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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

**LAW OF GEORGIA**

**ON PROPERTY RESTITUTION AND COMPENSATION  
ON THE TERRITORY OF GEORGIA FOR THE VICTIMS  
OF CONFLICT IN THE FORMER SOUTH OSSETIA DISTRICT,  
RELATED LEGISLATION AND EXPLANATORY MEMORANDA**

**Law of Georgia**  
**on Property Restitution and Compensation on the territory of Georgia for the**  
**Victims of Conflict in Former South Ossetia District**

The Georgian State

recognizing the human rights and freedoms enshrined in the Constitution of Georgia and international law,

namely, the right of every person to property and adequate standards of living regardless of his/her race, skin colour, sex, language, ethnic or social origin, religion, belief, political or other views,

realizing the consequences of the 1990-1992 Conflict in the Former South Osetia Autonomous District, which resulted in gross violation of rights and freedoms of a significant part of the population Georgia and forced them to leave their own houses,

takes over the responsibility to rehabilitate the rights of the victims of the conflict in 1990-1992 and afterwards and to bring them in conformity with the standards recognized by international law.

**Chapter I.**  
**General Provisions**

**Article 1. The Purpose of the Law**

The purpose of the present Law is restitution of property, provision of adequate (substitute) immovable property or compensation of property damage to natural persons who suffered damage on the territory of Georgia as a result of the Conflict in the Former South Osetia Autonomous District.

**Article 2. Notions and Definitions**

The notions used in the present Law for its purposes shall have the following definitions:

- a) conflict – the armed conflict in the Former South Ossetia District and/or the conflict on the ethnic basis between the Georgian and Ossetian population on the territory of Georgia in the period of 1990-1992 and afterwards.
- b) right to residence – right to usage or ownership of the original residence.
- c) original residence - residence of a forced migrant, where he/she had the right to reside at the moment of leaving the latter;
- d) original resident - individual, who had the right to reside in the original residence;
- e) forced migrant - individual, displaced within or beyond the territory of Georgia as a result of the conflict;
- f) bona fide and mala fide owners – individuals, defined in the articles 159 and 164 of the Civil Code of Georgia;
- g) relative – individuals, defined in the article 31 part II of the Civil procedural Code of Georgia
- h) family member – spouse, children, parents, adoptive parents, adopted children, grandparents, grandchildren, siblings;

- i) reconstruction – modification of immovable property, as a result of which the size and market value of the property was significantly changed;
- j) residence - immovable property designed for housing;
- k) state property – property, more than 50% of which is owned by the state or local self-administration body;
- l) other immovable property- land parcel and immovable property firmly fixed to it not designed for housing;
- m) property restitution – returning of residence or other immovable property, lost within the territory of Georgia as a result of the conflict to the rightful owners;
- n) secondary resident - individual presently residing (bona fide or mala fide) in the original residence of a forced migrant.

### **Article 3. Principles of the Law**

The present Law shall be based upon the following principles:

- a) justice and equality;
- b) lawfulness;
- c) respect for human dignity and protection and provision of the universally recognized rights and freedoms;
- d) the right of an individual to get comprehensive information from the state agencies on the issues related to him/her;
- e) the right of an individual to be provided with effective legal remedies;
- f) accountability and responsibility of the government to the citizens and people present on its territory;
- g) ensuring the right of the forced migrants to free and voluntary return.

### **Article 4. Scope of the Application**

The present Law shall apply:

- a) to the original residents, who as a result of the conflict were or are not able to return to their original residence due to lack of safety or adequate (substitute) residence;
- b) to the secondary residents, who are bona or mala fide owners of the place of residence or other immovable property belonging to the original resident;
- c) to the original residents, who received a substitute residence and/or monetary compensation with the help of state bodies or international or national organizations, and if the value of their original residence exceeds the compensation received or the value of the substitute residence;
- 1. The present Law shall recognize the right of forced migrants and other individuals to submit for the Commission's review all decisions made on the basis of Article 69 of the Housing Code of 1983 pursuant to which they lost their right to reside in the period during and following the conflict.

### **Article 5. Right to Property Restitution and Compensation**

- 1. The present Law recognizes the right of all forced migrants and other individuals to return to their original residence and be provided with immovable property, to receive adequate (substitute) residence of the same value if their residence and other immovable property is demolished, or if this is not possible, to get compensation of the property damage.
- 2. Also, the present Law recognizes the right of the secondary bona fide resident to own adequate (substitute), safe and reasonable residential and immovable property.

## **Chapter II. The Commission on Restitution and Compensation**

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

1. For the purpose of implementing the goals envisaged by the present Law, a Commission on Restitution and Compensation (hereinafter the Commission) shall be established for the period of 9 years. In case of achieving the goals of the Commission ahead of schedule, the Commission shall make decision on early termination of its authority, and if the Commission fails to fully resolve the disputes within the term of authority, it shall make decision on prolonging of the authority of the Commission for a certain period of time.
2. The Commission shall be a legal entity of public law, which shall not be under the oversight of any state controlling agency.

### **Article 7. The Goals of the Commission**

The goal of the Commission shall be:

- a) restoration of the property;
- b) provision of the adequate (substitute) residence;
- c) compensation of property damage.

for the individuals, who suffered damage on the territory of Georgia as a result of the conflict.

### **Article 8. Publicity of the Activities of the Commission**

1. The meetings of the Commission on Restitution and Compensation and its committees are public. The Commission and its Committees are obliged to hold closed meetings, if this is requested at least by one of the parties in accordance with the legislation of Georgia.
2. The information obtained in the process of working of the Commission and its committees shall be public, except when confidentiality of specific information is required by the present Law, legislation of Georgia or if this is necessary for the effective performance of the functions of the Commission.
3. Any member of the Commission or staff working for the Bureau of the Commission shall be obliged to keep confidential the information determined by the legislation of Georgia, that has come to his/her knowledge due to his/her position or in the course of performing the activities, and also facilitate provision of confidentiality of such information.
4. Any individual shall be obliged in accordance with the legislation of Georgia not to disclose the confidential information, that has come to his/her knowledge in the course of supporting the activities of the Commission, as a result of being present at a meeting of the Commission or its committees or in any other way. A representative of the Commission shall forewarn the individual about this.
5. In case of disclosure of confidential information by the Commission or its committees accordingly the Commission or the committee shall be liable to compensate moral and/or material damages, caused by it.

### **Article 9. The Rule for Establishment of the Commission and its Composition**

1. The Commission shall consist of 18 members, who shall be appointed for a term of 9 years by international organization.
2. The Commission shall be composed of representatives of the Georgian and Ossetian sides of the conflict, and international organization(s), on a parity basis.

3. International organizations within the limits of their quota nominate 6 members of the Commission, who further appoint members of the Commission out of representatives of Georgian and Ossetian parties on the open competition basis.
4. International organization, a political party, non-commercial legal entity of private law or a group of at least 50 citizens are eligible to nominate candidates from the Georgian and Ossetian sides of the conflict.
5. A member of the Commission may be a capable individual, with higher education degree and at least 5 years of working experience. He/she must have the recognition and trust of the public. At least one third of the members of the Commission must have higher legal education.
6. Any person can take part in the competition, provided that he/she complies with the requirements, set for the members of the commission by the present law. The term for submitting the competition documents is at most 45 days after the competition is announced.
7. If within the term set by the present law at least 2 candidates are not presented for each vacancy, the competition will be prolonged for the period, within which there will be at least 2 candidates presented per vacancy. Within 2 days after expiry of the term of presenting of the candidates the list of the candidates will be published.
8. Within 30 days after expiry of the deadline for submitting the candidates for the Commission on Restitution and Compensation, the members appointed under the quota of international organizations will appoint the members nominated under the quota of the Georgian and Ossetian sides.
9. The terms and procedures for appointment of members under the quota of international organizations as well as for execution of their authority, the rule and conditions of holding the competition shall be determined by the resolution of the Government of Georgia in accordance with the memorandum endorsed with the international organizations participating to the process of formation of this Commission.

#### **Article 10. Structure of the Commission**

1. The Commission shall have a Chair and two deputy Chairs, who shall be elected by the Commission from its own members by the majority of votes.
2. The Chair and the Deputy Chairs of the Commission shall each represent the candidates nominated by the different parties.
3. The Chair and the Deputy Chairs of the Commission shall rotate every three years. A person already nominated by one side shall not be eligible for a second term as Chairperson.
4. Within the commission 3 committees will be established.

#### **Article 11. Conflict of Interest Rule**

1. A person cannot be a member of the Commission if he/she, at the same time:
  - a) has another wage-earning employment, save for teaching, scientific and artistic work;
  - b) is a member of a political party;
  - c) has directly participated in the armed clashes during the conflict or openly called for violence, ethnic discrimination and enmity.
2. The same requirement is applicable to the staff of the bureau, save for supporting/technical personnel.
3. A member of the Commission or staff of the bureau, except for supporting/technical personnel, who appears to have a direct or indirect economic interest with a person whose case is under examination by the Commission, shall notify of this interest in writing and refrain from taking part in the examination of the case and decision-making.
4. A member of the Commission or staff of the bureau, except supporting/technical personnel, who is a family member of the person defined by the sub-clause c) of the clause 1 of the

present article or participated to the court hearing of the case during the conflict period or worked in a governmental body or held state position, who was directly connected to the arguable property, shall notify of this fact in writing and refrain from taking part in the examination of the case and making decision.

5. The conflict of interests, described in the sub-clause “a” of the clause one of the present article is not applicable to a member of the Commission nominated under the quota of an international organization, if he/she is paid for working in the commission by the international organization appointing him/her.
6. The conflict of interests, described in the sub-clause “b” of the clause one of the present article is not applicable to a member of the Commission nominated under the quota of an international organization.

### **Article 12. Termination of the Authority of a Member of the Commission before Expiry of the Term**

1. The Authority of a member of the Commission shall be terminated before the expiry of his/her term in service on the following basis:
  - a) his/her personal application;
  - b) failure to accomplish the duties for more than three months or for a period of 20 working days without acceptable reason;
  - c) gross violations of the duties and responsibilities;
  - d) appointment to a position or activity incompatible with the status of member of the Commission;
  - e) court ruling determining him/her as incapable or as a person with limited capacity;
  - f) conviction in effect;
  - g) death.
2. The issue of early termination of the authority of a member of the Commission in cases stipulated in the sub-clauses b-d of the first clause of the present law shall be determined by a vote of at least 2/3 of the full complement of the Commission, and in other cases the Commission will take into consideration existence of the ground for termination of authority. At this moment the authority of the member of the commission is terminated.
3. Filling of the vacancy for a member of the Commission is carried out through the rules set in the Article 10 of the present law on the parity basis between the parties, but within 1 month after the vacancy was announced.

### **Article 13. Chair of the Commission**

1. The chair of the Commission shall:
  - a) chair the meetings of the Commission;
  - b) creates the committees of the Commission;
  - c) undersign the decisions of the Commission;
  - d) is responsible for management of the resources of the accounts of the Commission;
  - e) on the competition basis nominates the secretary of the Commission and other staff, except the supporting/technical personnel;
  - f) accomplish other authorities, prescribed by the charter of the Commission.
2. By order of the Chair one of the deputies of the chair shall act as a chair in the absence of the latter or failure thereof to perform his/her duties.

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

1. the authority of the Bureau of the Commission involves:
  - a) organizational and technical provision of the activities of the Commission;
  - b) helping persons involved in preparing their complaints properly;
  - c) as per the task of the Commission and the committees carry out other obligations.
2. Structure of the bureau and the rules of performance are determined in the charter of the Commission.
3. The Secretary of the Commission:
  - a) draws up the minutes of the meetings of the Commission and other documents;
  - b) supervises implementation of the decisions of the Commission. Notifies the Commission of failure to implement its decisions within the set schedule;
  - c) is a director of the bureau of the Commission and is responsible for the daily activities of the bureau;
  - d) nominates and dismisses supporting/technical personnel of the Commission;
  - e) carries out other functions, defined by the Commission.
4. The Secretary of the Commission must have experience of working in management field of at least 5 years.
5. The Secretary of the Commission is appointed by the Chair of the Commission.

#### **Article 15. Guarantees of Independence and Impartiality of the Commission**

1. The Commission, its members and employees, in the performance of their duties and rights, shall be impartial and independent from any political or financial interests and comply to the Constitution and the legislation of Georgia only. Any exercise of influence or interference into their activities is inadmissible and shall be punished in accordance with applicable legislation, and the decision made under such influence and interference shall be considered as null.
2. The members of the commission act within the frame of their authority in accordance with the present law, the principles and norms of the international law and their inner belief.
3. Obstructing the activities of the Commission shall be punished in accordance with applicable legislation.

#### **Article 16. Decision-making Procedures**

1. The meeting of the Commission shall be authorized, when at least 12 of its members are present at the meeting. The Commission is authorized regarding appealed decisions, if at least 8 of its members are present at the meeting. If one of the parties does not participate to the working process of the Commission, the meeting of the Commission shall be authorized, when at least 10 of its members are present at the meeting, and the Commission is authorized regarding appealed decisions in this case, if at least 7 of its members are present at the meeting.
2. The meeting of the Committee shall be authorized, when at least 4 of its members are present at the meeting. If one of the parties does not participate to the working process of the Committee, the meeting of the Committee shall be authorized, when at least 3 of its members are present at the meeting.
3. The Committee shall make decisions by majority of the votes of the members present at the meeting. In case of division of the votes the decisive vote shall be the vote of the Chairperson of the Committee.
4. The Commission shall make decisions by majority of the votes of the members present at the meeting. In case of division of the votes the decision shall not be made.

**Article 17. Legal Acts of the Commission and the Committees**

1. The Commission and the Committees in accordance with the rule set by the legislation within the limits of their own authority shall adopt the following legal acts: Decision of the Commission, Decision of the Committee and Order of the chair of the Commission.
2. A decision of the Commission and the Committee and the Order of the Chair of the Commission are individual administrative legal acts, which shall be adopted within the limits of the authority granted to them by the legislation.
3. Legal acts of the Commission and the Committee shall be adopted at their meetings.
4. The Commission adopts the charter of the Commission.
5. The Chair of the Commission shall issue orders on specific cases, defined by the present law and under the charter of the Commission.

**Article 18. Functions and Authorities of the Commission**

1. The authority, rule of activities and structure of the Commission shall be defined by the present Law and the Charter of the Commission .
2. In accordance with the rules set by the legislation, the Commission shall be authorized to:
  - a) By its own initiative or upon request of a party request and receive from any natural or legal person or state agency any information connected to the application to be examined by the Commission;
  - b) by the initiative of one of the parties, without the independent count, involve the third party into the case. Such a decision shall be made by it taking into account the considerations of the parties;
  - c) twice a year prepare reports to be presented to the Parliament, the Government and the President of Georgia;
  - d) the complaints related to the decision of the Commission, submitted by authorized persons in connection with newly found and newly revealed circumstances;
  - e) examine the complaints in essence, related to the decision of the Committees, submitted by authorized persons in connection with newly found and newly revealed circumstances and violation of the procedures set by the present law.
3. For the purpose of effective accomplishment of its own functions, the Commission shall be authorized:
  - a) to execute administrative authorities;
  - b) when necessary, to act as a mediator in dispute resolution and facilitate conciliation;
4. Any body, authority or a private person is obliged to provide the Commission at its request with the necessary information or a document, help it due its competence in carrying out certain activities. Relevant bodies and authorities are obliged to provide the requested information immediately, but within at most 10 days.
5. The Commission is obliged to immediately submit the case to the relevant bodies, if it finds any signs of criminal in connection with the case under review.
6. The decisions made by the Commission and the Committees shall be mandatory for execution within the whole territory of Georgia.
7. For effective exercise of its activities and goals set by the present law the members of the Commission by the task of the Chair of the Commission or the Committees shall be authorized:
  - a) collect evidences, observe on site and request from administrative bodies and natural persons any information or document, record, give them a task to collect and process information, among them according to the rule set by the legislation, immediately get acquainted with or request the materials of investigation of criminal cases both completed and under investigation;
  - b) by the order of the judge, without preliminary notice enter, observe and study any territory;



- c) receive explanations from any person, invite him/her to the meeting of the Commission or the Committee and ask them to give explanations;
- d) request certain information from a state body of Georgia or any other country, also receive explanation from a citizen of a different state, or a person in the territory of a different state with preliminary agreement with the state, and according to the rules and conditions stipulated in the international agreements of Georgia.
8. The Commission and the Committees examine the cases in accordance with the rule set by the Civil Procedural legislation of Georgia, except otherwise stipulated by the present law.

#### **Article 19. Committees of the Commission**

1. For the Commission to exercise effectively its functions, timely examine and decide on the applications, restate the property, which was illegally or unjustly forfeited during the conflict, provide adequate (substitute) residence and compensation of property damage, the Committees are established.
2. The committees are led by the Chair of the committee, who is elected by the Commission.
3. The Committees are established by the Chair of the Commission from the members of the Commission on the parity basis with 6 members in each Committee.

#### **Article 20. Authorities of the Committee**

1. For the purpose of effective accomplishment of its own functions, the committee shall be authorized to the following:
  - a) to receive and process the applications on property restitution and return of other immovable property from an authorized person;
  - b) for the purpose of comprehensive, thorough and objective examine of cases, a Committee shall collect full information related to the case;
  - c) on the basis of the application or by its own initiative collect the evidences of property damage suffered by the applicant;
  - d) by its own initiative or upon a request of a party request and receive from any legal or private person or state agency information related to the application received by the Committee for examination;
  - e) by the initiative of one of the parties without the independent motion involve the third party into the case. Such a decision shall be made by it taking into account the considerations of the parties;
  - f) to receive and process the applications from citizens;
  - g) to generalize the collected information and materials and analyze them;
  - h) make decisions on particular cases;
  - i) to exercise other authorities prescribed by the present Law and the charter of the Commission.

#### **Article 21. Responsibility for Impeding the Activities of the Commission and Committee**

1. The Commission and the Committee shall be authorized to fine any natural or legal person, who:
  - a) violates the requirements of the present Law;
  - b) does not carry out a decision of the Commission and a Committee or an order of the Chair of the Commission;
  - c) does not submit the information documents requested in a legal form
  - d) discloses ahead of time the expected results of the investigation or performs such action, which puts at risk or impedes the objective and comprehensive examination of the case;
  - e) hinders the execution of the authorities assigned by the present Law to an agency or its official

- f) fails to appear at the meeting of the Commission or a Committee without the acceptable reason or deliberately misguides or provides false information to the Commission or the Committee, or refuses to submit the documentation available to hand, which is necessary for examination or hearing of the case.
2. The amount of the fine shall be determined in accordance with Georgian legislation.
3. The decision on fining a person must be made at an open meeting of the Commission. The person, whose case is under review, must be given a reasonable term for the opportunity to express his/her opinion.
4. The person fined must be notified about the possible fining and the grounds for it. The Commission and the Committee is liable to explain to him/her the charges against him/her.

#### **Article 22. Reporting and Recommendations**

1. The Commission shall submit to the Parliament, Government and the President of Georgia periodic reports twice a year.
2. The reports must include description of the materials collected by the Commission as well as report on activities and financial report and on recommendations for measures necessary for political, administrative and other activities necessary for achieving the goals set for the Commission.
3. The Commission shall submit to the Parliament, Government and President of Georgia information on specific or general issues, if:
  - a) the issue involves public interest;
  - b) the issue requires immediate attention or involvement of the Parliament, President or Government;
  - c) there is a request from the President, Government or at least of 1/3 of the members of the Parliament.
4. After submitting the report to the President, Parliament and Government, the Commission shall publish the report through existing electronic and/or printed media; it shall also ensure public accessibility of the report.
5. After publishing the report, the Commission shall monitor and facilitate implementation of the recommendations made by the Commission.

#### **Article 23. Location of the Commission**

1. The Commission shall be located in Tbilisi.
2. According to the circumstances of specific case the Commission is entitled to gather in a different place.

### **Chapter III Examination of Restitution and Compensation Cases**

#### **Article 24. The Right to Apply to the Commission**

1. Forced migrants and other individuals, who suffered property damage as a result of the conflict, may apply to the Commission, with no regard to their citizenship.
2. In the cases defined in the present Law, forced migrants and other persons shall apply to the Commission within 7 years from the moment when the Commission started to execute its authorities.

### **Article 25. Application**

1. An application must include the following:
  - a) name and surname of the applicant;
  - b) information about the events, which resulted in property damage.
  - c) Request about return of the original residence or owned immovable property.
2. Evidences, which the applicant has on hand, should be attached to the application.

### **Article 26. Initiation of Proceedings**

1. The Commission shall initiate proceedings when there is an application by the victim or his/her successor or representative.
2. The application shall be immediately forwarded to one of the committees. The committee shall make a decision on admitting or rejecting the application within 15 days.
3. The committee shall be authorized to reject an application if:
  - a) the claim is manifestly ill-founded;
  - b) a claim does not fall within the Commission's competence;
  - c) the term for submission of applications set by the present law has expired;
  - d) the decision by the Commission or the court related to the arguable property already exists.
4. The Commission shall be authorized to reject an appeal if:
  - a) the claim is manifestly ill-founded;
  - b) in case of appealing against the decision of the Commission there are no newly revealed or found circumstances;
  - c) in case of appealing against the decision of the Commission there are no facts of violation of the procedures defined by the present Law;
  - d) the term for submission of applications set by the present law has expired;
  - e) the decision of the court related to the arguable property already exists.

### **Article 27. Case Proceeding**

1. The Commission and the Committees shall proceed with oral hearings or through formal administrative proceeding, except in cases provided by the General Administrative Code of Georgia and the present Law and in cases when the resolution of the disputed issues does not require inquiry procedures.
2. Proceedings in the Commission and the Committees are performed in the state language of Georgia. Taking into consideration the interests of the parties as working languages for the Commission and the Committees can also be used Ossetian and one international language, if this is decided by the Commission in accordance with the rules set by the charter of the Commission. Participation of an interpreter to case proceeding shall be provided.
3. The Commission and a Committee shall make and publish a final decision within 6 months from the moment of admitting the application for proceeding.
4. In case of existence of special circumstances, if the facts indicated in the application require examination, which may be related to complicated administrative procedures, the term for making a final decision shall not exceed 9 months.
5. The Commission and the committee shall make the following decisions within the limits of their competence:
  - a) on satisfying the application entirely;
  - b) on satisfying the application partially;
  - c) on rejecting the application.
6. The decision must be justified.

7. The decision on satisfying of the application must define the grounds, conditions and rules for returning to the original residence, provision of adequate (substitute) residence and compensation of property damage.
8. The decision of the Commission and the committee comes into force as from the moment of public announcement made at the meeting.
9. The Commission and the Committee issue an act of execution for the decisions made by them and come into force.
10. In case of necessity the Ministry of Refugees and Accommodations may be requested by the Committee or the Commission to ensure the implementation of the decisions adopted by the Committee or the Commission.

#### **Article 28. Appealing Against Decision**

1. The decision of the Commission in case of violation of the procedures set by the present law can be appealed against in the Supreme Court of Georgia, and in connection with newly revealed circumstances – in the Commission. The decisions of the Committees for reviewing in essence, in case of violation of the procedures set by the present law or in connection with some newly revealed circumstances can be appealed against in the Commission.
2. The term of appealing against the decision made by the Committee is one month from the day of adopting the decision. Execution of the decision will be suspended within this term.
3. In relation with revealing and finding new circumstances application on appealing against the decision can be submitted within 90 days after revealing and finding new circumstances.
4. In case of violation of the procedures set by the present law, the term for appealing against the decision is 3 months after making the decision.
5. In case of appeal execution of the decision of the committee shall not be terminated as a rule. However, the commission has the authority to suspend execution of the decision with mediation of a party.
6. In relation to the decision appealed against the Commission makes a decision through the rules set for case proceeding. At this time the members of the Committee, who made the decision appealed against can not participate to the work of the Commission.

### **Chapter IV**

#### **Rules for Property Restitution and Payment of Compensation**

#### **Article 29. General Norms of Property Restitution and Compensation**

1. Original residence and other immovable property attached to it shall be immediately returned to its lawful owner, if the property:
  - a) is owned by the state/self-administration;
  - b) is owned by a mala fide owner;
2. If the original residence or other immovable property is owned by a bona fide owner, this property can be returned to the original resident only after the bona fide owner receives adequate (substitute) immovable property or, if he/she so wishes, monetary compensation.
3. In case if the property is destroyed, removed or reconstructed, the original resident shall receive other adequate (substitute) immovable property of similar value.
4. The original resident shall receive as adequate (substitute) immovable property the property, which by the moment of handing over has similar market value and is located in the same location as the forfeited property. With the consent of the original resident it shall be possible to hand him/her over immovable property of other type.

5. If the immovable property requires rehabilitation or reconstruction works the estimated cost of such works must be compensated.
6. By the decision of the Commission payment of monetary compensation can be proceeded only in case if returning of the original residence or the immovable property attached to it to the person or handing over of adequate (substitute) immovable property is not possible.

**Article 30. Property, that is not Subject to Returning**

1. Property shall not be subject to returning if by the time the application for restitution is made, it:
  - a) is located within the area in which handing over of property to legal or physical persons is forbidden by the legislation of Georgia;
  - b) is unsuitable for further usage due to depreciation or other circumstances, when the danger of its falling down exists or it is hazardous in terms of health and life and it can not be refurbish, or it impedes traffic safety, which makes it impossible to use this property for its purposes;
2. In this case the original owner shall be given adequate (substitute) immovable property, and if this is not possible, he/she shall receive property compensation.

**Article 31. Calculation of the Value of the Property**

1. The immovable property to be restituted and adequate (substitute) immovable property shall be evaluated in accordance with its market value by the moment of the restitution of the property. The property to be restituted shall be evaluated with the same criteria, also in the case of monetary compensation.
2. If there is difference between the value of the original property and other immovable property and the property to be restituted on the basis of the decision of the Commission or adequate (substitute) immovable property, this difference shall be covered from the fund of the Commission except for the value, which results from natural depreciation of the property.

**Article 32. Payment of the Compensation**

1. Monetary compensation shall be paid by either as a whole or in stages, but no longer than within 1 year of the Commission's decision.
2. In the case when the person entitled in accordance with the present Law to receive property chooses Georgia as his/her permanent place of residence he/she shall be given both one-time and monthly aid.
3. One-time aid for the beneficiary of the property and his/her family members shall amount to 1500 GEL per person.
4. Monthly aid shall be paid during 6 months and its amount shall be determined by the Commission based on the minimum consumer basket.

**Chapter V.**

**Financing of the Commission. Social Protection of the Members of the Commission**

**Article 33. Financing of the Commission**

1. Financial provision of the activities of the Commission and a Committee and execution of their decisions shall be supported from the Financial Fund of the Commission.
2. The rules of establishment of the Fund of the Commission shall be defined by the present Law and the Charter of the Commission.

3. The sources for supplying the Fund of the Commission shall be the State Budget, grants and charity contributions made by governments of other states, inter-governmental and non-governmental organizations or private persons, as well as disputable property handed over by the government or mala fide owners.
4. The Commission shall have a bank account where the resources of the Fund of the Commission shall be allocated.
5. The Commission shall submit its draft budget to the government according to the rule and term set by the legislation of Georgia.

#### **Article 34. Salaries and Social Security of the Members of the Commission**

1. The salaries and material benefits of the members of the Commission shall not be less than the salaries and material benefits of members of the Appeal Court of Georgia. It shall be inadmissible to reduce the salary of the members of the Commission during the whole period of his/her term of service.
2. For the members nominated under the quota of international organizations it is possible that other additional remuneration is used, amount and rules of payment of which is determined by the Charter of the Commission.

#### **Article 35. Control of the Finances of the Commission**

1. The Commission shall be obliged to:
  - a) keep the accounting records and other documents related to the activities of the Commission;
  - b) prepare quarterly accounting, which includes information about monthly expenses;
  - c) provide comprehensive information about the information systems of Commission management based on budgetary control;
  - d) ensure lawful management of funds by the Commission.
2. The Chamber of Control shall perform the annual audit of the budgetary fund management by the Commission, while the management of other resources of the Commission shall be audited by a highly reputable independent auditor appointed by the Commission. Accounting of the Commission and conclusions of the auditors shall be submitted to the Parliament of Georgia, President of Georgia and other sponsors of the Fund of the Commission.

### **Chapter VI Transitional Provisions**

#### **Article 36. Measures to be Taken by the Commission**

1. Formation of the Commission shall be conducted within 5 months after the present Law comes into force.
2. Before election of the Chairman, the first meeting of the Commission shall be chaired by the oldest member of the Commission. At the same meeting the Chairman and the Secretary of the Commission shall be elected in accordance with the procedures established by the Law.
3. The first Chairs of the Commission and the Committees shall be the persons elected under the quota of international organizations.
4. The commission adopts its charter within 2 months after formation.
5. The Commission shall start to receive applications 9 months after the present Law comes into force.

**Chapter VII  
Summary Provisions**

**Article 43. Entry into Force**

The present Law shall enter into force on the 1<sup>st</sup> January 2007.

**The President of Georgia**

**Mikheil Saakashvili**

**Explanatory Note**  
**on the Draft Law of Georgia**

**on Property Restitution and Compensation on the Territory of Georgia for the Victims of  
Conflict in Former South Ossetia District**

**a.a) The reason for adopting the Draft Law**

As a result of the armed conflict, which took place in Georgia in 1990-1992 considerable part of the population lost its immovable property either owned or used by them and/or was forced to leave the country. Therefore, property restitution and restoration of the residence rights of those who had to abandon their homes as a result of the conflict represents a strategic objective for the new Georgian Government.

It should also be noted that the forced migrants currently residing in various regions of Georgia (outside the former South Ossetia District) or in neighboring countries have little possibility to reenter and repossess places of their original residence.

Although since 1990 some out of many forced migrants have managed to return to the places of their original residence in Georgia proper they still encounter the problem of restoring the property rights or rehabilitating their original residence. Current civil legislation provides limited possibility for restitution (especially in case if property is used by mala fide owner or owned by bona fide owner), while has no effect within the territory of conflict (former South Ossetia District).

The presented Draft Law aims at establishing of effective legal remedies for forced migrants of any nationality to request and repossess the deprived property regardless of its location.

**The Purpose of the Draft Law**

The present draft law recognizes and is based on the principles of equality and justice, the respect for internationally recognized human rights standards, right of the free and voluntary return, etc.

The state recognizes the right of every persons to property and adequate standards of living regardless of her/his race, skin colour, sex, language, ethnic or social origin, religion, belief, political or other views.

The Draft Law defines the conflict as an armed conflict in the Former South Ossetia District and/or the conflict on ethnic basis between Georgian and Ossetian population in the other regions of Georgia in the period 1990-1992 and afterwards. Thus all who were forced to migrate as a result of war or ethnic hatred will benefit from the adoption of this law.

The Draft Law envisaged protection of legitimate interests of the forced migrants (and their successors) as well as bona fide owners of the property.

**The Principles of the Draft Law**

With an aim to consider the restitution claims and recognizing the need for building trust and confidence among the parties in conflict as well as making the decisions with regard to the property restitution effective on the whole territory of Georgia (including the breakaway former South Ossetian Autonomous District), taking into consideration the international experience, the Draft



Law envisages establishment of a special three-lateral commission – Commission for Restitution and Compensation.

According to the Draft Law this Commission is a legal entity of public law, an independent body, which shall not be under the oversight of any state (controlling) agency. It shall consist of 18 members, who shall be appointed for the period of 9 years. The Commission shall be composed of representatives of the Georgian and Ossetian sides of the conflict and international organizations on a parity basis. Initially the international organization(s) with limits of their quota nominate six (6) members of the Commission, who further appoint other members out of Georgian and Ossetian (sides in the conflict) through an open competition process.

International organizations, political parties, non-commercial legal entities of private law or a group of at least 50 citizens are eligible to nominate the candidates from Georgian and Ossetian sides of the conflict. The selection process is carried out on the open competition basis. The rules and conditions of nomination of the members of the Commission execution of their authority and terms of the competition are determined by the resolution of the government, which shall be based upon the memorandum, drawn up between the government of Georgia and international organizations.

A member of the Commission shall be a capable individual with higher education degree and at least 5 years of working experience. This individual must have public recognition and trust. At least one third of the members of the Commission must have the higher legal education.

The Commission has the Chair and two Deputy Chairs, elected by the Commission out of its members. The Chair and the Deputy Chairs of the Commission must represent the candidates presented by different parties. They shall be rotated every 3 years. A person presented by one party can not be elected as a Chair for two terms.

There will be three committees in the Commission. Supplementary unit of the Commission will be the Commission Bureau. The Commission will act on the basis of its Charter.

The Law considers limitation for the nomination as a member of the Commission. A person can not be a member of the Commission if he/she at the same time: a) has another wage-earning employment, save for teaching, scientific and artistic work; b) is a member of a political party; c) has directly participated in the armed clashes during the conflict or openly called for violence, ethnic discrimination and enmity. The Law considers possibility of challenging of the members of the Commission in particular cases.

The Draft Law comprehensively envisages the grounds for pre-term termination of the authority of the members of the Commission. These grounds are: a) personal application; b) failure to accomplish the duties for more than three months or for a period of 20 working days without acceptable reason; c) gross violations of the duties and responsibilities; d) appointment to a position or activity incompatible with the status of member of the Commission; e) court ruling determining him/her as incapable or as a person with limited capacity; f) conviction in effect; g) death.

The Law sets major aims – provision of effective legal mechanism for restituting the property and support/facilitation of return of the forced migrants. Therefore, the key concept is ensuring the restitution of property or provision of adequate living, while the compensation is a secondary measure, which will apply to specific cases. The philosophy of the law underlines rehabilitation of the property right of the victim and enabling her/him to manage it according to her/his own discretion.

The Law does not provide any conditionality for application and restoration of the property rights and restitution the property as well as for the return, would it be place of current residence, current citizenship, willingness (or unwillingness) to return, etc. The Law does not request the applicant to be present in person (she/he can apply via post or can be presented by another person). The Law considers that the Commission collects all necessary document proving the property rights from the sources located in Georgia in case if the applicant does not have them or does not have access to the sources.

All services of the Commission will be for free of charge for the applicants. In addition it is planned to provide the applicants with the free legal aid service, starting from 2008, together with establishment of free legal aid system. Provision of consultations for the forced migrants residing in South Ossetia or Russian Federation (North Ossetia) is subject to the negotiations and agreements with relevant authorities.

Special start up assistance package will be developed for those who decide to return, which will include, but not limited to one time payment in the amount of 1500 per family member and financial assistance in the amount of minimal consuming basket for the period of up to six months.

In case if the application is satisfied, the original residence and/or other immovable property must be immediately returned to its lawful owner, if the property: a) is owned by the state/self-administration; b) is owned by a mala fide owner. In case the property is in condition, which is not suitable for living (does not meet standards) it shall be renovated. If the immovable property requires rehabilitation or reconstruction works the estimated cost of such works must be compensated. If the original residence or other immovable property is owned by a bona fide owner, this property can be returned to the original resident only after the bona fide owner will receive adequate (substitute) immovable property or, if he/she so wishes, monetary compensation. In case if the property is completely destroyed, removed or reconstructed, the original resident shall receive other adequate (substitute) immovable property of similar value. The original resident shall receive as adequate (substitute) immovable property , which by the moment of handing over has similar market value and is located in the same location as the forfeited property. With the consent of the original resident it shall be possible to hand him/her over immovable property of other type. By the decision of the Commission payment of monetary compensation can be proceeded only in case if returning of the original residence and the immovable property attached to it to the person or handing over of adequate (substitute) immovable property is not possible.

Financial provision of the activities of the Commission and the decisions made by it is carried out through the financial fund of the Commission. The sources for supplying the Fund of the Commission shall be the State Budget, grants and charity contributions made by governments of other states, inter-governmental and non-governmental organizations or private persons, as well as disputable property handed over by the government or mala fide owners. The Commission shall have a bank account where the resources of the Fund of the Commission shall be allocated. Remuneration of the members of the Commission shall not be less than the remuneration of members of the Appeal Court of Georgia.

Tbilisi is determined as the place of location of the Commission, however, the Commission is can also hold the sessions in other locations if it decides so.

Initiator of the Draft Law: President of Georgia

Author of the Draft Law: Ministry of Justice of Georgia

**Draft**

**Law of Georgia  
on Amendments and Addendum to the Law of Georgia on Enforcement Procedures;**

**Article 1.** To amend Law of Georgia on Enforcement Procedures (Georgian Legislation Newsletter No13(20), 1999, Article 52) and insert addenda as follows:

1. The Article 1 to be set forth with the following wording:

**“Article 1. Application of the Law**

The present law regulates the rule and conditions of enforcement of the acts adopted by general courts, administrative bodies (authorities) and arbitrage, **Commission for Restitution and Compensation and its Committees**, also the European Court for Human Rights and International Criminal Court save for the cases stipulated by the Clause 3 of the Article 17<sup>1</sup> of the present Law”.

2. The Sub-clause k) with the following content to be added to the Article 2:

**“k) Decisions of the Commission for Restitution and Compensation”.**

**Article 2.** The present law to come into force as from the 1<sup>st</sup> of January 2007.

**President of Georgia**

*Mikheil Saakashvili*

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**Explanatory Note  
on Amendments and Addendum to the Law of Georgia on Enforcement Procedures;**

Purpose of the Draft Law:

The purpose of the Draft Law is to regulate the rule of execution of the decisions made by the Commission for Restitution and Compensation.

Main point of the Draft Law:

The Draft Law stipulates, that together with the decisions of other bodies the decisions made by the Commission for Restitution and Compensation are subject to execution.

**Draft**

**Law of Georgian  
on Amendments and Addendum to the Administrative Delinquency Code of Georgia**

**Article 1.** To amend the Administrative Delinquency Code of Georgia (Newsletter of the Supreme Committee of the SSR of Georgia No12, 1984, Article 421) and insert addenda as follows:

1. Article 173<sup>12</sup> with the following content to be added to the Code:

**“Article 173<sup>12</sup>. Impeding the activities of the Commission for Restitution and Compensation”**

“Violations of the requirements of the Clause 1 of the Article 21 of the Law of Georgia on Property Restitution and Compensation within the Territory of Georgia for the Victims of the Conflict in the Former South Osetia Autonomous District–

will cause fining by the amount from twenty to fifty minimal labor remunerations”.

2. Article 229<sup>5</sup> with the following content to be added to the Code:

**“Article 229<sup>5</sup>. The Commission for Restitution and Compensation and its Committees**

The Commission for Restitution and Compensation and its Committees are entitled to impose administrative payments and fees for delinquencies stipulated by the Article 173<sup>12</sup> of the present Code”.

3. Part 55 with the following content to be added to the Article 239:

**“55. The Commission for Restitution and Compensation and its Committees shall draw up the acts on the delinquencies stipulated by the Article 173<sup>12</sup> of the present Code”.**

**Article 2.** The present law to come into force as from the 1<sup>st</sup> of January 2007.

**President of Georgia**

*Mikheil Saakashvili*

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**Explanatory Note  
on Amendments and Addendum to the Administrative Delinquency Code of Georgia**

**General Information about the Draft Law**

Main point of the Draft Law:

According to the Draft Law, violation of the requirements of the Clause 1 of the Article 24 of the Law of Georgia on Property Restitution and Compensation Within the territory of Georgia for the Victims of the Conflict in the Former South Ossetia Autonomous District will lead to fining equal to the amount from 20 to 50 minimal labor remunerations.

The Commission for Restitution and Compensation shall consider this issue, charge the payment and draw up the act.

**Draft**

**Organic Law of Georgia  
on Amendments to the Organic Law of Georgia  
on Supreme Court**

**Article 1.** The Clause 1 of the Article 9 of the Organic Law of Georgia on Supreme Court (Georgian Legislation Newsletter No14(21), 1999, Article 62) to be set forth with the following wording:

“1. The Chamber of the Supreme Court (save for the Chamber for Discipline) is the court of cassation, which in compliance with the rule set by the procedural law shall consider appeals for the decisions made by the appeal courts of Georgia, in the cases stipulated by the law and in accordance with the rule set by the law shall consider other cases appurtenant to its judgment, shall review the sentences and other court decisions due to newly found and revealed circumstances, **shall consider appeals related to the decisions of the Commission for Restitution and Compensation in cases of violation of the procedures set by the Georgian Law on Property Restitution and Compensation of the Victims on the territory of Georgia of the Conflict in the Former South Osetia Autonomous District**”.

**Article 2.** The present law to come into force as from the 1<sup>st</sup> of January 2007.

**President of Georgia**

*Mikheil Saakashvili*

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**Explanatory Note  
on the Draft Georgian Law on Amendments the Organic Law of Georgia  
on Supreme Court**

**a) General Information about the Draft Law**

Purpose of the Draft Law:

The purpose of the Draft Law is to establish the mechanism for appealing against the decisions made by the Commission for Restitution and Compensation.

Main point of the Draft Law:

The Draft Law stipulates, that **in case of violation of the procedures set by the Law of Georgia on Property Restitution and Compensation on the Territory of Georgia for the Victims of the Conflict in the Former South Ossetia Autonomous District**, the decisions made by the Commission for Restitution and Compensation are appealed against in the Supreme Court of Georgia.

**Draft**

**Law of Georgia**  
**on Addendum to the Civil Procedural Code of Georgia**

**Article 1.** The Sub-clause d<sup>1</sup>) with the following content to be added to the Article 279 of the Civil Procedural Code of Georgia (Parliament Newsletter No47-48, 31.12.1997, p. 21):

**“d<sup>1</sup>) If the case is being considered by the Commission for Restitution and Compensation or its Committees”.**

**Article 2.** The present law to come into force as from the 1<sup>st</sup> of January 2007.

**President of Georgia**

*Mikheil Saakashvili*

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**Explanatory Note**  
**on Addendum to the Civil Procedural Code of Georgia**

Purpose of the Draft Law:

The purpose of the Draft Law is to ensure impartial decisions of the Commission for Restitution and Compensation and excluding courts from considering the restitution cases if the case is considered by the Commission.

Main point of the Draft Law:

According to the Draft Law the court is obliged to suspend case proceeding if this issue is considered by the Commission for Restitution and Compensation.

**Draft**

**Law of Georgian  
on Addendum to the Law of Georgia on Legal Status of Foreigners**

**Article 1.** The following addenda to be inserted into the Law of Georgian on Legal Status of Foreigners (Georgian Legislation Newsletter No3, 2005, Article 16):

1. Sub-clause g) with the following content to be added to the Clause 1 of the Article 19:  
“g) Participates to consideration of his/her application by the Commission for Restitution and Compensation or its Committees”.
2. Sub-clause d) with the following content to be added to the Article 20:  
“d) To the individual, toward whom the Commission for Restitution and Compensation or its Committee made a decision on property restitution, returning of adequate (substitute) immovable property or compensation of property damage”.

**Article 2.** The present law to come into force as from the 1<sup>st</sup> of January 2007.

**President of Georgia**

***Mikheil Saakashvili***

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**Explanatory Note  
on Addendum to the Law of Georgia on Legal Status of Foreigners**

Purpose of the Draft Law:

According to the Draft Law, permission for temporary residence must be issued for an individual if the application of this individual is being considered by the Commission for Restitution and Compensation or its Committee, and the permission for permanent residence must be issued for an individual, in relation to whom the Commission for Restitution and Compensation or its Committee has made a decision on property restitution, returning of adequate (substitute) immovable property or compensation of property damage.