



Strasbourg, 19 January 2009

Opinion n° 516 / 2009

CDL(2009)004
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

LAW

ON OCCUPIED TERRITORIES

OF GEORGIA

The law of Georgia On Occupied Territories

Georgia is a sovereign, integral and undivided state and, in compliance with the Hague Regulations of 1907, the 4th Geneva Convention of 1949 and the norms of common international law, presence of military forces of any other state on the territory of Georgia, without an explicit and voluntary consent expressed by the state of Georgia, shall be deemed illegal military occupation of the territory of a sovereign country.

Clause 1. Purpose of the Law

The purpose of this Law is to define the status of territories occupied as a result of the military aggression of the Russian Federation and to establish a special legal regime on the above territories.

Clause 2. Occupied Territories and Territorial Waters

For the purpose of this Law “the occupied territories and territorial waters” (hereinafter “The Occupied Territories”) shall mean:

- a) Territory of the Autonomous Republic of Abkhazia;
- b) Tskhinvali region (territory of the former Autonomous Republic of South Ossetia);
- c) Waters in the Black Sea: territorial inland waters and sea waters of Georgia, their floor and resources, located in the aquatic territory of the Black Sea, along the state border with the Russian Federation, to the South of the Psou river, up to the administrative border at the estuary of the Engury River, to which the sovereign right of Georgia is extended; also the sea zones: the neighboring zone, the special economic zone and the continental trail where, in compliance with the legislation of Georgia and international law, namely the UN Convention on Maritime Law (1982), Georgia has fiscal, sanitary, emigration and customs rights in the neighboring zone and the sovereign right and jurisdiction in the special economic zone and the continental trail;
- d) The air space over the territories stipulated in Paragraphs (a), (b) and (c) of this Clause.

Clause 3. Legal Regime on the Occupied Territories

During the validity period of this Law the Special Rule and Special Legal Regime shall be in force on the Occupied Territories, including limitation of free migration, economic activities, real estate transactions and other activities provided for in this Law.

Clause 4. Limitation of Free Migration on the Occupied Territories

1. Citizens of foreign countries and persons without citizenship shall be allowed to enter the Occupied Territories only under the following circumstances:
 - a) The territory of the Abkhazian Autonomous Republic shall be entered from the territory of Zugdidi Municipality;
 - b) The territory of Tskhinvali region (territory of the former Autonomous Republic of South Ossetia) shall be entered from the territory of Gori Municipality.

2. Citizens of foreign countries and persons without citizenship shall be prohibited to enter the Occupied Territories from any other directions except the ones specified in Article 1 of this Clause; violation of this requirement shall lead to punishment under the Criminal Law of Georgia.

3. In extraordinary cases a special permission to enter the Occupied Territories can be granted in compliance with the rules stipulated in the relevant normative document of the Georgian Government, in order to protect the state interests of Georgia, promote peaceful resolution of the conflict or serve the de-occupation or humanitarian purposes.

Clause 5. Real Estate Property Rights on the Occupied Territories

1. Any transaction related to real estate property and concluded in violation of the Georgian law shall be deemed void from the moment of conclusion and shall not give rise to any legal consequences.

2. Real estate property located on the Occupied Territories can be inherited only by way of succession on intestacy or on the basis of a testament, if persons receiving the property rights based on a testament are also legal successors on intestacy.

Clause 6. Limitation of Economic Activities on the Occupied Territories

1. The following types of activities shall be prohibited on the Occupied Territories:

a) Any economic activity (entrepreneurial or non entrepreneurial), regardless whether or not it is implemented for receiving profit, income or compensation, if under the Georgian legislation a license, permit, authorization, registration or agreement is required for the implementation of such economic activity but it has not been granted;

b) Import and/or export of military products or products that have double designation;

c) International air traffic, maritime traffic and railway traffic, also international automobile transportation of cargo;

d) Use of national resources;

e) Organization of cash transfer;

f) Financing or any type of support of activities listed in Paragraphs (a) – (e) of this Article.

2. On the Occupied Territories, implementation of activities stipulated in Article 1 of this Clause shall be allowed only in exceptional cases, based on a special permission granted in compliance with the rules stipulated in the relevant normative document of the Georgian Government, in order to protect the state interests of Georgia, promote peaceful resolution of the conflict or serve the de-occupation or humanitarian purposes.

3. Violation of the requirements provided for in this Clause shall lead to criminal responsibility stipulated in the active legislation of Georgia.

4. Legal sanctions provided for in the Georgian legislation for implementation of activities stipulated in Article 1 of this Clause on the Occupied Territories, shall also be extended to related persons i.e. persons directly or indirectly participating in the capital and/or influencing decisions of entities involved in activities listed in Article 1 of this Clause.

5. For the purpose of Article 4 of this Clause the term “Related Persons” shall mean:

a) persons who have equity or more than 5% of shares in an entity involved in activities defined in

Article 1 of this Clause;

A. persons who have equity or more than 25% of shares in an entity defined in Paragraph (a) of this Article;

B. persons who have equity or more than 50% of shares in an entity defined in Paragraph (b) of this Article.

Clause 7. Protection of Human Rights and Cultural Monuments on the Occupied Territories

1. Occupied territories are an integral part of the territory of Georgia where the Georgian legislation shall be in force. In compliance with the international law, on the Occupied Territory, the Russian Federation shall be responsible for violation of internationally recognized human rights stipulated in the Constitution of Georgia.

2. Executive government authorities of Georgia shall inform relevant international organizations about the facts of human right violations on the Occupied Territories.

3. The Russian Federation, being the state implementing military invasion, shall be responsible to reimburse moral and material damages inflicted on the Occupied Territories upon citizens of Georgia, persons without citizenship, and citizens of foreign countries who entered the territory of Georgia and moved to the Occupied Territory based on the required permission.

4. The Russian Federation shall be responsible to protect cultural heritage on the Occupied Territories.

Clause 8. Illegal Authorities (Officials)

1. Any authorized body (official person) shall be deemed illegal if it is not formed (appointed/elected) under the legislation of Georgia and/or if it actually performs legislative, executive or judicial functions or any other activities that belong to the sphere of authority of the national government or local self-government bodies of Georgia.

2. Any act issued by the authorities stipulated in Article 1 of this Clause shall be deemed invalid and shall not lead to any legal consequences.

Clause 9. Obligations of the Georgian Government

1. In case if the provisions of this Law are violated, the Government of Georgia shall use all mechanisms provided for in the Georgian and international law in order to protect lawful interests and safety of Georgia.

2. The Government of Georgia shall conclude bilateral agreements in order to ensure that the other state - party of the above agreement – shall use proper sanctions stipulated in its own law against the persons violating the provisions of this Law.

Clause 10. Transitional Provisions

1. Within one month after enactment of this Law the Government of Georgia shall issue all normative documents that are provided for in this Law and establish a Special Regime on the Occupied Territories.

2. In compliance with the Cease Fire Agreement of August 12, 2008, this Law shall also be extended to the following territories: the village Perevi of Sachkhere region, territories of Kureti, Eredvi, Azhara and Akhalgori Municipalities.

Clause 11. Legal Force of this Law

1. This Law shall come into force immediately upon its publication.

2. The provisions of Article 5.1, Clause 6 and Clause 8 shall be extended to relations formed since 1990.

3. The legal regime stipulated in this Law shall be effective on the Occupied Territories until full restoration of the jurisdiction of Georgia.

The President of Georgia

Mikheil Saakashvili

Tbilisi,
October 23, 2008.