



Strasbourg, 15 November 2013

CDL-REF(2013)053

Opinion no. 744 / 2013

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW
ON THE AMENDMENTS TO THE CRIMINAL CODE
OF GEORGIA

Draft Law

**Law of Georgia
On the Amendments to the Criminal Code of Georgia**

Article 1. The following amendments shall be introduced to the Criminal Code of Georgia and Article 322¹ shall be formulated in the following way:

“Article 322¹. Violation of the Rule for Entry to the Occupied Territories

1. Entry to the occupied territories by a citizen of a foreign country or a person without citizenship in violation of the rule defined by the Law of Georgia on the Occupied Territories, committed by a person previously subject to Administrative penalty for the same act, - shall invoke fine

2. The act stipulated in Paragraph 1 of this Article, committed:

- a) collectively;
- b) with violence or threat of violence;
- c) repeatedly, –

shall invoke imprisonment for a term of three to five years.

1. This article shall not be extended to citizens of foreign countries and persons without citizenship having entered Georgia who seek asylum in the country in compliance with the Constitution of Georgia, if there are no signs of other offences in his/her act, as well as persons who committed the act because of having been victims of human trafficking before they acquired the status of the victim of human trafficking. This article shall not be extended either to a person who has entered/enters the Occupied Territory from a prohibited direction without the special permission of the Georgian Government, but given the state interests of Georgia, has received the special permission of the Georgian Government after the entry to the Occupied Territory”.

2. The fine stipulated in this Article shall not be less than double the amount of the fine provided for for this act in the relevant Article of the Administrative Code of Georgia”.

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

President of Georgia

Mikheil Saakashvili

Explanatory Note

On the Draft Law of Georgia "On the Amendments to the Criminal Code of Georgia"

a) General information about the Draft Law

a.a) The Reasons for the Draft Law

The elaboration of the Draft Law derives from the goal to liberalize the criminal justice policy with regard to the rules of illegal entry to the occupied territories. Article 322¹ of the Criminal Code of Georgia is a blanket rule and imposes criminal responsibility on foreign citizens or persons without citizenship for the entry to the occupied territories in violation of the rules of the "Law of Georgia on the Occupied Territories." Those whom the norm may concern may not know about the restrictions that are in effect in Georgia for the entry to the occupied territories. Accordingly, invoking criminal responsibility of such persons might be perceived as an unfair, coercive measure imposed by the Georgian state. Besides, the punishment authorized by Article 322¹ of the current law (imprisonment for 2 to 4 years, and imprisonment for 3 to 5 years in case of aggravating circumstances) is extremely harsh and disproportional to the illegal act for which a person is culpable. Accordingly, it would be adequate to invoke the Administrative Code instead of the Criminal Code for the first-time illegal entry into the occupied territories, and therefore to invoke criminal responsibility of a person if he/she has already been held responsible under the Administrative Code in the past.

a.b) The Goal of the Draft Law

The goal of the Draft Law is to liberalize the penalties under the Criminal Law for the entry to the occupied territories and to invoke criminal responsibility of a person who has earlier been penalized under the Administrative Law.

a.c) The Content of the Draft Law

According to the presented amendments, Paragraph 1 of Article 322¹ of the Criminal Code imposes criminal responsibility on foreign citizens or persons without citizenship for the entry to the occupied territories in violation of the rules of the "Law of Georgia on the Occupied Territories" if a person has already been penalized under the Administrative Code. The illegal act invokes a fine instead of imprisonment; and the fine must be no less than the double amount of the fine envisaged by the relevant article of the Administrative Code of Georgia.

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 may 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 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.