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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT OPINION

ON THE LAW ON OCCUPIED TERRITORIES

OF GEORGIA

On the basis of comments by
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I. Introduction

1. By a letter of 14 January 2009, the Committee on the Honouring of Obligations and Commitments of the Parliamentary Assembly informed the Commission of its decision taken on 17 December 2008 to seek its opinion on the law on occupied territories of Georgia (CDL(2009)004).

2. Ms A. Nussberger, Messrs B. Aurescu and J. Hamilton were appointed as rapporteurs.

3. In the course of the visit of a delegation of the Venice Commission to Georgia, Mr Hamilton sought information on the implementation of the law, which was adopted on 23 October 2008 and is currently in force. The Georgian parliament provided information in reply to ceratin question, in particular an extract of the Criminal Code of Georgia (Articles 322/1 and 344), an extract of the Georgian Law on General Education (Article 63/1) and an extract of the Georgian Law on High Education (Article 89/1), as well as "Information regarding the criminal charges being brought against foreigners having breached the law on occupied territories" (CDL(2009)044).

4. The present opinion was drawn up on the basis of the comments of the rapporteurs (CDL(2009)045, 046 and 047) and was adopted by the Commission at its … Plenary Session (Venice, …).

II. General comments

5. The "Law on Occupied Territories of Georgia" is based on the perception that the two break-away regions of the Republic of Georgia, Abkhazia and South Ossetia, are part of the Republic of Georgia, but are illegally occupied by the Russian Federation. This understanding is clearly expressed by the reference to the sovereignty and integrity of Georgia in the preamble to the law and the qualification of the presence of military forces as "illegal military occupation of the territory of a sovereign country". Article 1 of the Law indicates as purpose of the law "to define the status of territories occupied as a result of military aggression of the Russian Federation"; Article 2 defines the "occupied territories and territorial waters".

6. This assumption is diametrically opposed to the point of view of the Russian Federation claiming that both Abkhazia and South Ossetia have proclaimed their independence and have been recognized as independent States by Russia. According to the Russian interpretation, Abkhazia and South Ossetia are not occupied territories, but independent States. Consequently, Georgia could not pass any law applicable in those territories.

7. The question of the legal status of South Ossetia and Abkhazia is not subject of the present opinion; the Preamble as well as Article 1 and 2 will therefore not be commented upon.

8. Starting-point of the comment on the "Law on Occupied Territories" are the two resolutions of the Parliamentary Assembly of the Council of Europe, Resolution 1633 (2008) on "The consequences of war between Georgia and Russia" and Resolution 1647 (2009) on "The implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia" where it is stated: "*The Assembly condemns the recognition by Russia of the independence of South Ossetia and Abkhazia and considers it to be a violation of international law and of the Council of Europe's statutory principles. The Assembly reaffirms its attachment to the territorial integrity and sovereignty of Georgia and reiterates its call on Russia to withdraw*

its recognition of the independence of South Ossetia and Abkhazia and to fully respect the sovereignty and territorial integrity of Georgia, as well as the inviolability of its borders." [1]

III. Relevant acts of international law

9. The Hague Convention "Respecting the Laws and Customs of War on Land of 18 October 1907" has been ratified by Russia (18.10.1907, in force since 27 November 1909), but not by Georgia. However, most of the rules contained in the Convention can be considered as reflecting customary international law. They are integrated and further elaborated in the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, ratified by the Russian Federation on 10.5.1954 and by Georgia on 14.9.1993.

10. According to the Hague Convention "*a territory is considered occupied when it is actually placed under the authority of the hostile army*" (Article 42 para 1). Furthermore, it is stipulated that "*the occupation extends only to the territory where such authority has been established and can be exercised*" (Article 42 para. 2). Another basic provision is Article 43 as it regulates the interaction between the measures applied by the occupying power and the laws enacted by the de iure government: "*The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country*." Articles 47 et seq. of the Geneva Convention IV are directly applicable to the regime on occupied territories.

11. Furthermore, Resolution 1866 (2009) adopted by the Security Council at its 6082nd meeting on 13 February 2009 and Resolution 1839 (2008) adopted by the Security Council at its 5992nd meeting on 9 October 2008 as well as all preceding resolutions concerning the same topic are binding both on the Russian Federation and on Georgia on the basis of Article 25 UN-Charta. According to paragraph No. 4 of Resolution 1866 (2009) the Security Council calls for "*facilitating, and refraining from placing any impediment to humanitarian assistance to persons affected by the regional conflict, including refugees and internally displaced persons, and further calls for facilitating their voluntary, safe, and dignified and unhindered return*". Also its paragraph no. 3 provides for the need "to ensure, without distinction, … the right of persons to freedom of movement …".

12. All the relevant regulations of international have to be taken into account when commenting the "Law on Occupied Territories in Georgia".

13. In addition, it might be worth mentioning that reference to the "Law on the occupied territories of Georgia" is contained in the report of the Secretary-General on the situation in Abkhazia, Georgia, pursuant to Security Council resolution 1839 (2008). There the relevant part of the text reads: "*On 23 October, the Parliament of Georgia adopted a law declaring Abkhazia and South Ossetia "occupied territories" and the Russian Federation a "military occupier". The law, signed on 31 October by the President of Georgia, declares null and void all legislative and administrative acts issued by the de facto authorities in Abkhazia and South Ossetia. It also restricts access to these territories and prohibits economic and financial activities that do not comply with Georgian law. These restrictive provisions raised concerns within the international community with regard to humanitarian access to the conflict affected areas.*"

[1] Parliamentary Assembly, Resolution 1647 (2009). The implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia, http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta09/ERES1647.htm.

IV. Comments on specific regulations in the "Law on occupied territories"

A. Occupied territories and Territorial Waters

14. The terms used in Article 2 are, at least in the English text, inaccurate.[2] It has to be noted , in relation to the definition of the maritime zones included within the scope of application of the law, that a maritime delimitation between Georgia and the Russian Federation is still to be effected.

B. Limitation on Free Migration on the Occupied Territories

15. Article 4 restricts the access to Abkhazia and South Ossetia for foreigners and Stateless persons. Three groups of persons can be discerned to which the law applies: (1) Third country nationals, especially the personnel of international organisations and non-governmental organisations, (2) Russian citizens, be they soldiers or civilians, and (3) Citizens living either in Abkhazia or in South Ossetia and having acquired the Russian citizenship. For the last group it is not clear how Georgia officially qualifies their status. If they are considered to have lost their Georgian citizenship, they fall under the law. If they have a dual citizenship it is not clear if the law will be applied to them. It is equally unclear what the status of holders of passports issued, as it is likely to happen, by the authorities of the occupied territories will be in Georgian law: Georgian citizens or persons without citizenship.

16. All foreigners and Stateless persons are allowed to enter the territory only from the Georgian side and are liable to criminal punishment for violations. In extraordinary cases a special permission to enter the relevant territories can be granted.

17. The relevant provision raises several problems. First, it has to be read in conjunction with Article 322/1[3] and 344[4] of the Criminal Code of Georgia. The wording of the criminal indictment

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[2] For example, the denominations of the sea zones included in the scope of the Law: "the neighbouring zone" is in fact the "contiguous zone" defined, together with its legal regime, by the 1982 UN Convention on the Law of the Sea - UNCLOS (and not the "UN Convention on Maritime Law", as it is denominated in the Law); the "special economic zone" is in fact the "exclusive economic zone" (EEZ) and the "continental trail" is in fact "the continental shelf" (both terms and their legal regime being also defined by UNCLOS).

[3] Article 322[1] - 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 violance or posing a threat of violance;

d) by person convicted for such crime –

is punishable by imprisonment from three to five years.

[4] Article 344 - Illegal Crossing of the Border of Georgia

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;

is very broad. There are no exceptions for emergency situations. The entry in the country is punished whatever the intention of the person; it also applies to persons providing necessary humanitarian aid. In this respect, this provision may be in contradiction with the Georgian international engagements, for example the obligations assumed through the 1951 Refugee Convention, that prohibits the Contracting States to "*impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.*" It is not an impossible scenario to imagine asylum seekers from neighbouring countries entering the Georgian territory from another side.

18. The following aspects have to be taken into account in this respect:

- If Russia is considered to be an "occupying power" it is obliged by international law to provide aid and shelter (cf. e.g. Article 55, 56, 59 of the IV Geneva Convention) and must not be hindered in fulfilling this duty.
- If the law is applied to people living in South Ossetia and Abkhazia, it might deteriorate their humanitarian situation and cause unnecessary hardship.
- If the law is applied to the personnel of international organisations, it must be assured that the provision of humanitarian aid is not rendered more difficult. Otherwise it might be at odds with Georgia's obligations on the basis of the Security Council Resolutions and also the resolutions of the Parliamentary Assembly of the Council of Europe.[5]

19. Secondly, the provision refers to a "normative document of the Georgian Government" regulating special permissions. It is not known if such a document already exists. In any case, in order to enhance transparency it would be preferable to define any such rules on the basis of the law itself and not on the basis of an act of the executive.

20. It might also be mentioned that the text of the law is not clear. On the one hand, Article 4 para. 1 restricts the access to the Abkhazia and South Ossetia only in regard to the entry chosen. On the other hand, Article 4 para. 3 mentions "a special permission to enter the Occupied Territories". This wording suggests that the entry to Abkhazia and South Ossetia always requires a special permission, and not only the entry from another side than the one accepted in Article 4 para. 1.

C. Limitations of transactions of real estate property rights

21. According to Article 5 of the Law, any transaction related to real estate property concluded in violation of Georgian law is deemed to be null and void. Furthermore, the right to inheritance of real property is restricted.

22. According to The Laws and Customs of War on Land, which constitutes a reflection of international customary law, private property cannot be confiscated (Article 46). Furthermore, the already mentioned Article 43 of the Hague Laws and Customs of War on Land stipulates that the occupying power has to respect the law in force in the country. Therefore, according to international law it can be required that transactions of real property observe the formal and material preconditions defined in Georgian law. This is all the more true as the return of the

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b) applying to violence or posing a threat of violance;

is punishable by imprisonment from four to five years

[5] See also the Council of Europe's Commissioner for Human Rights' report of 16 December 2008 (Comm DH(2008) 37), paras. 73-77.

fugitives must not be rendered impossible or made more difficult – this would be the case if their property could be transferred to third persons on the basis of new regulations not compatible with Georgian law.

23. A more detailed commentary on this point is not possible as the relevant provisions in Georgian real property law are not known. Therefore it cannot be evaluated if they set any insurmountable barriers to the transfer of property that might be in contradiction to Article 1 of the First Protocol to the ECHR and the principle of proportionality.

24. As the provisions are applied retroactively to transactions that took place during the period between the early 1990s and the entry into force of the law (Article 11 para. 2) there might be problems with the guarantees enshrined in Article 1 of the First Protocol to the ECHR. For example, the second paragraph prescribes that real estate can be inherited only by way of succession ab intestato or by will if the beneficiary is one of the legal successors. It is true that the right to heritage is not recognized as such by the ECHR, as this instrument only protects the present right over a certain property. However, succession is a way of acceding to property that will benefit of the guarantees of the rights to peaceful enjoyment of possessions. If a person acquired a property on the basis of an act, including acts mortis causa, at a time when the law permitted such an acquisition, the annulment of the acquisition act after a long period of time and without any compensation may represent a violation of the right to peaceful enjoyment of one's possessions. It is to be noted that:

- any legal act, after the passing of the period when one could dispute its validity, enters the civil circuit and generates new legal effects; its annulment is likely to affect the legal certainty;
- in its case-law[6], the ECtHR recognized the possibility for a State to demand the reassignment of a property without compensation from the heirs of the owners, if exceptional circumstances justify such a measure. But in its conclusions on non-violation of the right to peaceful enjoyment of possessions, the ECtHR put great emphasis on the short period of time elapsed between the acquisition moment and the reassignment of property and on the specific context, of a transition to democracy and the need for social justice. In the present case, the effects of the law go back in time and could affect acts concluded several years ago (the situation in the occupied territories is not a recent one, so a "contemporary" reaction of this kind of the Georgian Government might be considered as excessive).

25. For transactions in this period it might therefore be necessary to find regulations balancing the interests of the old and the potential new owners, in order not to violate Article 1 of the First Protocol to the ECHR.[7]

D. Limitations of economic activities

26. Article 6 of the Law prohibits a large range of economic activities. It provides that all economic activity carried out in the territories which under the Georgian legislation requires a licence, permit or authorization is declared to be a criminal offence if such a licence has not been granted. If for example a mobile telephone service provider wants to provide service in

[6] See ECtHR, Jahn and others v. Germany [GC], 30 June 2005.

[7] See ECtHR, Kopecký v. Slovakia judgment of 28.09.2004, 35-61; Brumărescu v. Romania (Application no. 28342/95), Judgment, 28.10.1999, 66-80; Jahn and Others v. Germany (applications nos. 46720/99, 72203/01 and 72552/01), Judgment, 30.06.2005, 77-117; Pincová and Pinc v. The Czech Republic (Application no. 36548/97), Judgment, 5.11.2002, 42-64; Zvolský and Zvolská v. The Czech Republic (Application no. 46129/99), Judgment, 12.11.2002, 56-74.

either of the two occupied territories, if it obtains a licence from the *de facto* authorities there but does not obtain a licence from Georgia, it will commit an offence under Georgian law.

27. The Commission does not have information as to how extensive a list of economic activities does require such permission. As the Georgian legislator is not restricted in requiring permits, theoretically even economic activities necessary for the survival of the population can be included in the regulation. The other restrictions contained in Articles 6 para. 1 b) to f) are worded in a very broad way as well. "Organisation of cash transfer" as well as "use of national resources" can also be applied to almost every economic activity.

28. Article 6 appears to introduce, at least apparently, a certain contradictory approach, if paragraphs 1a) and 2 are read together. Paragraph 1a) reads that "any economic activity" is prohibited "*if under the Georgian legislation a license, permit, authorization, registration or agreement is required for the implementation of such economic activity but it has not been granted*". This is correct per se. But paragraph 2 sets forth that "*implementation of activities stipulated in Article 1 of this Clause shall be allowed only in exceptional cases, based on a special permission granted in compliance with the rules stipulated in the relevant normative document of the Georgian Government*". These two provisions, read together, give the impression that any economic activities on the occupied territories are in fact not subject to regular/ordinary authorizations provided by the Georgian legislation for any business, but to the special permission provided in paragraph 2, which seems to be excessive. The prohibition of paragraph 1 b) of Article 6 ("Import and/or export of military products or products that have double designation") may be justified, as well as the prohibition of paragraph 1 d) ("Use of national resources").

29. The effects of the prohibition set forth in paragraph 1 c) of Article 6 ("International air traffic, maritime traffic and railway traffic, also international automobile transportation of cargo") amount in fact to an economic embargo or blockade. These provisions also affect the freedom of navigation and overflight of third States' flag ships and aircrafts.

30. In this respect, as far as the navigation and overflight are concerned, the EEZ enjoys the same regime as the high sea, namely all States have the freedom of navigation and overflight. As a consequence, the coastal State must respect the exercise of these freedoms and must not regulate the activities in its EEZ in a manner that is inconsistent with the relevant international law of the sea. However, the interests and rights of the coastal State may justify some exceptions and limitations to the exercise of the freedom of navigation and overflight.

31. Regarding the exceptions, the coastal State may close the access of third States' flag ships in certain areas, as long as these areas are clearly defined and the interdiction is temporary. Such areas may be major fishing grounds, marine protected areas, areas in which the coastal State tests weapons or carries on weapons exercises. As far as the limitations are concerned, the coastal State has the right to regulate the navigation of ships carrying dangerous or noxious substances; in their transit the third States' flag ships must respect the peace, order and security of the coastal State and must not interfere with the protection of the latter's environment.

32. The "blanket" prohibition in Article 6 § 1 c) of the Law is likely to come against the legal regime of navigation and overflight in the Exclusive Economic Zone.

33. The regulation on criminal responsibility in Article 6 para. 3 is incomplete as there is no concrete legal provision fixing criminal responsibility. The same applies to the legal sanctions against "persons directly or indirectly participating in the capital and/or influencing decisions of entities involved in activities listed." The regulation is not compatible with the principle nulla poena sine lege. According to the jurisprudence of the European Court of Human Rights all criminal sanctions must be "fixed by law", i.e. fixed in advance in a clear and understandable

manner. According to the case-law of ECtHR (Dragotoniu and Militaru-Pidhorni v. Romania, 2007, para. 33), extending the scope of application of a crime to persons assimilated (by analogy, for instance) to the active subjects defined by the criminal law is excessive.

34. More in general, it must be underlined that humanitarian aid is not excluded from the economic activities which under Article 6 of the Law require licenses, permissions or similar, as the law explicitly refers to "*any economic activity (entrepreneurial or non entrepreneurial), regardless whether or not it is implemented for receiving profit, income or compensation*". The clause on the prohibition of "international automobile transportation of cargo" might for example be applied to humanitarian aid. A restriction and criminalisation of economic activities necessary for the survival of the population in occupied areas as well as a (potential) restriction and criminalisation of humanitarian aid is contrary to the rule of customary international law that the well-being of the population in occupied areas has to be a basic concern of those involved in a conflict (cf. the preamble to the Hague Convention). It is the underlying idea of the IV Geneva Convention as well.[8]

35. In addition, it is important that any kind of sanction avoid producing negative effects upon the civil population, which is already affected by the conflict. So far as concerns supporters of the breakaway regimes, this regime may not in practice make any difference. However, it may create difficulties for ethnic Georgians in the occupied territories in the future. It seems at the very least likely to present an obstacle to the return of refugees and internally displaced persons. It may be noted that Security Council Resolution S/RES/1808 of 15 April 2008 provides in its last paragraph of the preamble that "*economic development is urgently required in Abkhazia, Georgia*".

E. Protection of Human Rights and Cultural Monuments

36. Article 7 of the "Law on the occupied territories of Georgia" explicitly fixes the responsibility of the Russian Federation for human rights violations, moral and material damage and the destruction of cultural heritage in Abkhazia and South Ossetia. As a rule, questions of international responsibility cannot be regulated on the basis of national law, but are solved on the basis of international law.

37. Concerning human rights violations, according to the jurisprudence of the European Court of Human Rights, an extraterritorial application of the ECHR is possible if the State exerts "effective overall control" over a certain territory.[9] This seems to be the case for the Russian Federation both in Abkhazia and in South Ossetia. But it has also to be realised that the responsibility of the occupying power based on the extraterritorial application of human rights conventions does not completely exonerate the other State from any responsibility.[10] It may be noted for example that the whole Law is an indication of Georgia's concern for the said territory, and taking into account the case-law of the ECtHR (Ilascu and others v. Russian Federation and the Republic of Moldova), the intention of the State to regulate the legal relations within the occupied territory may represent an indication of its responsibility for the respective territory .

[8] On the duties of the occupying powers, see also the Advisory Opinion of the ICJ on the legal consequences of the construction of a wall in the occupied Palestine Territory, 9 July 2004, para. 124 et seq.

[9] See ECtHR, Loizidou v. Turkey judgment of 23.03.1995, § 62; Ilascu and others v. Russian Federation and the Republic of Moldova judgment of 8 July 2004, paras. 382-385. See also the 2008 Venice Commission Report on the Democratic Control of the Armed Forces (CDL-AD (2008)004, paras. 305-306; 314).

[10] See the explanations in Ilaşcu and Others v. Moldova and Russia judgment, op.cit., para. 322 et seq. on the responsibility of Moldova.

38. The reimbursement of "moral and material damages inflicted on the Occupied Territories" regulated in Article 7 para. 3 will also have to be fixed on the basis of international law. Georgian courts would not be competent to adjudicate on claims against the Russian Federation according to the principles of State immunity.

39. The Hague Customs of War and Land stipulate that "the property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings." Legal responsibility is not explicitly regulated; it is part of international customary law; the ILC draft articles on State responsibility provide some guidance. The regulation of Article 7 para. 4 on cultural monuments contained in the Georgian law constitutes a repetition of the international regulations applicable, but goes even one step further. It stipulates that the Russian Federation is not only responsible for the destruction of cultural heritage, but also responsible for the protection. This aspect can be relevant, if, for example, Georgian cultural heritage is destroyed by South Ossetian militia. In this context difficult questions of the attributability of wrong-doings will arise. The relevant questions will have to be solved on the basis of international law[11] and not on the basis of the national law of one of the parties involved.

F. Stipulation on "illegal authorities"

40. A State has the right within its territory to determine who has the power to exert authority; this is an evident attribute of sovereignty. In (illegally) occupied territories this power exists de iure, but not de facto. De facto the authorities of South Ossetia and Abkhazia exert State authority.

41. The regulation in Article 8 touches upon the recognition of the acts of the non-recognized States or de facto regimes South Ossetia and Abkhazia by Georgia. According to this provision, not only are the authorities of the non-recognized States considered to be illegal, but also any act they issue "shall be deemed invalid and shall not lead to any legal consequences"; for example, the recognition of these acts can be refusd on the basis of considerations of *ordre publique*.

42. Generally speaking, each State is free to recognize or not to recognize acts of State issued by other States. On the basis of international customary law there is no obligation to recognize such acts. Nevertheless, this freedom ends where basic human rights would be violated. If Georgia refuses to accept e.g. basic documents concerning the personal status such as birth or death certificates, that would violate Article 8 of the ECHR. It is therefore to be welcomed that special regulations have been adopted concerning degrees of general and higher education. According to the report of the Georgian authorities, birth and death certificates are also acknowledged through a simplified procedure.

43. It is to be expected that practical problems arising in this regard will be solved in a pragmatic way. Nevertheless, it might be helpful to insert a clarifying provision into the text of the law.

G. Obligations of the Georgian Government

[11] See, on the question of State responsibility, due diligence, and the "obligation to protect", the Decision of the International Court of Justice in the case Bosnia-Herzegovina v. Serbia and Montenegro, 26 February 2007, para. 430.

44. According to Article 9 of the Law, the Government of Georgia shall use all mechanisms provided for in Georgian and international law in order to protect the lawful interests and safety of Georgia. Furthermore, the Government shall conclude bilateral agreements in order to ensure that other States use sanctions against persons violating the provisions of the Law.

45. Both provisions are to be understood more as political tasks than as normative regulations. The Parliament as legislative body relies on its competence in foreign policy (Article 48 of the Constitution); according to Article 78 of the Constitution the Government has to act in accordance with the legislation. But the “advices” given are rather vague. Neither is it clear to what “mechanisms” the law refers to nor with which States bilateral agreement should be concluded.

H. Retroactive application of the law

46. The retroactive application of provisions fixing criminal liability is neither compatible with Georgian constitutional law (Article 42 para. 5) nor with international human rights standards (Article 7 ECHR, Article 15 ICCPR).

I. Legal force of the law

47. According to para. 3 of Article 11, "*the legal regime stipulated in this law shall be effective on the occupied territories until full restoration of the jurisdiction of Georgia*".

48. The Commission would consider appropriate not to provide for a full and rigid application of the whole regime set out in this Law "until full restoration of the jurisdiction of Georgia", but rather to give the regime a transitory character by replacing para. 3 with a formula such as "the legal regime stipulated in this law shall be reviewed periodically, notably when the circumstances pertaining to the occupied territories change". This would make it possible to adjust the provisions of the law to the progress in the settlement of the conflict which, in time, will hopefully be made.

V. Conclusions

49. The Venice Commission finds that the Law on occupied territories of Georgia raises certain issues which need to be addressed by the Georgian authorities by way of priority. In particular:

- the criminalisation of irregular entry into the occupied territories with no exclusion of humanitarian aid and no exception for emergency situations, the restriction and criminalisation of economic activities necessary for the survival of the population in occupied areas as well as a (potential) restriction and criminalisation of humanitarian aid is contrary to the rule of customary international law that the well-being of the population in occupied areas has to be a basic concern of those involved in a conflict and to Security Council Resolution 1866(2009);
- the blanket limitation of freedom of navigation and overflight of third States' flag ships and aircrafts may be against the legal regime of navigation and overflight in the Exclusive Economic Zone;
- the criminalisation of irregular economic activities is too vague, and does not respect the principle of legality; at any rate, sanctions should not be applied to "related persons";
- the retrospective application of the criminalisation of irregular economic activities is in breach of the prohibition to create retrospective offences (nullum crimen sine lege);
- the retrospective annulment of real estate transactions may raise issues under Article 1 of Protocol No. 1;
- the questions of the international responsibility of the Russian Federation cannot be regulated on the basis of national law, but on the basis of international law;
- the recognition in Georgia of certificates and similar documents issued by the authorities of the occupied territories through simplified procedures should be guaranteed through an explicit provision in this law;
- the regime provided by this law should only have a transitory nature, and be subject to periodical review in order to take into account the progress in the settlement of the conflict which will hopefully be achieved over time.