



Strasbourg, 15 November 2013

CDL-REF(2013)052

Opinion no. 744 / 2013

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAF LAW

**ON AMENDMENTS TO THE LAW
“ON THE OCCUPIED TERRITORIES”**

OF GEORGIA

Draft Law

**Law of Georgia
On Amendments to the Law of Georgia “on the Occupied Territories”**

Article 1. Amendments shall be made to the Law of Georgia on the Occupied Territories, namely Article 4:

1. Paragraph 2 shall be formulated in the following way:

“2. Citizens of foreign countries and persons without citizenship shall be prohibited to enter the Occupied Territories from any other directions except the ones specified in Paragraph 1 of this Article; violation of this requirement shall lead to responsibility according to the rule as defined by the laws of Georgia”.

2. Paragraph 3 shall be formulated in the following way:

“3. In extraordinary cases special permission to enter the Occupied Territories, which is issued by the Georgian Government with its order, can be granted to persons covered by Paragraph 2 of this Article if doing so serves the protection of the state interests of Georgia, promotion of peaceful conflict resolution, de-occupation, confidence building or humanitarian purposes.”

3. Paragraph 4 shall be added with sub-paragraph d) of the following content:

“d) Persons having entered/entering the Occupied Territories from a prohibited direction without the special permission of the Georgian Government, but given the state interests of Georgia, having received the special permission of the Georgian Government after the entry to the occupied territories.”

Article 2. This law shall enter into force upon publication.

President of Georgia

Mikheil Saakashvili

Explanatory Note

On the Draft Law of Georgia On Amendments to the Law of Georgia “On the Occupied Territories”

a) General information about the Draft Law

a.a) The Reasons for the Draft Law

The elaboration of the Draft Law is necessitated by the draft amendments to the Criminal Code of Georgia and to the Administrative Code of Georgia, according to which responsibility of a person who violates the entry procedures for the occupied territories of Georgia is moved from the realm of Criminal Law to that of Administrative Law. Criminal responsibility is invoked against a person violating the entry procedures for the occupied territories only in case he/she commits the act after a penalty under the Administrative Code has already been invoked. That's why the draft amendment to the “Law of Georgia on the Occupied Territories” states that the violation of entry procedures for the occupied territories of Georgia shall invoke responsibility in accordance with the rules as defined by the Georgian legislation. Besides, the law stipulates that in extraordinary cases the special permission to enter the occupied territories from a prohibited direction shall be issued through the Government Order, which can be issued either before or after the entry to the occupied territory.

a.b) The Goal of the Draft Law

The goal of the Draft Law is to stipulate in the “Law of Georgia on the Occupied Territories” that illegal entry to the occupied territories of Georgia shall invoke responsibility according to the rules as defined by the Georgian legislation. This may entail responsibility either under the Criminal or Administrative Code. In addition, the law provides for a special permission for the entry to the occupied territories of Georgia through the forbidden direction to be issued with the Order of the Government of Georgia. Such permission may be issued either before or after the entry to the occupied territories, given the state interests.

a.c) The Content of the Draft Law

According to the amendments presented, Paragraph 2 of Article 4 of the “Law of Georgia on the Occupied Territories” is amended in a way to stipulate that the illegal entry to the occupied territories shall invoke responsibility according to the rules as defined by the laws of Georgia. In addition, Paragraph 3 of Article 4 states that the special permission for an illegal entry to the occupied territories is issued with the Order of the Government of Georgia. Furthermore, Sub-Paragraph “d” is added to Paragraph 4 of the mentioned Article. This sub-paragraph discharges from responsibility a person who has entered/enters the occupied territories through the forbidden direction without the special permission of the Government of Georgia, but – given state interests - obtains such permission after the entry to the occupied territories.

b) The Financial Justification for the Draft Law

b.a) The Source of Financing the Instant Expenses related to the Adoption of the Draft Law

The adoption of the Draft Law will not require the allocation of funds from the state budget.

b.b) The Impact of the Draft Law on the Budget Revenue

The adoption of the Draft Law will not cause an increase in the revenue of the state budget.

b.c) The impact of the Draft Law on Budget Expenses

The adoption of the Draft Law will not cause a change in budget expenses.

b.d) New Financial Obligations of the State

The adoption of the Draft Law does not entail new financial obligations for the state.

b.e) Expected Financial Outcomes for Those to whom Application of the Draft Law may Concern

The application of the Draft Law will not have financial consequences for those to whom it applies.

b.f) The Amount and the Principle for Determining the Amount of the Levies, Taxes and other Charges

The adoption of the Draft Law does not require any payment of levies, taxes or other charges.

c) The Compliance of the Draft Law with International Legal Standards**c.a) Compliance of the Draft Law with the Directives of the European Union**

The adoption of the Draft Law is not in contradiction with the directives of the European Union.

c.b) Compliance of the Draft Law with the Obligations of Georgia Undertaken by its Membership in International Organizations

The adoption of the Draft Law will not cause new obligations of Georgia through its membership in international organizations.

c.c) Compliance of the Draft Law with the Bilateral and Multilateral Treaties of Georgia

The Draft Law is not in contradiction with bilateral and multilateral treaties of Georgia.

d) Consultations Received During the Preparation of the Draft Law**d.a) The List of State, Non-State and/or International Organizations/Actors, Experts Who Have Participated within the Elaboration of the Draft Law, if Applicable**

Not Applicable.

d.b) The Assessment by Participatory Organizations (Entities) and/or Experts regarding the Draft Law, if Applicable:

Not Applicable.

d.c) The Author of the Draft Law

The author of the Draft Law is the Office of the State Minister of Georgia for Reintegration.

d.d) The Initiator of the Draft Law

The Draft Law is initiated by the Government of Georgia.