

Culture, Identity and Language Working Group Meeting, 13 Dec 2007

Paper 2 on Education

Introduction

Two issues have been identified as being of particular importance to the group – recognition of a right to minority language education and the need for educational policies and practices that meet the separate educational needs of different groups in society and which enable those belonging to such groups to learn to interact constructively with each other.¹ Both of these issues are addressed under Articles 12-14 of the Framework Convention for the Protection of National Minorities – see **Appendix I** for relevant sections of the Council of Europe's Explanatory Report.

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.

¹ These were the definitions of multicultural and intercultural education used within the UN Working Group on Minorities ('Montreal International Seminar on Intercultural and Multicultural Education' (31 March 2000) UN Doc E/CN.4/Sub.2/AC.5/2000/WP.4 para 6).

Commentary

It has been proposed that general provisions be included requiring the law to give effect to the Framework Convention and that language rights be protected through legislation giving effect to the commitments made under the Belfast (Good Friday) Agreement, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. However, it will also be recalled that the view of the Northern Ireland Human Rights Commission was that certain rights should be mentioned specifically, including the right to be educated in and through a minority language where there are substantial numbers of users and sufficient demand.² Members of the group therefore need to consider whether or not adequate protection is provided under these instruments, bearing in mind that the Irish language is protected specifically under Part III of the Languages Charter, or whether they support the inclusion of a provision recognising a specific right to minority language education.

Of the constitutional provisions identified in the Working Group's Blueprint document, only s. 23 of the Canadian Charter of Rights and Freedoms deals specifically with minority language educational rights and this provision is primarily aimed at providing protection for those belonging to the English or French linguistic minority population of the province in which they reside (see **Appendix II**). It will be noted that the right of children to receive primary and secondary school instruction in the minority language is subject to sufficiency of demand. This is also the criterion used in relation to the provision of primary and secondary education in Irish under Article 8 of the Languages Charter (Pt III).

² See 2004 document.

Appendix I
Extracts from the Explanatory Report to the Framework Convention
<<http://conventions.coe.int/Treaty/EN/Reports/Html/157.htm>>

Article 12

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

Article 13

Paragraph 1

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

Paragraph 2

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

Article 14

Paragraph 1

74. The obligation to recognise the right of every person belonging to a national minority to learn his or her minority language concerns one of the principal means by which such individuals can assert and preserve their identity. There can be no exceptions to this. Without prejudice to the principles mentioned in paragraph 2, this paragraph does not imply positive action, notably of a financial nature, on the part of the State.

Paragraph 2

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

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

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

Paragraph 3

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

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

Appendix II, s. 23 Canadian Charter of Rights and Freedoms

Language of instruction	<p>23. (1) Citizens of Canada</p> <ul style="list-style-type: none">a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, orb) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, <p>have the right to have their children receive primary and secondary school instruction in that language in that province.</p>
Continuity of language instruction	<p>(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.</p>
Application where numbers warrant	<p>(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province</p> <ul style="list-style-type: none">a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; andb) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.