The Council of Europe Framework Convention for the Protection of National Minorities

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On 10 November 1994, the Committee of Ministers of the Council of Europe adopted a Framework Convention for the Protection of National Minorities. They decided to lay it open for signature during the beginning of 1995. The Ministers noted that this is the first international treaty which is exclusively devoted to the protection of national minorities and which establishes substantive legal principles and incorporates a monitoring mechanism under international law for their implementation. They expressed the hope that the Convention would enter into force as soon as possible.

The Convention will enter into force after twelve member states of the Council of Europe have ratified it. The Convention will, upon invitation, also be open to non-member states. The explanatory report to the Convention indicates that these 'other states' are those states which are participating in the Conference on Security and Cooperation in Europe (CSCE).

With the adoption of this Framework Convention, the Council of Europe has achieved one of the major objectives for the protection of national minorities set by the Heads of State and Government at their Vienna Summit of 9 October 1993. In the Vienna Declaration, they considered, inter alia, that the Council of Europe should apply itself to transforming, to the greatest possible extent, the CSCE political commitments on national minorities into legal obligations. The Council of Europe is now engaged in the second standard-setting task agreed upon in Vienna, that is drafting a protocol to the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) 'in the cultural field by provisions guaranteeing individual rights, in particular for persons belonging to national minorities'.

The notion of a 'Framework' Convention seems to have been chosen by the Vienna Summit in order to create a convention which would contain principles and not justiciable rights. The explanatory report of the Convention states that the Framework Convention aims to specify legal principles, that it contains mostly programme-type provisions setting out objectives, and that the provisions are not directly applicable but leave the states concerned a measure of discretion as to their implementation. It should be noted, however, that the Convention also repeats obligations to ensure respect for such fundamental rights as freedom of assembly, association, expression and religion.

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The Vienna Summit chose a different approach than that proposed by the Parliamentary Assembly. The Assembly, in its Recommendation 1201 (1993), proposed that an additional protocol on the rights of national minorities be

1. The text of the Framework Convention and the explanatory report are contained in Council of Europe Document H (94) 10. The text of the Convention is reprinted in the Documents section of this issue of Helsinki Monitor, pp. 120-126.
elaborated, drawing on a proposed text for such a protocol contained in the Recommendation. While the provisions of such a protocol would have fallen within the jurisdiction of the European Commission and Court on Human Rights, the principles of the Framework Convention do not. And the cultural protocol now to be negotiated will be restricted to the cultural field. How that is to be defined or demarcated will be another question.

While there is no right of individual complaint under the Framework Convention, it should not be forgotten that the United Nations' 1966 International Covenant on Civil and Political Rights (ICCPR) contains an article (article 27) on minority protection, which is quite general and unambitious in its wording, and that an individual may make a complaint under that article to the UN Human Rights Committee, provided that the state in question has accepted this complaints procedure. Under this same condition, an individual may also file a complaint regarding ethnic discrimination to the UN Committee on the Elimination of Racial Discrimination. And the ECHR with its protocols and the supervisory Commission and Court are, of course, highly relevant for minority protection. As stated by the CSCE participating states in the 1991 Geneva Report of the Meeting of Experts on National Minorities: 'Human rights and fundamental freedoms are the basis for the protection and promotion of rights of persons belonging to national minorities'.

The Convention and its International Context
The adoption of the Framework Convention means that, over the past five years, the United Nations, the CSCE and the Council of Europe have defined sets of standards on minorities. Or, to put it differently, states belonging to all three organisations have entered into threefold commitments which constitute a minimum standard, a common consensus, on the protection of minorities. While the provisions of the Framework Convention will not, as such, be legally binding on non-ratifying states, the principles of the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and of the 1990 Document of the Copenhagen Meeting of the Conference of the Human Dimension of the CSCE, which represents the major achievement of the CSCE on minority rights, are equally and immediately politically committing on all these states. With the widespread recognition of the CSCE Copenhagen commitments in national legislations, bilateral treaties and international actions, they are rapidly developing into customary law in the CSCE area, and thereby becoming legally binding. The difference between legal obligations and political commitments should not, therefore, be over-

2. While the CSCE and Council of Europe standards refer to persons belonging to national minorities, the UN ICCPR uses the notion of persons belonging to ethnic, religious or linguistic minority. The UN 1992 minority rights declaration contains all four terms. While some experts argue that the notion 'ethnic minority' encompasses 'national minority', others argue just the other way around. Like there is no agreed definition of national minorities, there is no agreed difference between these two notions.