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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT LAW**  
**ON RESTITUTION OF HOUSING AND PROPERTY**  
**TO THE VICTIMS**  
**OF THE GEORGIAN-OSSETIAN CONFLICT**

**OF THE REPUBLIC OF GEORGIA**

Draft

## LAW ON RESTITUTION OF HOUSING AND PROPERTY TO THE VICTIMS OF THE GEORGIAN-OSSETIAN CONFLICT

The Georgian state,

**Having acknowledged** universally recognized human rights and freedoms by the Constitution of Georgia and the international law,

**Namely**, the right of each person to property and to an adequate standards of living regardless his/her race, color of skin, sex, language, religion or beliefs, political and other belonging, national, ethnic and social origin,

**Bearing in mind** the grave results of the 1991-1992 Georgian-Ossetian conflict causing displacement of a significant part of the population of Georgia from their own places of residence,

**And responsibility of Georgian state** to restitute rights of persons internally displaced as a result of the conflict in compatibility with standards recognized by the international law,

**Considers necessary** to regulate matters of restitution of housing and property to the victims of the Georgian-Ossetian conflict on the basis of a law

### CHAPTER I.

#### GENERAL PROVISIONS

##### *Article 1. Purpose of Law*

The present law regulates the matters of restitution of housing and other immovable property of original residents, factual residents and other persons having suffered as a result of the Georgian-Ossetian conflict as well as the procedure of establishment and activity of Commission on Housing and Property Issues.

##### *Article 2. Terms and Definitions*

For the purposes of the present law the terms used hereby have the following meaning:

- a) **a refugee** -- a person displaced from the territory of Georgia as a result of the Georgian-Ossetian conflict,
- b) **an internally displaced person (IDP)** -- a person displaced within the territory of Georgia as a result of the Georgian-Ossetian conflict;
- c) **an original residence** -- a residence of a refugee or IDP where he/she had the right to housing at the moment of leaving it;
- d) **an original resident** - a person possessing residual rights over the original residence;
- e) **Right to residence** - the right to use or to own an original residence.
- f) **A factual resident** - a person who currently lives at the original residence of a refugee or IDP.
- g) **a residence** - immovable property designed for living;

- h) **Commission** - Housing and Property Issues Commission.
- i) **other immovable property** - the land and immovable property firmly fixed on it, not designed for housing;
- j) **Other persons** - Persons with lawful interests with regard to the residence who lost this property as a result of Georgian-Ossetian conflict and who are not refugees or IDPs.

### ***Article 3. Application of Law***

1. The present law is applied to those original residents who cannot return to their original residence because of the security reasons or the absence of the adequate residence and are entitled to apply to the Commission for return of the original residence and other immovable property or for provision of the adequate residence or compensation.
2. The present law also applies to those factual residents who shall, under the decision of Commission, leave the residences with or without of provision of adequate residence or compensation.
3. The present law recognizes the right of refugees, IDPs and other persons to complain before the Commission on all decisions adopted on the ground of Article 69 of the Housing Code of Georgia of 1983, which caused loss of residual rights of that person during or after the conflict.

### ***Article 4. Right on Freely and Voluntary Return***

It is acknowledged by the present law the right to return of all refugees and IDPs to their original residence should they wish to do so and if they can prove lawful rights on it.

### ***Article 5. Right on Adequate Residence***

The present law recognized the right of all refugees, internally displaced persons and factual residents on the adequate, safe and accessible residence.

## **CHAPTER II.**

### **PROCEDURE OF THE INSTITUTION AND COMPETENCE OF THE COMMISSION FOR HOUSING AND PROPERTY ISSUES**

#### ***Article 6. Institution of the Commission***

1. The commission is established to discuss and adopt decisions on applications on the matters of residence and property filed by refugees, IDPs and other persons, in consistence with the requirements prescribed by law, also for implementation of competences envisaged by the national legislation.
2. The Commission is composed of 9 members, where 3 members are appointed by the Ossetian side, 3 are appointed by the President of Georgia and 3 by the UNHCR.
3. The chairman and secretary of the Commission are elected by the members of the Commission from themselves by 2/3 of votes by the secret ballot.
4. The term of the Commission is 3 years.

***Article 7. Independence of the Commission and Guarantees to Activities***

1. In execution of its authority the Commission is independent and obeys only the Constitution of Georgia, international agreements and Georgian legislation. Any interference and influence onto the activity of the Commission is prohibited and punishable under the law.
2. Initiation of difficulties to the activities of the Commission is punishable under the law.

***Article 8. Member of the Commission***

1. Any citizen of Georgia with higher legal education, five years of working experience in a legal field and a good knowledge of state language may be appointed as a member of the Commission.
2. The requirements of Citizenship and knowledge of the State Language envisaged in paragraph 1 of this Article shall not apply in relation to those members appointed by UNHCR and Ossetian side.
3. The member of the Commission is appointed for the term of 3 years.
4. The position of the member of the Commission is incompatible with any other position and paid activity, except of scientific and creative one.

***Article 9. Pre-term Termination of Powers of the Member of the Commission***

1. The pre-term termination of powers of the member of Commission shall be decided by the Commission with at least 6 votes of its members.
2. The ground of pre-term termination of the power of the member of the Commission is:
  - a) His/her application;
  - b) Failure to exercise his/her powers for more than 2 months or unjustifiably for 15 working days;
  - c) holding position or carrying out activity incompatible with the status of the member of the Commission;
  - d) his/her recognition as of incapable or lacking full capacity;
  - e) termination of the citizenship of Georgia;
  - f) entering into legal force of the judgment against him/her;
  - g) Decease.

***Article 10. Activity and Competence of the Commission***

- 1. The competence, activity and structure of the Commission are determined by the present law and by the “Regulations of the Commission for Housing and Property Issues”.**
2. If at least 6 members attend the session the Commission is entitled to take a decision. The Commission takes a decision by the two-third majority of the full composition unless otherwise is provided by Law.
3. According to the rule provided by Law the Commission:
  - a) considers applications of refugees and internally displaced persons and other persons (or their representatives) on housing and property issues;

- b) takes decisions on basis of applications submitted by refugees, internally displaced persons (or their representatives) obligatory for enforcement on the entire territory of Georgia;
  - c) is entitled to request and get information related to the applications accepted by the Commission for consideration from any physical and legal persons or governmental body;
  - d) Is entitled to obtain enforced court decisions on criminal, civil and administrative cases related to submitted applications.
4. The decision of the commission can be appealed to Regional Court of Georgia according to remedial legislation of Georgia.
  5. In case of revealing signs of criminal offence while consideration of the case, the Commission shall urgently forward them to respective bodies.

#### ***Article 11. Chamber of the Commission***

1. For the timely consideration of applications and efficiency of the Commission the Chairman of the commission on the parity principles establishes three Chambers with three members out of the members of the Commission.
2. The composition of Chambers is changing every following year from the creation of the Commission.
3. For the entire, full and impartial study of the case the Chamber is authorized to gain all the information related to the case.
4. The Chamber submits to the Commission obtained materials and draft conclusions related to the case within the terms provided by item 3 Article 13 of the present Law.

#### ***Article 12. Right to Application to the Commission***

1. Refugees, internally displaced persons and other persons can apply to the Commission individually or collectively.
2. In cases provided by present Law a refugee, internally displaced person or other person can apply to the Commission within 2 years from the date of exercising its authorities.
3. If refugee, internally displaced person or other person did not know or could not know about the rights provided by paragraph 1 of this Article, this person by the decision of the Commission can apply within 6 months from the time term indicated in paragraph 2 of this Article.
4. The Commission shall consider the applications and take (publish) relevant decisions not later than 30 days from the beginning of consideration of the case.
5. In extraordinary cases, this term can be extended with additional 30 days according to the decision of the Commission.

6. The time term of preparation of the case in the Chamber and its submission to the Commission shall not exceed 20 days.

#### ***Article 14. Chairman of the Commission***

*Chairman of the Commission:*

- a) Presides over the plenary sessions of the Commission;*
- b) Participates in the activity of Chambers;*
- c) Administers the Commission's Office;*
- d) Establishes the Chambers;*
- e) Assigns applications to Chambers;*
- f) Signs the decision of the Commission;*
- g) Exercises other authorities provided by regulation.*

#### ***Article 15. Commission Secretary***

- 1. Commission Secretary supervises the enforcement of the decision of the Commission.*
- 2. Commission Secretary performs the duties of the Chairman in absence of the latter.*

#### **Article 16. Commission's Office**

*Commission's Office is established for the organizational and technical security of the activities of the Commission. The structure and activities of the latter is determined by the Regulation of the Commission.*

#### ***Article 17. Location of the Commission***

**The Commission sits at the City of Tskinali.**

### **CHAPTER III.**

#### **FINANCING AND SOCIAL PROTECTION OF MEMBERS OF THE COMMISSION**

#### ***Article 18. Financing***

1. The activities of the Commission and implementation of its decisions shall be financed from the financial fund of the Commission.
2. The fund of the Commission shall be established according to this law and the Regulations of the Commission.
3. The fund of the Commission is established by the resources donated from Georgian State Budget, other states and/or international organizations as well as from private donations.
4. Donations to the Commission shall be transferred and registered on the account of the Commission in the National Bank of Georgia.

***Article 19. Remuneration and Social Protection of the Commission Member***

Remuneration and benefits of member of the Commission cannot be less than the remuneration and benefits of the Members of Parliament of Georgia. The remuneration of Commission member cannot be reduced during his/her exercising of authority.

***Article 20. Effective Competence of the Commission***

1. The competence of the Commission begins as soon as its Regulation is adopted.
2. The Commission begins to consider the applications from refugees, internally displaced persons and other persons after 15 days from the date of adoption of the regulation.

***Article 21. Transitional Provisions***

1. The first session of the Commission is chaired by the eldest member of the Commission until the chairman is elected. On the same session will be elected the chairman and the secretary of the Commission according to the Law.
2. The Commission shall adopt its Regulations within 30 days after the appointment of its 9-th member.
3. Within 30 days from the date of the enforcement of present Law the information about this shall be spread via mass media all over the country.
4. The local self-government and government bodies shall secure the availability of the present law for the population by its promotion in public places.
5. The Ministry of Foreign Affairs of Georgia shall secure to provide the text of the present law to the International Organizations, Accredited Missions acting in Georgia, to the Diplomatic Representations accredited in Georgia as well as to the Georgian Diplomatic Missions abroad.

***Article 22. Enforcement***

The present law is in force after its publication.