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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT OPINION

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

**(prepared by
Mr Ibrahim Spahić,
Delegate in the House of Peoples
of Bosnia and Herzegovina)
(CDL (2001) 70)**

**On the basis of comments by
M. G. MALINVERNI (member, Switzerland) and
P. VAN DIJK (member, the Netherlands)**

DRAFT OPINION

of the Venice Commission's Working Group on the draft Law on the Rights of Ethnic and National Communities and Minorities in Bosnia and Herzegovina

1. Introduction

The Venice Commission had been asked by the Office of the High Representative to give its opinion on the Draft Law on the Rights of the National Minorities of Bosnia and Herzegovina, prepared by the BiH Ministry of Human Rights and Refugees. The Office of the High Representative subsequently submitted to the Venice Commission for its opinion a second draft law on national minorities, the Law on the Rights of Ethnic and National Communities and Minorities in Bosnia and Herzegovina (hereinafter referred to as "the Draft Law") in the process of being adopted by the House of Peoples. A Working Group, composed of Mr Pieter Van Dijk and Mr Giorgio Malinverni, was set up to study the question. It prepared the following opinion, which was adopted by the Venice Commission at its .. Plenary Meeting (Venice,) and was sent to the Office of the High Representative.

2. General Comments

The purpose of the Draft Law is to "regulate the rights of ethnic and national communities and minorities as provided for by the Framework Convention on the Protection of National Minorities (hereinafter: "the Framework Convention"). (The concept of "communities", as opposed to minorities, is however unclear and should be specified in the Draft Law).

It seems difficult to appreciate the scope of the rights and of their protection in the Draft Law. In the explanation thereto, it is stated that the Draft Law "regulates in a more definitive manner the right to equality in terms of human rights, political engagement, use of language and other rights" as set out in the Bosnian Constitution. Through the Draft Law, furthermore, Bosnia and Herzegovina would "start the implementation" of ratified international agreements on minorities protection. Reference is made in particular to the European Charter on Regional or Minority Languages (hereinafter "the European Charter").

It must be noted, however, that the Draft Law does not contain any regulations and does not grant any concrete entitlement. Nor does it set out any detailed guidelines for the subsequent enactment, at the Entity or local level, of specific regulations.

None of the three provisions (Articles 4, 6 and 7) of the Draft Law which set forth the entitlements of persons belonging to national minorities provide for the specific content of these entitlements.

Article 4 grants persons belonging to national minorities "all religious and political rights in Bosnia and Herzegovina, including the right to be elected" "in accordance with the Framework Convention". This provision is pretty obscure. To the extent that it seems to provide that persons belonging to national minorities can enjoy the rights recognised to all individuals in Bosnia and Herzegovina (and it is difficult to understand why the right to be elected should be singled out, and why the right to vote is not mentioned), this article is

unnecessary and might even lead to the *a contrario* argument that the principle of equality is not of general application. If, on the other hand, it must be interpreted as granting the rights set forth in the Framework Convention, this provision is insufficient, given that most provisions of the latter convention are of a programme-type character and thus non self-executing.

Article 6 § 1 provides for a general right of persons belonging to national minorities to use their language and script and for their right to education, but it leaves to a specific piece of legislation to be further adopted the task of regulating these rights. In particular, it does not specify whether there is a right to have education in the minority language financed by public sources, and whether this includes the right to be educated in the minority language at an institution where general education is not in that minority language.

Article 6 § 2 sets forth a right to “information in the minority language, as provided in the European Charter”. To the extent that this right is in relation with the duties of a State under Article 11 of the European Charter (“Media”), this provision is insufficient in that it does not implement the undertakings in the aforementioned Article 11.

Article 7 leaves to the discretion of the local authorities the possibility of prescribing that, in given areas, public institutions and persons performing public functions “enscribe names also in the minority language” and “name cities and geographical areas so as to reflect the presence and existence of a minority”. Apart from the consideration that in this respect the Draft Law does not set out any obligation for the local authorities to act on Article 7, the entitlements contained therein appear completely insufficient, far below the entitlements to the use of the minority language in public and in private, in the relations with the administration and the right to display traditional local names, street names etc., recognised under Articles 10 and 11 of the Framework Convention and Articles 9, 10 13 of the European Charter.

Article 3 of the Draft Law sets out the principle of equality of treatment of minorities. The “equality” seems to refer to equality amongst national minorities only, and not also to equality between the minorities and the majority. Further, the Draft Law should also provide an express prohibition of discrimination on the basis of belonging to a minority. There should also be a provision expressly allowing for and guaranteeing affirmative action to the extent required to bring members of national minorities into a substantively equal position as compared to the members belonging to one of the three “constituent peoples”.

3. Conclusion

Under these circumstances, it is doubtful that the Draft Law would have any meaningful impact on the current scenario of minority protection in Bosnia. It is not surprising that “no special funds are required” for its implementation.

