



Strasbourg, 28 September 2009

Opinion no. 552 / 2009

CDL(2009)151
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**DRAFT AMENDMENTS AND ANNEXES
TO THE LAW ON OCCUPIED TERRITORIES**

OF GEORGIA

**Draft Amendments and Annexes
to the Law “On Occupied Territories”
of Georgia**

Article 1.

The following amendments and annexes shall be made in Law “on Occupied Territories” of Georgia (“Sakhartvelos Sakanonmdeblo Matsne”, 28,30.10.2008, Art. 172):

1. Article 4 paragraph 3 shall be formed in the following way:

“3. In a special case, a special permit to enter the occupied territory from the forbidden direction can be issued to persons stipulated in paragraph 2 of this Article under the rule set by the Government of Georgia, if it serves national interests of Georgia, the purposes of peaceful settlement of conflict-resolution, deoccupation, confidence building or humanitarian purposes.”;

2. The following paragraphs 4 and 5 shall be added to Article 4:

“4. The prohibition and corresponding punishment stipulated in paragraph 2 of this Article shall not be extended to:

a) A citizen of foreign country or person without citizenship to Georgia who seeks asylum from the Government in compliance with the Constitution of Georgia in case his/her action bears no other criminal signs, also to a person in case he/she perpetrated the mentioned act due to being a victim of human trafficking before the acquisition of a status of a victim of human trafficking;

b) That persons who render necessary humanitarian aid in the Occupied Territories in emergency circumstances for population in order to maintain their right to life, through the provision of food, medicine and emergency items.

5. Persons stipulated in paragraph 4 of this Article before the entrance into occupied territories from the forbidden direction and in case of impossibility, aftermath within a reasonable period of time shall inform the Government of Georgia about time of entry and exit in the occupied territories, while the persons stipulated in sub-paragraph “b” of paragraph 4 of this Article shall also to submit information about provided assistance to population.”;

3. Article 5 paragraph 2 shall be formed in the following way:

“2. The property rights on the occupied territories are observed and regulated by the Georgian legislation including inheritance of the real estate; in addition, the conditions for purchase of a property in line with statute of limitation on the occupied territories are determined by the Georgian legislation.”;

4. Article 6 paragraph 1 sub-paragraph “c” shall be formed in the following way:

“c) International air traffic and maritime traffic, except circumstances stipulated in the UN Convention on Law of the Sea (1982).”;

5. The following sub-paragraph “c¹” shall be added to Article 6 paragraph 1:

“c¹) Railway traffic and international automobile transportation of cargo.”;

6. Article 6 paragraph 2 shall be formed in the following way:

“2. On occupied territories, realization of forbidden activities envisaged under paragraph 1 of the present Article shall be allowed only in special cases with special permit issued in accordance with the decree of the Government of Georgia, if they serve national interests of Georgia, the purposes of peaceful conflict-resolution, deoccupation, confidence building or humanitarian purposes.”;

7. The following paragraphs 6 and 7 shall be added to Article 6:

“6. The prohibition stipulated in paragraph 1 of the present Article and the criminal responsibility stipulated in paragraphs 3, 4 and 5 shall not extend to persons rendering necessary/emergency humanitarian assistance to the population of the occupied territories in order to maintain their right to life through provision of food, medicine and emergency items to the population;

7. Persons stipulated in paragraph 6 of the present Article, before the implementation of the activity stipulated in paragraph 6 of the present Article and in case of impossibility, aftermath, within reasonable period of time shall inform the Government of Georgia about commencement and end of the implemented activity in assistance provided to the population;”;

8. Article 7 paragraph 3 shall be formed in the following way:

“3. The responsibility for compensation of material and moral damage inflicted upon the citizen of Georgia, stateless persons and foreign citizens who are present in Georgia on the basis of relevant permit and entered occupied territories, in line with the rules and principles of international law shall rest with the Russian Federation as a state exercising military occupation.”;

9. Article 7 paragraph 4 shall be formed in the following way:

“4. The Russian Federation shall be held liable for protection of cultural heritage on the occupied territories in line with the rules and principles of international law.”;

10. The following paragraph 3 shall be added to Article 8:

“3. The establishment of facts of civil importance in the occupied territories shall take place in accordance with Law on “Registration of Civil Acts” of Georgia.”;

11. Article 11 paragraph 2 shall be formed in the following way:

“2. The provisions of Article 5, Article 6 paragraphs 1, 2, 6 and 7 and Article 8 shall be extended to relations formed since 1990.”.

Article 2.

This law shall enter into force from the publication.