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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

SECOND DRAFT LAW

**AMENDING THE LAW
ON NATIONAL MINORITIES**

IN UKRAINE

And Explanatory Memorandum

Draft
submitted by Ukraine Peoples' Deputies
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(replacing an earlier draft)

**Law of Ukraine
amending the Law of Ukraine “On national minorities in Ukraine”**

In order to improve the law in respect of national minorities the Supreme Council of Ukraine decrees:

1. That the Law of Ukraine “On national minorities in Ukraine” (Supreme Council of Ukraine Report, No. 36, p. 529, 1996) shall be amended to read as follows:

**LAW OF UKRAINE
“On protecting the rights of national minorities in Ukraine”**

This Act shall regulate the conditions for the realisation of social and cultural rights linked to the activities and development of national minorities in Ukraine and also the protection of the rights of persons who belong to the national minorities of Ukraine.

Section 1. General provisions

Article 1. Definition of terms

For the purposes of this Act:

a) the term “national minority” shall mean groups of citizens of Ukraine who are not Ukrainian by nationality (origin), who historically live on the territory of Ukraine, who demonstrate ethnic, cultural and/or linguistic features, who proclaim and express a desire to preserve their identity and whose number is less than half the population of Ukraine;

b) the term “**territory of compact residence**” (*територія компактного проживання*) shall mean a particular territorial and administrative unit of Ukraine where the number of resident citizens of a national minority is sufficient to activate the measures specified under this Act and other regulatory legal instruments of Ukraine;

c) the term “persons from national minorities” shall mean citizens of Ukraine who acknowledge that they belong to a national minority and/or express the desire to preserve their national identity.

Article 2. Basic principles of state policy

In guaranteeing protection of the rights of persons from national minorities the state assumes that such rights are an inalienable part of generally recognised human rights.

Ukraine shall guarantee citizens, irrespective of their national origin or whether they belong to any national minority, equal political, social, economic and cultural rights and freedoms, and shall support the development of national consciousness.

The state shall promote the consolidation of society and citizens of all nationalities who inhabit the territory of Ukraine, and the development of the cultural, linguistic and religious identity of the national minorities of Ukraine.

The state shall promote the comprehensive development of national minorities.

Every citizen of Ukraine is bound to observe the Constitution and laws of Ukraine, to defend its sovereignty and territorial integrity, and to respect the languages, cultures, traditions, customs and religious distinctiveness of other citizens, irrespective of nationality.

Discrimination on grounds of national or linguistic characteristics shall be deemed to violate the state interests of Ukraine, and persons guilty thereof will be called to account before the courts.

The state shall prohibit any attempts on its territory to assimilate persons from national minorities against their will.

Article 3. Legal regulation in the field of national minorities

The relations which flow from the protection of the rights of national minorities shall be regulated by the Constitution of Ukraine, by this and other laws of Ukraine and by the international agreements and other regulatory legal instruments of Ukraine.

Section II. Particularities concerning the exercise of the rights of persons belonging to national minorities

Article 4. Recognition of nationality

Citizens of Ukraine are entitled to freely choose and [renew/resume/restore] their nationality.

Every citizen of Ukraine shall have the right to be recognised as a person who belongs to a national minority on grounds of ethnic and/or linguistic origin and also to declare that he/she belongs to a national minority to the public, state bodies or local authorities, companies and institutions by the means available to them.

Article 5. The right to a national first name

Every citizen of Ukraine shall have the right to a national surname, first name and patronymic.

Citizens may **[restore/renew]** their national surnames, first names and patronymics in the manner prescribed by law.

Citizens in whose national tradition the use of patronymics is not customary shall be entitled to enter the first name and surname alone in their passport and the first name of the father and mother in the birth certificate.

Article 6. Means of exercising rights by persons from national minorities

Persons from national minorities shall be free to choose the extent and methods by which they exercise the rights granted to them by the current law of Ukraine and by which they realise them, in particular by co-operation with state and local bodies, local authorities and associations of citizens. Citizens shall be entitled either individually or jointly with other members of a national minority to manifest and develop their ethnic, linguistic, cultural and religious identity while observing the rights and freedoms of other citizens of Ukraine.

Persons from national minorities in places of **compact residence** shall be entitled to create national and cultural autonomy which is regulated by a separate law of Ukraine.

Article 7. The exercise of political and social rights

Persons from national minorities shall have a right on a par with other citizens of Ukraine to participate in the cultural, social, political and state life of Ukraine and may exercise these rights both individually and jointly with others by creating associations of citizens. The participation or non-participation of a citizen of Ukraine in an association of citizens which represents the interests of a national minority shall not be grounds for restricting their rights.

Persons from national minorities shall have the right respectively to be elected or appointed on an equal footing to any post in the legislative, executive or judicial bodies and to local authorities.

Under the laws of Ukraine associations of citizens of national minorities shall have the right to put forward candidates to the election authorities of state and local authorities.

Article 8. The use of rights by persons from national minorities

The use of, or failure to use, the rights of national minorities provided for under the laws of Ukraine by persons from national minorities shall have no negative legal consequences for any person and may not serve to restrict the rights of persons from national minorities.

Article 9. Protection by the courts

Persons from national minorities shall have the right to protection by the courts of the rights of national minorities provided for under this and other laws of Ukraine.

Section III. Upbringing and education

Article 10. Use of the mother tongue

Persons from national minorities have the right to freely associate in their mother tongue in their private and public life. The state shall promote persons from national minorities who bring up their children in national customs, traditions, language and religion.

Article 11. Educational development programmes

Study of the mother tongue, history and culture and teaching in the mother tongue for the national minority in educational establishments shall be done in accordance with the State Programme for the Support of Education in Minority Languages approved by the Cabinet of Ministers of Ukraine.

The above programme shall be drawn up on the basis of general proposals from bodies of the state executive, local authorities and public organisations of national minorities for the development of programmes to advance education among persons from national minorities.

Article 12. Training of teaching staff

The state shall take measures to train teaching, cultural and educational and other national staff through a network of state and community educational establishments. Based on the international agreements of Ukraine the state authorities shall promote national minorities in training specialists in other countries.

Article 13. Creating educational establishments

The state shall support and encourage the creation of pre-school, out-of-school, general educational, vocational and technical and other educational institutions for the study of the languages, history, culture and traditions of national minorities and/or other subjects in minority languages.

These institutions shall be set up in places of **compact residence** of persons from national minorities under the State Education Programme in Minority Languages and financed by the state budget of Ukraine and the budgets of local authorities at various levels, by voluntary contributions from individuals, by donations from companies and organisations, by international technical aid (such aid being exempted from taxation in pursuance of the law of Ukraine on taxation), and from other sources that are not contrary to the laws of Ukraine.

A condition of the creation and operation of such institutions shall be the study of the Ukrainian language.

Section IV. Relations with local authorities

Article 14. Defining territories of **compact residence** of persons from national minorities

For the purpose of implementing the measures encouraged under this Act and other regulatory legal instruments of Ukraine, local authorities shall define the territory of **compact residence** of persons from national minorities in the light of statistical data, the proposals of public organisations of national minorities, the historical origins of national minorities and the principle of considering the interests of the smallest number of persons from national minorities.

The method of defining a territory of **compact residence** of persons from national minorities shall be approved by the Cabinet of Ministers of Ukraine.

Article 15. Advisory bodies

Local authorities shall create permanent advisory bodies with representatives from the public organisations and other associations of citizens from national minorities. Local executive bodies shall create departments dealing with international matters and co-operation with associations of citizens from national minorities.

Decisions by local authorities which affect national minorities shall be agreed with these advisory bodies, particularly where such decisions relate to building on historical sites, protection of historical and cultural monuments of national minorities, education and the organising of cultural events.

Local authorities shall draw up regional development programmes taking into consideration the needs of national minorities.

Article 16. Use of minority languages in the business of local authorities

The language of the relevant national minority may be used alongside Ukrainian in the work of local authorities, public associations and companies, institutions and organisations located in areas where the majority of the population is a distinct national minority.

The regulatory legal instruments of the local authority may, by decision of the local authorities, be published in minority languages subject to such decisions being made in Ukrainian. In the event of disagreement on the application and interpretation of such decisions the Ukrainian language shall have precedence.

The laws of Ukraine, decrees of the Cabinet of Ministers of Ukraine and regulatory legal instruments of the executive may be published in minority languages if such publication is feasible on economic grounds and justified by the interests of the broad range of persons from

national minorities. Such decisions shall be taken and executed by local authorities on the basis of proposals from associations of persons from national minorities.

Officials and other workers of local authorities may, when appointing persons from national minorities, communicate in the minority languages. The above provision shall apply to those officials and other workers who are fluent in the relevant minority language. Written responses to enquiries by persons from national minorities and national minority public organisations shall be made in the Ukrainian language and, if necessary and the appropriate technical means are available, in the minority languages.

Article 17. The use of national names (toponymy)

Local authorities shall independently take decisions, including on the basis of proposals from public associations of national minorities, regarding the use of names of streets, squares, towns and villages in the minority language/s in places of **compact population** of national minorities. The names must also be given in the Ukrainian language.

Section V. Media

Article 18. Information for national minorities

Persons from national minorities and public associations of national minorities shall be entitled to receive, exchange and distribute information in the mother tongue and/or other information regarding the history, culture and other matters connected with the life of national minorities.

The state shall provide clarification of issues which apply to national minorities in the state print media.

Article 19. Creation of mass media

The state shall promote the creation of media in minority languages and training for journalists and other specialists for the media of national minorities. Local authorities and/or public organisations of national minorities shall act as initiators in the creation of radio and television broadcasts, newspapers and magazines which throw light on the activities of national minorities.

Article 20. Re-transmission of broadcasts from neighbouring countries

The state guarantees the freedom to receive radio and television broadcasts from neighbouring countries which broadcast in the language of a national minority or in a language similar to it and shall not interfere with the re-transmission of radio and television broadcasts in such language from neighbouring countries.

Section VI. Development of culture of national minorities

Article 21. Guarantees in the field of culture

The state shall guarantee all national minorities the right to national and cultural autonomy and the right to found cultural associations and centres, develop national cultural traditions, use national symbols, celebrate traditional national festivals, profess their own religion, satisfy needs in literature and art, create national cultural and religious institutions and conduct any cultural activity that is not contrary to the law of Ukraine in force.

Article 22. Publication of works in minority languages

The state shall assist and encourage initiatives for the publication of works in minority languages to an extent that satisfies the needs of educational institutions, libraries, cultural centres and theatres, and shall provide funding for the relevant measures based on proposals from the authorised executive body for national minority issues, local authorities, public associations of national minorities.

Funding for these measures from the state budget of Ukraine shall be provided in accordance with the laws of Ukraine.

Article 23. Development of national traditions

The state shall promote the safeguarding and development of the cultural traditions of national minorities, the conduct of measures which promote folk creation, festivals, concerts, exhibitions and the organisation of scientific and research expeditions for the study of folklore.

Article 24. Traditional national festivals

The state shall promote the celebration of traditional national and/or religious festivals of national minorities. In the conduct of their business local authorities shall take into consideration the celebration of certain festivals and national minority events in areas of **compact residence** by persons from national minorities.

Additional leave days may be stipulated for persons from national minorities for the celebration of traditional national and/or religious festivals; these must be incorporated in the corresponding collective agreements between the administrations of companies (organisations, etc.) or in employment contracts with the relevant workers, at their request.

Article 25. Cultural and educational institutions

The state shall promote the creation and enlisting of funds to finance cultural and educational measures for the study of the languages, history, culture and traditions of national minorities and for the development of these institutions' international cultural links.

Article 26. Historical and cultural monuments

The state shall provide protection and security for the historical and cultural monuments of national minorities on the territory of Ukraine.

Local authorities shall take measures for the reconstruction or restoration and the safeguarding of the historical and cultural monuments of national minorities located on the territory of the citizens concerned.

Article 27. Development of traditional national craft industries

The state shall promote entrepreneurial initiatives directed at developing the traditional craft industries of national minorities.

Local authorities in areas of **compact residence** of persons from national minorities shall take decisions based on proposals from the public organisations of national minorities to organise protected areas for the crafts of national minorities, such areas being created in accordance with the law of Ukraine.

In these protected areas no manufacturing or other buildings may be built, or any commercial activity conducted, which have or may have adverse effects on the status of the crafts so protected.

On proposals from local authorities the Cabinet of Ministers of Ukraine shall approve targeted development programmes for traditional national craft industries.

Vocational study programmes may be created with or without teaching in the languages of the national minorities in order to develop national craft industries in vocational technical colleges and other educational establishments, if specialists in the relevant subject are available in an area of **compact residence** by persons from national minorities.

Section VII. State regulation in the field of national minorities**Article 28. Authorised executive body**

State policy in the field of national minorities shall be implemented by a central authorised body of the executive. Corresponding structures will be set up by the Council of Ministers of the Autonomous Republic of Crimea and local executive bodies.

In particular the central body of the executive power shall perform these functions:

- preparing and implementing the main directions of state policy regarding the development of national minorities;

- co-ordinating the activities of other central and local executive bodies and local authorities involved in co-operation with national minorities;

- preparing long term economic, social and cultural development programmes for national minorities, taking into consideration proposals from local authorities and public organisations of national minorities;

- expanding relations with public organisations of national minorities;

- conducting international co-operation on national minority issues with other countries and international organisations;

- drawing up draft legislation and other regulatory legal instruments in the field of national minorities.

An advisory body made up of representatives of social organisations of national minorities may be set up by the authorised executive body.

Article 29. Representation of the interests of national minorities

Persons from national minorities shall have the right to take part in the management of state and public affairs and to represent the interests of national minorities in state bodies and local authorities.

Article 30. Planning activities in the field of national minorities

The Cabinet of Ministers of Ukraine shall approve targeted economic, social and cultural development programmes for territories of **compact residence** of persons from national minorities in Ukraine based on proposals from local authorities and public organisations of national minorities and on forecasts of economic and social development in the medium term.

Article 31. State support for the development of national minorities

Provision shall be made in the state budget of Ukraine and in local budgets for special development funding for national minorities and for measures provided for by this Act and other regulatory legal instruments drawn up pursuant to this Act.

Section VIII. International co-operation and trans-border contacts

Article 32. Development of international co-operation

The state shall promote the furtherance of co-operation with international organisations and other countries in guaranteeing and protecting the rights and interests of national minorities, in particular by entering into and implementing the international agreements of Ukraine in this field.

Article 33. International links of national minorities

The state shall promote the development of international links and trans-border co-operation between public organisations of national minorities in Ukraine and international organisations and relevant public organisations in foreign countries.

Citizens from national minorities and public organisations of national minorities shall have the right to maintain links with persons of their own nationality and their public organisations beyond the borders of Ukraine and to take part in the activities of international non-governmental organisations.

Public organisations of national minorities may receive international technical aid and other types of aid in the manner defined by the law of Ukraine in force in order to meet the linguistic, cultural, educational, spiritual and other needs defined in this and other laws of Ukraine.

The state shall encourage the pursuit of international and inter-regional means whereby public organisations of national minorities may popularise the cultures and traditions of national minorities.

II. Final provisions

1. This Law shall enter into force on the date of publication.
2. The Laws of Ukraine and other regulatory legal instruments of Ukraine adopted before the present Law comes into force shall remain effective wheresoever they are not inconsistent with this Law.
3. When this Law comes into force, the Law of Ukraine “On national minorities in Ukraine” (No. 2494-XIII of 25th June 1992, VVR 1992, No. 36 p. 529) shall cease to apply.
4. The Cabinet of Ministers of Ukraine shall, within six months of this Law coming into force:
 - bring its regulatory legal instruments into conformity with this Law;
 - draw up the regulatory legal instruments which flow from this Act;
 - ensure that ministries and other central bodies of the executive bring their regulatory legal instruments into conformity with this Law.

Head, Supreme Council of Ukraine

V. M. LYTVYN

EXPLANATORY MEMORANDUM

on the draft Law of Ukraine amending the Law of Ukraine
“On national minorities in Ukraine”

1. Reasons for the draft Law of Ukraine

This draft law has been drawn up in order to reform and renew the fundamental regulatory legal instruments governing the definition and protection of the rights of persons from national minorities who reside on the territory of Ukraine and in order to bring the laws of Ukraine closer to international standards for the protection of the rights of national minorities.

Following independence the “National minorities in Ukraine” Law, which was based the Declaration of Rights of Nationalities of Ukraine of 1 November 1991, was passed in 1992. The 1992 Law in force is general in nature but the passing of it was an important step in the determination of Ukraine’s general policy in respect of national minorities.

Since the passing of the 1992 Act Ukraine has become a Party to a number of international agreements relating to the rights and protection of national minorities, in particular the Framework Convention for the Protection of National Minorities (Vienna 1993 [??]), and agreements have been signed with many states for the development of relations in the field of national minorities. Ukraine’s new international obligations and the demands of modern society will require that the state take measures in relation to nations which, alongside the Ukrainian nation, are an inalienable part of society. The European Charter for Regional or Minority Languages was ratified by Law of Ukraine No. 802-IV of 15 May 2003.

2. Aims and tasks of this draft Law of Ukraine

The main purpose of this draft law is to protect the rights of national minorities in Ukraine and to define specific measures which, with appropriate initiatives by local authorities and associations of citizens representing the interests of persons from national minorities, will serve to protect and develop the distinctive cultures of national minorities, granting as many opportunities as possible to create equal conditions for any nationalities historically resident on the territory of Ukraine.

Once passed, this draft Law will facilitate a renewed approach to relations with national minorities, revive the initiative of citizens of Ukraine from national minorities and boost initiatives for developing national cultures, education, traditions and craft industries.

The draft law emphasises that the State has a great interest in improving relations with national minorities each of which has left its mark on the history of humanity and has strong roots in the soil of Ukraine.

In accordance with the Constitution of Ukraine this draft law considers all national (ethnic) minorities which historically dwell on the territory of Ukraine to be inalienable components of the Ukrainian people. It lists economic, political and cultural means for meeting the needs of the national minorities of Ukraine.

One of the themes of the draft is the initiative of public organisations which will represent the interests of national minorities and persons from national minorities.

The draft explains the main aspects of life which to a greater or lesser extent concern each and every citizen of Ukraine. Foremost among these is the opportunity personally to acknowledge that one belongs to a national minority and to manifest other characteristics; it is emphasised that the personal, economic, cultural, social and political rights of individuals are equal for all citizens of Ukraine irrespective of nationality.

Bringing up children and receiving an education in the mother tongue, the study of traditions, the protection of cultural acquisitions, relations with state and local authorities, the development of entrepreneurial activity and international links – these are all areas in which it is proposed that relations with national minorities be enhanced and/or established.

Provision is made for equal guarantees of equal political, economic, social and cultural rights for all persons from national minorities who have historically lived on its territory.

Representatives of national minorities are appointed on an equal footing with Ukrainians to state bodies at all levels, and they can occupy any management positions in companies, institutions and organisations.

Discrimination on the grounds of national characteristics is prohibited and punishable by law.

The state takes due legislative and organisational measures to achieve this end.

A range of powers is granted to the Cabinet of Ministers of Ukraine, and to the authorised central executive and local authorities.

In the drawing up of this draft law consideration has been given to the basic provisions of the 1992 “National minorities in Ukraine” Law and also to the conceptual provisions of separate international agreements defining and protecting the rights of national minorities, in particular the European Charter for Regional or Minority Languages.

For convenience of use the draft law is constructed thematically (in nine sections).

4. The status of the regulatory legal base in the particular field of legal regulation

Ukrainian legislation for the protection of the rights of national minorities is based on the commonly accepted principles and standards of international law, which include:

1. The Constitution of Ukraine (Reports of the Supreme Council (VVR), No. 30, p. 141, 1996);
2. Law of Ukraine “On national minorities in Ukraine” (Reports of the Supreme Council (VVR), No. 36, p. 529, 1992);
3. Law of Ukraine “On the ratification of the Framework Convention of the Council of Europe for the Protection of National Minorities (Report of the Supreme Council (VVR), No. 14, p. 56, 1998);

4. The Framework Convention for the Protection of National Minorities, Strasbourg, 1 February 1995 (ratified by Law No. 703/97-VR (703/97-VR) of 9 December 1997).
5. The European Charter for Regional or Minority Languages (ratified by Law of Ukraine No. 802-IV of 15 May 2003).
6. Bilateral agreements of Ukraine with other states.

5. Financial and economic feasibility

Implementation of the draft Law will not require additional budget resources as funds are voted each year in the state finance laws. Finance within the limits of already established financial support will be made directly, namely: funding for cultural, information and educational measures to ensure realisation of the rights and needs of national minorities in Ukraine, for exhibitions and museums and for other cultural, information and educational purposes.

6. Forecast of the social, economic and other consequences of adopting the draft of Law of Ukraine

Adoption of the draft will make it possible to organise, systemise and renew the laws and regulations governing the protection of the rights of national minorities in Ukraine and to bring them into conformity with international standards.