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

**COMMENTS**

**ON THE DRAFT LAW  
OF GEORGIA  
ON REHABILITATION AND RESTITUTION OF PROPERTY  
OF VICTIMS OF THE GEORGIAN-OSSETIAN CONFLICT**

**by**

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### **1. General remarks**

1. The Georgian authorities have prepared a draft Law on Rehabilitation and Restitution of Property of Victims of the Georgian-Ossetian Conflict. The law has been the subject of provisional comments by Mr. Van Dijk and Mr. Bartole.

2. On 8-9 February Mr. Buquicchio, Mr. Dürr, Ms. Mychelova, Mr. Anrescu and I attended a series of meetings in Tbilisi. We met President Saakashvili, the Prime Minister Mr. Noghaideli; the Minister for Justice Mr. Kavtaradje; as well as Deputy Ministers for Justice and Justice Ministry officials; the Ministers for Civil Integration, Conflict Resolution Issues, European and Euro-Atlantic Integration, Refugees and Resettlement; the Deputy Minister for Foreign Affairs, representatives in Georgia of the OSCE, the UNHCR, the EU and the Council of Europe, the Chairman of Parliament and representatives of the government and opposition parties. We also met representatives of a number of NGOs active in Georgia. On 10 February Ms. Mychelova and I had a meeting with NGOs based in South Ossetia. This meeting had not been held earlier as the poor security situation had made travel from South Ossetia to Tbilisi impossible.

3. Following these meetings I set out below the following comments additional to those already made by Messrs. Van Dijk and Bartole.

### **2. The method of proceeding with this proposal**

4. The Georgian authorities have given copies of the proposed text to the *de facto* authorities in South Ossetia as well as to some NGOs which are active there. This appears to have been solely for purposes of information. Dialogue between the two sides to the conflict is extremely limited. There has not really been consultation with the Ossetian side much less a negotiation. Of course, if the refugee law had to await a resolution of the conflict it could be delayed indefinitely. There is a view that putting in place a law providing for restitution or compensation could be a confidence building measure. The risk, however, is that the *de facto* authorities will not cooperate with the law if they are not consulted in advance. Already it appears they have declined to disseminate the draft in South Ossetia. It is clear that an ineffective law will do nothing to build confidence. If the law as drafted is passed it is difficult to see it having any practical effect so far as concerns refugees and IDPs now in South Ossetia or in North Ossetia in advance of a settlement of the conflict.

5. At present according to South Ossetian NGOs there are between 60,000 and 100,000 refugees and IDPs in North Ossetia. About 30% of them originally come from South Ossetia, and 70% from other parts of Georgia. In the opinion of these NGOs few if any of these refugees

would now wish to be resettled in Georgia. They estimate that at most some elderly people might opt for resettlement in the event of a settlement of the conflict. None would do so under existing circumstances and they would not feel it safe to do so. The refugees have now been 15 years or more in North Ossetia and have made their lives there. They are Russian speakers and all hold Russian passports. Even if land or homes were restored to them in many cases their homes were in villages which have been destroyed. The restitution of property would not in itself create the social and economic conditions in which a return to Georgia would be possible.

6. There would not appear to have been any serious assessment by the Georgian authorities of the scale of the problem or the likely uptake of the proposed scheme or of its cost. It would be highly desirable to undertake such an assessment before enacting the law.

### **3. The Scope of the Law**

7. The preliminary opinions drew attention to the need to clarify the personal and material scope of the law. During discussions with the Georgian authorities concern was expressed on all sides to avoid overburdening the proposed Commission. We discussed the possibility of confining the scope of the activities of the Commission to be established by the law to property damage or to providing for non-property damage to be separately evaluated. On reflection, however, because in many cases where people were displaced it is alleged they were subjected to other human rights violations I think that such an approach would prevent the Commission from fully addressing the complaints of displaced victims of the Georgian-Ossetian conflict. A possible solution might be to confine the scope of the law to persons who had been displaced in the conflict (both refugees and IDPs) but to allow them to be compensated not merely for property loss but for any other serious human rights violations which took place. Human rights violations of persons who were not displaced could be separately addressed at a later stage.

### **4. The principles applicable for rehabilitation and restoration**

8. These principles need to be set out more clearly. Give that fifteen years have passed since the conflict it may not be easy in all cases to distinguish between *bona fide* and *mala fide* owners. Is a person who purchases for full value from the *mala fide* owner himself *mala fide* if he knows of the circumstances in which the previous owner came by the property? Assuming the law provides for actual restitution rather than monetary compensation at least where the property is owned by a *mala fide* owner, the displaced person should still have a right to opt for monetary compensation if he or she prefers. This is because the changed circumstances of the displaced person since the hostilities took place may make restitution impractical.

### **5. Monetary basis for compensation**

9. The law needs to clarify the proper monetary basis for compensation. If property is not being restored the compensation ideally should reflect present day values unless the property is now worth less than it was as a result of the conflict, in which case the compensation should be based on the value the property would now have but for the events which transpired. The loss of use of the property since displacement should also be compensated. Other violations associated with the displacement may need to be compensated according to some scale to be established. Open-ended compensation would be likely to prove very expensive. The establishment of a scale would also tend to assist the settlement of claims since the probable amount of compensation could more easily be assessed by the parties.

## **6. Dual Citizenship**

10. I understand Georgia now in principle can accept dual citizenship. An application for Georgian citizenship may be made by a foreign national. However, it appears the grant of Georgian citizenship to a foreign national is a discretionary matter for the President. We were informed that there would be no problem granting Georgian citizenship to South Ossetians who wished to retain Russian citizenship. In the writer's opinion they should be entitled to do so as a matter of right and not of grace and favour. It is important that having had to spend fifteen years as refugees in the Russian Federation and having built up ties there (not the least of which is the entitlement to Russian pensions) they should not have to abandon their citizenship of Russia as a precondition to having their homes in Georgia restored to them.

## **7. Composition of the Commission**

11. The possible composition of the Commission was the subject of considerable discussion at the meetings held in Tbilisi. There was general agreement that a tripartite Commission, with one-third of the members Ossetian, one third from other parts of Georgia, and one-third from the wider international community would represent a fair approach. It was suggested that an "honest broker" (such as an international body or bodies or some well-respected individual or group of persons) might be asked to select all of the members from amongst persons who might be suitably qualified. Bodies such as the OSCE, UNHCR, the EU or the Council of Europe might be suitable to undertake such a task.

12. In order to avoid the problems caused by suspicion of the Georgian courts which seems likely to exist amongst many Ossetians, it would be desirable if possible to avoid an appeal from the Commission to the Georgian courts but instead to establish an appeal mechanism within the Commission. This could be done if the Commission were to be divided into chambers. If there were four chambers of three members each then an appeal could be held to an appellate chamber comprising three Commissioners drawn from the chambers which had not made the original decision. Alternatively if there was sufficient business a permanent appellate chamber could be established. The optimum size of the Commission would depend on the amount of business coming before the Commission and it would clearly be desirable to try to have some assessment of this in advance.

## **8. Language**

13. The law should make provision for applicants to be entitled to apply in the Russian language as well as Georgian, and for both languages to be working languages of the Commission.