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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

OPINION

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

OF THE REPUBLIC OF GEORGIA

Adopted by the Venice Commission
at its 60th Plenary Session,
(Venice, 8-9 October 2004)

On the basis of comments by
Mr Pieter VAN DIJK (Member, The Netherlands)
Mr Peter PACZOLAY (Substitute Member, Hungary)

I. Introduction

1. By a letter of 3 August, the Minister of Justice of Georgia, Mr Giorgi Papuashvili, requested the Venice Commission to prepare an opinion on the draft law on Restitution of Housing and Property to the Victims of the Georgian-Ossetian Conflict (CDL(2004)088).

2. The Commission appointed Mr Pieter Van Dijk, member, and Mr Peter Paczolay, subsitute member, to act as rapporteurs.

3. The present opinion[1] was drawn up on the basis of their comments and was adopted by the Commission at its 60th Plenary Session (Venice,8-9 October 2004).

II. Background

4. Before the breaking up of the Soviet Union, there lived 164,000 Ossetians in Georgia out of a population of approximately 5 million (3,3 %). Only two-fifths of this population lived in South Ossetia, an Autonomous Territory, whose capital is Tskhinvali. Due to the Georgian-South Ossetian conflict in 1990-1992, 53,000 persons left their homes, 39,000 of which fled to North Ossetia–Alania, which forms part of the Russian Federation. In the terminology of the draft law they are called *refugees*. 3000 ethnic Ossetians moved to South Ossetia from Georgia proper, while 11 thousand ethnic Georgians left South Ossetia to Georgia proper. They are the so-called *internally displaced persons* (IDP) who were displaced within the territory of Georgia. In the light of the above figures, some 10-15,000 property claims might be expected in connection with this conflict.

5. The political problem which caused the war has not been solved yet, although the peace-building process for years seemed to be promisingly progressing. In the summer of 2004 tensions grew again, and led even to military conflict though the crisis talks – with Russian mediation - ended with a peace accord.

6. In order to understand the complexity of the situation from the legal point of view, one should note that in the former Soviet Union most apartments were in State property. Residents lived in State-owned flats assigned to them under an administrative procedure by the local executive committee. In case the title-holder (the tenant) was absent for more than six months "without a valid reason", under Article 69 of the Housing Code of Georgia of 1983, a partly administrative, partly judicial procedure existed to examine whether the absence was valid or not. Based on a report from the local authority, a Court would, if need be, order that the title be withdrawn from the absent person and the flat be returned to the common housing fund. The law stipulated eight "valid" grounds for absence (such as military service, work obligations, compulsory medical treatment, etc). During the Georgian-Ossetian conflict, people who fled their homes and became refugees and IDPs were considered to be absent without a valid reason, with the consequence that their flats were at first allocated to others and subsequently privatised. The Georgian Housing Code was

[1] *Previous attempts were made in Georgia at preparing a law addressing this matter. International experts were consulted in those contexts. The present opinion takes into consideration a report prepared in 1998 by Mr Scott Leckie? UNHCR consultant (Scott Leckie, Housing and Property Restitution Issues in the Context of Return to and within Georgia: An International Perspective (1998); a report of Mr Ivan Koedjikov, political advisor of the Council of Europe (1998) and a legal assessment of the previous draft legislation, drawn up by Mr Marcus Cox in 2000 at the request of OSCE/OHDIR and the Council of Europe.*

partially replaced by certain provisions of the Civil Code. In some cases, "late" returnees in the late 90es tried to appeal before the courts against the decisions whereby their title over the flats had been withdrawn. However, their claims were rejected under the six-month rule. The courts routinely refused to consider the Georgian-South Ossetian conflict as having been a valid reason to abandon one's home.[2]

III. Previous attempts aimed at solving the problem of return of refugees and IDPs

7. In order to encourage the voluntary return of Ossetian and Georgian refugees to their original homes Georgian President Eduard Shevardnadze and Ossetian leader Chibirov declared 1998 to be the "Year of Return".

8. In February 1997, the first Georgian-Ossetian document on the *Procedure of Return of Refugees and IDPs Displaced as a Result of the Georgian-Ossetian Conflict to Their Places of Former Permanent Residence* was adopted. According to the available source materials this document provided the right of voluntary return to places of former permanent residence, offered security guarantees (except for war criminals), and aimed at the restoration of property rights for those who were deprived of their property during the conflict. This procedure presupposed the voluntary departure from refugee and IDP homes later occupied by secondary occupants who were refugees or IDPs themselves. The procedure did not address what to do in the event that a permanent residence of a refugee or IDP remained occupied.

9. The UNHCR report pointed out that "these and other procedures are non-legal, and like most activity to date on this question, remain essentially political in nature. While important in generating confidence and good will, these procedures have only induced small scale, sporadic and reciprocal returns, which - while important - do not seem capable of forming the basis for a comprehensive solution of these problems."[3]

10. The UNHCR report, supported by OSCE/ODIHR and the Council of Europe; recommended *inter alia*:
- the adoption of a new law on Housing and Property Restitution;
- the establishment of a Housing and Property Claims Commission, to guarantee the right to effective remedy for all persons and to enforce the new law.

11. Different versions of the original draft law were subsequently circulated. The present draft law seems to be inspired by that draft.

IV. International and European standards: return and housing

12. The right to return to one's home is a well-established international principle, recognized in several documents. They come to the forefront especially in peace agreements, and whenever reconciliation is sought. In addition to the *Universal Declaration on Human Rights* (Article 13), the *United Nations International Covenant on Civil and Political Rights* (Article 12) recognizes the right to return to one's own country and the right of freedom to choose

2 *Leckie p. 7.*

3Leckie, p. 5.

one's residence. Various agreements go even further and accept the right to return *to one's original home*[4].

13. In particular, UN General Assembly Resolution No. 35/124 acknowledged "the right of refugees to return to their homes in their homelands". The Security Council in respect of Georgia recognized "the right of refugees and displaced persons to return to their homes" (Resolution 876 of 19 October 1993 on "The Situation in Abkhazia"). "General Recommendation XXII with regard to refugees and displaced persons", adopted by the UN Committee on the Elimination of Racial Discrimination on 16 August 1996, requires States to prohibit and eliminate racial discrimination and emphasizes that all such refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety, that States are obliged to ensure that their return is voluntary, and that the displaced have, upon return, the right to restoration of property or adequate compensation when this is not possible.[5]

14. International human rights law recognizes various manifestations of housing rights. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) was defined first and has remained the primary international legal source of the right to adequate housing:

> *"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent."*

15. Under Article 17 of the Covenant on Civil and Political Rights *"no one shall be subjected to arbitrary or unlawful interference with his home"*, and *"everyone has the rights to the protection of the law against such interference or attacks"*.

16. The Covenants were ratified by Georgia on 3 August 1994.

17. As for the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Georgia acceded to the Council of Europe on 27 April 1999, and the ECHR entered into force in Gerogia on 20 May 1999. The Convention does not impose any obligation on the Georgian State to remedy injustices which occurred before the Convention entered into force, because of the doctrine of *rationae temporis*. However, the Georgian government, among others inspired by the above mentioned international obligations, decided to begin a process of restitution. The case being this, the principles laid down in the Convention have to be observed.

18. If the restitution process interferes with the property rights of third parties (as would likely be the case with number of current occupants of the relevant housing units), it must comply with Article 1 of the First Protocol (*peaceful enjoyment of possessions)*.

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[4] Like the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement), Annex 7

5 Further examples are quoted by Leckie p. 11.

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

19. The restitution process has also to comply with Article 8 of the Convention, which stipulates the right to *respect for one's home*:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

20. In addition, such process must comply with Article 2 para. 1 of Protocol No. 4, which provides as follows:

"Everyone shall be free to leave any country, including its own".

21. We should note that the Strasbourg case law on property rights under Article 1 of the First Protocol has developed in the context of private property in stable societies and market economies. It is an open question and not predictable how the Court would adjudicate restitution and property cases connected to dislocation of vast population due to military conflicts. In cases related to the implementation of restitution laws in Central Europe, the European Commission of Human Rights (not the Court) upheld court rulings in favour of the original owner against a secondary owner. It is arguable that the original entitlement to the residence would be considered as a "possession".[6]

22. The application of the right to property in Article 1 of Protocol No. 1 is not restricted to interferences with property which involve the transfer of some benefit to the State. This article is also applicable to measures introduced by the State (or other public authority) which affect an individual's property rights by transferring them to, or otherwise benefiting, another individual or individuals, or which otherwise regulate the property of an individual.[7]

23. To the extent that property rights are at stake in a restitution process, any interference with the individual rights may be justified only if, at the outset, it meets requirements of serving a legitimate public interest objective. Pursuing the return of refugees and IDPs may be regarded as a legitimate interest.

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[6] *In case No. CH/96/28 "M.J" against Republika Srpska the Human Rights Chamber for Bosnia and Herzegovina has decided that "occupancy right… constitutes a "possession" within the meaning of Article 1 of Protocol 1 to the ECHR". In the case of Blecic v. Croatia, the European Court of Human Rights left the issue of applicability of Article 1 of Protocol No. 1 unanswered (see Blecic v. Croatia 29/07/04).*

[7] *James v. UK case*

24. But for an interference with property to be permissible, there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.[8] A fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's human rights, the search for such a balance being inherent in the whole of the Convention.[9]

25. The principle of proportionality is a crucial one when it comes to balancing competing rights with regard to property, and in any particular case, the requisite fair balance had to be struck. The fair balance is not struck if any party has to bear "an individual and excessive burden"[10]. This has ultimately to be taken into consideration in the relation of those claiming the rights to their original residence and the rights of the factual residents. The striking of a fair balance depends on many factors, and it is of vital importance that the applicable procedures are such to enable that all relevant factors are taken into due consideration.

26. Although Article 1 of Protocol No. 1 does not expressly require the payment of compensation for a taking of, or other interference with property, in the case of a taking (or deprivation) of property, compensation is generally implicitly required. It follows from, for example, the Court's judgment in James v. the United Kingdom[11], where the Court observed that: *...under the legal systems of the Contracting States, the taking of property in the public interest without payment of compensation is treated as justifiable only in exceptional circumstances not relevant for present purposes. As far as Article 1 [of Protocol No. 1] is concerned, the protection of the right to property it affords would be largely illusory and ineffective in the absence of any equivalent principle. Clearly, compensation terms are material to the assessment whether the contested legislation respects a fair balance between the various interests at stake and, notably, whether it does not impose a disproportionate burden on the applicant….* The Court also set the standards in respect of amount of the compensation to be provided, stating that … *the taking of property without an amount reasonably related to its value would normally constitute a disproportionate interference which could not be considered justifiable under Article 1. Article 1 does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of "public interest", such as pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value.*[12]

27. Finally, an interference with the right to property must also satisfy the requirement of legal certainty, or legality[13], which is inherent in the Convention as a whole. This is expressly stated in the second sentence of the first paragraph of Article 1, in relation to a deprivation of property: a taking must be "subject to the conditions provided for by law". In order to satisfy the principle of legal certainty, the State (or public authority) must comply

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[8] *Scollo v. Italy, para 32*

[9] *Sporrong and Lönnroth v. Sweden, A52, paras 69 and 73; Tre Traktorer Aktiebolag v. Sweden, A159, para 59; Hentrich v. France, A296-A, paras 45-49; Holy Monasteries v. Greece, A301-A, para 70; Air Canada v. UK, A316-A para 29*

10 Sporrong and Lönnroth v. Sweden., p. 28, para. 73.

[11] *A98, para 54*

[12] *Lithgow v. the United Kingdom, A98, para 121*

[13] *As above, para 18*

with adequately accessible and sufficiently precise domestic legal provisions, which satisfy the essential requirements of the concept of "law". This means not only that the interference in question must be based on some provision of domestic law, but that there must be a fair and proper procedure, and that the relevant measure must issue from and be executed by an appropriate authority, and should not be arbitrary.[14]

28. Similarly, the interference with one's right to respect for home has to satisfy the criteria established by Article 8 of the Convention: it must be in accordance with law, in pursuance of a legitimate aim, and necessary in a democratic society. Here again, a fair balance must be struck between the competing interests.

V. Preliminary Remark

29. The Commission notes that through the draft law under consideration, the Georgian authorities address some important problems caused by the Georgian-Ossetian conflict.

30. The Commission considers that it is important that the Georgian authorities also address the similar issues raised by the Abkhazian conflict.

VI. General remarks

31. The Commission observes at the outset that there is a sharp contrast between the conciseness of the provisions relating to the substance of the rights and entitlements, and the detailed character of the procedural rules concerning the Commission on Housing and Property Issues.

32. The draft Law establishes the Commission on Housing and Property Issues (Article 6 para 1 of the draft Law) but provides no guidance for its decisions. Indeed, crucial substantial rules are missing: the draft Law is silent on the possibly competing nature of the interests of returnees and factual residents, and it does not specify important matters such as the conditions for reinstating a refugee or IDP to his original residence; the deadlines for leaving the residence and its restitution to the original resident; the manner in which the rights of the factual residents are protected; under which conditions they can be evicted; the conditions upon which factual resident can receive a new accommodation and/or compensation.

33. The Commission is to decide on the applications "in consistence with the requirements prescribed by the Law", and to implement competences envisaged by the national legislation (Article 6 para 1).

34. There are no specifications of these legal regulations, and, given the only very general provisions concerning the Commission's competence prescribed by the draft Law (Article 10), the impression is that, primarily, the competencies of the Commission and the modalities of the right to return, will be set in the Regulations. But the latter are also left for the Commission to adopt, and in the absence of any guidelines set out in the draft law.

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[14] *As above, para 110; Winterwerp v. the Netherlands, A33, paras 45 and 39; Spacek v. the Czech Republic (9/11/99, para 54), where the Court observed that when speaking of "law", Article 1 of Protocol 1 alludes to the same concept to be found elsewhere in the Convention, a concept which comprises statutory law as well as case-law. It implies qualitative requirements, notably those of accessibility and foreseeability*

35. Considering the essential importance of the Commission's competence with regard to the right to return, this matter should be regulated by the Law itself, while the procedural and practical details may be left to delegated legislation. Such a solution would also eliminate an unwarranted situation where the same body (the Commission) is entitled both to pass the material regulations and to implement them, and would improve the quality of the Law in terms of its foreseeability (the draft Law does not envisage publishing the Regulations of the Commission).

VII. Analysis of the Draft Law

Title and Article 1

36. Article 1 of the draft Law, dealing with the purpose of the Law, provides that the present Law regulates the matters of restitution of housing and other *immovable* property. The Title of the draft Law, however, speaks of "restitution of housing and property", without the restriction to immovable property. It is clear that the text of the Law is determinant for its scope, but it is advisable to also clearly express the scope of the Law in its Title. Also, in the first paragraph of Article 6 of the draft Law, which deals with the institution of the Commission for Housing and Property Issues, there is a reference to "application on the matters of residence and property", without the restriction to immovable property. The restriction is also not taken into account in the name of the Commission.

37. In the Venice Commission's opinion, it would be appropriate to add the definition of "property" in Article 2 of the draft, clarifying that for the purposes of the present Law "property" means "immovable property". The definition of "other immovable property" should then also be adapted.

38. This being said, the Venice Commission does not find it self-evident that the scope of the Law will be restricted to housing, land and other immovable property. First of all, the distinction between immovable and movable property is not always clear. The criterion contained in the definition of Article 2, that it must be land or property "firmly fixed on it" is legally not sufficiently determinative. Secondly, the entitlement to restitution of movable property may be as important in view of its emotional and/or financial value.

39. The Venice Commission considers that it would be appropriate to define the scope of the Law more clearly, and to give a clearer definition of "immovable property" with reference to a definition under Georgian civil law, if there is any such definition. Also, it is recommended to reconsider the inclusion of movable properties of significant financial value. The third paragraph of Article 3, should use the term "right to residence" as defined in Article 2, and not the term "residual rights".

Article 2

40. While it is possible that the applicable national legislation has a clear provision on it, it is, at the outset, advisable to include family household members of the original holders of the residual rights in the definitions contained in Article 2 of the draft Law.

41. In Article 2 (e) of the draft Law the "right to residence" is defined as the "right to use or to own an original residence". It is not clear from this provision whether it is meant to also protect the rights of those persons who owned an original residence but had not used it as

their home. It could be argued that these persons are to be considered as "other persons with lawful interests with regard to the residence". However, from the definition of Article 2 and from the third paragraph of Article 3 of the draft Law it appears that "other persons" are meant to be persons who are not refugees or internally displaced persons. Moreover, Article 3 of the draft Law only refers to residents and not to non-residents. If the draft Law is not intended to also give a right of application to owners of an original residence who did not reside there, while such a right is granted to the owners of land or other immovable property, this would not seem to be justifiable.

Article 3

42. Article 3, in the first paragraph, indicates that the application to the Commission may concern return to the original residence and other immovable property, or provision of adequate residence or compensation. When it comes to balancing between the interests of the original user and the present user of a residence, the Commission will have to make a choice between restoration and compensation. That would be even more pertinent, however, in the case of balancing between the interests of the owner non-resident and the factual resident; in that case the outcome might be that the ownership is restored but not the right of residence, with possible additional compensation.

43. The first paragraph of Article 3 of the draft Law is not very clear in its reference to "residents who cannot return to their original residence because of security reasons" and who "are entitled to apply to the Commission for return of the original residence". It is unclear in what way, and to what extent, may the decision of the Commission remedy any security problem. This issue also relates to that of the enforcement of the decisions of the Commission, dealt with in the comments on Article 15.

44. Article 3, paragraph 2 of the draft Law does not specify whether the factual resident who apply to the Commission, has to be a *bona fide* resident in order to be entitled to compensation. Such a requirement should be included in the Law, instead of leaving the Commission to form its rules on the issue.

45. Article 3, paragraph 3 of the draft Law is formulated in a general way and recognises the right to complain before the Commission against decisions which terminated residual rights on the ground of Article 69 of the Housing Code of Georgia of 1983.. It is necessary to clarify whether the right to "complain" means in fact the right to "appeal", in particular whether the expression "decisions adopted on the ground of Article 69 of the Housing Code of Georgia of 1983" also includes court decisions which constitute *res iudicata.* While the recognition of the unjust impact of an excessively strict application of Article 69 is to be welcomed, it should be noted that, if it were envisaged that the Commission thourgh its own regulations could give itself the power to overrule or amend final decisions of the courts (even just those considered unjust or erroneous by the Commission), this would raise an issue in respect of the principle of subordination within the legal norms, i.e. a sub-law would outpower the law.

46. It seems also appropriate to clarify whether the "loss of residual rights …during or after the conflict" is meant to be restricted to losses *caused* by the conflict.

Article 4

47. Article 4 of the draft Law recognises the right of all refugees and internally displaced to return to their original residence. It is not clear how this general recognition relates to the fact that the first paragraph of Article 3 implies compensation as an alternative to restoration. It is unclear whether this means that the choice is to the refugees and internally displaced, or whether it is up to the Commission to make a choice on the basis of a balancing of the interests of the original resident and those of the factual resident.

Article 5

48. Article 5 recognises the right to an adequate, safe and accessible residence. The meaning of the word "safe" in this context is not clear, especially not if related to the competence of the Commission to decide on the return of the original residence or the allocation of another adequate residence. It is not clear in what way the Commission can assess, let alone guarantee the safety of that residence.

Article 6

49. As indicated before, the reference to "property" should be to "immovable property", in conformity with Article 1 if that restriction will be retained, while the reference to "the requirements prescribed by law" and to "competences envisaged by the national legislation" should be clarified.

50. In the second paragraph it should be specified how and by whom the appointment of the three members on the Ossetian side will take place.

51. In the third paragraph it should be clarified whether "2/3 of the votes" means "2/3 of the votes cast" or "2/3 of the members of the Commission".

52. The term of the Commission is three years, as envisaged by the fourth paragraph. It is not clear whether it would function only for three years, and has to finish its work during this time, or another Commission is to be elected afterwards.

Article 7

53. The words "punishable under the law" is not sufficiently precise. Especially it is not clear what sanction may be imposed and by whom, and whether that will be an administrative sanction or a criminal sanction. The *nulla poena, nulla crimen* principle of Article 7 of the Convention is here applicable.

54. While due regard is paid to the independence of the Commission and safeguards against interference with its operations, there is, on the other hand, no prescribed obligation on the part of the Commission to report on its work to any authority of Georgia (annually or in shorter intervals), and to make its work transparent to the public.

Article 8

55. Article 8 does not make it clear what, as a consequence of the second paragraph, will be the working language of the Commission, and what, in view of the second paragraph, is the purpose of the language requirement of the Georgian members. The exception in the fourth paragraph of scientific activities is, at least in the English translation, ambiguous, since "scientific" normally does not include the humanities. The word should rather be the equivalent of "scholarly and scientific".

Article 9

56. The competence of the Commission to decide on pre-term termination cannot relate to the ground of termination mentioned in paragraph 2, under g): decease. As far as the ground under a) is concerned, a member should normally be free to submit his or her resignation without any need for approval by the other members.

57. The ground of termination mentioned in paragraph 2, under e) can relate only to the members of the Commission appointed by the President of Georgia.

58. The judgment referred to in paragraph 2 under f) needs further specification. It cannot be the intention that every judgment, also those in minor civil and criminal cases, constitutes a ground for termination.

Article 10

59. The voting procedure of the second paragraph is not clear. It should be clarified what does "two-third majority of the full composition" mean, in other words: if the Commission meets with its minimum quorum of 6 members, does the requirement of two-third of the full composition mean 6 votes or 4 votes ?

60. The reference in the third paragraph to "the rule provided by law" is not clear, while "property" under a) should read "immovable property" and the words "related to the Georgian-Ossetian conflict" should be added.

61. While Article 10 para 3(b) of the draft Law prescribes that the decisions of the Commission are obligatory for enforcement within the whole of Georgia, Article 10 para 4 provides that these decisions could be appealed before a Regional Court of Georgia in accordance with Georgian legislation (by whom ? within what time-limits?) These provisions create uncertainty as to whether an appeal against a decision of the Commission suspends its enforcement.

62. Further, an assumingly general second-instance competence of a Regional Court in respect of the Commission's decisions calls into question the mere purpose of establishing such a body.

63. However, the ratio behind creating special bodies like the Housing Commission in comparable regions resided in its accessibility, swift procedure, expertise and independence in receiving and assessing complaints, and issuing binding decisions. Similar Commissions

in Bosnia and Herzegovina and Kosovo were empowered to issue *binding* decisions, which were not subjected to judicial review.

Article 11

64. It should be specified that the Chambers will each consist of one of the members appointed by the Ossetian side, one of the members appointed by the President of Georgia and one of the members appointed by UNHCR.

65. The second paragraph should specify in which composition a Chamber will complete its consideration of, and draft a conclusion in a case that it had under examination before its composition changed.

Article 13

66. The first paragraph provides that the Commission shall consider the application and take a decision not later than 30 days from the beginning of the consideration of the case, while the third paragraph provides that the term of preparation of the case by the Chamber and its submission to the Commission shall not exceed 20 days. Although these are very short time-limits, nevertheless in combination they do not guarantee that the final decision – including any court decision on appeal - will be taken within a reasonable time in the sense of the first paragraph of Article 6 of the Convention. The weak link in the chain of decision-making is the moment the Commission starts its consideration of the application. Furthermore, there is no provision on time-limits applicable to enforcement of a decision. As enforcement of a decision is an integral part of proceedings, therefore subjected to *reasonable time* considerations, it is necessary to include adequate time-limits thereto.

Article 14

67. Article 14 (b) provides that the Chairman of the Commission participates in the activity of the Chambers. On the one hand, this provision is superfluous because it follows from Article 6, paragraph 3, that the Chairman is a member of the Commission, and from Article 11, first paragraph, that the Chambers are composed of the members of the Commission; the provision might even lead to the *a contrario*-conclusion that the Secretary of the Commission does not participate in any Chamber, since Article 15 does not contain a provision to that effect.

68. On the other hand, it is not clear why the provision uses the plural. It follows from the first paragraph of Article 11 that the nine members of the Commission are divided over the three Chambers and that, as a consequence, the Chairman will be a member of only one Chamber. To resolve this, it is possible to replace Article 14, under b), by a provision that the Chairman of the Commission may substitute for a member of a Chamber in case of a vacancy, or if that member is unable to participate in the work of the Chamber.

Article 15

69. Article 15 provides that the Secretary of the Commission supervises the enforcement of the decisions of the Commission. Although this task may be detailed in the Regulation, the Law should at least provide which powers the Secretary has to supervise the execution, which are his or her powers if he or she reaches the conclusion that a decision is not, or not fully

executed, and whether he or she operates under his or her own authority, under that of the Chairman of the Commission, or under that of the Commission in accordance with the second paragraph of Article 10.

70. In addition, it is obvious that the execution of decisions of the Commission would require measures that can only be taken by the administrative authorities. Article 15 should at least contain a reference to the relevant laws and regulations with regard to enforcement of decisions.

Article 16

71. It is not clear what is meant by the "technical security of the activities of the Commission", which the Commission's Office must secure.

Article 18

72. The second paragraph provides that the fund of the Commission shall be established according to this Law and the Regulations of the Commission, while the third paragraph provides how the fund will be established. This creates the impression that "fund" in the second paragraph is meant to be the annual budget, indicating the use of the financial sources, rather than the sources themselves. The second paragraph should provide to what authority the Commission will have to submit its budget for approval, while the third paragraph should contain some guarantee that the State budget supplements the financial sources of the Commission to the extent required for it to effectively perform its functions.

Article 20

73. In the second paragraph "Commission" should read "Chambers", since the Commission will only start its examination of applications after submission by a Chamber.

Article 21

74. In the third paragraph "enforcement" should read "entry into force" in the English translation.

VIII. Conclusions

75. The Venice Commission welcomes the intention of the draft Law to regulate the return of the refugees and internally displaced to their homes. In particular, the recognition of the right to return to the original residence is a crucial step forward towards remedying the effects of the conflict with regard to rights of the affected population.

76. An independent commission with an international element to deal with applications, under swift procedure and issuing decisions obligatory for enforcement is a good practicable solution to secure the effective implementation of the law.

77. However, the Venice Commission is concerned with the absence of substantive provisions which would guide the decisions of the Commission, thus securing the adequate protection of the rights of the individuals concerned – both the returnees and the current occupants. Adequate provisions should be adopted to secure that the *fair balance* principle, in accordance with the Convention's guarantees, is respected in the restitution process with regard to competing interests over the same property.

78. Finally, the Venice Commission considers that the draft law under consideration requires a number of clarifications, which are outlined in this opinion.

79. The Venice Commission remains at the disposal of the Georgian authorities for any further assistance they may require in this area.