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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**DRAFT LAW
ON RIGHTS OF NATIONAL MINORITIES
IN BOSNIA AND HERZEGOVINA**

DRAFT

Pursuant to the Article IV. Item 4 and the Article II. Item 4. of the Constitution of Bosnia and Herzegovina (“Official Gazette of BiH”, No.:___), and in accordance with the Framework Agreement on Protection of National Minorities from the Annex I of the Constitution of Bosnia and Herzegovina, the House of Representatives upon its session held on ____, and the House of Peoples of the Parliamentary Assembly of BiH at its ___ session held on___, have adopted the following:

LAW ON RIGHTS OF NATIONAL MINORITIES**I BASIC PROVISIONS****Article 1.**

This Law shall regulate the rights of members of national minorities in Bosnia and Herzegovina (hereinafter BiH) and duties of the bodies of authority in BiH to respect and protect, preserve and develop the ethnic, cultural, linguistic, and religious identity of each member of national minorities in BiH , who is a citizen of BiH.

Article 2.

Protection of national minorities and the rights and freedoms of these minorities, shall be an integral part of international protection of human rights and freedoms.

Framework Convention for Protection of National Minorities shall directly apply and be an integral part of the legal system in BiH and the entities within BiH.

Article 3.

Every member of a national minority shall have right freely to choose to be treated or not to be treated as such and he/she may not be put into an adverse position for such choice nor he/she may be subject to any other form of discrimination upon such basis.

Assimilation of members of national minorities against their will shall not be allowed.

Article 4.

Members of national minorities shall have right to self-organizing for expression and protection of their cultural, religious, educational, social, economic, and social freedoms, rights, interests, and needs.

Article 5.

A national minority, in the sense of this Law, is a part of the population of BiH that does not belong to one of three constituent peoples of BiH, and it consists of the people of the same or similar ethnic origin, same or similar tradition, customs, religion, culture, and spirituality and close or related history or other features.

BiH shall protect situation and equality of members of national minorities Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Romani, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks, and Ukranians.

Article 6.

BiH shall facilitate maintenance and development of relations between the members of national minorities and members of the same national minorities and with the peoples in their countries of descent.

Article 7.

Entities, Cantons, and municipalities in BiH, within the scope of their competencies, upon their laws and other regulations shall in details regulate rights and duties stemming from this Law and international conventions regulating the issues of importance for national minorities.

Article 8.

BiH entities, cantons, cities and municipalities in BiH shall within their budgetary resources secure funds for realization of rights belonging to national minorities pursuant to this Law.

Article 9.

In the cities, municipalities, and local communities (or populated areas) where the members of national minorities constitute majority, shall respect the rights of majority population respecting the principles of their full equality.

II INSIGNIA AND SYMBOLS

Article 10.

Members of national minorities may freely display and bear insignia and symbols of a national minority to which they belong, as well as their organizations, associations, and institutions.

Upon use of insignia and symbols stated in the above paragraph, the members of national minorities shall also display the official insignia and symbols of BiH, as well as the symbols and insignia of entities, cantons and municipalities, in accordance with their regulations.

III USE OF LANGUAGES

Article 11.

BiH shall recognize and protect the right of each member of a national minority in BiH to use of their language and freely without impediment, privately and publicly, orally and in writing.

The right stated in the above paragraph shall also include the right of a member of national minority to use his/her name in the language of minority and to request it to be in public use as such.

Article 12.

In the cities, municipalities, and local communities (displaced persons) in which the members of national minority represent an absolute or relative majority of population, the bodies of authority shall secure that a minority language is used between such members and the bodies of authority; that the names of cities, municipalities, and populated areas be also inscribed in the minority language; that the inscriptions of institutions be also displayed in a minority language, and that the local names, street names, and other topographic signs intended for the public be inscribed and displayed also in the language of minority requesting that.

Cities and Municipalities may upon its statutes determine that the rights stemming from the preceding paragraph may be used by the members of national minorities and when they do not constitute absolute or relative majority of population, but when they constitute in the city, municipality or populated area more than one third of the population.

IV EDUCATION

Article 13.

Entities and Cantons in BiH shall upon their legislation determine the possibilities for the members of national minorities for establishment and maintenance of their own private institutions for education and vocational training.

The national minorities shall secure financing of the institutions from the above paragraph themselves.

Article 14.

Entities and cantons in F BiH shall within the frames of their educational system (pre-school, primary, secondary) secure that within the cities, municipalities, and populated areas in which the members of national minorities represent an absolute or relative minority be enabled to have education in the minority language. Regardless of the number of members of national minorities the entities and cantons shall secure that the members of national minority, if they request so, may have teaching of their language, literature, history, and culture in the language of minority to which they belong, as additional training.

For the purposes of realization of rights from the preceding paragraph the authorities of the entities and cantons shall secure education and teachers and printed textbooks in the languages of national minorities.

V INFORMATION

Article 15.

Members of national minorities in BiH shall have a right to establishment of radio and TV stations, issuance of newspapers and other printed information journals in the language of a minority to which they belong.

Article 16.

Radio and TV stations whose founders are BiH, entities, cantons, cities, and municipalities realizing the role of a public service shall in their program schedules provide for special programs for members of national minorities, and they may also provide for other materials in the minority languages.

Radio and TV stations as public services of BiH shall at least once a week secure one-hour informative program for members of national minorities in the entity, city and municipalities.

VI CULTURE

Article 17.

Members of national minorities shall have right to establish libraries, video libraries, cultural centres, museums, archives, cultural-artistic and folklore associations, and all other forms of freedom of cultural expression, and to take care of maintenance of their monuments of culture and cultural heritage.

In the cities, municipalities, and local communities (populated places) in which members of national minorities make over one third of population, in the institutions for cultural activities contents in the languages of a national minority shall be secured.

Archives, museums, and institutions for protection of monuments of culture and tradition in BiH and its entities shall in their programs secure also the proportional representation of all national minorities in BiH, and protect monumental heritage and cultural heritage of national minorities.

VII ECONOMIC AND SOCIAL RIGHTS

Article 18.

In the cities, municipalities, and local communities (populated areas) in which the members of national minority make an absolute or relative majority of population, bodies of authority shall secure that in the financial and banking institutions and other services of public sector through payment receipts and forms, and in the hospitals, elderly care facilities, and other social institutions, the use of minority language and the treatment in minority language is facilitated.

VIII PARTICIPATION IN BODIES OF AUTHORITY

Article 19.

Members of national minority participating in the population of BiH with over three (3) percent (?) shall have right to representation proportional to its share in the entire population of BiH in legislative, executive, and judicial authorities of BiH.

Members of national minorities whose share in the population is under three (3) percent shall have right to elect at least two representatives in the House of Representatives of BiH and one from each entity respectively.

Representatives elected in this manner shall represent all the national minorities and protect their interests.

Manner of election of representatives of national minorities into the House of Representatives of BiH shall be provided pursuant to the Election Law of BiH.

Article 20.

Members of a national minority participating in the population of cities and municipalities with over fifteen (15) percent (?) shall have right to representation proportionally to its share in the total number of population of the entity in the Parliament of the entity, executive and judicial authority of the entity.

Members of national minorities whose share within the population of the canton is lower than three (3) percent shall have right to elect at least two representatives in the entity parliament. Representatives elected in such manner shall be the representatives of all national minorities and shall protect their interests.

The Election Law of BiH, i.e. the entity, shall prescribe manner of election of the representatives on national minorities in the parliaments of entities.

Article 21.

Members of national minorities participating in the population of the canton with over ten percent shall have right to representation in the legislative, executive, and judicial authority of the canton proportionally to its share in population of the canton.

Members of national minorities whose share in the population does not exceed ten percent shall have right to elect at least one representatives into the parliament of the canton. Representatives elected in such a manner shall be representatives of all national minorities and shall protect their interests.

The entity election laws shall prescribe manner of election into the cantonal parliaments.

Article 22.

Members of national minorities participating in the population of cities or municipalities with more than fifteen (15) percent (?) shall have right to representation in the city, i.e. municipal council proportionally to their share in the population of the city, i.e. the municipality council proportionally to their share in the population of the city, i.e. municipality.

Members of national minorities whose share in the population of the city, i.e. the municipality is lower than fifteen (15) percent shall have right to elect at least one representative in the city, i.e. municipal council.

The election law of the entity shall prescribe manner of election of representatives into the city, i.e. municipal council.

IX INTERNATIONAL SUPERVISION AND CO-OPERATION

Article 23.

BiH shall co-operate and exchange experiences with the governments and institutions of the interested states, as well as with the international institutions for a fullest possible realization of human rights and national minority rights.

X PENAL PROVISIONS

Article 24.

In accordance with the criminal laws of the entities in BiH, any action, incitement, organization, and aiding of the activities that could jeopardize survival of a national minority, cause ethnic hatred, lead to discrimination or bringing the members of a national minority into unequal position shall be prohibited.

XI TRANSITIONAL AND CLOSING PROVISIONS

Article 25.

Republika Srpska and F BiH shall adopt and harmonize their regulations on national minority rights with this Law within 60 days of the date of entry into force of this Law.

Article 26.

This Law shall enter into force on the 8th (eighth) day of the date of its publication in the "Official Gazette of BiH".

REASONING

Draft Law on Rights of National Minorities

The Schedule of Operations of the Council of Ministers and the Parliamentary Assembly of BiH envisages the preparation of the Law on Rights of National Minorities, which should be adopted in 2001. Since the rights of national minorities belong to the area of fundamental human rights and freedoms management of the project has been entrusted to the Ministry of Human Rights and Refugees

I CONSTITUTIONAL GROUNDS

The constitutional grounds for adoption of this Law have been contained in the following provisions of the Constitution of BiH.

- The Parliamentary Assembly is competent to adopt laws necessary for execution of duties of BiH towards the international conventions on human rights and fundamental freedoms (Article IV Item 4);
- Enjoyment of rights and freedoms enumerated in the Constitution and international agreements stated in the Annex I of the Constitution of BiH has been provided for all the persons in BiH without discrimination upon any grounds such as sex, race, color... national origin, affiliation with a national minority. (Art. II, Item 4);
- Framework Convention for Protection of National Minorities is in force in BiH (Annex I of the Constitution in BiH)

II REASONS FOR ADOPTION OF THE LAW

According to the most recent population census (1991) in BiH there live a number of members of minorities throughout the territory of BiH. Their rights and duties have not been regulated by domestic legislation. Such legislation did not exist even before the adoption of the "Dayton" Constitution, so it was not possible to apply the provision of continuity of legal regulations, i.e. to apply the regulations from the pre-Dayton period.

On the other hand the integral part of the Constitution of BiH represent numerous international conventions (Annex I) among which there is also the Framework Convention on the Protection of National Minority.

Although the international conventions regarding the human rights and fundamental freedoms, which cover the rights of national minorities, are directly applicable, this conventions are vague and refer to the domestic legislation to elaborate each of these conventions and subsequently apply it departing from the circumstances in each country party to the convention.

Due to the above stated reasons, in order to facilitate access to the European integration, a

and for the purpose of justified requests of the minority communities the drafting of this law has been initiated.

III PRINCIPLES UPON WHICH THE LAW IS BASED

Principles upon which this law is based are the following:

- principle of full equality of the citizens regardless of their sex, religion, color, race, ethnic origin and political opinion
- principle of application of the highest standards of internationally recognized rights and fundamental freedoms;
- principle of free expression of ethnic, cultural, religious and linguistic identity, interest, and needs stemming from this principle;
- principle of protection of survival of national minorities: ban on assimilation of members of national minorities.

IV EXPLANATION OF PROPOSED LEGAL ARRANGEMENTS

CHAPTER I. Basic Provisions of the Articles I to 9 concern the general provisions upon which it has been defined through every member of a national minority freely to choose his ethnic affiliation and without any discrimination regardless of the grounds. It also defines the obligations of the state, entity, cantonal, city, and municipal authorities to secure, respect, protect, and develop these rights and to provide financial resources for that.

Obligations have been provided for the national minorities to ensure full equality of the majority population of BiH in the areas where they constitute a majority.

CHAPTER II Insignia and Symbols, Articles 10

Members of national minorities shall have right to public use of their insignia and symbols, but also the obligation to display besides their symbols also the appropriate official insignia and symbols, in BiH in accordance with the valid regulations.

CHAPTER II Use of Languages, Articles 11-12

These provisions define the right of the national minorities to freely use in public and in private their mother tongue, and in the areas where they constitute a majority to have besides the inscriptions in official language the inscriptions in minority language. This right in any case exists in the areas where national minorities constitute majority of citizens. A possibility has been left that the cities and municipalities may pursuant to their statutes prescribe that such a right exists in cases where minorities constitute at least 1/3 of the population.

CHAPTER IV. Education, V – Information, VI- Culture and VII – Economic and Social Activities Articles 13-18 shall follow the basic principles stemming from the right to use the language of national minorities transferred into the area of education, culture, information...

Thus they provide for the obligation to the state, entities, cantons, to secure within the public services the right and opportunity of expression of national identity, as well as its preservation and development.

CHAPTER VIII Participation in bodies of authority; Articles 19-20

These provisions ensure representation of members of national minorities also in the structures of authority, in particular the legislative authority. Rights defined by this law, however, should be regulated in a manner that would ensure the representation of national minorities in power.

Penal provisions shall be contained in appropriate laws of entities.

V FINANCIAL RESOURCES

For implementation of this Law at the state level no major financial resources are required. However, the realization of this Law within the entities, i.e. the cantons, cities, and municipalities shall require special funds, in particular in the area of education. These funds should be included in the draft budgets for the next calendar year.