



Strasbourg, 24 May 2004

Opinion no. 270 / 2003

Restricted
CDL(2004)037
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMMENTS

**ON THE REVISED DRAFT LAW
ON EXERCISE OF THE RIGHTS AND FREEDOMS
OF NATIONAL AND ETHNIC MINORITIES**

IN MONTENEGRO

by

Mr Bogdan AURESCU (Substitute member, Romania)

1. Taking into account the Opinion no 270/2003, the outcome of the discussions held in Podgorica with the representatives of the civil society of Montenegro and the revised draft law on exercise of rights and freedoms of national and ethnic minorities submitted by the Government of the Republic of Montenegro, the following comments and observations should be addressed:
2. As to the revised article 1, I would suggest to have it split in two paragraphs: the first paragraph should be drafted as follows:
3. “Republic of Montenegro, pursuant to the Constitution of the Republic of Montenegro and generally accepted rules of International Law, including the ratified international treaties, shall ensure the protection of national minorities and of the rights of persons belonging to them”.
4. The second paragraph should be drafted as follows: “For the purpose of this law, the term “national minorities” will also cover the notion “minority peoples” (see argumentation in Opinion no. 270/2003, CDL (2004) 018.
5. As to the revised article 2, as well as the rest of the law, should refer only to the term of “national minorities”, which is comprehensive in accordance to the proposed article 1 para 2 (see above).
6. For the same argumentation which may be found in para 10 of the Opinion no. 270/2003, taking into account the particular conditions after the dissolution of the former Yugoslavia, the inclusion in the scope of protection of the Law of persons who do not hold citizenship (including refugees and displaced persons) seems to be necessary.
7. I maintain my comments from points no. 1,2, 14, 20, 21, 22, 23, 24, 25, 26 and 27. As to the comments from point no. 10, I support the solution proposed by Mr. Asbjorn Eide on the occasion of the discussions held in Podgorica – definition of national minority making no reference to citizenship and approach on an article by article basis which means that, as to the political rights, it will be mentioned that the condition to exercise the right is the existence of the citizenship of the Republic of Montenegro.
8. As to article 29, I consider that further comments should be addressed, as the procedure ensuring representation of national minorities in public authorities does not seem to be accurate. In fact, as the article is currently drafted, the political level “looks after” the representation of the minorities in these institutions. The involvement of the political level in appointing such representatives is not the solution especially when it comes to the representation within the judiciary. The appropriate solution, in my opinion, would be to set forth that members of the national minorities shall be able to work in public institutions in conditions of equality with the others and according to their own individual merits.