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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

REVISED DRAFT LAW

**ON EXERCISE OF RIGHTS AND FREEDOMS
OF NATIONAL AND ETHNIC MINORITIES**

**IN MONTENEGRO
(25 March 2004)**

Draft text**LAW ON EXERCISE OF RIGHTS
AND FREEDOMS OF NATIONAL
AND ETHNIC MINORITIES****I. BASIC PROVISIONS****Article 1**

Republic of Montenegro, pursuant to the Constitution of the Republic of Montenegro and generally accepted rules of international law and ratified international treaties, shall ensure the protection of rights of national minorities, that is, minority peoples and ethnic minorities and persons belonging to them, the rule of law and all the highest values of constitutional and international legal order.

Article 2

This Law protects national minorities, minority peoples and ethnic minorities and freedoms and rights of the persons belonging to them.

All rights prescribed by this Law are also guaranteed to the predominant population in the local self-management units where they represent minority.

In the spirit of this law, national minority, minority people and ethnic minority (hereinafter referred to as: national minority) shall mean any group of citizens of the Republic of Montenegro (hereinafter referred to: the Republic) that is numerically smaller than the rest of predominant population, that is, minority that has common ethnic, religious or linguistic characteristics different from those of the rest of the population, that is motivated by the wish to express themselves and maintain their national, ethnic, cultural, linguistic and religious identity and that has historical ties to the Republic.

Article 3

This law does not refer to refugees, displaced persons and persons who do not hold citizenship.

Article 4

This law prohibits abuse of this right for the sake of destroying legal order, territorial integrity and sovereignty of the Republic, inciting national, ethnic, religious, racial or other form of hatred or intolerance, threatening or jeopardizing public security, public order, moral and health of people.

It is prohibited to undertake measures and activities for the purpose of alteration of population structure in the territory inhabited by persons belonging to a national minority, with the goal to limit freedoms and rights of national minorities and persons belonging to them.

Article 5

Person belonging to a national minority can freely choose to be treated or not treated as such and shall not be put in an unfavorable position due to such choice or due to exercise of rights related to that choice.

Persons belonging to national minority can exercise their rights and enjoy freedoms individually or together with others.

Article 6

Direct or indirect discrimination on any basis, including race, color, sex, nationality, social background, birth or similar status, religion, political or other affiliation, wealth, culture, language, age or psychological or physical disability shall be prohibited.

It is allowed to temporarily introduce special measures needed to provide equality, necessary protection and progress of the persons or groups of persons with an unequal status, in order to allow them to exercise fully human and minority rights under the same conditions.

Special measures as of paragraph 2 of this Article shall apply only until the goals for which they have been introduced are fulfilled.

Article 7

National minorities and persons belonging to national minorities are equal with other citizens before the law and shall enjoy equal legal protection.

Any violation of rights of national minorities and persons belonging to national minorities shall be deemed unlawful and punishable.

Article 8

In addition to the rights stipulated in generally accepted international regulations and ratified international treaties, this law ensures full exercise of minority rights to national minorities and persons belonging to national minorities under equal terms and with a view to providing their substantial equality with other citizens.

Article 9

The Republic can sign international agreements on protection of rights of national minorities with other states.

Regarding the issue of signing international agreements as of paragraph 1 of this Article, the Republic shall ensure that the agreements thereof do create and promote the conditions necessary for maintenance, development and protection of national, ethnic, cultural, linguistic and religious identity.

Article 10

With a view to providing conditions for unhindered exercise and promotion of national and ethnic specifics pertaining to national minorities and persons belonging to national minorities, state agencies are obliged to undertake appropriate measures in compliance with the Strategy of the Policy for Minorities.

The Strategy as of paragraph 1 of this Article shall particularly define measures for enforcement of this Law and promotion of the living conditions for minorities, and measures and activities for the greatest possible integration of Roma into the social and political life of the Republic.

The Government of the Republic of Montenegro (hereinafter referred to as: the Government) shall adopt the Strategy of the Policy for Minorities.

II. RIGHTS OF NATIONAL MINORITIES AND OF PERSONS BELONGING TO NATIONAL MINORITIES

Article 11

National minorities and persons belonging to national minorities shall have the right of expression, preservation, development, transmission and public manifestation of national, ethnic, cultural, religious and linguistic identity as a part of their tradition.

The Republic shall foster and promote the study of history, tradition, language and culture of national minorities.

In compliance with this law and accepted international commitments, the competent authorities shall provide for the protection of cultural heritage of national minorities and persons belonging to national minorities.

Article 12

With a view to preserving and developing national or ethnic identity of a national minority, persons belonging to a national minority are also entitled to establish institutions, societies, associations and non-governmental organizations in all fields of social life and manage them in compliance with the law.

The Republic shall also take part in funding organizations as of paragraph 1 of this Article, in compliance with its financial means.

Article 13

Persons belonging to national minorities have right to freely choose and use their first names and surnames and the names of their children, as well as to register those names in public registers and identification documents in their language and alphabet.

The right to name and registration of the name in original language and alphabet can also be used by organizations that are founded pursuant to Article 12 of this Law.

Article 14

National minorities and persons belonging to national minorities are entitled to free use of their language and alphabet.

In local self-governments in which national minorities account for 5% of the total population as registered by the latest population census, the language of that national minority shall also be an official language.

The official use of language of national minorities in relation to paragraph 2 of this law shall particularly imply the following: use of language in administrative and court procedures and in conducting administrative and court procedures, use of language in communication of authorities which are exercising public competencies with citizens, issuance of public documents and keeping official records, ballot papers and electoral material as well as use of language in the work of representative bodies.

In the territory of local self-government as of paragraph 2 of this Article, the names of the authority that performs public services, names of local self-governments, names of settlements, squares and streets, institutions, businesses and other entities and the topographical indications shall be written in the language and alphabet of the national minority, too.

Article 15

National minorities and persons belonging to national minorities shall be given freedom of information at the level of standards that are set forth in international documents on human rights and freedoms, in compliance with the law.

Persons belonging to national minorities are entitled to freely establish media and to work on the following without any obstruction: freedom of expressing opinion, research, collection, dissemination, publishing and receiving information, free access to all sources of information, protection of personality and dignity and free flow of information, in compliance with the law.

Council of Public Institutions (Radio and TV station and printed media) founded by the Republic, shall provide appropriate number of hours of broadcast, for the purpose of broadcasting information, cultural, educational, sports and entertainment programs in the language of national minorities and persons belonging to national minorities, and financial means for funding programs relevant for national minorities.

The Republic can provide translation (subtitling) of programs from the minority languages into the official language in compliance with its financial means.

The Government can also employ incentive measures to provide broadcasting of programs as of paragraph 3 of this Article within other radio and television programs.

Article 16

National minorities and persons belonging to national minorities have right to education in their language and to appropriate representation of their language in general and vocational education, depending on the number of students and financial means the Republic can afford, in compliance with law.

The rights as of paragraph 1 of this Article are exercised in all levels of education.

The rights as of paragraph 1 of this Article shall be exercised through special schools or special classes in regular schools.

The classes shall be completely or partially taught in the language of national minority.

When the teaching is delivered in the language of national minority the official language and alphabet is compulsory to learn.

The pupils and students who do not belong to national minority can use the language of national minority they live with.

Article 17

A class in which the language and alphabet of national minority is taught can be founded even for a smaller number of pupils than what the standard for such an institution prescribes.

Article 18

The curricula for the purpose of education as set forth in Article 16, paragraph 1 of this law shall contain the topics in the fields of history, arts, literature, tradition and culture of the national minority.

The Council of the national minority shall participate in drafting curricula for the subjects which reflect specifics of that national minority.

Educational program in the institutions and schools in which teaching is delivered in official language shall contain units on history, culture of national minorities and other contents that promote common tolerance and cohabitation. In the territory where language of national minority is in official use, the curricula and the program in official language in educational institutions and schools can also provide for possibility to learn the language of national minority.

Article 19

High or higher education special courses, faculties or institutes can be established to educate pre-school and school teachers in the language of a national minority for the purpose of their education in the language of the national minority as of Article 16, paragraph 1 of this law.

For the sake of ensuring efficient participation of national minorities, the Republic can foster international cooperation in education and science and technical cooperation with a view to enabling national minorities to study abroad in their mother tongue and to have their diplomas recognized, in compliance with the law.

Article 20

National minorities and persons belonging to national minority are entitled to set up educational institutions in compliance with the law.

Funding of the institutions as of paragraph 1 of this Article shall be the obligation of the founder.

The standard of education cannot be lower than the general standards of education prescribed by the law.

Article 21

Educational and pedagogical work in schools or in special classes of regular schools that deliver teaching in language of national minority shall be delivered by teachers who themselves belong to national minority and have full command of language of that national minority, or teachers who are not national minority provided that they have a full command of language and alphabet of national minority.

Schoolmasters in schools that deliver teaching in the language and alphabet of national minority founded by the Republic or municipality can be selected among the persons belonging to national minority or among the persons not belonging to national minority if they have a full command of language and alphabet of national minority.

A competent authority selecting a person as of paragraph 2 of this Article shall be obliged to obtain approval of the Council of that national minority beforehand.

Article 22

The republican authority competent for education affairs shall set up a unit for monitoring the national minority education for the purpose of monitoring the teaching delivered in the language of national minority.

Article 23

University of Montenegro can demonstrate its full respect for minority rights by admitting every year certain number of students belonging to national minority who have passed the entrance examination but did not collect enough enrolment credits.

The University of Montenegro shall set forth the criteria and number of students as of paragraph 1 of this Article.

Article 24

National minorities and their members are entitled to use national symbols in compliance with the law.

The national symbols as of paragraph 1 of this Article cannot be desecrated or altered.

Article 25

National minorities and persons belonging to national minority are entitled to celebrating certain dates, events and persons/dignitaries from their tradition and history, in compliance with the law.

Article 26

National minorities and persons belonging to national minorities are entitled to associate freely, in compliance with the law and principles of international law on freedom of association.

National minorities and persons belonging to national minorities have right to articulate their interests and to contribute efficiently to governance and to public control of the governance.

National minorities and persons belonging to national minorities can cooperate with governmental and non-governmental organization in country and abroad for the purpose of exercising common interests.

Article 27

An additional number of seats in republican parliament and in municipal assemblies shall be provided for the representatives of national minorities through the electoral law, by enforcement of principles of affirmative action.

Distribution of additional seats as of paragraph 1 of this Article shall be determined in proportion with the share of concerned national minority in the total population number taken from the latest census in the Republic and from the ballot results for special minority candidate list.

National minorities and their representatives are free to choose which candidate list to vote for.

The authority competent for keeping the register of voters shall keep a separate register of voters for national minorities, in compliance with the law.

Article 28

If at least one representative of national minority, which in the population of that local self-government makes 5% of the total population, does not get elected in the municipal assembly, the total number of councilors thereof shall be increased for one councilor seat in compliance with the statute.

Article 29

National minorities are entitled to appropriate representation in public authorities, public institutions and local authorities.

The Prime Minister and the Government commission for Human Resources acting upon the proposal of the Council of a national minority shall look after the representation of the national minorities in public authorities.

The president of the Supreme court acting upon the proposal of the Council of national minority shall look after the representation of a national minority in judiciary.

Article 30

National minorities and persons belonging to national minorities are entitled to participate in the process of adopting and proposing the decisions of government bodies that are conducive to exercising rights of national minorities, in compliance with the law.

The participation as of paragraph 1 of this Article comprises consultations, opinion polls, negotiations and special procedures undertaken by those who are directly concerned by a certain decision.

Article 31

In local communities where a national minority makes a majority of population, the statute of a municipality or some other legal act can prescribe performance of certain activities which cater for direct and common interest related to work and life of the citizens in the territory of that local community.

The funds for performance of the activities as of paragraph 1 of this Article shall be provided by municipality.

Article 32

The statute, a decisions or some other legal acts that municipal bodies adopt shall be drafted and published in official language and in the language and alphabet of a national minority, in compliance with this law.

The draft acts as of paragraph 1 of this Article shall be (publicly) published, in compliance with the law.

Article 33

In municipalities where a national minority makes at least 5% of the total population of that local self-government, the municipality is obliged to stipulate its action plan and program for efficient participation of local population in performance of public functions and to adopt a special plan and program so as to provide conditions for participation of local minorities in adopting the development program for municipality, spatial and urban plans, budget and general acts that stipulate rights and obligations of the citizens and to define a manner and procedure for participation of national minorities in performance of public functions and to appoint a body that will conduct public hearings on those and other legal acts.

Article 34

If members of parliament or councillors who were elected from special minority candidate list think that proposed decision from the agenda of a session significantly infringes into the interests of that national minority, the proponent of proposed decision and those members of parliament or councillors shall harmonise their stands. The decision shall be considered adopted only provided that, after the stands were harmonised, majority of members of parliament and councillors elected from the special minority candidate list voted for that.

If preceding harmonization as of paragraph 1 of this Article is not made, the proposed decision shall be withdrawn from the agenda. The deliberation about the proposal cannot be put on the agenda before the expiry of three years.

The issues related to paragraph 1 of this Article are the following:

- Issues related to altering ethnic composition of population contrary to the will of local population;
- Issues related to adopting curricula and teaching programs without the approval of the Council of national minorities, and
- Issues related to preservation of linguistic and cultural identity of national minorities.

Article 35

National minorities and persons belonging to national minorities are entitled to establish and maintain free and peaceful relations across frontiers with kin people and with people who lawfully reside in other countries, particularly with those who they are sharing ethnic, cultural, linguistic and religious identity with.

The right as of paragraph 1 of this Article cannot be exercised contrary to the interests of the Republic.

Article 36

National minorities and their members are entitled to receiving material and financial assistance of local and international organizations, foundations and private persons.

In case of financial or other material assistance to associations, institutions and non-governmental organization of national minorities received from abroad, the state can provide special tax or other relieves or customs exemption as well as other incentive measures in compliance with the law.

The lawfulness of the use of funds as of paragraphs 1 and 2 of this Article shall be supervised in compliance with the law.

Article 37

National minorities and persons belonging to national minorities can establish a council of national minority (hereinafter referred to as: the Council) with a view to promoting freedoms and rights of national minorities.

A national minority can elect only one council.

The Council is elected to four-year tenure.

The Council of a national minority comprises: elected members of parliament or councillors that have been elected from a special minority candidate list, councillors and members of parliament from other electoral lists, and a certain number of NGO representatives which are involved in the issues of protection and promotion of the rights of national minorities, professional associations of national minorities, institutions and media run by national minorities, representatives of religious organizations and prominent individuals belonging to that minority.

The Council shall define the procedure of electing the Council members. A republican body in charge of national minority affairs shall regulate the first constitutive election to the Council, in compliance with this law.

Members of parliament and 1/3 of councillors shall make majority of the Council members, whereas the persons listed in paragraph 4 of this Article shall be appointed by the other members.

Members of the Council shall elect president and secretary of the Council among the members by a secret balloting.

The Council adopts the budget, statute and rules of procedure of its work in compliance with this law.

The funds for the Council shall be provided from the Budget of the Republic.

Article 38

The republican authority competent for the protection of rights of national and ethnic minorities shall keep the register of the councils as of Article 37 of this law.

A council gets the status of legal entity after its registration.

The republican authority competent for the protection of rights of national and ethnic minorities shall prescribe the form and manner of keeping the register. The confirmation of registration thereof shall be published in the Official Gazette of the Republic.

Article 39

The council shall:

- Present and represent a national minority and its members;
- Submit proposals to government authorities and authorities in local self-government and to public institution focused on promotion and development of the rights of national minorities and their members;
- Submit proposals to the ombudsman if an act or action of a government authority or other body has violated rights and freedoms of a person belonging to national minority.
- Submit proposal for candidates who will work in government bodies or public institutions;
- Give proposals, opinions or approval for regulations that define the manners in which ethnic, cultural, linguistic and religious identity is manifested;

- Participate in creating and founding of educational institutions as well as in preparation of educational programs;
- Launch initiative for amendment of legislation and other acts that stipulate rights of national minorities; and
- Perform other activities in compliance with this law.

In order to develop mutual trust, appropriate cooperation with the council shall be made regarding the issues related to rights of national minorities and their members that are discussed by government authorities or public institutions.

Government and other bodies shall inform the Council about undertaken measures within 30 days after an initiative or request as of paragraph 1 of this Law is made.

Article 40

As a rule, members of the Council shall perform their functions as volunteers.

Members of the Council can receive some remuneration and reward for performing their activities, in compliance with the rules of procedure.

Article 41

The president, secretary and a member of the Council can be removed even before the expiry of their tenure in compliance with the statute of the Council.

Article 42

The Parliament of the Republic shall establish a fund for national minorities (hereinafter referred to as: the Fund) for the purpose of supporting the activities important for preserving national or ethnic specifics of national minorities and their members in terms of their national, ethnic, cultural, linguistic and religious identity.

The funds for financing the Fund shall be provided from the Budget of the Republic.

The funds as of paragraph 2 of this Article shall be allocated in compliance with proportional share of national minorities and their members in the population structure in the Republic.

Persons belonging to national minority shall also participate in making the decision on the allocation of funds as of paragraph 3 of this Article, in compliance with the decision of the Council of national minorities.

III. PROTECTION OF RIGHTS

Article 43

Protection of rights of national minorities and their members shall be provided by government or local authorities, ombudsman (protector of human rights and freedoms), Parliamentary Committee for Human and Minority Rights and the courts.

No provision of this Law shall be interpreted in a way that involves granting a person the right to undertake activity or perform action contrary to the basic principles of international law, and especially contrary to sovereign equality and territorial integrity of the Republic.

Article 44

The Ministry for protection of rights of national and ethnic groups shall propose to the Government of the Republic the policy for development and protection of the rights of national minorities.

At least once a year the Government of the Republic shall submit to the Parliament the report on the development and protection of the rights of national minorities and on the funds that were spent for such purposes.

Article 45

National minorities and their members are entitled to standard court protection in case of violation of the rights stipulated in this law and others.

For the purpose of protection of rights as of paragraph 1 of this law, anyone can lodge a constitutional complaint to the Constitutional Court of the Republic of Montenegro on the grounds that his/her freedoms and rights of a man and citizen stipulated by the Constitutions have been violated by an individual act or action if no other judiciary protection is provided.

Article 46

Anyone is entitled to lodge a constitutional complaint to the Constitutional Court for establishing the constitutional or legal basis of an act by which the rights stipulated by this law are violated.

When an enacted law affects the rights of national minorities and persons belonging to national minority, the Council can lodge a petition to the President of Republic requesting that such a law is not promulgated.

Article 47

Upon the proposal from a Council, the parliamentary Committee for Human and Minority Rights shall separately deliberate on the issues that are important for national minority.

IV. TRANSITIONAL PROVISIONS

Article 48

The laws and other regulations which stipulate the rights of national minorities and their members shall be harmonized with the provisions of this law within a year after this law enters into force.

The statutes and other general acts of local self-government authorities shall be harmonized with the provisions of this law within six months from the day when this law enters into force.

Article 49

The acts for enforcement of this law shall be adopted within six months after this law enters into force.

Article 50

The republican authority for the issues of protection of rights of national and ethnic groups shall adopt regulations for enforcement of this law within six months after the date when this law enters into force.

Article 51

The Government shall adopt the Strategy of the Policy for Minorities within one year as of the day when this law enters into force.

Article 52

The Fund for national minorities shall be established within six months as of the day when this law enters into force.

Article 53

The republican authority for the issues of protection of rights of national and ethnic groups shall arrange that this law is translated into the language of national minority within 30 days as of the day when this law enters into force.

Article 54

This law shall enter into force on the eighth day after it is published in the Official Gazette of the Republic of Montenegro.