Aurik v. Netherlands** , United Nations' Human Rights Committee, Communication No. 453/1991, U.N. Doc. CCPR/C/52/D/453/1991 (1994); **Burghartz v. Switzerland** , European Court of Human Rights, judgment of 22 February 1994, 18 E.H.R.R. 101.

¹³ **Coeriel and Aurik v. Netherlands** , supra, Paragraph 10.2.

¹⁴ See for example Article 11 of the **Framework Convention for the Protection of National Minorities** ; Article 11 of the **Central European Initiative for the Protection of Minority Rights** ; Article 7(2) of **Recommendation 1201 (1993) on an Additional Protocol on the Rights of National Minorities to the European Convention on Human Rights** , and Paragraph 6 of the 30 October 1987 European Parliament **Resolution on the Languages and Cultures of Regional and Ethnic Minorities** , Also noteworthy, though not legally, nor politically, binding is Recommendation 1 of the **Oslo Recommendations regarding the Linguistic Rights of National Minorities** .

¹⁵ See **Guillot v. France** , European Court of Human Rights, 52/1995/558/644, judgment of 24 October 1996, and **Stjerna v. Finland** , judgment of 25 November 1994, Series A no. 299-B.

¹⁶ See for example Article 11 of the **Framework Convention for the Protection of National Minorities** ; Article 14 of the **Central European Initiative Instrument for the Protection of Minority Rights** ; and of a non-binding nature Recommendation 3 of the **Oslo Recommendations regarding the Linguistic Rights of National Minorities**.

¹⁷ **Ballantyne, Davidson and McIntyre v. Canada** , United Nations' Human Rights Committee Communications Nos. 359/1989 and 385/1989, 31 March 1993.

¹⁸ A state would not have complete discretion on the joint use of the official language it can impose. It appears likely from a few national decisions that a state's demand for the use of an official language jointly with a minority language could constitute discrimination in international law if it imposes a too heavy burden. In other words, some requirements for using the official language, without directly excluding the free use of a minority language in private communication activities, could be so unreasonable as to be a form of discrimination. See also de Varennes, Fernand (1996), *Language, Minorities and Human Rights*, Martinus Nijhoff, The Hague, Booklet 3.

¹⁹ **Singer v. Canada** , Communication No. 455/1991, U.N. Doc. CCPR/C/51/D/455/1991 (1994).

²⁰ Article 11 of the **Framework Convention for the Protection of National Minorities**.

²¹ See specifically on this point de Varennes, Fernand (1996), *Language, Minorities and Human Rights*, Martinus Nijhoff, The Hague, Section 4.6.

²² Article 9 of the **Framework Convention for the Protection of National Minorities** and Article 11(2) of the **European Charter for Regional or Minority Languages** . Paragraph 12(ii) of **Recommendation 1134 (1990) on the Rights of Minorities** , Article 7(2) of **Recommendation 1201 (1993) on an Additional Protocol on the Rights of National Minorities to the European Convention on Human Rights** and Recommendation 8 of the **Oslo Recommendations regarding the Linguistic Rights of National Minorities** are also useful in this regard, though of a non-binding nature.

²³ Comments on Dominican Republic, U.N. Doc. CCPR/C/79/Add.18 (1993).

²⁴ Article 9 of the **Framework Convention for the Protection of National Minorities** ; and Article 11(3) of the **European Charter for Regional or Minority Languages** ; Article 18 of the **Central European Initiative Instrument for the Protection of Minority Rights** . The following are also relevant, though non-binding: Article 7(2) of **Recommendation 1201 (1993) on an Additional Protocol on the Rights of National Minorities to the European Convention on Human Rights** ; paragraph 7 of the

Resolution on the Languages and Cultures of Regional and Ethnic Minorities ; and Recommendation 8 of the **Oslo Recommendations regarding the Linguistic Rights of National Minorities** .

²⁵ See for example **Advisory Opinion on Minority Schools in Albania** , (1935) Permanent Court of International Justice, Series A/B, No. 64, 3, at p. 17.

²⁶ Article 13 of the **Framework Convention for the Protection of National Minorities** and Article 16 of the **Central European Initiative Instrument for the Protection of Minority Rights** . A politically, binding document which clarifies this right is paragraph 32.2 of the **Document of the Copenhagen Meeting of the Conference on the Human Dimension** . Also recognising this right though non-binding are paragraph 11(ii) of **Recommendation 1134 (1990) on the Rights of Minorities** ; Article 8(2) of **Recommendation 1201 (1993) on an Additional Protocol on the Rights of National Minorities to the European Convention on Human Rights** ; and Recommendations 8 and 9 of the **Hague Recommendations regarding the Education of National Minorities** and Part IV of the **Report of Experts on National Minorities** .

²⁷ Article 14 of the **Framework Convention for the Protection of National Minorities** and Article 17 of the **Central European Initiative Instrument for the Protection of Minority Rights** . Also referring to this right and politically binding is paragraph 34 of the **Document of the Copenhagen Meeting of the Conference on the Human Dimension** . Though not binding, Recommendations 12 and 13 of **The Hague Recommendations regarding the Education of National Minorities** are also relevant.

²⁸ See the non-binding Recommendation 10 of **The Hague Recommendations regarding the Education of National Minorities** .

²⁹ The Human Rights Committee did not say that non-discriminative was limited to “negative discrimination”. In fact, its decision left open the exact manner by which Canada could comply with non-discrimination: whether this could be done by stopping all funding of private schools (“negative discrimination”), or whether it required “positive discrimination” by providing funding to all private schools. This decision confirms that non-discrimination in international law mandates neither negative or positive discrimination: it simply requires an end to discriminatory practices by whatever means are most appropriate.

³⁰ **Waldman v. Canada** , Communication 694/1996, decision of 3 November 1999.

³¹ Article 12 of the **Central European Initiative Instrument for the Protection of Minority Rights** . Non-legally binding provisions confirming this include Recommendation 4 of the **Oslo Recommendations regarding the Linguistic Rights of National Minorities** and paragraph 32.3 of the **Document of the Copenhagen Meeting of the Conference on the Human Dimension** , though the latter is politically binding.

- 32 See also the non-binding Recommendation 5 of the **Oslo Recommendations regarding the Linguistic Rights of National Minorities** .
- 33 See for example Article 12 of the **European Charter for Regional or Minority Languages** .
- 34 “Human Rights in the Republic of Estonia”, Raimo Pekkanen and Hans Danelius, Special Rapporteurs (1991), in *Human Rights Law Journal*, Vol. 13, No 5-6, 236-256, at p. 241, and **Ballantyne, Davidson and McIntyre v. Canada** , Communications Nos. 359/1989 and 385/1989, 31 March 1993.
- 35 **Ballantyne, Davidson and McIntyre v. Canada**, Communications Nos. 359/1989 and 385/1989, 31 March 1993.
- 36 Article 13 of the European Charter for Regional or Minority Languages, as well as the non-binding Recommendation 12 of the Oslo Recommendations regarding the Linguistic Rights of National Minorities.
- 37 Article 13 of the European Charter for Regional or Minority Languages and the non-binding Recommendation 6 of the Oslo Recommendations regarding the Linguistic Rights of National Minorities.
- 38 **Sidiropoulos and Others v. Greece**, European Court of Human Rights, judgment of 10 July 1998.
- 39 See for example Recommendation 6 of the Oslo Recommendations regarding the Linguistic Rights of National Minorities.
- 40 **Hasan and Chaush v. Bulgaria**, Judgment of 26 October 2000.
- 41 Article 17 of the Framework Convention for the Protection of National Minorities.
- 42 Recommendation 11 of the Oslo Recommendations regarding the Linguistic Rights of National Minorities which is a non-binding document prepared by a committee of leading international experts.
- 43 See de Varennnes, Fernand (1996), *Language, Minorities and Human Rights*, Martinus Nijhoff, The Hague, chapter 4 for a detailed discussion of this issue.
- 44 See in particular the list in de Varennnes, Fernand (1996), *Language, Minorities and Human Rights*, Martinus Nijhoff, The Hague, Section 4.5.
- 45 *Minority Languages Today* (1981), Einar Haugen, J. Derrick McClure and Derick Thomson (eds.), Edinburgh University Press, Edinburgh, at p. 133.

⁴⁶ For example, Article 14 of the [RTF bookmark start: OLE_LINK1]Framework Convention for the Protection of National Minorities[RTF bookmark end: OLE_LINK1]; Article 8 of the European Charter for Regional or Minority Languages; Article 4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; and Article 17 of the Central European Initiative Instrument for the Protection of Minority Rights. Non-binding documents confirming this include Paragraph 12 of the Recommendation 1134 (1990) on the Rights of Minorities; Paragraph 8 of the Recommendation 1201 (1993) on an Additional Protocol on the Rights of National Minorities to the European Convention on Human Rights; Recommendations 11-16 of The Hague Recommendations regarding the Education Rights of National Minorities; and Section IV of the Report of Experts on National Minorities.

⁴⁷ *Isop v. Austria*, Application 808/60, 5 Yearbook of the European Convention on Human Rights 108; *Dominique Guesdon v. France*, Communication No. 219/1986; *Kamasinski v. Austria*, judgment of 19 December 1989, European Court of Human Rights.

⁴⁸ Article 14(3)(a) of the International Covenant on Civil and Political Rights, Article 5(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 10(3) of the Framework Convention for the Protection of National Minorities. It is also contained in Recommendation 17 of the Oslo Recommendations regarding the Linguistic Rights of National Minorities, which is not a legally-binding document.

⁴⁹ *Brozicek v. Italy* (1989) European Convention on Human Rights, Series A, No. 167.

⁵⁰ See Article 11 of the European Charter for Regional or Minority Languages; and Article 2 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities.

⁵¹ Article 11 of the Framework Convention for the Protection of National Minorities; and Article 10(2)(g) of the European Charter for Regional or Minority Languages; and Article 14 of the Central European Initiative Instrument for the Protection of Minority Rights. Other influential, though non-binding documents confirming this right are paragraph 6 on the Resolution on the Languages and Cultures of Regional and Ethnic Minorities and Recommendation 3 of the Oslo Recommendations regarding the Linguistic Rights of National Minorities.

⁵² Articles 9 and 10 of the Framework Convention for the Protection of National Minorities; and Article 11(1) of the European Charter for Regional or Minority Languages; and in general Article 1 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities. Recommendation 9 of the Oslo Recommendations regarding the Linguistic Rights of National Minorities supports the same conclusion, though it is not a treaty nor an official OSCE document.

53 Article 25 of the International Covenant on Civil and Political Rights.

54 This is referred to in Mathieu-Mohin and Clerfayt, (1987) European Convention on Human Rights, Series A, No. 113.

55 *Fryske Nasjonale Partij v. Netherlands* (1986) 45 Decisions and Reports 240 (European Commission of Human Rights), at p. 243.

56 In the situation where elected politicians were prevented from taking up their office for refusing to take a parliamentary oath in Dutch in Mathieu-Mohin and Clerfayt, (1987) European Convention on Human Rights, Series A, No. 113, at p. 25, the European Court on Human Rights essentially concluded that such a linguistic requirement affecting the principles embodied in Article 3 of the First Protocol of the Convention for the Protection of Human Rights and Fundamental Freedoms could not be deemed to be unreasonable, and therefore discriminatory, under Article 14: The aim is to defuse the language disputes in the country by establishing more stable and decentralised organisational structures... In any consideration of the electoral system in issue, its general context must not be forgotten. The system does not appear unreasonable if regard is had to the intentions it reflects and to the respondent state's margin of appreciation within the Belgian parliamentary system — a margin that is all the greater as the system is incomplete and provisional.

57 Article 10(2)(e) & (f) of the European Charter for Regional or Minority Languages and the politically-binding paragraph 35 of the Copenhagen Meeting of the Conference on the Human Dimension.

58 Advisory Opinion of 19 January 1984 (*Costa Rican Naturalisation Case*) Case No. OC-4/84 and Advisory Opinion on Certain Questions, Arising Out of the Application of Article 4 of the Polish Minorities Treaty (*Polish Nationality Case*), (1923) Permanent Court of International Justice, Series B, No. 7, at p. 18. See also de Varennnes, Fernand (1996), *Language, Minorities and Human Rights*, Martinus Nijhoff, The Hague, Section 6.4.

59 Ratification is the formal process by which a State becomes party to a treaty it has signed.

60 Information on the procedures at the European Court of Human Rights and its decisions can be found at <http://www.echr.coe.int/>.

61 These are, as of 19 March 2001: Albania, Andorra, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia (FRY), Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and the United Kingdom.

62 General information on the procedure to follow, and on the Committee's decisions and other information can be found at the UN Internet site of the High Commissioner for Human Rights at <http://www.unhchr.ch/>

63 As of 18 May 2001 these are: Armenia, Austria, Belarus, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia (FRY), Malta, Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, Spain, Sweden, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Yugoslavia.

64 Denmark, Estonia, Finland, Germany, Iceland, Latvia, Lithuania, Norway, Poland, Russia and Sweden.

65 States which have ratified the Convention as of 22 May 2001 are: Albania, Armenia, Austria, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Macedonia (FRY), Malta, Moldova, Netherlands, Norway, Poland, Romania, Russia, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Ukraine, the United Kingdom and Yugoslavia.

66 Since neither the Framework Convention nor the European Charter for Regional or Minority Languages contain an actual "international investigation or settlement" for individual complaints, individuals can submit information to the Advisory Committees of both these treaties, while at the same time pursuing actual remedies available to them as individuals under the ICCPR or the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms.

67 The countries which have ratified the treaty as of 22 May 2001 are Croatia, Denmark, Finland, Germany, Hungary, Liechtenstein, Netherlands, Norway, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.

68 The High Commissioner has been involved in minority issues in Albania, Croatia, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Macedonia (former Yugoslav Republic of), Moldova, Romania, Slovakia, Tajikistan and Ukraine, among others.

69 The OSCE has missions or field activities in Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Macedonia (former Yugoslav Republic), Russia, Tajikistan, Turkmenistan, Uzbekistan, and Yugoslavia (Kosovo). Details on how to contact a specific mission can be found at the OSCE website page at <http://www.osce.org>.

8. APPENDICES

8.1 Framework Convention for the Protection of National Minorities

(Excerpts)

The full text can be found at <http://conventions.coe.int/Treaty/EN/Treaties/Html/157.htm>.

...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; ...

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.

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 cooperation 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 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, with-

out 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 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 multi-lateral 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.

8.2 European Charter for Regional or Minority Languages

(Excerpts)

The full text of the European Charter can be found on the Internet at a number of locations, including <http://conventions.coe.int/Treaty/EN/Treaties/Html/148.htm>.

PART II

Objectives and principles pursued in accordance with Article 2, paragraph 1

Article 7 - Objectives and principles

1. In respect of regional or minority languages, within the territories in which such languages are used and according to the situation of each language, the Parties shall base their policies, legislation and practice on the following objectives and principles:

a the recognition of the regional or minority languages as an expression of cultural wealth;

b the respect of the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question;

c the need for resolute action to promote regional or minority languages in order to safeguard them;

d the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life;

e the maintenance and development of links, in the fields covered by this Charter, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages;

f the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages;

g the provision of facilities enabling non-speakers of a regional or minority language living in the area where it is used to learn it if they so desire;

h the promotion of study and research on regional or minority languages at universities or equivalent institutions;

i the promotion of appropriate types of transnational exchanges, in the fields covered by this Charter, for regional or minority languages used in identical or similar form in two or more States.

2. The Parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it. The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages.

3. The Parties undertake to promote, by appropriate measures, mutual understanding between all the linguistic groups of the country and in particular the inclusion of respect, understanding and tolerance in relation to regional or minority languages among the objectives of education and training provided within their countries and encouragement of the mass media to pursue the same objective.

4. In determining their policy with regard to regional or minority languages, the Parties shall take into consideration the needs and wishes expressed by the groups which use such languages. They are encouraged to establish bodies, if necessary, for the purpose of advising the authorities on all matters pertaining to regional or minority languages.

5. The Parties undertake to apply, *mutatis mutandis*, the principles listed in paragraphs 1 to 4 above to non-territorial languages. However, as far as these languages are concerned, the nature and scope of the measures to be taken to give effect to this Charter shall be determined in a flexible manner, bearing in mind the needs and wishes, and respecting the traditions and characteristics, of the groups which use the languages concerned.

PART III

Measures to promote the use of regional or minority languages in public life in accordance with the undertakings entered into under Article 2, paragraph 2

Article 8 - Education

1. With regard to education, the Parties undertake, within the territory in which such languages are used, according to the situation of each of these languages, and without prejudice to the teaching of the official language(s) of the State:

a

i to make available pre-school education in the relevant regional or minority languages; or

ii to make available a substantial part of pre-school education in the relevant regional or minority languages; or

iii to apply one of the measures provided for under i and ii above at least to those pupils whose families so request and whose number is considered sufficient; or

iv if the public authorities have no direct competence in the field of pre-school education, to favour and/or encourage the application of the measures referred to under i to iii above;

b

i to make available primary education in the relevant regional or minority languages; or

ii to make available a substantial part of primary education in the relevant regional or minority languages; or

iii to provide, within primary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or

iv to apply one of the measures provided for under i to iii above at least to those pupils whose families so request and whose number is considered sufficient;

c

i to make available secondary education in the relevant regional or minority languages; or

ii to make available a substantial part of secondary education in the relevant regional or minority languages; or

iii to provide, within secondary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or

iv to apply one of the measures provided for under i to iii above at least to those pupils who, or where appropriate whose families, so wish in a number considered sufficient;

d

i to make available technical and vocational education in the relevant regional or minority languages; or

ii to make available a substantial part of technical and vocational education in the relevant regional or minority languages; or

iii to provide, within technical and vocational education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or

iv to apply one of the measures provided for under i to iii above at least to those pupils who, or where appropriate whose families, so wish in a number considered sufficient;

e

i to make available university and other higher education in regional or minority languages; or

ii to provide facilities for the study of these languages as university and higher education subjects; or

iii if, by reason of the role of the State in relation to higher education institutions, sub-paragraphs i and ii cannot be applied, to encourage and/or allow the provision of university or other forms of higher education in regional or minority languages or of facilities for the study of these languages as university or higher education subjects;

f

i to arrange for the provision of adult and continuing education courses which are taught mainly or wholly in the regional or minority languages; or

ii to offer such languages as subjects of adult and continuing education; or

iii if the public authorities have no direct competence in the field of adult education, to favour and/or encourage the offering of such languages as subjects of adult and continuing education;

g to make arrangements to ensure the teaching of the history and the culture which is reflected by the regional or minority language;

h to provide the basic and further training of the teachers required to implement those of paragraphs a to g accepted by the Party;

i to set up a supervisory body or bodies responsible for monitoring the measures taken and progress achieved in establishing or developing the

teaching of regional or minority languages and for drawing up periodic reports of their findings, which will be made public.

2. With regard to education and in respect of territories other than those in which the regional or minority languages are traditionally used, the Parties undertake, if the number of users of a regional or minority language justifies it, to allow, encourage or provide teaching in or of the regional or minority language at all the appropriate stages of education.

Article 9 - Judicial authorities

1. The Parties undertake, in respect of those judicial districts in which the number of residents using the regional or minority languages justifies the measures specified below, according to the situation of each of these languages and on condition that the use of the facilities afforded by the present paragraph is not considered by the judge to hamper the proper administration of justice:

a in criminal proceedings:

i to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or

ii to guarantee the accused the right to use his/her regional or minority language; and/or

iii to provide that requests and evidence, whether written or oral, shall not be considered inadmissible solely because they are formulated in a regional or minority language; and/or

iv to produce, on request, documents connected with legal proceedings in the relevant regional or minority language, if necessary by the use of interpreters and translations involving no extra expense for the persons concerned;

b in civil proceedings:

i to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or

ii to allow, whenever a litigant has to appear in person before a court, that

he or she may use his or her regional or minority language without thereby incurring additional expense; and/or

ii to allow documents and evidence to be produced in the regional or minority languages, if necessary by the use of interpreters and translations;

c in proceedings before courts concerning administrative matters:

i to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or allow, whenever a litigant has to appear in person before a court, that

ii to he or she may use his or her regional or minority language without thereby incurring additional expense; and/or evidence to be produced in the regional or minority languages, if

iii to allow documents and necessary by the use of interpreters and translations; that the application of sub-paragraphs i and iii of interpreters and translations does not involve extra expense for the persons concerned.

d to take steps to ensure paragraphs b and c above and any necessary use of

2. The Parties undertake:

a not to deny the validity of legal documents drawn up within the State solely because they are drafted in a regional or minority language; or

b not to deny the validity, as between the parties, of legal documents drawn up within the country solely because they are drafted in a regional or minority language, and to provide that they can be invoked against interested third parties who are not users of these languages on condition that the contents of the document are made known to them by the person(s) who invoke(s) it; or

c not to deny the validity, as between the parties, of legal documents drawn up within the country solely because they are drafted in a regional or minority language.

3. The Parties undertake to make available in the regional or minority languages the most important national statutory texts and those relating particularly to users of these languages, unless they are otherwise provided.

Article 10 - Administrative authorities and public services

1. Within the administrative districts of the State in which the number of residents who are users of regional or minority languages justifies the measures specified below and according to the situation of each language, the Parties undertake, as far as this is reasonably possible:

a

i to ensure that the administrative authorities use the regional or minority languages; or

ii to ensure that such of their officers as are in contact with the public use the regional or minority languages in their relations with persons applying to them in these languages; or

iii to ensure that users of regional or minority languages may submit oral or written applications and receive a reply in these languages; or

iv to ensure that users of regional or minority languages may submit oral or written applications in these languages; or

v to ensure that users of regional or minority languages may validly submit a document in these languages;

b to make available widely used administrative texts and forms for the population in the regional or minority languages or in bilingual versions;

c to allow the administrative authorities to draft documents in a regional or minority language.

2. In respect of the local and regional authorities on whose territory the number of residents who are users of regional or minority languages is such as to justify the measures specified below, the Parties undertake to allow and/or encourage:

- a** the use of regional or minority languages within the framework of the regional or local authority;
 - b** the possibility for users of regional or minority languages to submit oral or written applications in these languages;
 - c** the publication by regional authorities of their official documents also in the relevant regional or minority languages;
 - d** the publication by local authorities of their official documents also in the relevant regional or minority languages;
 - e** the use by regional authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State;
 - f** the use by local authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State;
 - g** the use or adoption, if necessary in conjunction with the name in the official language(s), of traditional and correct forms of place-names in regional or minority languages.
3. With regard to public services provided by the administrative authorities or other persons acting on their behalf, the Parties undertake, within the territory in which regional or minority languages are used, in accordance with the situation of each language and as far as this is reasonably possible:
- a** to ensure that the regional or minority languages are used in the provision of the service; or
 - b** to allow users of regional or minority languages to submit a request and receive a reply in these languages; or
 - c** to allow users of regional or minority languages to submit a request in these languages.

4. With a view to putting into effect those provisions of paragraphs 1, 2 and 3 accepted by them, the Parties undertake to take one or more of the following measures:

a translation or interpretation as may be required;

b recruitment and, where necessary, training of the officials and other public service employees required;

c compliance as far as possible with requests from public service employees having a knowledge of a regional or minority language to be appointed in the territory in which that language is used.

5. The Parties undertake to allow the use or adoption of family names in the regional or minority languages, at the request of those concerned.

Article 11 - Media

1. The Parties undertake, for the users of the regional or minority languages within the territories in which those languages are spoken, according to the situation of each language, to the extent that the public authorities, directly or indirectly, are competent, have power or play a role in this field, and respecting the principle of the independence and autonomy of the media:

a to the extent that radio and television carry out a public service mission:

i to ensure the creation of at least one radio station and one television channel in the regional or minority languages; or

ii to encourage and/or facilitate the creation of at least one radio station and one television channel in the regional or minority languages; or

iii to make adequate provision so that broadcasters offer programmes in the regional or minority languages;

b

i to encourage and/or facilitate the creation of at least one radio station in the regional or minority languages; or

ii to encourage and/or facilitate the broadcasting of radio programmes in the regional or minority languages on a regular basis;

c

i to encourage and/or facilitate the creation of at least one television channel in the regional or minority languages; or

ii to encourage and/or facilitate the broadcasting of television programmes in the regional or minority languages on a regular basis;

d to encourage and/or facilitate the production and distribution of audio and audiovisual works in the regional or minority languages;

e

i to encourage and/or facilitate the creation and/or maintenance of at least one newspaper in the regional or minority languages; or

ii to encourage and/or facilitate the publication of newspaper articles in the regional or minority languages on a regular basis;

f

i to cover the additional costs of those media which use regional or minority languages, wherever the law provides for financial assistance in general for the media; or

ii to apply existing measures for financial assistance also to audiovisual productions in the regional or minority languages;

g to support the training of journalists and other staff for media using regional or minority languages.

2. The Parties undertake to guarantee freedom of direct reception of radio and television broadcasts from neighbouring countries in a language used in identical or similar form to a regional or minority language, and not to oppose the retransmission of radio and television broadcasts from neighbouring countries in such a language. They further undertake to ensure that no restrictions will be placed on the freedom of expression and free circulation of information in the written press in a language used in identical or similar form to a regional or

minority language. The exercise of the above-mentioned freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

3. The Parties undertake to ensure that the interests of the users of regional or minority languages are represented or taken into account within such bodies as may be established in accordance with the law with responsibility for guaranteeing the freedom and pluralism of the media.

Article 12 - Cultural activities and facilities

1. With regard to cultural activities and facilities - especially libraries, video libraries, cultural centres, museums, archives, academies, theatres and cinemas, as well as literary work and film production, vernacular forms of cultural expression, festivals and the culture industries, including inter alia the use of new technologies - the Parties undertake, within the territory in which such languages are used and to the extent that the public authorities are competent, have power or play a role in this field:

a to encourage types of expression and initiative specific to regional or minority languages and foster the different means of access to works produced in these languages;

b to foster the different means of access in other languages to works produced in regional or minority languages by aiding and developing translation, dubbing, post-synchronisation and subtitling activities;

c to foster access in regional or minority languages to works produced in other languages by aiding and developing translation, dubbing, post-synchronisation and subtitling activities;

d to ensure that the bodies responsible for organising or supporting cultural activities of various kinds make appropriate allowance for incorporating

the knowledge and use of regional or minority languages and cultures in the undertakings which they initiate or for which they provide backing;

e to promote measures to ensure that the bodies responsible for organising or supporting cultural activities have at their disposal staff who have a full command of the regional or minority language concerned, as well as of the language(s) of the rest of the population;

f to encourage direct participation by representatives of the users of a given regional or minority language in providing facilities and planning cultural activities;

g to encourage and/or facilitate the creation of a body or bodies responsible for collecting, keeping a copy of and presenting or publishing works produced in the regional or minority languages;

h if necessary, to create and/or promote and finance translation and terminological research services, particularly with a view to maintaining and developing appropriate administrative, commercial, economic, social, technical or legal terminology in each regional or minority language.

2. In respect of territories other than those in which the regional or minority languages are traditionally used, the Parties undertake, if the number of users of a regional or minority language justifies it, to allow, encourage and/or provide appropriate cultural activities and facilities in accordance with the preceding paragraph.

3. The Parties undertake to make appropriate provision, in pursuing their cultural policy abroad, for regional or minority languages and the cultures they reflect.

Article 13 - Economic and social life

1. With regard to economic and social activities, the Parties undertake, within the whole country:

a to eliminate from their legislation any provision prohibiting or limiting without justifiable reasons the use of regional or minority languages in documents relating to economic or social life, particularly contracts of employ-

ment, and in technical documents such as instructions for the use of products or installations;

b to prohibit the insertion in internal regulations of companies and private documents of any clauses excluding or restricting the use of regional or minority languages, at least between users of the same language;

c to oppose practices designed to discourage the use of regional or minority languages in connection with economic or social activities;

d to facilitate and/or encourage the use of regional or minority languages by means other than those specified in the above sub-paragraphs.

2. With regard to economic and social activities, the Parties undertake, in so far as the public authorities are competent, within the territory in which the regional or minority languages are used, and as far as this is reasonably possible:

a to include in their financial and banking regulations provisions which allow, by means of procedures compatible with commercial practice, the use of regional or minority languages in drawing up payment orders (cheques, drafts, etc.) or other financial documents, or, where appropriate, to ensure the implementation of such provisions;

b in the economic and social sectors directly under their control (public sector), to organise activities to promote the use of regional or minority languages;

c to ensure that social care facilities such as hospitals, retirement homes and hostels offer the possibility of receiving and treating in their own language persons using a regional or minority language who are in need of care on grounds of ill-health, old age or for other reasons;

d to ensure by appropriate means that safety instructions are also drawn up in regional or minority languages;

e to arrange for information provided by the competent public authorities concerning the rights of consumers to be made available in regional or minority languages.

8.3 The Hague Recommendations regarding the Education Rights of National Minorities

The text and explanatory document can be found on the Internet at numerous sites, including <http://www.osce.org/hcnm/documents/recommendations/hague/index.php3>.

The spirit of international instruments

1. The right of persons belonging to national minorities to maintain their identity can only be fully realised if they acquire a proper knowledge of their mother tongue during the educational process. At the same time, persons belonging to national minorities have a responsibility to integrate into the wider national society through the acquisition of a proper knowledge of the State language.
2. In applying international instruments which may benefit persons belonging to national minorities, States should consistently adhere to the fundamental principles of equality and non-discrimination.
3. It should be borne in mind that the relevant international obligations and commitments constitute international minimum standards. It would be contrary to their spirit and intent to interpret these obligations and commitments in a restrictive manner.

Measures and resources

4. States should approach minority education rights in a proactive manner. Where required, special measures should be adopted by States to actively implement minority language education rights to the maximum of their available resources, individually and through international assistance and cooperation, especially economic and technical.

Decentralization and participation

5. States should create conditions enabling institutions which are representative of members of the national minorities in question to participate, in a meaningful

way, in the development and implementation of policies and programmes related to minority education.

6. States should endow regional and local authorities with appropriate competences concerning minority education thereby also facilitating the participation of minorities in the process of policy formulation at a regional and/or local level.

7. States should adopt measures to encourage parental involvement and choice in the educational system at a local level, including in the field of minority language education.

Public and private institutions

8. In accordance with international law, persons belonging to national minorities, like others, have the right to establish and manage their own private educational institutions in conformity with domestic law. These institutions may include schools teaching in the minority language.

9. Given the right of persons belonging to national minorities to establish and manage their own educational institutions, States may not hinder the enjoyment of this right by imposing unduly burdensome legal and administrative requirements regulating the establishment and management of these institutions.

10. Private minority language educational institutions are entitled to seek their own sources of funding without any hindrance or discrimination from the State budget, international sources and the private sector.

Minority education at primary and secondary levels

11. The first years of education are of pivotal importance in a child's development. Educational research suggests that the medium of teaching at pre-school and kindergarten levels should ideally be the child's language. Wherever possible, States should create conditions enabling parents to avail themselves of this option.

12. Research also indicates that in primary school, the curriculum should ideally be taught in the minority language. The minority language should be taught as a subject on a regular basis. The official State language should also be taught as a subject on a regular basis preferably by bilingual teachers who have a good understanding of the children's cultural and linguistic background. Towards the end of this period, a few practical or non-theoretical subjects should be taught through the medium of the State language. Wherever possible, States should create conditions enabling parents to avail themselves of this option.

13. In secondary school, a substantial part of the curriculum should be taught through the medium of the minority language. The minority language should be taught as a subject on a regular basis. The State language should also be taught as a subject on a regular basis, preferably by bilingual teachers who have a good understanding of the children's cultural and linguistic background. Throughout this period, the number of subjects taught in the State language, should gradually be increased. Research findings suggest that the more gradual the increase, the better for the child.

14. The maintenance of the primary and secondary levels of minority language education depends a great deal on the availability of teachers trained in all disciplines in the mother tongue. Therefore, ensuing from their obligation to provide adequate opportunities for minority language education, States should provide adequate facilities for the appropriate training of teachers and should facilitate access to such training.

Minority education in vocational schools

15. Vocational training in the minority language should be made accessible in specific subjects when persons belonging to the national minority in question have expressed a desire for it, when they have demonstrated the need for it and when their numerical strength justifies it.

16. The curriculum of vocational schools providing training in the mother tongue should be devised in a way which ensures that, upon completion of these programmes, students are able to practice their occupation both in the minority and the State language.

Minority education at tertiary level

17. Persons belonging to national minorities should have access to tertiary education in their own language when they have demonstrated the need for it and when their numerical strength justifies it. Minority language tertiary education can legitimately be made available to national minorities by establishing the required facilities within existing educational structures provided these can adequately serve the needs of the national minority in question. Persons belonging to national minorities may also seek ways and means to establish their own educational institutions at the tertiary level.

18. In situations where a national minority has, in recent history, maintained and controlled its own institutions of higher learning, this fact should be recognised in determining future patterns of provision.

Curriculum development

19. In view of the importance and value that international instruments attach to intercultural education and the highlighting of minority histories, cultures and traditions, State educational authorities should ensure that the general compulsory curriculum includes the teaching of the histories, cultures and traditions of their respective national minorities. Encouraging members of the majority to learn the languages of the national minorities living within the State would contribute to the strengthening of tolerance and multiculturalism within the State.

20. The curriculum content related to minorities should be developed with the active participation of bodies representative of the minorities in question.

21. States should facilitate the establishment of centres for minority language education curriculum development and assessment. These centres could be linked to existing institutions providing these can adequately facilitate the achievement of the curriculum related objectives.

8.4 Oslo Recommendations regarding the Linguistic Rights of National Minorities

The text and explanatory document can be obtained from the OSCE High Commission for National Minorities or the Foundation on Inter-Ethnic Relations. These can be found on the Internet at a number of locations, including the OSCE site at <http://www.osce.org/hcnm/documents/recommendations/oslo/index.php3>.

N a m e s

1. Persons belonging to national minorities have the right to use their personal names in their own language according to their own traditions and linguistic systems. These shall be given official recognition and be used by the public authorities.
2. Similarly, private entities such as cultural associations and business enterprises established by persons belonging to national minorities shall enjoy the same right with regard to their names.
3. In areas inhabited by significant numbers of persons belonging to a national minority and when there is sufficient demand, public authorities shall make provision for the display, also in the minority language, of local names, street names and other topographical indications intended for the public.

R e l i g i o n

4. In professing and practicing his or her own religion individually or in community with others, every person shall be entitled to use the language(s) of his or her choice.
5. For those religious ceremonies or acts pertaining also to civil status and which have legal effect within the State concerned, the State may require that certificates and documents pertaining to such status be produced also in the official language or languages of the State. The State may require that registers pertaining to civil status be kept by the religious authorities also in the official language or languages of the State.

Community Life and NGOs

6. All persons, including persons belonging to national minorities, have the right to establish and manage their own non-governmental organisations, associations and institutions. These entities may use the language(s) of their choosing. The State may not discriminate against these entities on the basis of language nor shall it unduly restrict the right of these entities to seek sources of funding from the State budget, international sources or the private sector.

7. If the State actively supports activities in, among others, the social, cultural and sports spheres, an equitable share of the total resources made available by the State shall go to support those similar activities undertaken by persons belonging to national minorities. State financial support for activities which take place in the language(s) of persons belonging to national minorities in such spheres shall be granted on a non-discriminatory basis.

The Media

8. Persons belonging to national minorities have the right to establish and maintain their own minority language media. State regulation of the broadcast media shall be based on objective and non-discriminatory criteria and shall not be used to restrict enjoyment of minority rights.

9. Persons belonging to national minorities should have access to broadcast time in their own language on publicly funded media. At national, regional and local levels the amount and quality of time allocated to broadcasting in the language of a given minority should be commensurate with the numerical size and concentration of the national minority and appropriate to its situation and needs.

10. The independent nature of the programming of public and private media in the language(s) of national minorities shall be safeguarded. Public media editorial boards overseeing the content and orientation of programming should be independent and should include persons belonging to national minorities serving in their independent capacity.

11. Access to media originating from abroad shall not be unduly restricted. Such access should not justify a diminution of broadcast time allocated to the minori-

ty in the publicly funded media of the State of residence of the minorities concerned.

Economic Life

12. All persons, including persons belonging to national minorities, have the right to operate private enterprises in the language or languages of their choice. The State may require the additional use of the official language or languages of the State only where a legitimate public interest can be demonstrated, such as interests relating to the protection of workers or consumers, or in dealings between the enterprise and governmental authorities.

Administrative Authorities and Public Services

13. In regions and localities where persons belonging to a national minority are present in significant numbers and where the desire for it has been expressed, persons belonging to this national minority shall have the right to acquire civil documents and certificates both in the official language or languages of the State and in the language of the national minority in question from regional and/or local public institutions. Similarly regional and/or local public institutions shall keep the appropriate civil registers also in the language of the national minority.

14. Persons belonging to national minorities shall have adequate possibilities to use their language in communications with administrative authorities especially in regions and localities where they have expressed a desire for it and where they are present in significant numbers. Similarly, administrative authorities shall, wherever possible, ensure that public services are provided also in the language of the national minority. To this end, they shall adopt appropriate recruitment and/or training policies and programmes.

15. In regions and localities where persons belonging to a national minority are present in significant numbers, the State shall take measures to ensure that elected members of regional and local governmental bodies can use also the language of the national minority during activities relating to these bodies.

Independent National Institutions

16. States in which persons belonging to national minorities live should ensure that these persons have, in addition to appropriate judicial recourses, access to independent national institutions, such as ombudspersons or human rights commissions, in cases where they feel that their linguistic rights have been violated.

The Judicial Authorities

17. All persons, including persons belonging to a national minority, have the right to be informed promptly, in a language they understand, of the reasons for their arrest and/or detention and of the nature and cause of any accusation against them, and to defend themselves in this language, if necessary with the free assistance of an interpreter, before trial, during trial and on appeal.

18. In regions and localities where persons belonging to a national minority are present in significant numbers and where the desire for it has been expressed, persons belonging to this minority should have the right to express themselves in their own language in judicial proceedings, if necessary with the free assistance of an interpreter and/or translator.

19. In those regions and localities in which persons belonging to a national minority live in significant numbers and where the desire for it has been expressed, States should give due consideration to the feasibility of conducting all judicial proceedings affecting such persons in the language of the minority.

Deprivation of Liberty

20. The director of a penal institution and other personnel of the institution shall be able to speak the language or languages of the greatest number of prisoners, or a language understood by the greatest number of them. Recruitment and/or training programmes should be directed towards this end. Whenever necessary, the services of an interpreter shall be used.

21. Detained persons belonging to national minorities shall have the right to use the language of their choice in communications with inmates as well as with oth-

ers. Authorities shall, wherever possible, adopt measures to enable prisoners to communicate in their own language both orally and in personal correspondence, within the limitations prescribed by law. In this relation, a detained or imprisoned person should, in general, be kept in a place of detention or imprisonment near his or her usual place of residence.

**8.5 Document of the Copenhagen Meeting
of the Conference on the Human Dimension
of the OSCE**

Copenhagen, 29 June 1990

25. The participating states confirm that any derogations from obligations relating to human rights and fundamental freedoms during a state of public emergency must remain strictly within the limits provided for by international law, in particular the relevant international instruments by which they are bound, especially with respect to rights from which there can be no derogation. They also reaffirm that...

25.4 - such measures will not discriminate solely on the grounds of race, colour, sex, language, religion, social origin or of belonging to a minority.

31. Persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law.

The participating states will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise of human rights and fundamental freedoms.

32. To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice.

Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular, they have the right:

32.1 - to use freely their mother tongue in private as well as in public;

32.2 - to establish and maintain their own educational, cultural and religious institutions, organisations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation;

32.3 - to profess and practise their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue;...

32.5 - to disseminate, have access to and exchange information in their mother tongue;...

Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group. No disadvantage may arise for a person belonging to a national minority on account of the exercise or non-exercise of any such rights.

33. The participating states will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organisations or associations of such minorities, in accordance with the decision-making procedures of each state.

Any such measures will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating state concerned.

34. The participating states will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the state concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation.

In the context of the teaching of history and culture in educational establishments, they will also take account of the history and culture of national minorities.

35. The participating states will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities.

The participating states note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the state concerned.

36. The participating states recognise the particular importance of increasing constructive co-operation among themselves on questions relating to national minorities. Such co-operation seeks to promote mutual understanding and confidence, friendly and good-neighbourly relations, international peace, security and justice.

Every participating state will promote a climate of mutual respect, understanding, co-operation and solidarity among all persons living on its territory, without distinction as to ethnic or national origin or religion, and will encourage the solution of problems through dialogue based on the principles of the rule of law.

40. The participating states clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, anti-Semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds. In this context, they also recognise the particular problems of Roma (gypsies).

They declare their firm intention to intensify the efforts to combat these phenomena in all their forms and therefore will:

40.1 - take effective measures, including the adoption, in conformity with their constitutional systems and their international obligations, of such laws as may be necessary, to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-Semitism;

40.2 - commit themselves to take appropriate and proportionate measures to protect persons or groups who may be subject to threats or acts of discrimination, hostility or violence as a result of their racial, ethnic, cultural, linguistic and religious identity, and to protect their property;

**8.6 General Comment 23, Article 27,
Human Rights Committee, U.N. Doc.
HRI\GEN\1\Rev.1 at 38 (1994).**

1. Article 27 of the Covenant provides that, in those States in which ethnic, religious or linguistic minorities exist, persons belonging to these minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. The Committee observes that this article establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant.

2. In some communications submitted to the Committee under the Optional Protocol, the right protected under article 27 has been confused with the right of peoples to self-determination proclaimed in article 1 of the Covenant. Further, in reports submitted by States parties under article 40 of the Covenant, the obligations placed upon States parties under article 27 have sometimes been confused with their duty under article 2.1 to ensure the enjoyment of the rights guaranteed under the Covenant without discrimination and also with equality before the law and equal protection of the law under article 26.

3.1. The Covenant draws a distinction between the right to self-determination and the rights protected under article 27. The former is expressed to be a right belonging to peoples and is dealt with in a separate part (Part I) of the Covenant. Self-determination is not a right cognizable under the Optional Protocol. Article 27, on the other hand, relates to rights conferred on individuals as such and is included, like the articles relating to other personal rights conferred on individuals, in Part III of the Covenant and is cognizable under the Optional Protocol.

3.2. The enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a State party. At the same time, one or other aspect of the rights of individuals protected under that article - for example, to enjoy a particular culture - may consist in a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority.

4. The Covenant also distinguishes the rights protected under article 27 from the guarantees under articles 2.1 and 26. The entitlement, under article 2.1, to enjoy the rights under the Covenant without discrimination applies to all individuals within the territory or under the jurisdiction of the State whether or not those persons belong to a minority. In addition, there is a distinct right provided under article 26 for equality before the law, equal protection of the law, and non-discrimination in respect of rights granted and obligations imposed by the States. It governs the exercise of all rights, whether protected under the Covenant or not, which the State party confers by law on individuals within its territory or under its jurisdiction, irrespective of whether they belong to the minorities specified in article 27 or not. Some States parties who claim that they do not discriminate on grounds of ethnicity, language or religion, wrongly contend, on that basis alone, that they have no minorities.

5.1. The terms used in article 27 indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of the State party. In this regard, the obligations deriving from article 2.1 are also relevant, since a State party is required under that article to ensure that the rights protected under the Covenant are available to all individuals within its territory and subject to its jurisdiction, except rights which are expressly made to apply to citizens, for example, political rights under article 25. A State party may not, therefore, restrict the rights under article 27 to its citizens alone.

5.2. Article 27 confers rights on persons belonging to minorities which "exist" in a State party. Given the nature and scope of the rights envisaged under that article, it is not relevant to determine the degree of permanence that the term "exist" connotes. Those rights simply are that individuals belonging to those minorities should not be denied the right, in community with members of their group, to enjoy their own culture, to practise their religion and speak their language. Just

as they need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State party constituting such minorities are entitled not to be denied the exercise of those rights. As any other individual in the territory of the State party, they would, also for this purpose, have the general rights, for example, to freedom of association, of assembly, and of expression. The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.

5.3. The right of individuals belonging to a linguistic minority to use their language among themselves, in private or in public, is distinct from other language rights protected under the Covenant. In particular, it should be distinguished from the general right to freedom of expression protected under article 19. The latter right is available to all persons, irrespective of whether they belong to minorities or not. Further, the right protected under article 27 should be distinguished from the particular right which article 14.3 (f) of the Covenant confers on accused persons to interpretation where they cannot understand or speak the language used in the courts. Article 14.3 (f) does not, in any other circumstances, confer on accused persons the right to use or speak the language of their choice in court proceedings.

6.1. Although article 27 is expressed in negative terms, that article, nevertheless, does recognize the existence of a "right" and requires that it shall not be denied. Consequently, a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party.

6.2. Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group. In this connection, it has to be observed that such positive measures must respect the provisions of articles 2.1 and 26 of the Covenant both as regards the treatment between different minorities and the treatment between the persons belonging to them and the remaining part of the

population. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under article 27, they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria.

7. With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.

8. The Committee observes that none of the rights protected under article 27 of the Covenant may be legitimately exercised in a manner or to an extent inconsistent with the other provisions of the Covenant.

9. The Committee concludes that article 27 relates to rights whose protection imposes specific obligations on States parties. The protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole. Accordingly, the Committee observes that these rights must be protected as such and should not be confused with other personal rights conferred on one and all under the Covenant. States parties, therefore, have an obligation to ensure that the exercise of these rights is fully protected and they should indicate in their reports the measures they have adopted to this end.

9. Resources and contacts

Joint Council of Europe - European Union Programme

"National Minorities in Europe"

A Joint Programme between the European Commission and the Council of Europe has been established on "National Minorities in Europe". This joint program has been created as a follow up to the Action Plan adopted in October 1997 at the Second Summit of Heads of State and Government of Council of Europe member States. An initial Joint Programme between the European Commission and the Council of Europe, entitled "Minorities in Central European Countries", was carried out between the second half of 1996 and early 1998 as a measure to support the Stability Pact. In view of the success of the First Joint programme, a second programme was launched for the period January 1999 June 2000. This last programme had four aspects: it was open to all Council of Europe member States and applicant States; it was based on a thematic approach (media, education, participation in decision-making processes etc.); it was concerned with sub-regional or bilateral projects; and it envisaged greater participation by representatives of national minorities. There is no indication whether this programme will be re-established. Contact: Council of Europe, Directorate of Human Rights, Minorities Unit, F-67075 Strasbourg Cedex, France; tel: (33) (0) 3 90-21-49-05; fax: (33) (0) 3 88-41-27-93.

OSCE Institutions and associated organisations involved in minority issues
or conflict resolution

Office for Democratic Institutions and Human Rights
Organization on Security and Cooperation in Europe
Krucza 36/Wspólna 6 (3rd floor)
00-522 Warsaw 53
POLAND
tel: + 48-22-625 70 40
fax: + 48-22-625 43 57
Email office@odihr.osce.waw.pl

OSCE High Commissioner on National Minorities
P.O. Box 20062
2500 EB - The Hague
NETHERLANDS
tel: + 31-70-312 55 00
fax: + 31-70-363 59 10
Email: hcnm@hcnm.org

OSCE Conflict Prevention Center
Kärntnerring 5-7, 4th Floor
1010 Vienna
AUSTRIA
tel: + 43-1 51 436 122
fax: + 43-1 51 436 96

Foundation on Inter-Ethnic Relations
Prinsessegracht 22
2514 AP The Hague
NETHERLANDS
Tel + 31-70-363-6033
Fax + 31-70-346-5213

Council of Baltic Sea States
Commissioner on Democratic Institutions and Human Rights, including the
Rights of Persons belonging to Minorities
Amagertorv 14
DK-1160 Copenhagen
Phone: + 45 3391 2288
Fax: + 45 3391 2296
<http://www.cbss-commissioner.org/>
Email: mail@cbss-commissioner.org

Organisations associated with the Council of Europe involved in Language
Minorities Issues
Council of Europe
Directorate General of Human Rights - DG II
Secretariat of the Framework Convention for the Protection of National
Minorities and of the DH-MIN

F - 67075 Strasbourg Cedex, FRANCE
Tel + 33 (0) 3 88 41 29 63
Fax + 33 (0) 3 88 41 27 93

Regina Jensdottir, Administrator
European Charter for Regional or Minority Languages
Council of Europe
Strasbourg CEDEX 67075, FRANCE
Telephone: + 33 3 88 41 22 25
Fax: + 33 3 88 41 27 84
Email: regina.jensdottir@coe.int

Stability Pact for Southeastern Europe
Working Table 1 Human Rights and National Minorities
Rue Wiertz 50
1050 Brussels, BELGIUM
Telephone: + 32 2 401 8700
Fax: + 32 2 401 8712
<http://www.stabilitypact.org>

Intergovernmental Committee of Experts on Issues Relating to the Protection of National Minorities (DH-MIN) [Note: suspended since March 1999 due to lack of resources]

Council of Europe
Directorate General of Human Rights - DG II
Secretariat of the Framework Convention for the Protection of National Minorities and of the DH-MIN
F - 67075 Strasbourg Cedex, FRANCE
Tel + 33 (0) 3 88 41 29 63
Fax + 33 (0) 3 88 41 27 93

Office of the Commissioner for Human Rights
Council of Europe
F-67075 STRASBOURG CEDEX
FRANCE

Fax : 33 (0) 3 90 21 50 53

Email : commissioner.humanrights@coe.int

Organisations associated with the European Union involved in Language Minorities Issues

MERCATOR-Education

MERCATOR-Education

Fryske Akademy

Doelestrjitte 8

8911 DX Ljouwert

NETHERLANDS

Tel + 31-58-13-14-14

Fax + 31-58-13-14-09

MERCATOR-Legislation

CIEMEN

Pau Claris, 106, 1er 1a

E-08009 Barcelona

SPAIN

Tel + 34-3-302-01-44

Fax + 34-3-412-08-90

MERCATOR-Media

Prifysgol Cymru

Aberystwyth SY23 2AU

Cymru (UK)

44 1970 622533/6

fax 44 1970 622190

merc@aber.ac.uk

European Bureau for Lesser Used Languages

Dublin Office

10 Sráid Haiste Íocht.

IRL - Baile Átha Cliath 2

IRELAND

Tel (+ 353 1) 661 22 05

Fax (+ 353 1) 676 68 40

Email eblul@indigo.ie

Non-Governmental and research organisations which may be able to support minorities rights projects

Constitutional & Legal Policy Institute (COLPI)
Nádor u. 11, 4th floor
1051 Budapest
HUNGARY
Tel: (36 1) 327 3102
Fax: (36 1) 327 3103
E-mail: colpi@osi.hu

Minority Rights Group
379 Brixton Road
London SW9 7DE
UNITED KINGDOM
Tel + 44-171-978-9498
Fax + 44-171-738-6265
minority.rights@mrg.sprint.com

Centre for Documentation and Information of Minorities
in Europe (CEDIME)
Panayote Elias Dimitras, Director
P.O. Box 51 393
GR-14510 Kifisia
GREECE
tel: + 30-4-62-0120;
fax: + 30-1-807-5767
e-mail: panayote@greekhelsinki.gr

Greek Helsinki Monitor & Minority Rights Group
P.O. Box 51393
GR-14510 Kifisia
GREECE
Tel. + 30-1-620.01.20
Fax: + 30-1-807.57.67
Email: office@greekhelsinki.gr

Centre Internacional Escarré per les Minories Etniques i les Nacions
Rocafort, 242 bis
08029 Barcelona (Catalunya)
SPAIN
Tel: (Int+ 34+ 3) 444 38 00
Fax: (Int+ 34+ 3) 444 38 09
eMail: ciemen@troc.es

Associazione per i popoli minacciati
Casella postale 6282
50127 Firenze,
ITALY
Tel/Fax = 39-55-488600
eMail: apm-gfbv@ines.gn.apc.org

Gesellschaft für bedrohte Völker (Society for Endangered Peoples)
Postfach/P.O.Box 2024
D 37010 Göttingen
GERMANY
Tel.: + 49/(0)551 - 499 06 - 0
Fax: + 49/(0)551 - 580 28
E-mail: info@gfbv.de

Organisations and centres: scientific research in the area of language,
minorities or ethnic relations

Institute for Human Rights
Abo Akademi University
Gezeliusgatan 2
FIN-20500
Turku/Abo
FINLAND
Tel + 358-2-265-4260
Fax + 358-2-265-4699

Centre for Research in International Migration and Ethnic Relations
Stockholm University
Stockholm

SWEDEN

Phone: + 46 (0)8 16 26 87

Fax: + 46 (0)8 15 67 20

E-mail: Ceifo.editor@ceifo.su.se

Raoul Wallenberg Institute of Human Rights and Humanitarian Law

Stora Gråbrödersgatan 17

P.O. Box 1155

S-221 05 Lund, SWEDEN

Phone: + 46 46-222 1200

Fax: + 46 46-222 1222

European Research Centre on Migration and Ethnic Relations

Utrecht University

PO Box 80.140

3508 TC Utrecht

THE NETHERLANDS

Phone: + 31 - 30 253 92 12

Fax: + 31 - 30 253 92 80

E-mail: ERCOMERsecr@fsw.ruu.nl

European Centre for Minority Issues (ECMI)

Schiffbrücke 12 (Kompagnietor)

D - 24939 Flensburg,

GERMANY

Phone + 49 461-14 14 9 - 0

Fax + 49 461-14 14 9 - 19

Email: info@ecmi.de

International Organisation for Migration

17 route des Morillons, P.O. Box 71

CH-1211 Geneva 19

SWITZERLAND

Tel: + 41.22/717 91 11

Fax: + 41.22/798 61 50

E-mail: telex@geneva.iom.ch

European Center for Ethnic, Regional and Sociological Studies
Mladinska 9
SLO-62000 Maribor
SLOVENIA
Tel + 38-62-221-709
Fax + 38-62-222-240

Ethnic Minorities and Regional Autonomy
European Academy
Weggensteinstraße 12a
39100 Bolzano, ITALY
Tel + 39 471 306190
Fax + 39 471 306199
eMail info@eurac.edu

International Council on Human Rights Policy
Thomas Clarkson House
The Stableyard
Broomgrove Road
London SW9 9TL
UNITED KINGDOM
TEL: + 44 171 733 7592
Fax: + 44 171 733 7594
email InternationalCouncil_sw@compuserv.com

Institute for Ethnic Studies
Erjavceva 26
SI-1000 Ljubljana
SLOVENIA
Tel.: 386-61-210-823
Fax 386-61-210-964

Virtual Library of Internet resources on national and ethnic minorities in
Central and Eastern Europe and the Former Soviet Union
Local Government and Public Service Reform Initiative
P.O.Box 10/27
1525 Budapest 114
HUNGARY

tel.: (36-1) 327-3104
fax: (36-1) 327-3105
e-mail: lgprog@osi.hu

Useful Internet Information Sites

Centre for Documentation and Information of Minorities in Europe:
<http://www.greekhelsinki.gr>

Centre Internacional Escarré per a les Minories Etniques i Nacionals:
<http://www.partal.com/ciemen/english/index.html>

Centre international de recherche en aménagement linguistique:
<http://www.ciral.ulaval.ca/alx/amlxmonde/europe/europeacc.htm>

Comissió de Política Lingüística in Catalonia: <http://www.ub.es/cpl/cpl.htm>

Commissioner of the Council of the Baltic Sea States on Democratic Institutions and Human Rights, including the Rights of Persons belonging to Minorities:
<http://www.cbss-commissioner.org/>

Constitutional & Legal Policy Institute (COLPI): <http://www.osi.hu/colpi/>

European Bureau for Lesser Used Languages: <http://www.eblul.org/>

European Centre for Minority Issues (ECMI): <http://www.ecmi.de/>

European Minority Languages: http://www.smo.uhi.ac.uk/saoghal/mionchanain/Failte_en.html

Federalist Union of European Nationalities: <http://www.fuen.org>

Gesellschaft für bedrohte Völker (Society for Threatened Peoples):
<http://www.gfbv.de/>

Greek Helsinki Monitor & Minority Rights Group - Greece:
<http://www.greekhelsinki.gr>

Groupement de recherches 1178 du Conseil national de recherche scientifique "Droit, Cultures, Langues": <http://www.u-paris10.fr/gdr1178/>

Institut Universitari de Lingüística Aplicada (IULA):

<http://www.iula.upf.es/defecte.htm>International Organization for Migration:

<http://www.iom.ch/gov/>

Language Futures Europe:

<http://web.inter.nl.net/users/Paul.Treanor/eulang.html>

MERCATOR - Education: <http://www.mercator-education.org>

MERCATOR - Law & Linguistic Legislation: <http://www.troc.es/ciemen/mercator/index-gb.htm>

MERCATOR - Media: <http://www.aber.ac.uk/~merwww/>

MINELRES (Minority Electronic Resources - Eastern and Central Europe):

<http://www.riga.lv/minelres/>

Minority Rights Group: <http://www.minorityrights.org>

SCE High Commissioner on National Minorities: <http://www.osce.org/hcnm/>

Terralingua: <http://cougar.ucdavis.edu/nas/terralin/>

UNESCO MOST Clearing House Linguistic Rights:

<http://www.unesco.org/most/ln1.htm>

University of California Linguistic Minority Research Institute (UC LMRI):

<http://lmrinet.gse.ucsb.edu>

Virtual Library of Internet resources on national and ethnic minorities in Central and Eastern Europe and the Former Soviet Union:

<http://www.osi.hu/lgi/ethnic/weblibrary/index.html>

Reports and Other Documents

Office for Democratic Institutions and Human Rights, CONSOLIDATED SUMMARY OF THE CSCE HUMAN DIMENSION SEMINAR ON CASE STUDIES ON NATIONAL MINORITIES ISSUES: POSITIVE RESULTS, WARSAW, 24-28 MAY 1993, <http://www.osce.org/odihr/docs/minor-93.htm>

REPORT ON THE LINGUISTIC RIGHTS OF PERSONS BELONGING TO NATIONAL MINORITIES IN THE OSCE AREA, 1999, http://www.osce.org/hcnm/documents/reports/linguistic_rights/index.htm

ANNEX I: Model Communication to the UN Human Rights Committee

UN Human Rights Committee
c/o Centre for Human Rights
United Nations' Office
8-14 avenue de la Paix
1211 Geneve 10, SWITZERLAND

Re: Communication under the First Optional Protocol to the International
Covenant on Civil and Political Rights

*1. Information concerning the author
of the communication:*

Name _____ First name(s) _____

Nationality _____ Occupation _____

Date and place of birth _____

Present Address for exchange of confidential correspondence (if other than
present address) _____

Submitting the communication as: _____

(a) ___ Victim

(b) ___ Appointed representative/legal counsel of victim

(c) ___ Other

If you have indicated (c), the author must explain: _____

(i) In what capacity he or she is acting on behalf of the victim (eg family relationship pr other personal links with the alleged victim): _____

(ii) Why the victim is unable to submit the communication: _____

An unrelated third party having no link to the victim cannot submit a communication on his or her behalf.

*2. Information concerning the alleged victim(s)
(if other than the author):*

Nationality _____ Occupation _____

Date and place of birth _____

Present Address or whereabouts: _____

3. Identify violations of articles of ICCPR/exhaustion of domestic remedies/international procedures _____

Name of the State party (country) to the ICCPR and the First Optional Protocol against which this communication is directed: _____

Article(s) of the ICCPR which are believed to have been violated: _____

Steps taken to exhaust domestic remedies; recourse to the courts or other public authorities, when and with what results (if possible enclose copies of all relevant judicial or administrative decisions): _____

If domestic remedies have not been exhausted, explain why: _____

Has the matter been submitted for examination under another procedure of international investigation or settlement? If so, when and with what results?

4. Facts of the claim

Detailed description of the facts of the alleged violation(s) (including relevant dates): _____

Author's signature: _____

Date: _____

Constitutional and Legal Policy Institute (COLPI)

Nádor u. 11
1051 Budapest, Hungary
(tel) + (36-1) 327-3102
(fax) + (36-1) 327-3103
(web) <http://www.osi.hu/colpi>

