

European Commission  
for Democracy through Law

Commission européenne  
pour la démocratie par le droit

**PROPOSAL FOR A EUROPEAN  
CONVENTION FOR THE PROTECTION  
OF MINORITIES**

Strasbourg, 4 March 1991

PLEASE NOTE

This proposal for a Convention for the protection of minorities has been prepared by the European Commission for Democracy through Law (\*).

The proposal has been published in its present form by decision of the Commission, in order to enable the interested circles to be informed and make their views known.

The proposal has been submitted to the Committee of Ministers of the Council of Europe.

Publication at this stage does not imply the agreement of the Committee of Ministers with the contents of the proposal for a Convention nor does it in any way engage the political responsibility of the Committee of Ministers and the member States of the Council of Europe.

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(\*) The European Commission for Democracy through Law is a consultative body of the Council of Europe on matters of constitutional law. It is composed of experts who have achieved international fame through their experience in democratic institutions or by their contribution to the enhancement of law and political science. To date 20 member States have appointed an expert (Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, Norway, Portugal, San Marino, Spain, Sweden, Switzerland and Turkey). Bulgaria, Poland, Romania and Yugoslavia also participate as associate members.

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PROPOSAL FOR A  
EUROPEAN CONVENTION FOR THE PROTECTION OF MINORITIES  
(adopted during the 6th meeting, on 8 February 1991)

PREAMBLE

The member States of the Council of Europe and the other States, signatory hereto,

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

Considering that the dignity and equal worth of every human being constitute fundamental elements of these principles;

Considering that minorities exist in member States of the Council of Europe and in Central and Eastern European States;

Considering that minorities contribute to the pluriformity and cultural diversity within European States;

Having regard to the work carried out within the CSCE and in particular to the Declaration adopted during the Copenhagen meeting in June 1990, as well as the Charter of Paris for a new Europe, of 21 November 1990;

Having regard to Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms and to Article 27 of the International Covenant on Civil and Political Rights;

Considering that an adequate solution to the problem of minorities in Europe is an essential factor for democracy, justice, stability and peace;

Being resolved to implement an effective protection of the rights of minorities and of persons belonging to those minorities,

Have agreed as follows :

CHAPTER I - GENERAL PRINCIPLES

Article 1

1. The international protection of the rights of ethnic, linguistic religious minorities, as well as the rights of individuals belonging to minorities, as guaranteed by the present Convention, is a fundamental component of the international protection of Human Rights, and as such falls within scope of international co-operation.

2. It does not permit any activity which is contrary to the fundamental principles of international law and in particular of sovereignty, territorial integrity and political independence of States.

3. It must be carried out in good faith, in a spirit of understanding tolerance and good neighbourliness between States.

Article 2

1. For the purposes of this Convention, the term "minority" shall mean a group which is smaller in number than the rest of the population of a State, whose members, who are nationals of that State, have ethnical, religious or linguistic features different from those of the rest of the population, and are guided by the will to safeguard their culture, traditions, religion or language.

2. Any group coming within the terms of this definition shall be treated as an ethnic, religious or linguistic minority.

3. To belong to a national minority shall be a matter of individual choice and no disadvantage may arise from the exercise of such choice.

So the blacks in SA wouldn't be a protected group.

nor would any group which didn't want to protect its own culture  
e.g. W. Indians in UK?

CHAPTER II - RIGHTS AND OBLIGATIONS

Article 3

1. Minorities shall have the right to be protected against any activity capable of threatening their existence.
2. They shall have the right to the respect, safeguard and development of their ethnical, religious, or linguistic identity.

Article 4

1. Any person belonging to a minority shall have the right to enjoy the same rights as any other citizen, without distinction and on an equal footing.
2. The adoption of special measures in favour of minorities or of individuals belonging to minorities and aimed at promoting equality between them and the rest of the population or at taking due account of their specific conditions shall not be considered as an act of discrimination. *positive discrimination is o.k.*

Article 5

With a view to promoting and reinforcing their common features, persons belonging to a minority shall have the right to associate and to maintain contacts, in particular with other members of their group, including across national borders. This right shall include notably the right to leave freely one's country and to go back to it.

Article 6

1. Persons belonging to a minority shall have the right to freely preserve, express and develop their cultural identity in all its aspects, free of any attempts at assimilation against their will.
2. In particular, they shall have the right to express themselves, to receive and to issue information and ideas through means of communication of their own.

Article 7

Any person belonging to a linguistic minority shall have the right to use his language freely, in public as well as in private.

Article 8

Whenever a minority reaches a substantial percentage of the population of a region or of the total population, its members shall have the right, as far as possible, to speak and write in their own language to the political, administrative and judicial authorities of this region or, where appropriate, of the State. These authorities shall have a corresponding obligation.

Article 9

Whenever the conditions of Article 8 are fulfilled, in State schools, obligatory schooling shall include, for pupils belonging to the minority, study of their mother tongue. As far as possible, all or part of the schooling shall be given in the mother tongue of pupils belonging to the minority. However, should the State not be in a position to provide such schooling, it must permit children who so wish to attend private schools. In such a case, the State shall have the right to prescribe that the official language or languages also be taught in such schools.

why ?

Article 10

Any person belonging to a religious minority shall have the right to manifest his religion or belief, either alone or in community with others and in public or private, in worship, teaching, practice or observance.

Article 11

Any person belonging to a minority whose rights set forth in the present Convention are violated shall have an effective remedy before a national authority.

Article 12

The rights set forth in Articles 5, 7 and 10 of this Convention shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 13

States shall refrain from pursuing or encouraging policies aimed at the assimilation of minorities or aimed at intentionally modifying the proportions of the population in the regions inhabited by minorities.

Article 14

1. States shall favour the effective participation of minorities in public affairs in particular in decisions affecting the regions where they live or in the matters affecting them.
2. As far as possible, States shall take minorities into account when dividing the national territory into political and administrative sub-divisions, as well as into constituencies.

*dubious: against the LBR principle.*

Article 15

1. Any person who belongs to a minority shall loyally fulfil the obligations deriving from his status as a national of his State.
2. In the exercise of the rights set forth in this Convention, any person who belongs to a minority shall respect the national legislation, the rights of others, in particular those of the members of the majority and of other minorities.

Article 16

States shall take the necessary measures with a view to ensuring that, in any region where those who belong to a minority represent the majority of the population, those who do not belong to this minority shall not suffer from any discrimination. ✓

Article 17

This Convention shall not prejudice the provisions of domestic law or any international agreement which provide greater protection for minorities or persons belonging to minorities.

CHAPTER III - CONTROL MACHINERY

Article 18

To ensure the observance of the undertakings by the Parties in the present Convention, there shall be set up a European Committee for the Protection of Minorities (hereinafter referred to as "the Committee").

Article 19

1. The Committee shall consist of a number of members equal to that of the Parties. In principle, no two members of the Committee may be nationals of the same State.
2. The members of the Committee shall be chosen from among persons known for their competence in the field of Human Rights and in particular in the fields covered by this Convention.
3. The members shall serve in their individual capacity.

Article 20

1. The members of the Committee shall be elected by the Committee of Ministers of the Council of Europe by an absolute majority of votes, from a list of names presented by the Bureau of the Consultative Assembly of the Council of Europe; each national delegation of the Parties shall put forward three candidates on this list.
2. The same procedure shall be followed in filling casual vacancies.
3. The members of the Committee shall be elected for a period of four years. They may be re-elected. However among the members elected at the first election, the terms of office of half of the members shall expire at the end of two years. The members whose terms of office are to expire at the end of the initial period of two years shall be chosen by lot by the Secretary General of the Council of Europe immediately after the first election has been completed.
4. A member of the Committee elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.
5. The members of the Committee shall hold office until replaced. After having been replaced, they shall continue to deal with such cases as they already have under consideration.
6. Notwithstanding the provisions of this Article, members of the Committee in respect of the States Parties, non-members of the Council of Europe, shall be appointed by the Parties concerned; the other provisions of this Article shall apply mutatis mutandis.

Article 21

1. The Committee shall meet in camera.
2. A quorum shall be equal to the majority of its members. The decisions of the Committee shall be taken by a majority of the members present.

Article 22

1. The Committee shall meet as the circumstances require, at least once a year. The meetings shall be convened by the Secretary General of the Council of Europe.
2. The Committee shall draw up its own Rules of Procedure.
3. The Secretariat of the Committee shall be provided by the Secretary General of the Council of Europe.

Article 23

1. In the application of this Convention, the Committee and the competent national authorities of the Party concerned shall co-operate with each other.
2. Parties shall provide the Committee with the facilities necessary to carry out its tasks, in particular access to their territories, and the right to travel without restriction and to communicate freely with any person from whom it believes it can obtain relevant information.

Article 24

1. The Parties shall submit to the Committee, through the Secretary General of the Council of Europe, reports on the measures they have adopted to give effect to their undertakings under this Convention, within one year of the entry into force of the Convention for the Party concerned. The Parties shall submit supplementary reports at three yearly intervals concerning any new measure adopted, as well as any other report requested by the Committee.
2. Those reports shall be examined by the Committee who will forward them to the Committee of Ministers of the Council of Europe with its observations.
3. By a majority of two-thirds of the members entitled to sit on the Committee, the Committee may make any necessary recommendations to a Party.



Article 25

1. Provided that a Party has, by declaration addressed to the Secretary General of the Council of Europe, recognised the competence of the Committee to receive a State's request, the Committee may receive petitions from any Party which considers that another Party does not respect the provisions of this Convention.

2. The declarations provided for in paragraph 1 may be made for a specific period. In this case, they shall be renewed automatically for the same period, unless withdrawn by previous notice of one year before the expiration of the period of validity.

3. The Committee shall only exercise the powers provided for in this Article when at least five Parties are bound by declarations made in accordance with paragraph 1.

Article 26

1. Provided that a Party has, by declaration addressed to the Secretary General of the Council of Europe, recognised the competence of the Committee to receive individual petitions, it may receive such petitions from any person, group of individuals or any international non-governmental organisation representative of minorities, claiming to be the victim of a violation by this Party of the rights set forth in this Convention.

2. The declarations provided for in paragraph 1 may be made for a specific period. In this case, they shall be renewed automatically for the same period, unless withdrawn by previous notice of one year before the expiration of the period of validity.

3. The Parties who have made the declaration provided for in paragraph 1 undertake not to hinder in any way the effective exercise of the right of individual petition.

4. The Committee shall only exercise the powers provided for in this Article when at least five Parties are bound by declarations made in accordance with paragraph 1.

Article 27

1. The Committee may only deal with the matter referred to it under Article 26 after all domestic remedies have been exhausted, according to the generally recognised rules of international law.

2. The Committee shall declare inadmissible petitions submitted under Article 26 which :

- a. are anonymous;
- b. are substantially the same as a matter which has already been examined by the Committee;
- c. have already been submitted to another international body and do not contain any relevant new information;
- d. are incompatible with the provisions of this Convention, manifestly ill-founded or, an abuse of the right of petition;
- e. are submitted to the Committee more than six months from the final internal decision.

#### Article 28

In the event of the Committee accepting a petition referred to it :

- a. it shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation.
- b. it endeavours to reach a friendly settlement of the matter on the basis of respect of this Convention. If it succeeds it shall draw up a report which shall contain a statement of the facts and of the solution reached and be sent to the State or States concerned.

#### Article 29

1. If no friendly settlement has been reached, the Committee shall draw up a report as to whether the facts found disclose a breach by the State concerned of its obligations under this Convention and make such proposals as it thinks are necessary.

2. The report shall be transmitted to the Committee of Ministers, to the State or States concerned and to the Secretary General of the Council of Europe.

3. The Committee of Ministers may take any follow-up action it thinks fit in order to ensure respect of the Convention.

#### Article 30

This Convention shall not be construed as limiting or derogating from the competence of the organs of the European Convention on Human Rights or from the obligations assumed by the Parties under that Convention.

CHAPTER IV - AMENDMENTS TO THE ARTICLES OF THE CONVENTION

Article 31

1. Amendments to the Articles of this Convention may be proposed by a Party or by the Committee of Ministers of the Council of Europe.
2. Any proposal for amendment shall be communicated by the Secretary General of the Council of Europe to the States mentioned in Article 32 and to every State which has acceded to or has been invited to accede to this Convention in accordance with the provisions of Article 34.
3. Any amendment proposed by a Party or the Committee of Ministers shall be communicated to the Committee which shall submit to the Committee of Ministers its opinion on the proposed amendment.
4. The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the Committee and may adopt the amendment, after having consulted the non-member States Parties to the Convention.
5. The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 4 of this Article shall be forwarded to the Parties for acceptance.
6. Any amendment adopted in accordance with paragraph 4 of this Article shall come into force on the first day of the month following the expiration of a period of one month after all Parties have informed the Secretary General of their acceptance thereof.

CHAPTER V - FINAL PROVISIONS

Article 32

1. This Convention shall be open for signature by member States of the Council of Europe and non-member States which have participated in its elaboration. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 33

1. The Convention shall enter into force on the first day of the month following the expiration of a period of one month after the date on which five States, including at least four member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of Article 32.

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

Article 34

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Parties, may invite to accede to the Convention any European non-member State by a decision taken by the majority provided for in Article 20 d. of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.

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

Article 35

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2. Any State may, at any later date, by a declaration addressed to the Secretary General, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of one month after the date of receipt of such declaration by the Secretary General.

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

Article 36

denounce?

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

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

Article 37

The Secretary General of the Council of Europe shall notify the Parties, the other member States of the Council of Europe, the non-member States which have participated in the elaboration of this Convention and any State which has acceded or has been invited to accede to it of:

- a. any signature in accordance with Article 32;
- b. the deposit of any instrument of ratification, acceptance, or accession in accordance with Article 32 or 34;
- c. any date of entry into force of this Convention in accordance with Articles 33 and 34;
- d. any declaration made under the provisions of Articles 25 and 26;
- e. any report prepared in pursuance of the provisions of Article 24;
- f. any proposal for amendment or any amendment adopted in accordance with Article 31 and the date on which the amendment comes into force;
- g. any declaration made under the provisions of Article 35;
- h. any notification made under the provisions of Article 36 and the date on which the denunciation takes effect;
- i. any other act, notification or communication relating to this Convention.

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

Done at ....., the ..... in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention and to any State invited to accede to it.