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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

INFORMATION NOTE

**ON THE LAW
ON OCCUPIED TERRITORIES
OF GEORGIA**

**prepared by
the Parliament of Georgia**

at the request of the rapporteurs

**This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

A. Issue 1: Information regarding the criminal charges being brought against foreigners having breached law on occupied territories

As a preliminary note, we think it's important to provide some basic information regarding the objectives of the Law on Occupied Territories (*hereinafter* the Law) and the modes of application of the said Law.

From the outset, it shall be noted that the drafters of the Law were guided by the relevant international standards as stressed in the preamble. Therefore, the law balances the interests of the local population *vis-à-vis* the obligations of an occupying power. As the territories of Abkhazia and South Ossetia remain under the military occupation of the Russian Federation, the crossing of the state border from the North (that is from the territory of Russian Federation) falls outside the *de facto* jurisdictional control of Georgian border guards. Thus, relevant Georgian authorities are unable to carry out respective duties (passport control, customs checks, etc.) in the said territories.

As a result, the Law has limited entrance from explicitly defined areas for foreign citizens and stateless persons:

- Zugdidi municipality as an entrance point to Abkhazia;
- Gori municipality as an entrance point to South Ossetia;

Those two defined areas are entry points and do not represent official borders equivalent to state borders of the country, as Georgia retains sovereignty over the occupied territories and these borders are merely administrative delimitation measures.

In addition, the Law (article 4(3)) separately provides for special permission to be granted by the Government of Georgia for entrance when it serves state interests, peaceful settlement of conflict, de-occupation process or humanitarian aims. This would mean, apart from explicitly defined entry points, the person/legal entity would be allowed to enter occupied territories from other possible destinations (including the North) if the aims of the visit meet the aforementioned criteria. As an example, we could name the permissions granted by the Ministry of Foreign Affairs of Georgia to the Chairperson of the Council of Europe's Committee on Migration, Refugees and Population Ms. Corin Jonker, to the OSCE High Commissioner for National Minorities Mr Knut Vollebaek, to the Director of the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) Mr Janez Lenarcic.

Furthermore, it would seem logical, that the state interest to monitor the crossing of the entry points only arises when there is a violation of the law/rule. In particular, it means that the person has entered the territory of Georgia unlawfully from the North (from the direction of the Russian Federation to Abkhazia or South Ossetia) or from the other destinations/municipalities of Georgia than the ones explicitly referenced in the Law (Zugdidi and Gori municipalities), and this fact became known to the Georgian authorities (as the person has afterwards entered the territory of Georgia under control of Georgian government).

Taking into consideration all the aforementioned, let us note that relevant Georgian authorities do not register information regarding the movement of foreigners and/or stateless persons to Abkhazia and South Ossetia *via* permitted entry points, as long as the foreigners/stateless person have lawfully crossed the official border of Georgia (He/she came to Georgia and went to Abkhazia/South Ossetia *via* Gori/Zugdidi municipality).

Having said so, to the public knowledge of the Government, the entry points have been crossed from south to north (via defined entry points) by the ICRC, OSCE and CoE representatives.

With respect to the question as to whether any foreigner had been charged with criminal responsibility for violating the Law, please note that as of today no such fact has taken place. In this regard, one should underline that criminalization of the certain acts as envisaged by Law never served as a sanctioning measure: its primary purpose was to act as a deterrent factor aimed at preservation of the territorial integrity and sovereignty of Georgia.

Issue 2 Recognition of the certain documents such as birth certificates, marriage certificates, school certificates, etc., issues by the “authorities” of the occupied territory

Here, once again, we consider it relevant to briefly describe the circumstances that led to the formulation of such a provision within the Law. The international law of occupation is full of practice when the occupying power establishes “puppet governments” *via* proxy regimes, receives consent to be present from the said government and officially claims end of occupation, while remaining on the territory (in this respect view article 47 of the GC IV). Situation in Georgia does not in any way differ from the respective practices, since the recognition of the independence of Abkhazia and South Ossetia by Russian Federation (August 26, 2008).

Therefore, the drafters of the Law once again underlined the illegality of such measures with the relevant provision in the Law.

The preamble of the Law expressly notes relevance of the 1907 Hague Regulation and Geneva Convention IV of 1949, which provide the “benefit of the local population” in occupied territories as a primary duty incumbent upon the parties to the conflict (see article 43 of Hague Regulations). Although the relevant rules of humanitarian law primarily oblige the enemy party in whose hands civilian finds himself/herself to provide adequate treatment including education, civil services, etc. (see article 24, 50 and 129 of GC IV), the Georgian legislation has also incorporated relevant procedures allowing the recognition of the main facts that affect the juridical status of a person living in occupied territories (birth, death, level of education) as necessary for realization of rights and legal interests of residents of occupied territory.

For example, Georgian Law on Registration of the Civil Acts provides a simplified registration procedure for recognition of the birth and death related facts, which merely requires written application and presence of the person at the territorial entity of the Civil Registry for oral hearing. Civil Registry Agency plans to raise public awareness in this regard with the assistance of relevant international organizations.

With respect to the education of children in occupied territories, relevant amendments entered into the Law on General Education and the Law on Higher Education. Amendments entering into the Law on General Education (dated December 19, 2008) authorize the Ministry of Education and Science to recognize general education received in the occupied territories. Particularly, the Ministry certifies *via* simplified inquiry procedure certified education received by the student in occupied territory. Similarly, amendments entering into the Law on Higher Education (dated December 10, 2008) determined the competence of the Ministry of Education and Science to recognize higher education received in the occupied territories *via* special inquiry procedure. This procedures makes it possible to certify the higher education received in occupied territory as by the member country (meant Georgia) of Bologna Process.

B. Annex 1**Criminal Code of Georgia****Article 322¹ Violation of the Rule on Entry to Occupied Territory**

1. Entry to occupied territories by foreign citizens and persons without citizenship in breach the rule envisaged by the Law on Occupied Territories, , -
is punishable by fine or imprisonment from two to four years
2. Action, envisaged by first part of this Article, committed:
 - a) by group;
 - b) repeatedly;
 - c) applying to violence or posing a threat of violence;
 - d) by person convicted for such crime –is punishable by imprisonment from three to five years.

Note: this article does not apply to foreign citizen or person without citizenship asking government for shelter, in compliance with Constitution of Georgia; if no signs of other crimes are shown in his/her action. This article does not apply to the person in case if he/she committed mentioned action due to being victim of trafficking, before getting status of the victim of trafficking.

Annex 2**Criminal Code of Georgia****Article 344. Illegal Crossing of the Border of Georgia**

(20.06.2006. N3309 1 month after promulgation)

1. Illegal crossing of the border of Georgia –
is punishable by fine or imprisonment from three to five years
2. Action, envisaged by first part of this Article, committed:
 - a) by group;
 - b) applying to violence or posing a threat of violence;is punishable by imprisonment from four to five years

Note: this article does not apply to foreign citizen or person without citizenship asking government for shelter, in compliance with Constitution of Georgia; if no signs of other crimes are shown in his/her action. This article does not apply to the person in case if he/she committed mentioned action due to being victim of trafficking, before getting status of the victim of trafficking.

Annex 3

Georgian Law on General Education

Article 63¹ Acknowledgement of Education Received at Occupied Territory (19.12.2008 N 790)

General Education provided at occupied territory is being acknowledged, in compliance with the rule determined by the Minister of Education and Science.

Annex 4

Georgian Law on High Education

Article 89¹ Measures Used due to Military Operations in Georgia, on Purpose of Supporting Students in Getting High Education

(10.12.2008 N 673)

General Education provided at occupied territory is being acknowledged, in compliance with the rule determined by the Minister of Education and Science. After acknowledgement of high education obtained at occupied territory, a citizen of Georgia has right to continue studies at high education institutions accredited in Georgia, without going through National Exams, in compliance with rule determined by the Minister of Education and Science.

The Ministry of Education and Science shall approve the rule on acknowledgement of high education, got at occupied territory, by June 1, 2009.

C. Permissions given by the Government of Georgia in course of the implementation of the Law on Occupied Territories

After war in Georgia in August, Parliament of Georgia adopted a Law on Occupied Territories. According to the Law, legal status and regiment of Abkhazian and Tskinali region was defined.

The Law defines these territories as occupied territories, so various rights are restricted, *inter alia* right to perform economical activities.

At the same time, the law balances the interests of the local population *vis-à-vis* the obligations of an occupying power and restrictions defined by the law. Therefore, for guaranteeing normal functioning of the companies operating on the occupied territories for the benefit of the residents of these territories government is authorized to grant permissions for performing forbidden economical activities.

Based on the Law and Government of Georgia issued following permissions:

1. Government Order N 754 of November 17, 2008 (on granting permission to some organizations on performing activities in energy field on occupied territories.);
2. Government Order N 805 of November 26, 2008 (on granting permission to the Central Hospital of Gali to perform activities on occupied territories.);
3. Government Order N 918 of December 28, 2008 (on granting permission to the "Tanamegobroba" (Union of injured persons after conflict of Abkhazia) and JSC "Centre of Infectious Pathology, AIDs and Clinical Immunology" to perform activities on occupied territories.)

Listed governmental orders refer to the economical activities in energy sector and in health field necessary to cover essential needs of local population and which under the Georgian law on Licenses and Permits are subject to relevant licenses.

According to the order of 17 November, permission to perform energy activities was granted to following organizations: LLC "Engurhesi", LLC "Vardnilhesebis Kaskadi", LLC "Specenergoremonti", LLC "Mshenservisi-2002", LLC "Merkuri Plusi", LLC "Tranfiber-Servisi", LLC "Eko-Energia", LLC "Merkuri", LLC "Limensi", LLC "Kashkhali", LLC "Ubukhi 2006", LLC "Tasi", LLC "Specenergoserвиси-2000", LLC "Hidrogeoenergocentri", Austrian-German company "Viotsimens", Ukrainian company "Zaporoztransformators", Company "Turboatoms", JSC "Saq-Hidroenergomsheni", LLC "Georgian State Electro System", LLC "Comercial Opperator of Electro Energetical System", Georgian Affiliation of Georgian Pipeline Company "Energo Pro Georgia", JSC "Telasi", JSC "Saqenergoremonti", JSC "Saqrusenergo".

According to the order N 805 of November 26 and order N 918 of December 28 permission to perform Medical activities was granted to regional hospital of Gali, "Tanamegobroba" (Union of injured persons after conflict of Abkhazia) and JSC "Centre of Infectious Pathology, AIDs and Clinical Immunology" for guarantying normal functioning of the healthcare providers for the benefit of the local population.

It has to be noted that the Government of Georgia granted permission not only to the Georgian companies, but also to those registered in foreign states, such as Austrian-German and Ukrainian operators providing services in energy sector on the occupied territories.