



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 27 September 2004

CDL(2004)079

Opinion no. 303 / 2004

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT LAW

ON THE STATUS OF THE INDIGENOUS PEOPLES

OF UKRAINE*

* *The first text of the draft law was provided to the Venice Commission in May 2004. In August 2004, the Venice Commission received a new, revised version of the law in its original language. English translation of this draft law was ensured by the Venice Commission. The present document includes, in the footnotes, the text of the relevant articles in its previous version of May 2004.*

Law of Ukraine
“On the status of the indigenous peoples of Ukraine”*

In accordance with Article 92 section 3 of the Constitution of Ukraine the rights of indigenous peoples shall be defined exclusively by the laws of Ukraine.

Under Article 11 of the Constitution of Ukraine, the state shall promote the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples of Ukraine.

The present Act contains the basic principles which govern the legal status of indigenous peoples, defines the legal principles of the relationship between the state and the indigenous peoples of Ukraine and regulates relations arising from the exercise of other rights and freedoms.

Article 1. Definition of terms.[†]

Ukrainian nation: citizens of Ukraine, an historical community of peoples linked by political interests, irrespective of ethnic or social origin, capable of preserving their history, culture and traditions.

Ukrainians: a titular nation, an historical community of peoples, of Ukrainian ethnic origin only, who since time immemorial have lived on the territory of modern-day Ukraine, have their own nationality, common historical memory, language, culture, traditions and symbols of state.

Ethnographic groups of Boyko, Hutsul, Lemko, Lithuanians, Polisyans, Russians: part of the Ukrainian ethnic group, who have certain differences in culture and language, special features in terms of distribution and historical development, way of life and traditions.

* The title of the Law according to the first version of the draft: “Draft Law of status of indigenous (autochthonous) peoples of Ukraine”.

† “Ukrainian people – citizens of Ukraine of all nationalities, where Ukrainians, indigenous peoples and national minorities of Ukraine constitute their ethnic-national structure.

The Ukrainians – native people, historical community of people of Ukrainian origin only, who live in the territory of modern Ukraine for a long time, have own statehood, sovereignty, territory and common historic memory, own language and culture, customs, traditions and state symbols.

Boyky, Hutsuly, Lemky, Polischuky, Rusyny – ethnographic groups, the integral part of Ukrainian nation, who have clear double identification, preserve local differences in culture and language for a long time; have peculiarities of settling and historical development, way of life and traditions.

Indigenous (autochthonous) peoples – groups of population, which formed in Ukraine historically, who do not dominate, numerically are less than other population of country, don't include formerly migrants are deeply enrooted in the territory of modern Ukraine, demonstrate their ethnic self-identification and have possibility to represent their ethnic originality.

Indigenous peoples of Ukraine consist of Ukrainian citizens of Byelorussian, Bulgarian, Armenian, Gagauze, Greek, Jewish, Karaites, Crimean Tatar, Krymchak, Moldavian, Polish, Russian, Romanian, Slovak, Hungarian, Czech nationalities.

National minorities of Ukraine consist of groups of citizens of Ukraine who are not Ukrainians by the nationality, express their national self-consciousness and aware their integrity.

Representatives of indigenous peoples could not belong to national minorities simultaneously as well as representatives of national minorities could not belong to indigenous peoples.

The legal status of national minorities of Ukraine is regulated by the Law of Ukraine of national minorities of Ukraine”.

Indigenous peoples: an historical community of peoples who live on the territory of modern-day Ukraine and are its citizens, who are numerically smaller than the rest of the population of the country, are not composed of recent immigrants, display a sense of ethnic awareness and preserve their ethnic identity, culture, traditions and language.

Citizens of Ukraine shall include indigenous peoples of Ukraine who are: Belarusians, Gagauz, Greeks, Jews, Karaites, Crimean Tatars, Crimeans, Moldovans, Poles, Russians, Romanians and Hungarians.

Article 2. Any relations arising from the exercise of the rights and freedoms belonging to indigenous peoples shall be governed by the Constitution of Ukraine, the present Act, other regulatory legal instruments and international treaties to which the Supreme Council of Ukraine has given its assent.

Article 3.[‡] The development and implementation of state policy in the field of indigenous peoples shall be the responsibility of the specially authorised central executive authority. Corresponding structural divisions shall be created within municipal executive authorities.

Article 4.[§] An Assembly of the indigenous peoples of Ukraine shall operate under the specially authorised central executive authority as a consultative and advisory body in the field of protecting the rights and freedoms of the indigenous peoples and national minorities of Ukraine.

The Assembly shall represent the interests of indigenous peoples in the executive authorities and shall be governed in its activities by the Constitution of Ukraine, the present Act and other regulatory legal instruments.

Article 5. The Assembly of Indigenous Peoples shall be composed of representatives of the indigenous peoples of Ukraine.

Each indigenous people of Ukraine shall have the right to delegate one representative to the Assembly, selected at the Congress of the All-Ukrainian Public Organisations of the relevant indigenous people.

The operating procedures of the Assembly shall be laid down by the provisions on the Assembly of Indigenous Peoples of Ukraine.

The Assembly of Indigenous Peoples of Ukraine may have a print media outlet financed from the state budget of Ukraine.

Article 6. Citizens who belong to indigenous peoples must observe the Constitution and laws of Ukraine, protect its state sovereignty and territorial integrity and respect the language, culture, traditions, customs, religious identity of the titular ethnic group, of the indigenous peoples and of national minorities.

[‡] *The Committee on human rights, interethnic relations, indigenous peoples and national minorities works in the Verkhovna Rada of Ukraine.*

The corresponding structures are created in the local state executive bodies.

Consultative bodies of the representatives of indigenous peoples could be created and functioned on a common base under the local bodies of the state executive power. The order of those bodies forming is determined by the corresponding Councils of People's Deputies.

The forming and realization of the public policy in the sphere of indigenous peoples put in charge of special authorized governmental body of executive power.

[§] *The consultative and representative body – Assembly of Indigenous Peoples of Ukraine functions under the special authorized governmental body of the executive power.*

Article 7. The state shall guarantee citizens who belong to indigenous peoples the right to equal legal protection and equality before the law in all spheres of social, economic and cultural activity irrespective of their ethnic or social origin, race, skin colour, political, religious and other convictions, gender, property status, place of residence, linguistic or other characteristics.

The rights of citizens who belong to indigenous peoples shall be an inalienable part of the universally recognised human rights.

Any limitation of rights or freedoms or discrimination against citizens on the basis of their belonging to indigenous peoples and any incitement to inter-ethnic or religious hatred shall be prohibited and punishable by law.

Article 8. Citizens of Ukraine who belong to indigenous peoples shall have the right to be elected or appointed to any post in the legislative, executive, judicial authorities, in local government, the Armed Forces of Ukraine, its enterprises, institutions and organisations.

Article 9. The state shall grant the right to citizens who belong to indigenous peoples to independently decide questions relating to the preservation and development of their identity, in particular, culture, language, religion, traditions and customs on the basis of the principles of the freewill of citizens when they declare themselves as belonging to the said indigenous people, self-organisation and self-government.

Article 10. The state shall guarantee the protection of historical and cultural monuments of indigenous peoples on the territory of Ukraine.

Article 11. Every citizen of Ukraine who belongs to an indigenous people shall have the right to a national surname, first name and patronymic and to their restoration under current legislation.

If the national tradition does not have a “patronymic” the citizen shall be entitled to enter in his/her passport only the surname and first name and in his/her birth certificate the surname and first name of the child, the father and the mother.

It shall be prohibited to compel citizens in any way to reject their nationality.

Article 12. The state shall guarantee citizens who belong to indigenous peoples the right to participate in cultural, religious, social, economic and state life, in particular, in resolving issues which relate to the protection of their lawful interests.

Article 13. The state shall determine for each individual who belongs to an indigenous people the right to teach or study their mother tongue, to freely and without hindrance use it in private and in public, in spoken and written form, and also to establish their own educational institutions in accordance with the laws of Ukraine.

Article 14. The state shall provide proper conditions for teaching and studying the language of the relevant indigenous people in state and municipal teaching institutions or through national cultural associations.

In towns and cities where the majority of the population are citizens who belong to indigenous peoples, the municipal executive authorities and local self-government bodies may in exercising their powers freely use the language of the relevant indigenous people.

Article 15. The state shall take measures to train pedagogical, cultural and educational specialists for general education institutions with teaching in the languages of indigenous peoples.

Article 16. Citizens who belong to indigenous peoples and their public organisations shall have the right to receive and disseminate information in their mother tongue via the media in accordance with the laws of Ukraine, to establish their own media and to publish literature in the languages of the indigenous peoples.

Article 17. Citizens who belong to indigenous peoples shall have the right to establish cultural centres, associations, societies of fellow-countrymen and organisations under the current legislation of Ukraine.

These public organisations may engage in activities directed at developing national culture, hold public meetings in accordance with the established procedure, promote the creation of national educational institutions, media, museums, artists' collectives, theatres and film studios.

The executive authorities and local self-government bodies shall promote the activities of public organisations of indigenous peoples which shall operate in accordance with current legislation.

Article 18.** Ukraine shall promote the development of international co-operation to ensure the protection of the rights and interests of indigenous peoples, including by entering into and implementing international treaties in this field with other states.

Final provisions^{††}

1. The present Act shall enter into force on the date of its publication.
2. The Cabinet of Ministers of Ukraine shall within three months of the present Act coming into force:
 - 2.1. submit for examination by the Supreme Council of Ukraine proposals on amendments to the statutory instruments connected with the adoption of this Act:

Law of Ukraine "On national minorities in Ukraine"

Law of Ukraine "On ratification of the European Charter for Regional or Minority Languages"

Law of Ukraine "On languages in the Ukrainian SSR"

Law of Ukraine "On education"

Law of Ukraine "On local self-government in Ukraine"

Law of Ukraine "On protecting cultural heritage"

The principles of Ukrainian cultural legislation;

The Family Code of Ukraine;

** Former Article 19.

Article 18 of the former version of the Draft Law stated as follows: "*Representatives of indigenous peoples and their public associations have the right to free contacts with their historical motherland if it is not contrary to interests of the state as well as to getting assistance with the aim to enjoy their ethnic and cultural needs, to take part in the activity of non-governmental organizations of interethnic and international level*".

†† There were no "Final provisions" in the former version of the Draft Law.

The Civil Code of Ukraine;

- 2.2. bring its regulatory legal instruments into conformity with this Act;
- 2.3. ensure that ministries and other central executive bodies revise and/or repeal any regulatory legal instruments which conflict with the present Act.