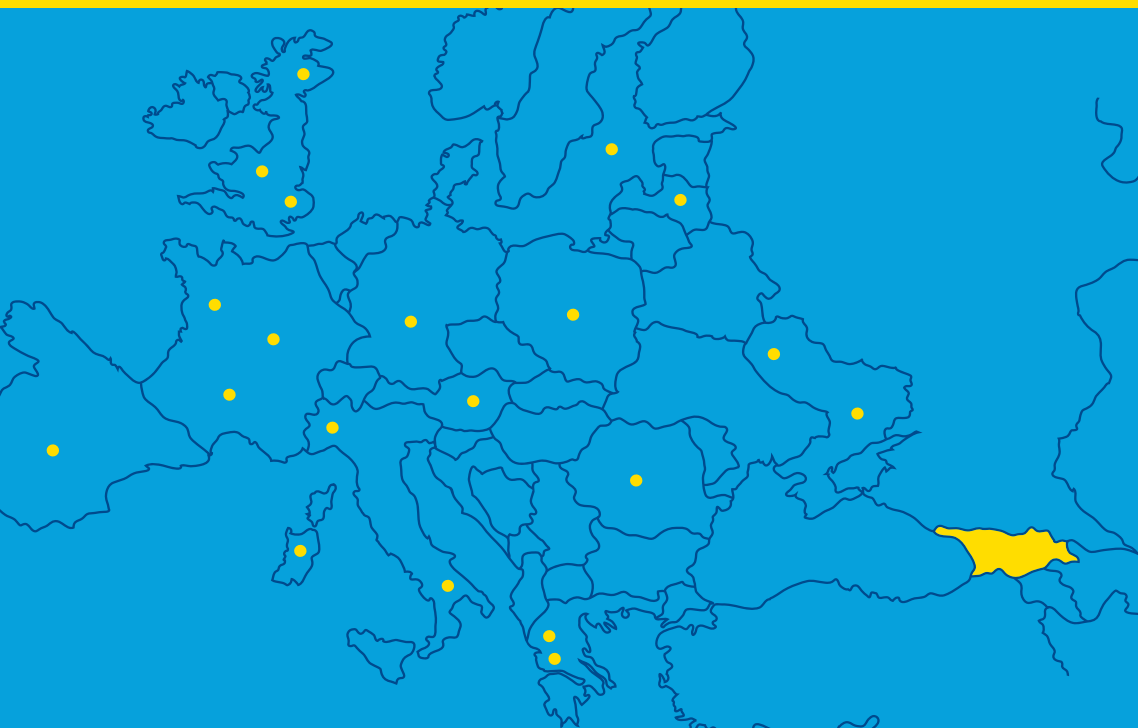


GEORGIA AND MIGRATION LEGISLATION ANALYSIS

Tbilisi 2013



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**Tbilisi
2013**

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EXECUTIVE SUMMARY

This research analysed Georgian legislation on migration, identified gaps in the legislation and developed recommendations for improving the legal regulations.

The research reviewed all international obligations concerning migration, national legislation and its compliance with international obligations, as well as the consistency of national legal acts with international obligations.

Recommendations developed in this research take into account economic, demographic and security factors to ensure against may negatively impacting the state's interest in these areas.

Migration legislation analysis should focus on human rights protection standards. The individual migrant, who is the direct object of the migration process, is an individual who is very often extremely vulnerable and needs special support and protection of a state notwithstanding his/her nationality.

The Migration Strategy of Georgia 2013-2015 was approved in March 2013. Approval of the Migration Strategy of Georgia 2013-2015 was an extremely positive step-forward. It is the first state policy document concerning migration since 1997. This research discusses the Strategy and presents recommendations for its improvement, and analyses Georgian legislation in light of the newly adopted Strategy.

The authors were not given access to draft Migration amendments and therefore this research does not analyse the newly proposed legislative initiatives.

The following features are essential for the migration legislation of Georgia:

- Influence of liberal economy;
- EU influence on development of migration legislation;
- Chaotic development in the absence of unified vision;
- Lack of cooperation between responsible authorities (establishment of Migration Commission in 2010 was a positive development however the legislation has not created yet the relevant legal basis for cooperation).

The recommendations developed in the strategy may be summarized as follows:

- Develop a long-term migration policy;
- Revise the existing visa regime, taking into account security, economic and external-political factors:
 - Only one agency should be responsible for issuing visas;
 - More sophisticated visa categories (add new categories) and specify procedures for each;
 - Decrease the visa-free stay in Georgia ;
- Residence permit regulations should correspond to the updated visa system; in addition regulations concerning issuing and termination of residence permits should be reviewed and rationalized;
- Upgrade regulations on expulsion and introduce relevant mechanisms for implementation of relevant provisions;
- Elaborate state policy on labour migration and develop legislation; national legislation does not regulate labour migration issues (f.e. no work permit is necessary for foreigners);
- Revise state policy on eco-migration and develop legislation for protection the rights of eco-migrants.

1. INTRODUCTION

Migration processes became topical for Georgia in the 1990s after independence. Initially, immigration was very important; immigration to Georgia intensified in the last 4-5 years as a direct consequence of stated liberal policy of government (*inter alia*, facilitate foreigners' economic activities in Georgia, visa-free and simplified visa procedures, etc) and intensified cooperation with the EU and on the light of visa liberalisation agreement negotiations.

Until recently, there was no migration policy document in Georgia. The initiative to develop migration policy emerged in 2004. It was only in 2010 when the real steps were taken. On October 13, 2010 Resolution #314 of the Government was adopted that established the State Commission on Migration Issues. The main task of the Commission was identified as: "*preparation of proposals and recommendations for defining state policy on internal and international migration and improvement of migration state management*". The work of the Commission resulted in adoption of Georgian Migration strategy by the Government of Georgia on March 15, 2013. This document identifies the purposes and principles of migration management in Georgia and created coordinate migration management versus the previous ad hoc system.

Efficient management of migration implies the existence of policy, legislation, administrative structures and enforcement mechanisms.

The main objective of migration should be the prevention of emigration from Georgia through improved state support and social assistance, the elimination of poverty, and the involvement of returned migrants in social life of the country. The migration policy has to strive to address problems of irregular migration, trafficking and illegal border crossing by migrants.

The Migration Strategy of Georgia is a declaratory document and contains general statements and objectives. It is too early to discuss its impact on legislation and migration practices in Georgia. The Strategy stated the need of revision and amendment of legislation, as well as

need of identification of existing gaps in legal regulations. Despite the critical comments to the Migration Strategy it is significant to mention that its adoption is a milestone for the improvement of migration management in Georgia.

This research analysed national legislation in the light of international obligations on migration and evaluated whether the national legislation meets Georgia's international treaty obligations related to protection of migrants' rights, prevention of irregular migration, documents security and asylum issues. The research also focuses on legislative gaps, as well as consistency of legislation and strategy.

There are several peculiarities in the Georgian legislation:

- Legal regulations of migration were drafted in the absence of migration policy;
- Liberal economic model influenced migration management and minimum state regulation of migration processes;
- There is a lack of legal regulations on migration.

Migration management is efficient only if supported by international cooperation. Georgia-EU cooperation on migration has developed on the basis of international treaties or, platforms, such as visa facilitation and readmission agreements and "Mobility Partnership".

The research consists of eight chapters:

- Introduction;
- Georgia-EU Cooperation - discusses the milestones of Georgian-EU cooperation on migration;
- Migration Legislation - this chapter provides a general review of the national legislation and offers a list of basic legal acts; Migration Strategy is also discussed here;
- Collection of Statistical Information on Migration - chapter discusses the need of data collection, existing problems and recommendations for creation of united database;

- Emigration of Citizens of Georgia - this chapter examines the legal basis of provisional and permanent emigration (except labour migration);
- Migration to Georgia - this chapter reviews entry, stay and leave of foreigners on the territory of Georgia, their status, protection of foreigners rights, etc.
- Labour Migration – This chapter discusses legal regulations on labour emigration and immigration and its gaps;
- Internal migration – this chapter examines internal migration caused by natural disasters and conflicts, as well as for employment purposes.

2. GEORGIA - EU COOPERATION

Georgia-EU cooperation is based on the Partnership and Cooperation Agreement, which has been in force since July 1, 1999. In 2006, ENP AP was adopted. It defined political priorities for Georgia-EU cooperation. The Section “Justice, Freedom and Security” of ENP AP is especially interesting that it is supervised by the JFS subcommittee.

The importance of enhancing mobility of citizens in a secure and well-managed environment was recognised in the Council Conclusions on Eastern Partnership adopted on 25 October 2010. This was the next step to launching the Mobility Partnership initiative between Georgia and EU, which was a new agreement in migration cooperation.

The Joint Declaration on Mobility Partnership between Georgia and the 16 EU Member States was signed on November 30, 2009.¹ On February 16, 2010 the cooperation within the EU initiative “Mobility Partnership” between Georgia and the EU officially launched. The aim of this initiative is cooperation on the following migration issues:

- migration management,
- labour migration,
- readmission,
- reintegration,
- diasporas,
- document security,
- integral migration database and information exchange with the EU,
- labour market and recognition of professional qualifications.

Cooperation within the initiative “Mobility Partnership” promotes legal employment in the EU countries through so called “circular migration”. This framework allows Georgian citizens to work legally, study, get trained, and then return to Georgia. This Initiative also provides for close cooperation with Georgian Diasporas in the EU.

¹ http://eu-integration.gov.ge/index.php?que=eng/georgia_and_the_eu/%E1%83%9E%E1%83%90%E1%83%A0%E1%83%A2%E1%83%9C%E1%83%98%E1%83%9D%E1%83%A0%E1%83%9D%E1%83%91%E1%83%90%20%E1%83%9B%E1%83%9D%E1%83%91%E1%83%98%E1%83%9A%E1%83%A3%E1%83%A0%E1%83%9D%E1%83%91%E1%83%98%E1%83%A1%E1%83%90%E1%83%97%E1%83%95%E1%83%98%E1%83%A1

It is noteworthy that Georgia-EU agreements have bilateral application; thus they promote not only employment of Georgian citizens in EU but also vice versa.

It is noteworthy that simplified procedures under the “Mobility Partnership” do not mean that local laws and regulations concerning employment should not be observed. Georgian migrant workers are still under an obligation to comply with national requirements concerning residence and work permits.

Further steps taken in migration cooperation included visa facilitation and readmission agreements put into effect on March 1, 2011 between Georgia and EU. Implementation of these agreements is a prerequisite for a visa liberalization agreement. It is noteworthy that since 2006 EU nationals enjoy visa-free regime in Georgia.

Georgia and EU launched **the visa liberalisation dialogue** in 2012. However, the conclusion of the agreement on visa liberalization shall be followed with the adoption of visa liberalisation action plan, which is a very important precondition for the entry into force of the agreement. The VLAP was not open for the public when this research was developed; accordingly, we were unable to use it for this study.

It is expected that visa liberalisation action plan shall focus on the following issues:

- Integrated border management, migration management and asylum;
- Document security;
- Security;
- Human rights.

Implementation of the visa liberalisation action plan will include two stages:

- 1) Legislative amendments – in order to create legal basis for implementation of undertakings;
- 2) Implementation phase.

This research should be used for the purposes of the first stage.

3. MIGRATION LEGISLATION

3.1. Overview

The Migration legislation of Georgia includes international treaties and national legal acts. Legislation on emigration and immigration falls within the exclusive competence of higher state bodies of Georgia.²

See below the list of international treaties related to migration:

UN Documents

- Universal Declaration on Human Rights
- International Covenant on Civil and Political Rights
- International Convention on the Elimination of all Forms of Discrimination Against Women
- Convention on the Rights of the Child
- Convention Against torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention Relating to the Status of Refugees
- Protocol Relating to the Status of Refugees
- Convention Against Transnational Organized Crime
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime
- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
- Protocol Against Smuggling of Migrants by Land, Sea and Air, Supplementing the UN Convention Against Transnational Organized Crime
- Convention Concerning Private Employment Agencies
- Convention on International Civil Aviation (ICAO) Standards on Machine Readable Travel Documents)

² Art. 3.1.a of the Constitution of Georgia.

- Convention on the Recognition of Studies, Diplomas and Degrees Concerning Higher Education in the States Belonging to the Europe Region 21 December 1979
- Convention on Status of Stateless Persons

CoE Documents

- Convention for the Protection of Human Rights and Fundamental Freedoms and Its Protocols;
- European Convention on Extradition
- Convention on the Transfer of Sentenced Persons
- Revised Social Charter
- Convention on the Recognition of Qualifications Concerning Higher Education in the European Region

The following laws are basic regulation framework of migration in Georgia:

<i>Constitution of Georgia</i>
<i>Organic Law on Citizenship of Georgia</i>
<i>Law of Georgia on Rules concerning Registration, ID (Residence) Card and Issuing the Passport of Citizens of Georgia and Aliens residing in Georgia</i>
<i>Law of Georgia on Leave from and Entry into Georgia by Citizens of Georgia</i>
<i>Law on Legal Status of Aliens and Stateless Persons</i>
<i>Law of Georgia on “Refugees and Humanitarian Statuses”</i>
<i>Law of Georgia on Combating Trafficking in Human Beings</i>
<i>Law of Georgia on Personal Data Protection³</i>
<i>Table 1</i>

³ This table lists only the most important legal acts. The following acts also regulate or are related to migration: Law of Georgia on Consular Activities, Law of Georgia on State Border of Georgia, Criminal Code of Georgia, Labour Code, etc.

In line with the aforementioned statutes, there is a large body of by-laws regulating migration in Georgia, *inter alia*:

- Ordinance #34 of the President of Georgia (dated 30 January 2009) on Approval of Rules concerning Review of Applications and Submissions on Citizenship Issues;
- Ordinance #541 of the President of Georgia (dated 7 November 2008) on Approval of Charter of the Ministry of Justice of Georgia;
- Ordinance #59 of the President of Georgia (dated 4 February 2008) on Approval of Border Management Strategy;
- Ordinance #614 of the President of Georgia (dated 27 December 2004) on Approval of Charter of Ministry of Internal Affairs;
- Ordinance #707 of the President of Georgia (dated 23 December 1998) on Inspection of Migrants at Border Check-points of Georgia;
- Ordinance #708 of the President of Georgia (dated 23 December 1998) on Approval of Rules concerning Shortening and Prolongation of Validity for Migrant's Card;
- Ordinance #706 of the President of Georgia (dated 23 December 1998) on Inspection of Migrants on the Territory of Georgia;
- Ordinance #400 of the President of Georgia (dated 28 June 2006) on Approval of Regulations on Rules of Discussing and Deciding on Granting Residence Permit in Georgia;
- Ordinance #515 of the President of Georgia on Approval of Rules concerning Establishing Status of Stateless person.

Migration legislation provides for decentralized management of migration because the responsibilities reside with several government agencies. Establishment of State Commission on Migration Issues in 2010 was the first attempt to coordinate migration management. The objective of the Commission was *preparation of proposals and recommendations for defining state policy on internal and international migration and improvement of migration state management*.⁴ Coordination of competent authorities' activities was not the primary goal

⁴ Section 1 of the Charter of State Commission on Migration Issues (approved by the Government Resolution #314 of 2010).

of the Commission. It served as a specialized forum for discussion of migration issues for government agencies⁵ and representatives of civil society⁶. Involvement of civil society was vital for the work of the Commission; thus respecting transparency and ensuring dialogue with civil society. The Strategy identified more clearly the roles and functions of all government agencies in migration management. The role of the Commission in the institutional structure is also now more clearly defined in the Strategy.

3.2. Migration Strategy of Georgia 2013-2015

The Migration strategy was the result of the Government's political will and efforts of the State Commission on Migration Issues. It was the first time since 1997 when a policy document on migration was adopted that was designed to improve migration management in the country and implement Georgia's international obligations. The VLAP provides adoption of Strategy on Migration as a necessary precondition.

It is important to remember that the drafters of the document intended it to be an evolving legislative instrument to address the changing dynamics of migration management.

It is recommended that the migration policy document contains short-term, medium-term and long-term objectives and tasks. The Strategy is designed for 2013-2015 years and obviously there will be a need to adopt a new document by 2016. In order to facilitate the sustainable development of migration in Georgia, it is recommended

⁵ Members of the Commission are: Minister of Justice (chairman), State Minister on Diaspora Issues (co-chair), Deputy Minister of Internal Affairs, Deputy Minister of Foreign Affairs, Deputy Minister of Labour, Health and Social Protection, Deputy Minister of Education and Science, Deputy Minister of Economy and Sustainable Development, Deputy Minister of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia and Deputy Minister of State Ministry for European and Euro-Atlantic Integration, Deputy Executive Director of LEPL National Service of Statistics of Georgia.

⁶ Amendments to the on Establishment and Functions of Government Commission on Migration dated December 17, 2012, the following organizations were requested to participate in the work of the Commission: IOM, DRC, ILO, TIG, CIM, EU Delegation, UNHCR, ICMPD, GIZ.

that the Commission begin to develop long-term policy document on migration.

Section 2.1 identifies purposes of the Strategy:

“The purpose of the Migration Strategy is to improve the management of migration processes, which implies providing of national security, fighting irregular migration and human trafficking, ensuring the defence of migrants’ rights and their social protection and state development through positive impact of migration. ***The Goal of the following Strategy is to consider national interests and international best practices is to develop a state policy in the migration sphere.*** The above mentioned will contribute to fighting irregular migration and human trafficking, protecting human rights and fundamental freedoms, managing migration processes according to the interests of the society and deepening international collaboration in the migration sphere.

This document will help to direct the development of migration process management for the State, to protect migrants’ rights and ensure their social protection. The activities envisioned in the Strategy will be implemented through full consideration of migrants’ rights and fundamental freedoms”.

It is recommended that the Strategy clearly identifies the purposes and tasks and distinctions between the rights listed above.

Recommendation 1. The State Commission on Migration Issues begins to elaborate policy documents providing the long-term perspective of migration development in Georgia taking into account the security, economic, demographic, foreign policy needs and international obligations of the country.

Recommendation 2. Strategy has to clearly identify objectives and clearly differentiate tasks and objectives.

Section 3.1 of the Strategy identifies state agencies that participated in preparation of strategy and its functions:



The Strategy contains a section that defines the functions of competent authorities concerning management and regulation of migration, implementation of migration policy and achievement of the objectives of the Strategy. This chapter is informative and describes the functions of the authorities as provided in different legal acts. There is no added value in inclusion of such a section in the Strategy even

more so it is not aimed at optimizing or upgrading the migration management system. It is suggested that the objective of the strategy be identification of migration management model and migration development directions. The existence of the mentioned chapter does not seem reasonable because of the systematic amendments to the legislation resulting in change of functions of the competent authorities; such amendments create necessity of changing Strategy. The same reasoning is true for section 3.2. of the Strategy discussing legal regulation of migration in Georgia. However the last paragraph of this section is noteworthy as slightly changes Commission's functions:

"The State Commission on Migration Issues is a consultative body, which has competences in the formulation of the National Strategy on Migration, the improvement of migration management and designing proposals within the framework of European Neighbourhood Policy. The Commission is entitled to prepare proposals for the Government regarding migration management and amendments to legislation as well as recommendations on international agreements. In applying its functions the Commission can request as from Georgian institutions as well as from international organizations, the other countries' structures and establish thematic working groups."

Recommendation 3. Either delete sections 3.1 and 3.2 of the Strategy or move to Annexes of the Strategy.

The Strategy underlines the importance of Georgian-EU cooperation on migration (see section 3.3 of the Strategy); this section is also informative and it would be reasonable to move it to the introduction. However it is more noteworthy the title of this section is "International Cooperation" while it discusses only Georgian-EU cooperation. The reasons of emphasizing EU-Georgian cooperation are clear taking into account EU support to development of the Strategy itself. It is worth mentioning that that flows of migration to Georgia basically come from Asian and African countries and close cooperation with source-countries (f.e. conclusion of readmission agreements) is extremely important.

⁷ Section 3.1 of Strategy.

Recommendation 4. It is recommended that section 3.3 of the Strategy reflects all aspects of international cooperation, including need to strengthen collaboration and treaty coverage with African and Asian countries.

Main directions of the Migration Strategy are:

- Legal Migration
- Irregular Migration
- Improvement of the asylum system, integration process of refugees' and individuals with humanitarian status' according to the international standards
- Supporting dignified return and reintegration of Georgian citizens.

The strategy will be subjected to amendments very soon because of legislative changes (f.e. Section 4.1.2 states that liberal visa regime positively impacts socio-economic development of the country. If the foregoing statement is true, it seems unreasonable to change the existing liberal visa regime with more diversified and controlled system). It is recommended to draft the strategy generally enough to ensure its sustainability and avoid frequent amendments. Specific measures may be incorporated in the Action Plan as states in Section 4 of the Strategy.

Recommendation 5. It is recommended to ensure sustainability of strategy by using more general and declaratory provisions. Specific measures should be moved to Action Plan.

3.3. Competent Authorities

It is important to have a clear understanding of the functions of all competent authorities for the purposes of this research. An extract from the Strategy concerning the competencies of the relevant agencies is outlined below:

“President of Georgia

In accordance with the Constitution of Georgia and other legal acts, the President of Georgia decides on issues related to the Georgian citizenship and granting asylum. Besides, the President defines procedures on the issuance, extension and suspension of visas, and issues related to the residence permits of aliens.

Ministry of Justice / Public Service Development Agency (PSDA)

Public Service Development Agency along with the Ministry of Justice are responsible for issuing visas and residence permits to the immigrants on the territory of Georgia, as well as providing travel documents to stateless persons and refugees. Apart of those categories the PSDA is authorized to issue travel documents to the citizens of Georgia, managing a united database and ensuring that relevant institutions and organizations have access to appropriate information only depending on level and need. The PSDA also prepares conclusions regarding issues related to Georgian citizenship.

Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia

The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia is responsible for forming state policy on the issues of internally displaced persons, refugees, persons with humanitarian status, asylum seekers, repatriated persons, victims of natural disaster and returned Georgian migrants. The Ministry has competences in processing asylum applications, registering asylum seekers, granting refugee and humanitarian statuses, providing temporary accommodation for asylum seekers and supporting the integration process of persons with refugee or humanitarian statuses, coordinating the integration of refugees and returning Georgian migrants into the society.

Ministry of Internal Affairs (MIA) / Patrol Police Department and Border Police

Respective Agencies of the Ministry of Internal Affairs of Georgia are involved in migration management. Notably the Ministry is responsible to ensure control / facilitation of legal movement at the state border

and combating of irregular migration. Among the competencies of the Patrol Police Department are undertaking control at the border crossing points, which covers inspecting travel documents of Georgian and foreign citizens' and stateless persons, issuing visas and ensuring protection of the legal regime. It also acts as a competent authority on the implementation of readmission agreements and related procedural and organizational issues. The Border Police has the responsibility to conduct migration related law enforcement activities on the ground as well as on maritime boundary. The Ministry has competences in preventing and eliminating trans-border organized crime, irregular migration and trafficking in human beings, seizure contraband, notably - drugs, weapons, explosive devices, preventing turnover of nuclear materials and radioactive substances, and application of other activities defined by the legislation.

Ministry of Foreign Affairs

The Ministry of Foreign Affairs of Georgia is responsible for keeping consular registration of Georgians residing outside Georgia, issues certificates, visas for returning to Georgia and visas through consular representatives abroad. The Ministry is actively involved in the implementation of readmission and visa facilitation agreements through participating in joint committee meetings. Georgian diplomatic representatives and consulates abroad promote the information Georgian citizens residing abroad irrespective of state on programs for voluntary return and support victims of trafficking in human beings. Georgian diplomatic representatives and consulates abroad in the frames of delegated authority register civil acts, issuance of ID cards and, receive applications on citizenship related issues in order to forward them later to the PSDA.

The Office of the State Minister of Georgia on European and Euro-Atlantic Integration

The Office of the State Minister coordinates implementation of the European Neighborhood Policy Action Plan within Georgia-European Union Cooperation, including issues related to Freedom, Security and Justice; and managing multilateral cooperation and related migration issues within the European Union's "Eastern Partnership". It also coor-

dinates the issues of Georgia's co-operation with the European Union member states in the framework of European Union "Mobility Partnership" Initiative.

The Office of the State Minister of Georgia for Diaspora Issues

The Office of the State Minister of Georgia for Diaspora Issues is responsible for deepening relations with Georgians residing abroad and supports them to maintain the national identity. In case of return, the Office creates favorable conditions to ensure integration of those persons into the society. Taking into consideration the above mentioned the Office of the State Minister is responsible for the following issues within its competence:

- *It acquires and maintains a united database with contact details of Georgians and Diaspora Organizations abroad;*
- *It introduces and shares the unified educational program to Georgian educational centres abroad and ensures their compatibility with the Georgian Education System;*
- *It ensures the preservation of Georgian cultural identity among its compatriots abroad;*
- *It maintains contact with Georgian diasporas residing abroad by introducing a compatriot status based on the Georgian Law on Diaspora Organizations and Compatriots Living Abroad;*

It provides interested persons with information about current economic and investment trends in the country."⁸

The MLHSA is not mentioned among competent authorities. The MLHSA should be responsible for regulation of labour migration, specifically, for issuing work permits, monitoring of foreigners economic activities and sanctioning.⁹

⁸ *Ibid.*

⁹ The Charter of the MLHSA (approved by Resolution of the Government #249 from 2005) provides that regulation of labour migration is the function of the Ministry.

4. COLLECTION OF STATISTICAL INFORMATION ON MIGRATION

Efficient migration management requires collection and processing data concerning migration flows. All persons leaving and/or entering country need to be registered.

The information on the following categories is necessary for the aforementioned purpose:

- Citizens of Georgia (including persons holding dual citizenship): permanently residing in Georgia, temporarily living abroad, returnees to Georgia voluntarily or forced and permanently residing abroad (diasporas, emigrants);
- Foreigners: visiting Georgia, asylum seekers, applicants for refugee status, stateless persons (having status in Georgia) and persons holding residence permit (provisional or permanent) in Georgia, as well as persons who held Georgian citizenship.

Article 66 of the Law of Georgia on Legal Status of Aliens and Stateless Persons (further referred as Aliens' Law) states *"Unified migration databank shall be created with the purpose of operative exchange and common usage of the information on issuance and extension, termination, abolition of a permit for staying in Georgia, on registration and deportation of aliens, as well as on other relevant data envisaged by the Georgian legislation."*

The unified database does not currently exist. Different agencies have information different databases concerning the information within their competencies. The following agencies are responsible for collecting data: MOJ (registration of Georgian citizens and foreigners, residence permits),¹⁰ MFA (consular registration), MRA (registration of asylum seekers, refugees, IDPs and repatriates), SMDI (registration of diaspora members), MIA (registration of those entering and/or leaving the country) and National Bureau for Statistics (collection and processing of all statistical data).

The Strategy (section 4.1.2.1) also underlines the need for creation of a unified migration database as a necessary measure for promoting legal migration:

¹⁰ Article 27 of Law of Georgia on Leave from and Entry into Georgia by Citizens of Georgia states: *"Ministry of Justice runs statistics on emigration"*.

“For the effective management of immigration processes and decision making it is important to collect the data on the status of migrants. Therefore, a unified migration system will be established, which will ensure the collection of data, dispersed within different state institutions. The system will have the capacity to assume migration trends based on statistical analysis, thus supporting the elaboration and implementation of the respective policy.”

Georgia has undertaken the creation of migration database during the visa liberalisation negotiations with the EU.

Creation of migration information system requires legal regulation of the following issues:

1. Identify the information that is collected in the system;
2. Persons who have access to data system and levels of access to information;
3. Personal data protection within the migration data system in line with CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data,¹¹ General Administrative Code and Law of Georgia on Personal Data Protection;
4. Identify agencies responsible for data processing;
5. Methodology of data collection and processing (methodology of EUROSTAT might be used).

Recommendation 6. It is recommended to develop legislation for creation of unified migration database.

Legislation on the collection of migration data is not consistent. The 1998 Law of Georgia on Inspection of Migrants established the system of migrants' registration. 3 ordinances of the president have been elaborated based on this law: Ordinance #706 on Inspection of Migrants on the Territory of Georgia; Ordinance #707 on Inspection of Migrants at Border Check-points of Georgia; Ordinance #708 on Approval of Rules concerning Shortening and Prolongation of Validity

¹¹ In force for Georgia since April 1, 2006.

for Migrant's Card. Several orders were adopted on the basis of the law. However the Law on Inspections of Migrants was abolished by the Aliens' Law (see article 67.c). Georgian legislation provides that if a legal act is no longer valid, all by-laws issued on its basis or for its implementation should be abolished. Accordingly, the aforementioned by-laws (ordinances and orders) should be abolished and their legal analysis is not relevant for the purposes of this research.¹²

Recommendation 7. It is recommended to abolish all by-laws that are adopted on the basis of the Law of Georgia on Inspection of Migrants.

The Law of Georgia on Facilitating Registration of Tourists Entering and Leaving Georgia regulates registration of tourists. The Law defines that a tourist is a person “*who is beyond his/her country of residence, in foreign environment for holiday, business and any other purpose for more than 24 hours and no more than 1 year – on a permanent basis and his stay is not paid.*”¹³ MRA is responsible for registration of the following categories of tourists:

- All tourists who have entry visas to Georgia or who may enter Georgia visa-free under international treaties of Georgia;
- Citizens of Georgia and persons permanently residing in Georgia who travel abroad as tourists.

However the Law states that registration rules of tourists shall be made as provided by the Law on Inspection of Migrants. The last amendments to the Law of Georgia on Facilitating Registration of Tourists Entering and Leaving Georgia were made in 2012. The Law of Georgia on Inspection of Migrants was abolished in 2005. The new rules for registration of tourists have never been introduced. It

¹² Article 25.5 of Law of Georgia on Normative states: “*A normative act has no legal effect if a statute or by-law which served as its legal basis was abolished notwithstanding to whether a normative act was abolished or not.*” However, official web-site of Sakartvelos Sakanonmdeblo Matsne does not indicate that the aforementioned by-laws are not valid any more. In order to avoid inconsistency in practice it is recommended to make relevant indication.

¹³ Art. 2.a of the Law of Georgia on Facilitating Registration of Tourists Entering and Leaving Georgia.

is recommended that the Law of Georgia on Facilitating Registration of Tourists Entering and Leaving Georgia is amended to specify the rules of tourists' registration. It is noteworthy that Georgian legislation does not provide for tourist visas. It is not clear whether there is the need for registration of tourists for migration purposes, such a need should be evaluated by the Commission on Migration Issues

Recommendation 8. The State Commission on Migration together with MESD/LEPL National Administration of Tourism of Georgia have to discuss the need of tourists' registration.

If they conclude that there is a need for tourist registration, then it is recommended that relevant amendments are prepared to the Law of Georgia on Facilitating Registration of Tourists Entering and Leaving Georgia to specify:

- ***Tourists' registration procedures;***
- ***Competent authority (it is not reasonable to keep MRA as responsible authority for tourists' registration)***

If the Commission together with MESD come to a conclusion that there is no need for tourists' registration, then it is recommended that Law of Georgia on Facilitating Registration of Tourists Entering and Leaving Georgia is abolished.

5. EMIGRATION OF GEORGIAN CITIZENS

5.1. General Overview

Georgian Legislation on emigration is modest and liberal. During the last years some new regulations were introduced concerning registration of citizens. The purpose of these regulations is to get more information on migration flows rather than to regulate emigration from Georgia.

Georgian legislation guarantees the right of all Georgian citizens or persons legally staying on the territory of Georgia to depart from Georgia freely. The right of a Georgian Citizen to return to Georgia any time is also guaranteed. The legislation provides temporary or permanent emigration. A person willing to emigrate permanently has to undertake certain procedures and get emigration permission.

State regulation of emigration shall be effective only if it is aimed at assisting persons willing to emigrate (provide more information, decrease of costs, simplification of procedures) and combating irregular emigration. The Migration Strategy of Georgia highlights the importance of assistance of Georgian citizens who wish to emigrate (see section 4.1.1 of the Strategy). The strategy focuses on legal emigration in three directions:

- to develop opportunities of temporary legal employment abroad;
- to support educational exchange programmes, and rising public awareness on legal migration opportunities;
- Strategy also underlines the need for combating illegal emigration with special emphasis on combating trafficking in human beings, strengthening institutional capacities and raising public awareness.

In the context of emigration, reintegration and employment of returned emigrants is especially important (see section 4.4 of the Strategy).

5.2. Law of Georgia on Leave from and Entry into Georgia by Citizens of Georgia

The Law of Georgia on Leave from and Entry into Georgia by Citizens of Georgia guarantees the right to leave Georgia temporarily or permanently.¹⁴ Article 3 of the Law states:

“1. A citizen of Georgia is entitled to emigrate that is to leave for another country for permanent residence (further emigration), as well as to temporary departure from and entry into Georgia.

2. It is not allowed to restrict this right save otherwise provided by the legislation of Georgia.”

Article 22 of the Constitution of Georgia also guarantees the right to leave freely the territory of the country. The same article specifies that this right may be restricted only if expressly provided by the law for the following purposes:

- National security or public safety;
- Protection of health;
- Prevention of crime;
- Administration of justice that is necessary for maintaining a democratic society.¹⁵

The exceptions provided by the Constitution are specified in the Law of Georgia on Leave from and Entry into Georgia by Citizens of Georgia:

“A citizen of Georgia shall be refused a passport of a citizen of Georgia or extension of passport validity period for temporarily departing from the country, as well as refused to cross border if:

- a) he/she is prosecuted by law-enforcement bodies;
- b) presents false or invalid documents”¹⁶.

¹⁴ Article 22.2 of the Constitution of Georgia states: “Everyone legally within the territory of Georgia shall be free to leave Georgia.”

¹⁵ Article 22.3 of the Constitution of Georgia.

¹⁶ Article 10 of the Law of Georgia on Leave from and Entry into Georgia by Citizens of Georgia.

The Law also guarantees the property right of Georgian citizens leaving country; all persons have “right to take abroad any movable item that is his/her property or is legally under his ownership and/or usage, unless expressly prohibited by the Georgian legislation.”

Temporary and permanent departure is regulated differently. In case of temporary departure, requirements are quite loose: a person shall need a passport, or any travel document and visa for the country of destination.¹⁷ Minors and persons with disability need to have consent from a trustee or guardian.

Minors under 16 years and person with disability will need the consent of guardian/trustee and be accompanied by an adult with full legal capacity.¹⁸ As for the minors between 16-18 years, unless married, they need consent of at least one legal representative.¹⁹

Georgian legislation provides an “obligation” for Georgian citizens willing to emigrate permanently to obtain emigration permission issued by PSDA. In case of issuance of emigration permission, a note of “permanent leave” will be made in passport.²⁰

Emigration permission is not required in case of temporary leave, including circular migration. It is noteworthy that Migration Strategy (section 4.1.1) recognizes importance of circular migration for the purposes of promoting legal emigration.

It is difficult to conclude whether obtaining emigration permission is the right or obligation for a citizen of Georgia. Legislation leaves this issue open; there is no imperative provision requiring obtaining emigration permission. Legislation provides the possibility to obtain such permission. Besides, there is no sanction for failing to leave the country without emigration permission.

Based on the aforementioned we may presume that obtaining emigration permission is a right of an emigrant; on the other hand, it is

¹⁷ Georgian citizens are entitled to travel visa-free in some countries; for more details see chapter 5.2 below.

¹⁸ Article 8 of the Law of Georgia on Leave from and Entry into Georgia by Citizens of Georgia.

¹⁹ *Ibid.*

²⁰ *Ibid*, art. 21.

a tool for the state to obtain information on permanent emigration. Emigration permission entirely depends upon the will of an emigrant. It is important to identify whether there are any benefits for a person that would promote him/her to obtain the emigration permits and what are the relevant rights and obligations stemming from this permission. It is noteworthy that a decision on permanent emigration is not an easy decision, and burdening them with extra procedures seems unreasonable, even more so the permission comes with fees.

The only benefit a person may get from emigration permission is that a person is no longer obliged to register in Georgia, which is a mandatory pre-requisite for obtaining an electronic ID card.²¹ Cancellation of registration shall be the condition for suspension of ID/residence card save exceptions, including cases when a person has emigration permission.²²

Legislation does not promote persons willing to emigrate permanently to obtain emigration permission. It seems that this permission mainly serves to collect data on the permanent emigration and movement of Georgian citizens. The state interest is greater than individual, even more so there is a state commitment to establish unified migration data base (see above).

²¹ Art. 3.22 of the Law of Georgia on Rules concerning Registration, ID (Residence) Card and Issuing the Passport of Citizens of Georgia and Aliens residing in Georgia and article 5.5 of the Order #98 of the Minister of Justice (dated 27 July 2011) on Approval of Rules concerning Registration, ID (Residence) Card and Issuing the Passport of Citizens of Georgia and Aliens residing in Georgia.

²² Art 36.1.c.b of the Order #98 of the Minister of Justice (dated 27 July 2011) on Approval of Rules concerning Registration, ID (Residence) Card and Issuing the Passport of Citizens of Georgia and Aliens residing in Georgia.

Recommendation 9. It is recommended to promote citizens to inform state on permanent emigration. It is reasonable either to abolish or simplify procedures of obtaining emigration permission. It is noteworthy that reasons for refusing emigration permission and leaving the country are almost identical. It seems reasonable to abolish procedures for obtaining permission and stamp the passport with a note “permanent migration” on the border upon notification by a citizen.

If State Commission on Migration Issues does not consider reasonable abolition permission procedures, it is recommended to remove any fees for the permission.

In order to obtain emigration permission, a person shall apply PSDA. A minor and a person with disability may emigrate only with consent of their legal representative.

An application may be submitted in paper, or electronically, directly or via legal representative.²³ An application shall contain all the data that is included in the passport and be accompanied with:

“a) A copy of Passport of Citizen of Georgia;

b) for persons of age 18-27 – a copy of a military card or a notice confirming postponing military service, call up to military service or exemption from military service;

c)2 photos 3X4;

d)proof of payment for service.”²⁴

PSDA shall issue emigration permission within a month unless there are the following circumstances:

“a) criminal proceedings are ongoing [against a person];

b) [a person] has to serve a sanction under court decision;

c) a paramilitary person has not yet served military service unless he is exempted from obligatory military service by law;

²³ Paragraphs 2¹ and 2² of art. 20 of the Law of Georgia on Leave from and Entry into Georgia by Citizens of Georgia.

²⁴ *Ibid*, art. 20.3.

d) [a person] is aware of a state or military secret information because of his/her occupation and the time prescribed by the law has not lapsed. This period shall not exceed 5 years;

d) [a person] submitted forged documents for obtaining emigration permission.”²⁵

It is noteworthy that the aforementioned circumstances shall be valid for refusing a person to cross Georgian border.

A person may appeal decision refusing emigration permission in accordance with Georgian legislation.²⁶

5.2.1. Citizenship of Georgia and Emigration

Permanent or temporary emigration shall not cause termination of Georgian citizenship. Article 7 of the Organic Law of Georgia on Georgian Citizenship provides that “*the mere fact that a citizen of Georgia is residing outside the country shall not by itself cause termination of citizenship of Georgia.*” Article 32.b of the same Law states that a person shall lose citizenships of Georgia if he/she “*permanently resides on the territory of another state and has not been registered in a consulate of Georgia for 2 years without any excusable cause.*”

The practice showed that as a general rule, the aforementioned article has not been used as a legal basis for depriving Georgian citizenship. It is not reasonable that failure to register at the consular post of Georgia is the basis for the termination/loss of Georgian citizenship.

Recommendation 10. Article 32.b of the organic Law of Georgia on Citizenship of Georgia should be deleted.

5.3. Visa requirements of Citizens of Georgia

Georgian citizens need to acquire visa for entering other countries, including for emigration purposes, save the exceptions. The table below shows the states where Georgian citizens are entitled to visa-free entry:

²⁵ *Ibid*, art. 22.

²⁶ *Ibid*, art. 22.

Country ²⁷	Passport necessary for visa free travel	Visa free Stay duration
Azerbaijan	Any type of passport	Unlimited
Belarus	Any type of passport	Unlimited
Armenia	Any type of passport	Unlimited
Tajikistan	Any type of passport	Unlimited
Moldova	Any type of passport	Unlimited
Uzbekistan	Any type of passport	Unlimited
Ukraine	Any type of passport	Unlimited
Kirgizistan	Any type of passport	Unlimited
Kazakhstan	Any type of passport	90 days
Turkey	Any type of passport	90 days
Hungary	Diplomatic and Service	30 days
Cyprus	Diplomatic and Service	90 days
Turkmenistan	Diplomatic and Service	30 days
Iran	Diplomatic and Service Ordinary	30 days 45 days
Romania	Diplomatic and Service	30 days
Syngapure	Diplomatic and Service	30 days
Latvia	Diplomatic and Service	30 days
Slovakia	Diplomatic and Service	90 days
Estonia	Diplomatic	90 days
China	Diplomatic, Service and Special	30 days
Egypt	Diplomatic, Service and Special	30 days
Qatar	Diplomatic	90 days
Bulgaria	Diplomatic and Service	90 days
Croatia	Diplomatic and Service	90 days
Peru	Diplomatic, Service and Special	90 days
Brazil	Diplomatic, Service and Special	90 days
Montenegro	Diplomatic and Service	90 days

Table 2

²⁷ Source: official web-site of MFA: http://mfa.gov.ge/index.php?lang_id=GEO&sec_id=387&info_id=13728 (last seen on March 28, 2013).

On March 1 2011, the Agreement between the European Union and Georgia on the facilitation of the issuance of visas went into effect. Member States of the Agreement are:²⁸

Austria	Germany	The Netherlands
Belgium	Greece	Poland
Bulgaria	Hungary	Portugal
Cyprus	Italy	Romania
Czech republic	Latvia	Slovakia
Estonia	Lithuania	Slovenia
Finland	Luxemburg	Spain
France	Malta	Sweden

Table 3

This agreement decreased visa fees for certain categories of Georgian citizens and abolished the fee for others (including minors younger than 12 years, students, sportsmen, etc.). Visa application processing period was limited to 10 days (might be decreased to 2 days or increased to 30 days). The list of accompanying documents was simplified for 13 categories (including pupils, students, etc). The Agreement also provides for multilateral, including 5-year visas.

This agreement does not provide simplified procedures for migrant workers.

5.4. Readmission of Georgian Citizens to Georgia

Readmission is extremely efficient mechanism in combating irregular migration. The State of nationality has nearly absolute obligation to readmit its nationals, as well as persons permanently residing its territory. Georgia shall also readmit persons who hold neutral travel document.

Further information on readmission see below.

²⁸ *Ibid.*

6. MIGRATION TO GEORGIA

6.1. Introduction

Aliens' Law regulates entry, stay, transit and departure from Georgia of Aliens and stateless persons. It also regulates their rights and obligations, legal basis for their expulsion, forms and procedures of expulsion, as well as competencies and responsibility of competent authorities. The Law also specifies their rights during their stay in Georgia. The Law regulated only legal status of aliens. The amendments of May 25, 2012 introduced new regulations for stateless persons. The amendments were triggered by the ratification of the Convention on the Status of Stateless persons.

The law clearly sets the legal basis for stay in Georgia for aliens and stateless persons.²⁹ It is in line with international standards, including respect of human rights and combating trans-border and international crime.

The Law recognises the principle of non-discrimination of aliens/stateless persons.³⁰ Rights are guaranteed save otherwise provided by law,³¹ family unity principle shall be respected,³² and an alien, who has been refused crossing the state border of Georgia, shall have the right to appeal against such a decision³³.

Article 3.h should be especially highlighted, which provides that:

“The state shall refuse entry into the territory of Georgia to any alien against whom the criminal prosecution is pending for an international crime such as terrorism, drug smuggling, trafficking in human beings, and to a deceased person with infectious diseases”.

A state, as sovereign, decides who to allow, or refuse to allow, to enter its territory under international law save exceptions, like force-majeure, humanitarian necessity, etc. It seems that the goal of article 3.h is to reiterate commitment of Georgia to combat international crimes

²⁹ Art. 3 of Aliens' Law.

³⁰ *Ibid*, art. 3.c.

³¹ *Ibid*, art. 3d

³² *Ibid*, art. 3.g

³³ *Ibid*, art. 3.e.

such as terrorism, smuggling, trafficking in human beings. The latter crime is especially relevant in the context of migration and the Migration Strategy, which highlights combating trafficking in human beings as an efficient method against irregular migration.³⁴

Georgian legislation also recognises a right of aliens to leave Georgia freely that *“shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the protection of health, for the prevention of crime or for the administration of justice.”*³⁵

Georgia is entitled to expel aliens from the territory of Georgia in line with national legislation and principles of international law.

6.2. Legal Basis for Entry and Stay in Georgia

The Georgian visa regime is liberal. It is extremely easy to get Georgian visa. Georgia introduced by bilateral treaties or a visa free regime unilaterally (*details see below*).³⁶ The Migration Strategy (section 4.1.2) supports liberal visa regime and states: *“The Government’s liberal visa policy has a positive impact on the State’s social-economic development.”* Almost every review of Georgian visa policy made by international organizations criticizes the existing visa regime. The criticism is mainly focusing on the existence of only four types of visas and the possibility to obtain a visa at borders through simplified procedures. Georgian visa system is considered inconsistent with EU practices. Studies on influence of migration on country economy claim that the liberal visa regime negatively influences employment in Georgia. The unemployment rate is very high in Georgia. Low-wage workers may lead to deteriorating conditions of the labour class. The Georgian labour market is completely free for the foreign labour force.

Another deficiency of the existing visa system is the possibility to change visa status. A tourist may become a migrant worker and obtain residence permit based on a work contract.

³⁴ Migration Strategy of Georgia 2013-2015, section 4.2.1.1.

³⁵ Art. 3.1 of Aliens’ Law.

³⁶ Article 4.5 of Aliens’ Law provides that nationals of more than 60 countries enjoy visa-free entry in Georgia.

The Strategy recognises the positive impact of the liberal visa regime. It observes the “possible challenges with regard to the above issue” and recognises the need for the adequate reaction to address them.³⁷ The following steps are planned to avoid the possible issues:

- Creating a unified migration data system;³⁸
- Revising the legislation and possible changes;³⁹
- Improving the service and infrastructure for immigrants.⁴⁰

For our purposes the measures related to lawmaking activities are especially interesting. Strategy specifies specific activities under each headline. Section 4.1.2.2 “Revising the legislation and possible changes” states:

“Georgia’s liberal visa policy is based on the country’s social-economic development needs. This process is dynamic and it may have different influences, thus visa policy, legislation and respective procedures are subject to periodical study-analysis. Based on results and state interests the possible changes will be reflected accordingly.”

Government agencies work on the revision of visa legislation and plan to introduce new categories of visas, abolition of issuing visas at border, etc.

A foreigner has to hold travel document and permit of stay in Georgia in order to be admitted to the country. Permit of stay in Georgia is: visa, residence permit, refugee’s or humanitarian status (Refugee Card or Card for Humanitarian Status) or Certificate of Compatriot; visa free entry might be provided by the Georgian law or international treaty of Georgia.⁴¹

Georgian laws recognize 4 types of visas: diplomatic, service, ordinary and study;⁴² and two types of residence permit – permanent and

³⁷ Migration Strategy of Georgia (approved by the Resolution #59 of the Government of Georgia on March 15, 2013), section 4.1.2.

³⁸ *Ibid*, section 4.1.2.1.

³⁹ *Ibid*, section 4.1.2.2.

⁴⁰ *Ibid*, section 4.1.2.3.

⁴¹ Article 16.1 of Aliens’ Law.

⁴² *Ibid*, art. 6.1.

temporary.⁴³

A number of different agencies issue visas in Georgia: MFA via diplomatic or consular missions/posts abroad, MIA and MoJ via PSDA.⁴⁴ It is vital to exchange information and have cooperation between visa-issuing agencies as provided by the Ordinance #399 of the President of Georgia (dated 28 June, 2006) concerning Approval of Regulations on Issuing, Extension and Termination Validity of Visas.

Recommendation 11. It is recommended visas be issued by only one agency. It seems reasonable that only MFA is the only competent authority.

The following categories of persons are entitled to enter Georgia visa free:

- Nationals of countries listed in article 4 of Aliens' law; as well as stateless persons permanently residing in these states, including nationals of EU, USA, Canada, Singapore, Barbados; all these categories of persons are entitled to stay on the territory of Georgia for 360 days;
- Compatriot residing abroad who may enter Georgia visa-free and stay for 30 days;⁴⁵
- Persons on transit;⁴⁶
- Representatives of military forces of NATO member-countries or states participating in "Partnership for Peace" Programme while they are on official duty;⁴⁷
- Person holding residence card or Refugees/Humanitarian Status Card during the validity period of the relevant card.⁴⁸

⁴³ *Ibid*, art. 16. 2.

⁴⁴ *Ibid*, art. 5..

⁴⁵ *Ibid*, art. 4.5⁴.

⁴⁶ *Ibid*, art. 4.7.

⁴⁷ *Ibid*, art. 4.9 and 4.10.

⁴⁸ *Ibid*, art. 16.3..

International treaty of Georgia may provide simplified regime of entry and stay in Georgia or set procedures different from Aliens' law.

Ordinance #399 of the President of Georgia (dated 28 June, 2006) concerning Approval of Regulations on Issuing, Extension and Termination Validity of Visas introduces different rules from Aliens' Law⁴⁹ and provides that the following categories of persons may travel visa-free to Georgia:

- Nationals of Georgia for entry and stay in Georgia for 90 days;
- Persons holding *temporary* residence permit of Kuwait, Qatar, Bahrain, United Emirates of Saudi Arabia may enter and stay in Georgia for 360 days;
- Nationals of Bolivia, Columbia, Dominique Community, Dominique republic, Guatemala, Honduras, Paraguay, Surinam, Cuba, Turkmenistan, Peru, Sent-Lucia, Saint-Vincent and Grenadines, Lebanon may enter and stay in Georgia visa free for 360 days;
- Persons holding US, EU member-state or Schengen visas valid for a year or more which is used at least once, may enter and stay in Georgia visa free for 90 days, provided the relevant visa is valid for that period;
- Persons holding travel document (Laissez Passer) issued by the UN or its specialized agencies may enter and stay in Georgia visa-free for 90 days.⁵⁰

Based on the aforementioned it may be concluded that the nationals of many countries are entitled to enter Georgia without visa. Aliens' Law (article 4.5³) provides that a presidential or government legal act may introduce different rules from this law. It is not reasonable for those by-laws and laws regulate the same issue differently. Taking into account the importance of the issue, it is recommended that new categories of persons become entitled to visa-free entry and stay in Georgia only through Parliamentary approval. It would be reasonable if the Presidential Ordinance #399 implemented only international treaties and laws instead of introducing new rules.

⁴⁹ Article 3 of Ordinance #399.

⁵⁰ *Ibid.*

Recommendation 12. It is recommended that only the Aliens' Law entitles aliens to enter and stay in Georgia visa-free. Article 3 of the Ordinance #399 of the President of Georgia (dated 28 June, 2006) concerning Approval of Regulations on Issuing, Extension and Termination Validity of Visas should be deleted and the relevant provisions reflected in the Aliens' Law (provided all the categories entitled to visa-free entry are considered reasonable).

For the purposes of our study we shall discuss ordinary and study visas.

An ordinary visa is issued to foreigners who travel to Georgia based on the invitation of a physical or legal person or for the purposes of tourism, medical care, visit relatives or any other purpose.⁵¹ Though the Law does not specify, it may be concluded that migrant workers also need to get ordinary visas. The latter is used for every case except diplomats and foreign officials visiting Georgia for official purposes or persons arriving Georgia for education.

Ordinary visa may be issued for from 72 hours up to 15 years:

Validity of Visa	Note
360 days	Multiple entry
90 days	Multiple or single entry
72 hours	Transit travel
No more than 15 years	In line with international treaty of Georgia
Table 4	

Study visas are issued for 360 days, if an alien has an invitation from an educational institution of Georgia.⁵² After this period expires, a person needs to get residence permit.

Ordinary and Study visas cannot be extended. It is allowed to extend

⁵¹ Aliens' law, art. 9.1.

⁵² *Ibid*, art. 10.1.

the validity of diplomatic and service visas.⁵³ Persons holding diplomatic or service visas are also entitled to change status and stay in the country provided they have valid residence permit.

Article 9.1¹ states that an alien who wishes to study or work in Georgia, needs to get a residence permit after their ordinary visa expires. It may be concluded that if a person wishes to study in Georgia and has no invitation from educational institution, they are free to use ordinary visas for educational purposes.

A competent authority *may* refuse to issue visa on the following grounds:

- If during his/her previous stay in Georgia the fact of violation of the Georgian criminal legislation by him/her was revealed, or during the last 1 year, before submitting an application, he/she was deported or did not pay the fine established for illegal stay in Georgia;
- If he/she has submitted incomplete, fraudulent data or documents in order to receive or extend a visa;
- If he/she does not have health and accident insurance, or sufficient financial means to stay in Georgia and to return;
- If his/her stay in Georgia will pose threat to the public order and security of Georgia, to the protection of health, rights and legitimate interests of citizens and residents of Georgia;
- If his/her stay in Georgia will result in the tension of relations between Georgia and foreign countries;
- If there is a reasonable doubt that he/she will illegally stay in the territory of Georgia after the expiry of his/her visa;
- In other cases envisaged by the Georgian legislation.

There is no absolute obligation to refuse a visa in the aforementioned circumstances. The wording of the Law is quite “soft” – “*An alien may be refused a visa*” if the aforementioned circumstances arise. It is recommended that legislation provide clear and straightforward regulation for visa refusal. There should be two categories of circumstanc-

⁵³ Art. 17 of Ordinance #399 of the President of Georgia (dated 28 June, 2006) concerning Approval of Regulations on Issuing, Extension and Termination Validity of Visas.

es: circumstances when the visa *shall* be rejected (f.e. threat to state security or public order, health of population, etc.) and circumstances when visas *may* be rejected.

Recommendation 13. It is recommended that article 12 of the Aliens' Law is drafted using the so called "closed list" in order to identify all cases when authorities may/shall refuse to issue visa.

It is also recommended that the article has two different paragraphs listing circumstances imperatively refusing visa (f.e. threat to public order or state security) and circumstances when government officials have discretion taking into account reasonability principles.

Article 19.2¹ of the Ordinance #399 of the President states that "in case the circumstances of visa issuing are not met a visa issuing authority is not obliged to justify such a decision for an alien". The EU practice requires explaining the reasons of refusing the visa. Accordingly it is reasonable to reflect that practice in the Georgian legislation.

Recommendation 14. It is recommended that a visa issuing agency be obliged to explain the reasons of visa refusal as provided by EU practice.

A person holding valid entry permit to Georgia shall not necessarily be admitted to the country. Articles 13 and 15 of Aliens' Law specify the circumstances when a person will not be admitted to country. They are almost the same as the grounds of visa refusal. The obligation of carrier companies is relevant as they have to check documents of aliens in order to find out whether they have a valid visa and travel documents, in line with Georgian Laws for entry into Georgia and return those aliens who have been refused a permit to enter Georgia.⁵⁴

As already mentioned above there are two types of residence permit – temporary and permanent. Holders of the residence permit have

⁵⁴ *Ibid art. 15.*

the same rights. The residence permit is issued by the PSDA.

Temporary residence permit may be issued to:

- An alien who wishes to stay in Georgia for more than 90 days; and
- Is employed in Georgia in accordance with labour legislation of the country, including freelance professionals;
- Is staying in Georgia for the purposes of health treatment or study;
- Is invited by the state agencies as a highly qualified specialist or is an artist and his/her invitation is within the state interest;
- Is guardian or custodian of a Georgian citizen;
- Is under the guardianship or custody of a Georgian citizen;
- Is a spouse, parent, child, adoptee, adoptive parent, sister, brother, grandmother or grandfather of a Georgian citizen or a foreigner, who has residence permit;⁵⁵
- A person who is considered stateless in Georgia;⁵⁶
- A person whose Georgian citizenship is terminated or a government member initiates to issue a temporary residence permit for such a person.⁵⁷

A person holding temporary residence permit is entitled to receive a temporary residence card. A temporary residence card is also issued to persons who have refugee or humanitarian status.⁵⁸

A temporary residence permit is issued for no more than 6 years. As a general rule, residence permits are issued initially for one year with the possibility to extend it up to 5 years. A person does not need to submit financial conditions evidence for extension of a residence permit.⁵⁹ It is unclear why the lawmakers ignored the possibility that a

⁵⁵ Art. 2.1. of Ordinance #400 of the President of Georgia (dated 28 June 2006) on Approval of Regulations on Rules of Discussing and Deciding on Granting Residence Permit in Georgia.

⁵⁶ *Ibid.* art. 2.2.

⁵⁷ *Ibid.* art. 2¹.

⁵⁸ Art. 26 of the Refugees' Law. See further chapter 6.3 below.

⁵⁹ Article 4.5. Ordinance #400 of the President of Georgia (dated 28 June 2006) on

person's financial conditions may worsen since he had acquired the temporary residence permit. It is recommended that in cases when a residence permit is issued on the grounds of a work contract or financial conditions a residence permit is extended only if the relevant evidence is re-submitted.

Recommendation 15. It is recommended to check financial conditions of a person when his/her residence permit is extended even if relevant proof had been submitted for residence permit.

The only legal way to stay more than 6 years in Georgia is to obtain a permanent residence permit. It is recommended not to limit the number of years of a temporary residence permit and allow issuing temporary residence permit beyond 6 years. This is in line with European practice. The foregoing does not exclude the possibility to issue a permanent residence permit after 6 years if a person wishes so.

Recommendation 16. It is recommended not to limit the number of years of a temporary residence permit.

Article 22.1 of Aliens' Law provides that a person or a legal representative of a person may apply for obtaining a temporary residence permit to PSDA. If a person is abroad, he/she or his/her legal representative may apply to the diplomatic mission or consular post of Georgia. Paragraph 2 of article 22.1 states that a person above 18 years and with full legal capacity may apply for a residence permit. There are no rules concerning application for permanent or temporary residence permit by persons with disability.

Temporary residence permit is terminated upon expiry of its validity period. It will be terminated if:

- It is revealed that a person submitted forged or invalid documents for obtaining Georgian visa or residence permit;

Approval of Regulations on Rules of Discussing and Deciding on Granting Residence Permit in Georgia.

- A person is engaged in activities endangering state security and/or public safety;
- Relations were terminated that constituted the basis for the residence permit;
- A person was in fictitious marriage for obtaining residence permit;
- A person was expelled from Georgia.

PSDA shall decide to terminate the residence permit.⁶⁰

Permanent residence may be granted to:

- An alien:
 - Who has been living legally in Georgia for past 6 years. This term does not include period of residence in Georgia for reasons of health treatment or study and/or employment in diplomatic mission or equal representation;
 - Who holds an immovable property with the value of 100,000GEL in Georgia or the bank deposit of the same amount in Georgian bank institution;
 - Who carried out investment of 100,000 GEL in line with the Law of Georgia on Promotion of Investment Activities and Guarantees.⁶¹

The first option for obtaining permanent residence permit is living in Georgia legally for 6 years. The second and third options – property or investment of 100,000GEL in Georgia - are the result of Georgian economic policy to promote economic activities of foreigners in Georgia. The research showed that other countries do not follow such practice. The granting of permanent residence permits based on financial conditions should be evaluated on the light of security considerations. It is not clear whether such a policy really resulted in expected economic benefits. This consideration is especially important as the existing legislation does not provide for termination of

⁶⁰ Article 4 Ordinance #400 of the President of Georgia (dated 28 June 2006) on Approval of Regulations on Rules of Discussing and Deciding on Granting Residence Permit in Georgia.

⁶¹ Permanent residence permit is issued to spouses, minor children, dependants of persons falling under two categories.

permanent residence permit. It is recommended that the two categories of persons are not granted directly permanent residence permit, but a temporary residence permit. Such a residence permit does not need necessarily be for 6 years, as is the general rule. After expiration of validity of a temporary residence permit, a person may be granted a permanent residence permit provided he still meets the financial requirements and/or continues economic activities.

Recommendation 17. It is not recommended that a person is entitled to permanent residence permit if he/she has a property/account or investment of the value of 100,000GEL in Georgia without having acquired temporary residence permit. Such a temporary residence permit may be for the validity period of 5 years.

A permanent residence permit may be granted to a person who is granted the status of stateless person if:

- By March 27, 1993 he/she permanently resided in Georgia, was not considered to be national of Georgia and is on permanent registration in Georgia;
- His/her citizenship was terminated via withdrawal of citizenship.⁶²

A permanent residence may be granted to the following persons:

- A spouse, parent, child, grandchild, adoptive child, sister, brother, grandfather or grandmother of a citizen of Georgia;
- Who is a highly qualified scientist or an artist or sportsman, and your residence is within the state interest;
- In favor of whom, a commission on restitution and rehabilitation made a decision on property restitution, adequate compensation for real-estate or damages thereto.⁶³

⁶² Art. 1.e of Article 4.5. Ordinance #400 of the President of Georgia (dated 28 June 2006) on Approval of Regulations on Rules of Discussing and Deciding on Granting Residence Permit in Georgia.

⁶³ *Ibid*, art. 5.1.

The aforementioned grounds for permanent residence do not depend upon the nationality status of a person – whether a person is an alien or stateless. A decisive element is the relations of an applicant to Georgian’s, national interest or property restitution. A person who has lost Georgian citizenship is also entitled to receive permanent residence permit. Such persons may also apply for temporary residence permit.⁶⁴ The first wording of the Ordinance did not allow issuing temporary or permanent residence permit to such persons. Amendments to the Ordinance dated August 10, 2010 introduced new rules.⁶⁵ The new wording fails to clarify whether a person who lost Georgian citizenship may initially apply for a temporary residence permit and only after 6 years – for permanent residence permit, or he/she may receive permanent residence permit without waiting 6 years. An applicant is free to choose which residence permit to apply for, or the PSDA has the discretion to decide which residence permit to issue. To establish consistent practice it is recommended that the legal rules be worded clearer concerning persons who lost Georgian citizenship. We do not seek to propose a legal solution here. It is suggested that based on the PSDA practice analysis to clarify interrelations of articles 2¹ and 5.e.

Recommendation 18. It is recommended to clarify whether possession of temporary residence permit for 6 years is a precondition to issue permanent residence permit to persons who lost Georgian citizenship.

Ordinance #400 of the President from 2006 also regulates procedures of issuing residence permit. It is noteworthy that procedures are sufficiently transparent. Legislation sets time-frames for application processing and safeguards the right of an applicant to appeal against decision refusing to grant residence permit, as well as the right to reapply after rejecting decision.

Legislation does not regulate what happens if a person holding a temporary permanent residence permit is absent from Georgia for

⁶⁴ *Ibid*, art 2¹.

⁶⁵ Ordinance #626 of the President of Georgia dated August 10, 2010.

a considerable period of time. As a general rule, absence from the residence country for a long period is the basis for termination of residence permit. It is recommended that relevant provisions are introduced in Georgian legislation to clarify this (for example, absence during 12 months or more as provided by EU practice).

Recommendation 19. It is recommended to define the legal basis for termination of permanent residence permit.

Recommendation 20. It is recommended that absence for 12 months or more be a basis for withdrawing temporary and permanent residence permits.

Ordinance #400 specifies who is entitled to apply for a residence permit – a person of 18 years or more with disability or his/her legal representative.⁶⁶ The same document also regulates how persons under 18 may apply for a residence permit. There are no provisions concerning persons with disability. General provisions of the Civil Code of Georgia regulate how persons with disability should be represented. It is recommended to introduce the specific provisions in Ordinance #400, even more so all legal acts regulating similar issues include specific rules for persons with disability.⁶⁷

Recommendation 21. It is recommended to introduce provisions specifying how persons with disability may apply for a residence permit.

Law of Georgia on Rules concerning Registration, ID (Residence) Card and Issuing the Passport of Citizens of Georgia and Aliens Residing in Georgia sets alien's obligation to register. Article 3 of this Law provides that an alien holding a residence permit has to register his place of residence. This obligation begins from the moment when a person

⁶⁶ Paragraphs 4 and 10 of article 1 of Regulations.

⁶⁷ Article 20².8 of the Law of Georgia on Rules concerning Registration, ID (Residence) Card and Issuing the Passport of Citizens of Georgia and Aliens residing in Georgia.

enters the country, or if he is present in Georgia, within a month after he/she receives residence permit.⁶⁸

It should be noted that government authorities under the umbrella of Government Commission for Migration Issues are working on amendments to legislation regulating entry, stay and leave from Georgia. We hope that the aforementioned recommendations will be reflected therein.

6.3. Refugee and Humanitarian Statuses

The following legal acts regulate refugees and humanitarian status in Georgia:

- Law of Georgia on “Refugees and Humanitarian Statuses”
- Order of Minister of of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia dated August 16, 2012:
 - #98 on Approval of Rules concerning Admission to, Behaviour and Dismissal from Reception Centres;
 - #99 on Approval of Rules concerning Annual Registration of Persons holding Refugee or Humanitarian Status;
 - #100 on Approval of Procedures for Granting Refugee or Humanitarian Status;
 - #101 on Approval of Rules concerning Form, Issuing and Replacement of Asylum Seeker’s Document.
- Resolution #145 of the Government of Georgia on Social Assistance, dated 28 July of 2006.

Refugee is a person **who is neither national of Georgia nor stateless person permanently residing in Georgia** and entered the territory of Georgia and has a well-grounded fear of being persecuted for the reasons of race, religion, national identity, membership of a social group or political opinion and who is unable or is unwilling owing such fear return to his country of nationality or avail himself of the protection of his country.⁶⁹ Law sets clear grounds when refugee status may be rejected (article 3); such grounds include crime against

⁶⁸ Article 5.2. of the Order of the Minister of Justice #98, dated 27 July, 2011.

⁶⁹ Art. 2 of the Refugees’ Law.

mankind, war crimes, crime against international peace and security, etc.

Refugee's status entitles a person to receive temporary residence permit with the validity period of 3 years.⁷⁰

Humanitarian status is granted for a year with the possibility of extension. A temporary residence card shall be issued with the same validity period.

Humanitarian Status shall be granted to a person who cannot fulfil the necessary requirements to receive refugee status and⁷¹

- Was forced to leave his/her country as a result of violence, aggression, occupation, internal conflict, mass violations of human rights or grave violations of public order;
- Based on international legal obligations of Georgia (article 3 of ECHR or non-expulsion principle based on any other human rights treaty) a person cannot be forced to return to his/her country and cannot travel to another country;
- His/her life may be under risk or be subject of human rights violations if he returns to his country of origin.

Humanitarian status may be granted to a person who is not a national of Georgia or stateless person permanently residing in Georgia and who:

- Was forced to move on the territory of Georgia and cannot receive IDP status under the law of Georgia on IDPs;
- Entered Georgia from neighbouring country as a result of natural disaster;
- Is in need of humanitarian assistance.

A person holding refugee or humanitarian status may enter the country with a temporary residence permit card. If a person who illegally crossed the Georgian border applies for asylum in Georgia, he/she cannot be expelled from the country until a final decision is made upon his/her application. During the review of his/her application an asylum seeker has to be placed in a reception centre charge-free.

⁷⁰ *Ibid*, art. 14.

⁷¹ *Ibid*, art. 4.

Georgian legislation allows asylum seekers status based on the *prima facie* principle if there is a mass entry into the country. MRA will decide on granting the humanitarian or refugee status to persons who entered the country massively taking into account the real conditions in their country of origin.⁷²

Refugees' Law specifies the grounds for termination of the humanitarian/refugee status and rights and obligations of status-holders. The most important innovation of the law is the principle of non-expulsion⁷³ (non refoulement) and socio-economic guarantees, including right to education, respect for family unity, etc.

MRA holds basic responsibility towards refugees or humanitarian status-holders.⁷⁴

The Migration Strategy highlights the importance of protection of rights of refugees and persons with humanitarian status. Special attention is focused on institutional improvements. The government of Georgia commits itself to take all appropriate measures for the protection of rights of persons with refugee/humanitarian status and asylum seekers and to create dignified living conditions for them. The Strategy states that the legal basis regulating refugee/humanitarian status and asylum seekers will be reviewed to ensure full compliance with international standards. New by-laws will also be developed to establish more precise rules and procedures for the implementation of the Law on Refugees and Asylum Statuses.

6.4. Repatriation of Persons Forcefully Sent into Exile from Georgia in the 1940s by the USSR

One of the main challenges of immigration to Georgia is implementation of an obligation undertaken before the CoE concerning repatriation of persons forcefully sent into exile from Georgia in 1940s and their descendants.

Since 1999 the Georgian-CoE negotiations have discussed the issue on establishing a legal framework for repatriation of departed

⁷² *Ibid*, art. 5.

⁷³ *Ibid*, art. 21.

⁷⁴ Chapter VI of Refugees' Law specifies all competent authorities and their competencies.

Meskhetyans to their historical home-land, their integration into the society and granting nationality to them. Georgia had to implement this obligation within 12 years. In 2007, the Law of Georgia on Repatriation of Persons forcefully sent into exile from the Soviet Socialist Republic of Georgia by the Former USSR in the 40's of the 20th Century (further – Repatriation Law) was adopted.

The following by-laws were adopted on the basis of Repatriation Law:

1. Resolution #3 of the Government of Georgia dated January 9, 2008 on Establishment of Form of Health Certificate for the Purposes of the Law of Georgia on Repatriation of Persons forcefully sent into exile from the Soviet Socialist Republic of Georgia by the Former USSR in the 40's of the 20th Century;
2. Resolution #111 of the Government of Georgia of March 1, 2011 on Approval of the Composition and Regulations of the Government Commission on Repatriation of Persons forcefully sent into exile from the Soviet Socialist Republic of Georgia by the Former USSR in the 40's of the 20th Century;
3. Resolution #87 of the Government of Georgia of 30 March, 2010 on Granting Citizenship through Simplified Procedures to Persons Holding a Status of a Repatriate.

Article 4.7 of the Repatriation Law set a deadline – July 1, 2009 – for submission applications on granting status of repatriate. The 2009 amendments to the Law postponed the deadline until January 1, 2010.⁷⁵

Accordingly, because of time-limitation it is not expected to have additional flows of repatriates to Georgia.

It is noteworthy that a wife or child of a repatriate are also entitled to status or repatriate.⁷⁶

Because of set deadlines repatriation might have impacts on migration only in cases if a person holding repatriate status wishes to ob-

⁷⁵ Art. 11¹ of Law of Georgia on Repatriation of Persons forcefully sent into exile from the Soviet Socialist Republic of Georgia by the Former USSR in the 40's of the 20th Century.

⁷⁶ *Ibid*, art. 3.2.

tain nationality of Georgia through simplified procedures⁷⁷.

A repatriate has to apply for obtaining citizenship of Georgia to the competent authority within two years. If he/she fails to meet the deadline he/she is not entitled to simplified procedures of granting Georgian citizenship;⁷⁸ however, he/she may use general rules.

The status of a repatriate may be suspended or withdrawn by MRA in cases precisely specified by the law. If a person commits a crime, the status of a repatriate may be suspended until the investigation bodies make a decision on termination of a case or entry into force of court decision in favour of this person. The status of a repatriate shall be withdrawn:

- On the basis of an application by a person;
- If a person obtains nationality of Georgia or any other country;
- If a person does not apply to the competent authority concerning obtaining citizenship within the prescribed time-limit;
- If a person is rejected to grant Georgian citizenship in accordance with the Resolution of the Government on Granting Citizenship through Simplified Procedures to Persons Holding a status of a Repatriate;
- If a new circumstance is revealed hindering the granting of a status after the status has already been granted;
- If after the granting status of a repatriate it is revealed that a person wilfully submitted false or forged information for obtaining the status;
- After entry into force of court decision against the person;
- If the court declares the person lost or dead;
- When a person dies.

If a person fails to submit an application to the competent authority

⁷⁷ Art. 27¹ of the Law of Georgia on Citizenship; Resolution of the Government on Granting Citizenship through Simplified Procedures to Persons Holding a Status of a Repatriate.

⁷⁸ *Ibid*, art. 8.

concerning the status of a repatriate within specified time, he/she is still entitled to obtain right to reside legally in Georgia based on the Aliens' Law or obtain Georgian citizenship (naturalisation or dual citizenship).

Adoption of this Law was a step forward for safeguarding the legal protection of deported persons and their descendants in Georgia; at the same time obligation before the CoE was implemented. However, the Law has some deficiencies that preclude repatriates from enjoying and realizing their rights fully. Due to existing deficiencies there is a probability that implemented measures might be considered insufficient for fulfilling the obligations before the CoE.

The Repatriation Law does not create any mechanisms concerning settlement of repatriates in Georgia. The state has only one obligation towards repatriate – decide on a status of a repatriate. The wording of the obligation towards the CoE is quite plain. It is deemed that the obligation is broader than just granting a status of a repatriate and provides for implementation of active measures for integration of a repatriate after a person repatriates to Georgia. The text of the obligation is read as follows: “adoption of a legal framework permitting the repatriation and integration of Meshketian Turks”. The preamble of the Repatriation Law provides that repatriation system is based on voluntary and dignified return of Meshketian Turks. In accordance with this provision the state commits to provide repatriated Meshketians with socio-economic conditions necessary for their dignified living in Georgia. It is important that the state introduces long-term and short-term programs aimed at reintegration into society.

Recommendation 22. It is recommended to develop legislation and programs promoting reintegration of repatriates into society.

6.5. Status of Stateless Persons

Protection of stateless persons is novelty in Georgian legislation. Georgia acceded to the Convention on the Status of Stateless Persons on December 9, 2011. National legislation was drafted and adopted upon ratification. Amendments to the Law of Georgia on Legal Status

of Aliens dated May 23, 2012 introduced the new provisions regulating the status of stateless persons. The name of the law was changed to the Law of Georgia on Legal Status of Aliens and Stateless Persons.

A person is stateless if no state considers him/her as its national.⁷⁹ The PSDA in accordance with the Ordinance of the President #515 dated June 27, 2012 on Approval of Rules of Establishing Status of Stateless Person establishes the status of stateless person. A person holding a status of stateless in Georgia shall enjoy rights and obligations equivalent to aliens.⁸⁰

Stateless persons, who permanently reside in other country and wish to enter, stay or leave Georgia, are subject to the same rules and procedures as the nationals of residence country.⁸¹

A stateless person who holds a residence permit may stay in Georgia legally. A residence permit is issued for 3 years after a person is granted the status of stateless. A residence card is also issued for 3 years.⁸²

In certain cases a stateless person may be granted a permanent residence permit if the person:

- Though permanently residing in Georgia by 27 March 1993 was not considered to be citizen of Georgia and has not stopped his/her registration since March 27, 1993;
- If the citizenship of Georgia was terminated through abandonment of citizenship.⁸³

A person may legally stay in Georgia while his/her status is under consideration. This period should not exceed 9 months. A person may not be subjected to expulsion during this period.

Ordinance of the President of Georgia on Approval of Rules concerning Establishing Status of Stateless person and Aliens' Law does not provide the possibility to appeal against the decision of a competent authority to refuse status of stateless person.

⁷⁹ Aliens' Law, art. 2.

⁸⁰ *Ibid*, art. 26³.

⁸¹ *Ibid*, art. 3.k

⁸² *Ibid*, art. 19.

⁸³ *Ibid*, art. 26¹.5.a.

Recommendation 23. It is recommended that provisions on appeal against decision of competent authorities on refusing stateless person's status are added to the Aliens' Law and Ordinance #515 of the President of Georgia on Approval of Rules concerning Establishing Status of Stateless person of 27 June 2012.

Article 26².1 of Aliens' Law states that a status of stateless person may be refused "if there is an opinion any competent authority that presence of this person is not reasonable for the purposes of protection of state or public interest".

The aforementioned ground for refusal is quite obscure and gives excessive discretion to government authorities to refuse the granting of status because his presence contradicts state or public interests. It is important that the opinion of government authority is grounded and justified and a person has a possibility to appeal against such decision. It is also unclear which government agencies will be competent under this article.

Recommendation 24. It is recommended that competent authorities are specified in article 26².1.c; in addition the Law should expressly state that the opinion prepared by the competent authorities needs to be justified.

6.6. Readmission to Georgia

The Legal status of aliens and stateless persons is precisely regulated by Georgian legislation. There are no provisions concerning the status of persons who were readmitted to Georgia, and are not Georgian citizens and do not hold legal permission to stay in Georgia.

Entry into force of the EU-Georgian agreement on the readmission of persons residing without authorisation triggered adoption of legislation on readmission, rights and obligations of readmitted persons. Under the agreement two categories of persons residing without authorisation shall be readmitted to Georgia: 1. Citizens of Georgia; and 2. Third-country nationals and statelessness persons.

Third-country nationals and statelessness persons shall be subjected to readmission to Georgia if such person: 1. hold, at the time of submission of the readmission application, a valid visa or residence permit issued by Georgia; or 2. illegally and directly entered the territory of a Member State after having stayed on, or transited through, the territory of Georgia. There is no readmission obligation if:

1. The third-country national or stateless person has only been in airside transit via an international airport of Georgia; or
2. The Requesting Member State has issued to the third-country national or stateless person a visa or residence permit before or after entering its territory
3. The Requested State has expelled the third-country national or stateless person to his/her state of origin or to a third State.

Readmission request shall be based on the following documents issued by the requested state: valid visa or residence permit; entry/ departure stamp or any other indication in the travel document.

Prima facie evidence of the conditions of readmission is the following: description issued by the relevant authorities of the Requesting State, of place and circumstances under which the person concerned has been intercepted after entering the territory of that State; information related to the identity and/or stay of a person which has been provided by an international organisation (e.g. UNHCR); reports/ confirmation of information by family members, travelling companions, etc.; statement by the person concerned; information showing that the person concerned has used the services of a courier or travel agency; official statements made, in particular, by border authority staff and other witnesses who can testify the fact of the border crossing for the person concerned; official statement by the person concerned in judicial or administrative proceedings; documents, certificates and bills of any kind (e.g. hotel bills, appointment cards for doctors/dentists, entry cards for public/private institutions, car rental agreements, credit card receipts, etc.) which clearly show that the person concerned stayed on the territory of the Requested State; named tickets and/or passenger lists of air, train, coach or boat passages which show the presence and the itinerary of the person concerned on the territory of the Requested State.

The agreement specifies the readmission procedures, time-frames, transfer forms and transportation means.

Competent authorities for implementation of the Agreement have been identified (see the Ordinance # 225 of the President of Georgia dated April 26, 2011 on Implementation of Agreement on the readmission of persons residing without authorisation; see also Joint Order # 185-35-63-22 dated March 12, 2012 of the Minister of Internal Affairs, Minister of Justice, Minister of Foreign Affairs and Minister of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia concerning Approval of Readmission Agreement Implementation Rule). MIA is the coordinating agency of readmission agreement implementation measures. The order specifies the functions of competent authorities and their obligation to cooperate. However the legal status of readmitted persons (not entitled to stay in Georgia) in administrative detention or special detention facilities are not regulated.

Migration Strategy of Georgia recognizes readmission as an efficient measure of combating irregular migration and urges upon state agencies to facilitate inter-agency and international cooperation in that direction. Measures on national level include reintegration of readmitted citizens of Georgia. Strategy failed to prioritize the definition of legal status of aliens who are readmitted to Georgia and do not have legal permission to stay in Georgia. Some may argue that implementation protocols to readmission agreements provide for establishment of reception facilities for readmission purposes and safeguarding protection of human rights of persons subjected to readmission. However, taking into account the non-self executing nature of such legal provisions, there is an immediate need to develop legal regulations in this direction with special emphasis of third state's nationals who are readmitted to Georgia.

Recommendation 25. It is recommended to identify state policy in relation of third states' nationals who were readmitted to Georgia and do not have legal permission to stay in the country. Attention should be focused on cases when it is impossible to return a person to his/her country of origin.

Recommendation 26. The aim of national legal acts on readmission is to implement EU-Georgia Readmission Agreement. Taking into account already concluded readmission agreements with non-EU countries (Switzerland, Ukraine) and clearly identified statement of the Strategy to conclude readmission agreements with other countries; it is recommended to elaborate general legal regulations on implementation of readmission agreements.

Recommendation 27. It is recommended to initiate readmission agreements with source countries of immigrants to Georgia.

6.7. Leave the Territory of Georgia

A foreigner may leave the territory of Georgia either voluntarily – exit from Georgia, or based on the decision of administrative or judicial authority – expulsion.

6.7.1. Depart from Georgia

Under Georgian legislation “*An alien legally staying in Georgia shall be free to leave Georgia. **This right shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the protection of health, for the prevention of crime or for the administration of justice**”⁸⁴.*

Article 51 of Aliens’ Law identifies the cases when an alien may be refused to exit Georgia:

- “a) If a relevant decision has been taken by the court;*
- b) If he/she is convicted for committing a crime – before enforcement of sentence or before release from sentence;*

⁸⁴ Article 3.i of Aliens’ Law.

c) If he/she avoids the fulfilment of the obligation assigned by a competent administrative organ – until the fulfilment of the obligation;

d) In other cases envisaged by the legal acts of Georgia.”

Article 51 contains an open-ended list of the cases when an alien may be refused to leave Georgia. It is recommended to remove 51.1.d of Aliens’ Law and add a comprehensive list of conditions of when the right to leave may be refused.

Aliens shall leave the country through border check points open for international traffic, if they have a valid travel document and a permit for staying in Georgia, unless otherwise provided by international agreements of Georgia and the Georgian legislation.

An alien has to leave Georgia until a permit to stay in the country is valid. An obligation to leave the country may be postponed up to 3 months under the decision of PSDA and in accordance with law.⁸⁵

An alien may stay in Georgia for 10 days after the expiration of their permit to stay in the country. If a person does not leave country within this grace period, he will be subjected to administrative liability (see below).

When a person is refused to leave the country he may be even detained.⁸⁶

6.7.2. Expulsion

On the basis of a decision of administrative or judiciary body, an Alien may be expelled from Georgia if legal grounds for his/her further stay in Georgia no longer exist, his/her stay contradicts with the protection of the interests of national security and public order, as well as the public’s health.

Georgian legislation does not define the meaning of the term “ex-

⁸⁵ *Ibid*, art. 50.8. In exceptional cases, the exit may be postponed for more than 3 months.

⁸⁶ *Ibid*, art. 51.2.

pulsion”. Lawmakers also use “deportation”,⁸⁷ “voluntary return”,⁸⁸ “controlled expulsion”⁸⁹ and “administrative expulsion”.⁹⁰ It is recommended that the existing legislation is reviewed and amended to ensure consistent use of terms to prevent inconsistent interpretation and practice.

Article 24.2 of Administrative Misdemeanours Code states “*Georgian laws may provide for administrative expulsion of foreigners and stateless persons from Georgia who gravely violate public order.*” Neither the code itself nor other “laws” provide administrative detention as a sanction.

Recommendation 28. It is recommended to define the terms “expulsion”, “deportation” and “voluntary return”.

An alien may be deported to his/her country of nationality, residence, any other country from where he/she entered Georgia, or any country that consents to receive this person if:

⁸⁷ Articles 26 and 27 of the Law of Georgia on Refugee When and Humanitarian Statuses uses terms “expulsion” and “deportation” as synonyms. Aliens’ Law does not use the term “deportation”; however chapter 3.2. of the Migration Strategy states: “*The Law on the Legal Status of Aliens and Stateless Persons regulates legal grounds and mechanisms for aliens’ entry, residence, transit, and leaving Georgia, also the forms and procedure of deportation, as well as the field of competences of institutions involved.*” The terms “deportation” and “expulsion” are understood as synonyms even though the Strategy does not mention “expulsion”.

⁸⁸ Chapter 4.3.2.2 promotes the voluntary return of those foreigners whose asylum claim has been rejected, as well as other migrants who wish to return to their country of origin. The term “voluntary return” is basically used in relation to the return of Georgian citizens and related legal acts. See Ordinance # 142 of the President of Georgia (dated February 27, 2012) on Approval of Regulations concerning Return Documents.

⁸⁹ Article 24.1.d of the Regulations on Issuing Georgian Visa (approved by the Order of the Minister of Foreign Affairs § 104, dated August 5, 2005). These provisions are noteworthy because they provide a basis for refusal of entry not specified in the Aliens’ Law, namely: Visa shall not be granted if “*an applicant was expelled from Georgia during last year or **was subjected to controlled expulsion from the territory of Georgia.***” It may be concluded that the terms “expulsion” and “controlled expulsion” have different meanings with “expelled” being less punitive. It is not clear in what cases controlled expulsion shall be employed.

⁹⁰ Administrative Misdemeanours Code, art. 24.

- He/she has illegally entered Georgia;
- Legal grounds for his/her further stay in Georgia no longer exist;
- His/her stay contradicts the interests of national security and public order of Georgia;
- His/her deportation is necessary for the protection of health, rights and legitimate interests of citizens and other persons legally residing in Georgia;
- He/she systematically violates Georgian legislation;
- He/she has obtained legal grounds for entry and stay in Georgia by submitting fraudulent or invalid documents;
- He/she is sentenced to imprisonment for a term longer than 1 year for intentionally committing one or more crimes after the enforcement of sentence.⁹¹

Article 19.8 of the European Social Charter (revised) provides that a migrant worker cannot be expelled” unless they endanger national security or offend against public interest or morality”.

It is recommended that this provision be incorporated in article 53 of the Aliens’ Law to ensure proper implementation of the treaty obligations.

Recommendation 29. It is recommended to incorporate article 19.8 of the European Social Charter (revised) in article 53 of Aliens’ Law.

A person granted stateless person status could be expelled from Georgia, only if his/her stay on the territory of Georgia threatens state security and public order.⁹²

A person-seeking asylum or whose status - refugee, humanitarian, stateless person - is being considered by administrative/judiciary bodies in Georgia, is a victim of human trafficking, or there are reasonable grounds to believe that he/she may be a (statutory) victim of

⁹¹ Article 53.1. of Aliens’ Law

⁹² *Ibid*, art. 53.3.

human trafficking shall not be expelled from Georgia.

Unless there is a threat to state security and public order the following categories of aliens shall not be expelled from Georgia:

- An alien who has a residence permit in Georgia and has been living in Georgia for the last 3 years without conducting an offence;
- An alien who was born in Georgia and has a residence permit in Georgia, and has been living in Georgia for the last year without conducting an offence;
- An alien who is a minor and has a residence permit in Georgia, and has been living in Georgia for the last year without conducting an offence;
- An alien being in Georgia and being under the custody or guardianship of a citizen of Georgia;

A person may not be expelled to a country where:

- He/she is persecuted for political beliefs, or for an action/omission not considered a crime under Georgian law;
- He/she is persecuted for protecting human rights and peace, for progressive social, political, scientific and other artistic activities;
- His/her life or health is endangered.

If a person cannot be expelled from Georgia, he/she may be granted Humanitarian Status.⁹³

The rules of expulsion for stateless persons are the same unless his/her status is under consideration. A person waiting for the decision on status shall not be subject to expulsion, even if he/she entered Georgia illegally and/or there are no longer legal grounds for his/her stay in Georgia.⁹⁴

The PSDA is responsible for discussing the issue of expulsion.⁹⁵ The MoJ or MIA prepares opinions on expulsion,⁹⁶ and the decision is

⁹³ Law of Georgia on Refugee and Humanitarian Statuses, art. 4.1.b.

⁹⁴ Aliens' Law, 53.2.

⁹⁵ Law of Georgia on Public Service Development Agency, art. 4.2.m.

⁹⁶ Aliens' Law, art. 54.

made by the Minister of Justice⁹⁷ or a Court.⁹⁸

The Minister of Justice shall decide upon expulsion in two cases: when a person has illegally entered Georgia and the legal grounds for his/her further stay in Georgia no longer exist. A decision on expulsion should indicate a time when a person has to leave the country.⁹⁹ Article 6.1 of the Regulations on Expulsion of Foreigners from Georgia (approved by the Ordinance #401 of the President of Georgia dated June 28 2006) specifies that a person has to leave the country within 3 days after the decision on expulsion.

If a decision on expulsion is in force and a person does not exercise his/her right to leave the country voluntarily, the LEPL National Bureau of Enforcement shall enforce expulsion

A court will decide upon expulsion in all other cases. A court judgment shall be enforced immediately by the LEPL National Bureau of Enforcement.

The law safeguards the right to appeal decisions on expulsion.

Article 58.5 of the Aliens' Law provides that while taking a decision on deportation, the following may be taken into consideration:

"a) Length of legal stay in Georgia, as well as personal, social, economic and other links of a person with Georgia;

b) Possible consequences for an alien's family and persons permanently living with him/her, in case of an alien's deportation."

The European Court of Human Rights has reviewed the issue of expulsion many times in the light of human rights law. **It is recommended that the staff of government agencies that make decisions on expulsion or enforce it are trained in human rights law in the context of expulsion.**

Regulations on Expulsion of Foreigners from Georgia (approved by the Ordinance #401 of the President of Georgia dated June 28 2006)

⁹⁷ Charter of the Ministry of Justice (approved by the Ordinance #541 of the President of Georgia, dated November 7, 2008) art. 5.2.k.

⁹⁸ Aliens' Law, art. 54.1.

⁹⁹ *Ibid*, art. 55.2.

does not correspond with modern requirements. It has never been updated to bring it in line with changes to the Aliens' Law or other legislation on aliens' and asylum seekers. Accordingly the regulations need to be amended in substance or replaced by a new legal act.

It is also recommended to declare non-effective order #182 of the Minister of Justice of Georgia of August 3 2000 on Approval or Temporary Regulations concerning the Competencies of the Ministry of Justice on Expulsion.¹⁰⁰

On the same basis the following legal act needs to be declared invalid: Order #304 of the Minister of Internal Affairs dated August 15, 2000 on Implementation Measures for the Ordinance #401 of the President of Georgia dated June 28 2006 on Approval of Regulations on Expulsion of Foreigners from Georgia.

Recommendation 30. The following legal acts need to be declared invalid:

- ***Ordinance #401 of the President of Georgia dated June 28 2006 on Approval of Regulations on Expulsion of Foreigners from Georgia***
- ***#182 of the Minister of Justice of Georgia of August 3 2000;***
- ***Order #304 of the Minister of Internal Affairs dated August 15, 2000***

6.8. Responsibility for Violation Rules of Entry, Stay and Departure from Georgia

Aliens who violate rules on entry, stay and exit from Georgia shall be liable under Georgian legislation. Article 63 of Aliens' Law states that an alien shall be subject to criminal, civil or administrative liability in accordance with the established rules, for the violation of the Georgian legislation in the territory of Georgia.

A person subject to expulsion may be administratively detained. Ad-

¹⁰⁰ The legal basis of the order is Ordinance #111 of the president of Georgia dated March 28, 200 that is invalid since 01.06.2006 (source: https://matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=1245487# - last seen on 01.04.2013).

ministrative detention should not exceed 12 hours.¹⁰¹ The Aliens' Law provides that administrative detention of a person who is subjected to expulsion may be up to 72 hours. In this time, a court has to decide the necessity of detention. Administrative detention may be extended (i) until the verification of an alien's identity, citizenship, country of permanent residence or the country from which an alien has entered Georgia; (ii) until the end of enforcement of the deportation of an alien from Georgia.¹⁰² Aliens' Law does not specify the limit of extension of administrative detention; however the responsible agencies are responsible for verification of the circumstances in a potentially reasonable time.

Administrative¹⁰³ and criminal¹⁰⁴ responsibility is applicable to aliens violating entry, stay and exit rules.

Article 191 of the Administrative Misdemeanours Code provides fines to aliens when they stay in Georgia for more than 10 days after their permit to stay in Georgia expired. Thus, an alien may stay in Georgia for 10 days after the stay permit is expired. It is recommended to review this provision and decrease 10 days grace period in line with European best practices. Amendments will be necessary to paragraphs 3 and 4 of article 50 of the Aliens' Law.

Recommendation 31. It is recommended to decrease 10 days grace period for stay in Georgia after the expiration of stay permit.

It is also recommended that liability of carrier companies is introduced for non-compliance of responsibilities envisaged by article

¹⁰¹ Article 247.1 of Administrative Misdemeanours Code.

¹⁰² Article 62 of Aliens' Law.

¹⁰³ Article 185 (Residence in Georgia with Violation of Registration Rules for the Citizens of Georgia and Aliens) and Article 191 (Violation of Rules on Stay of Foreign Nationals on the Territory of the Republic of Georgia, as well as Transit Rules) of Administrative Misdemeanours Code.

¹⁰⁴ Article 344 (Illegal Border Crossing at State Border of Georgia) and article 344¹ (illegal transportation of migrants through state border of Georgia or creation of desirable conditions for their illegal presence in the territory of Georgia) of Criminal Code of Georgia.

15.1 of Aliens' Law¹⁰⁵.

Recommendation 32. It is also recommended that liability of carrier companies is introduced for non-compliance with responsibilities envisaged by article 15.1 of Aliens' Law.

Paragraphs 1 and 2 of article 191 uses the term “foreign nationals”. Interpretation of this term presumes that stateless persons are not covered by these two paragraphs. Taking into account the meaning of these paragraphs, it is logical to apply them to stateless persons too. Broader interpretation of the term “foreign nationals” does not seem reasonable as the term “alien” is used for identification of “nationals of other countries and stateless persons; besides, paragraphs 3 and 4 of the same article use terms “foreign national” and “stateless person” together. Article 185 refers to “alien”. It is recommended that the terminology stays consistent in the Administrative Misdemeanour Code and amendments are made to article 191.

Recommendation 33. It is recommended that article 191 is reviewed to ensure terminology consistency.

The illegal crossing of the state border is a crime under Georgian legislation (article 344 of Criminal Code of Georgia). It is recommended to abolish criminal responsibility for illegal border crossing unless there is additional criminal intention. Paragraph 1 of article 344 sets a fine without specifying upper limit. The practice analysis showed that in certain cases imposed fines were not proportional with the offence committed. It is recommended to define upper limit of fine.

¹⁰⁵ Article 15.1 of Aliens' Law states:

“Carrier companies shall be obliged to:

- a) Check documents of aliens in order to find out whether they have a valid visa and travel documents, envisaged by the present Law for entry into Georgia;*
- b) Provide presence of aliens for inspection at border check points, immediately upon their arrival;*
- c) Return those aliens who have been refused a permit to enter Georgia.”*

Recommendation 34. It is recommended that criminal responsibility for illegal border crossing is abolished unless accompanied with another criminal intention. It is also recommended to define the upper limit of fine for illegal border crossing.

6.9. Combating Human Trafficking– Efficient Tool for Fight against Irregular Migration

The fight against trafficking was on top of the agenda for the government of Georgia long before the migration. Notwithstanding the close links between migration and trafficking, the counter-trafficking strategy/action plan was developed disregarding migration. The main reason was the fact that the competent authorities had a political will to take measures against trafficking and achieved significant results (both on national level – adoption and implementation of legislation and on recognition on international level¹⁰⁶). The same authorities had no interest in migration and did not link fight against irregular migration with trafficking, and had no understanding what was necessary to eliminate/prevent irregular migration.

However, the Migration Strategy stresses the close links between trafficking and migration. The crime of trafficking is often committed through irregular migration. Illegal border crossing and irregular migrants are extremely vulnerable to trafficking.

The aim of this research is not to analyse the legislation regulating trafficking in human beings. Relevant legislation shall be reviewed in the migration context.

Having recognized the importance of combating trafficking in human beings the Migration Strategy states: *“The purpose of the Migration Strategy is to improve the management of migration processes, which implies ... fighting ... human trafficking”*.¹⁰⁷

Chapter 2.2 of the Strategy defines the basic principles of the strategy.

¹⁰⁶ US State Department’s Report on Trafficking in Human Beings.

¹⁰⁷ Migration Strategy, chapter 2.1.

There is “Zero tolerance for trafficking in human beings and smuggling of migrants across the state border”.

The fight against human trafficking is also recognised as an efficient tool to eliminate and prevent irregular emigration:

*“The Government of Georgia will continue efforts towards further improving anti-trafficking measures and integrated border management. The, activities will be carried through the Inter-agency Cooperation Council on Combating Trafficking in Human Beings; respective mechanisms for the detection of irregular emigration will be elaborated and developed.”*¹⁰⁸

The Aliens’ Law states that the following fundamental principle, *inter alia*, shall regulate the entry, stay, transit and exit of aliens from Georgia: “The state shall refuse entry into the territory of Georgia to any alien against whom the criminal prosecution is pending for an international crime such as terrorism, drug smuggling, **trafficking in human beings**, and to a deceased person with infectious diseases”.¹⁰⁹

For the purposes of this research, it is important whether a victim of human trafficking is the citizen of Georgia or an alien for the purpose of this research. However, it does not mean that there each receive different rights based on their nationality: “The aliens who are (statutory) victims of human trafficking perpetrated on the territory of Georgia shall have the same rights as envisaged for the (statutory) victims of human trafficking by this Law.”¹¹⁰

Irregular migrants are more vulnerable to becoming victims of human trafficking. Georgian legislation provides for the protection of such Georgian nationals, repatriation to Georgia, their rehabilitation, and proper investigation of crime and punishment of those responsible.

The main issue in relation to aliens who are victim of human trafficking is whether they are entitled to stay in Georgia, even if they crossed Georgian border illegally, or do not possess the right to stay on the territory of Georgia.

¹⁰⁸ *Ibid*, chapter 4.2.1.1.

¹⁰⁹ Aliens’ Law, art. 3.h.

¹¹⁰ Law of Georgia on Combating Human Trafficking, art. 20.1.

A victim of human trafficking, who is an alien or stateless person, shall be exempted from liability from failing to register under article 185 of Administrative Misdemeanours Code (Residence in Georgia with Violation of Registration Rules for the Citizens of Georgia and Aliens).¹¹¹ Victims of human trafficking shall not bear responsibility for illegal border crossing.¹¹²

Victims of human trafficking are not exempted from liability established by article 191 (Violation of the Rule of Stay in and Traverse through the Territory of Georgia by Aliens) of the Administrative Misdemeanours Code of Georgia.

Recommendation 35. It is recommended that victim of human trafficking be exempted from liability for actions prescribed by article 191 of Administrative Misdemeanours Code of Georgia.

Georgian law prevents the expulsion of a foreigner during the deliberation time where there are reasonable grounds to believe that he/she may be a (statutory) victim of human trafficking.¹¹³ However, there is no express provision prohibiting expulsion of a victim of human trafficking during criminal proceedings when he/she agrees to cooperate with law-enforcement bodies. It is recommended to introduce a provision clearly excluding expulsion of a victim or alleged victim of a human trafficking.

Recommendation 36. It is recommended that Georgian legislation clearly states that a person who is a (statutory) victim of trafficking in human beings shall not be subjected to expulsion at all stages of investigation.

A (statutory) victim of human trafficking is entitled to stay in Georgia during deliberation time and criminal proceedings. Law of Georgia on Combating Human Trafficking (paragraphs 4 and 5 of article 20) states that a residence permit may be issued to them.

¹¹¹ *Ibid*, art. 20.2.

¹¹² Criminal Code of Georgia, note of art 344.

¹¹³ Law of Georgia on Combating Human Trafficking, art. 20.3. and Aliens' Law, art. 53.3.d¹.

The state shall take appropriate measures to safely return foreign (statutory) victims of human trafficking to their country of origin after the expiration of the deliberation term or upon completion of the relevant criminal proceedings. A person may be granted asylum on the territory of Georgia, if there are reasonable grounds to believe that his or her life, health or personal liberty will be under threat if returned to the country of origin.

6.10. Admission to Georgian Citizenship

Aliens may apply to competent authorities to get Georgian citizenship.

Georgian nationality may be acquired by:

- Birth;¹¹⁴
- Naturalization; ¹¹⁵
- On the basis of other grounds provided for by international treaties to which Georgia is a party and this Law.¹¹⁶

Georgian citizens cannot be citizens of another country save the exceptions provided by the Constitution of Georgia. ***Citizenship of Georgia shall be granted by the President of Georgia to a citizen of foreign country, who has a special merit before Georgia or grant the citizenship of Georgia to him/her is due to State interests.***¹¹⁷

We shall focus only upon the rules related aliens.

Article 26 of the Organic Law of Georgia on Citizenship of Georgia Citizenship of Georgia may be granted to an alien or a stateless person of legal age pursuant to this Law if he or she meets the following requirements:

- Has been permanently residing within the territory of Georgia during the last five years;

¹¹⁴ Article 12.1 of the Constitution of Georgia.

¹¹⁵ *Ibid.* see also article 10.b of the Organic Law on Citizenship of Georgia.

¹¹⁶ Article 10.c of the Organic Law on Citizenship of Georgia.

¹¹⁷ Article 12.2 of the Constitution of Georgia. Article 1.2 of the Organic Law on Citizenship of Georgia.

- Knows the state language at the established minimum;
- Is familiar with the history and legislation of Georgia at the established minimum;
- Has a job or any real estate on the territory of Georgia or carries out entrepreneur activities or owns shares or stock in Georgian enterprise.

If the person meets the aforementioned criteria he/she shall not be granted citizenship of Georgia if he/she:

- Committed an international crime against peace and humanity;
- Participated in a crime against the states provided for in the Georgian legislation;
- Granting him/her Georgian citizenship is not reasonable for state and/or public interests¹¹⁸.

In exceptional circumstances, the President of Georgia is entitled to grant citizenship of Georgia to a person without having observed requirements mentioned above, if the person has made a special contribution to Georgia, or mankind with his scientific, or social activity, or possesses special profession or qualification, which are of interest for Georgia, or granting of citizenship to him is within the interests of the state.

Special rules of granting citizenship are established for repatriates (see above chapter 6.4) and spouses of Georgian citizens.

¹¹⁸ Article 26¹.1 of the organic Law of Georgia on Citizenship of Georgia.

7. Labour Migration

7.1. Labour General Overview

Labour migration policy was extremely liberal during the last decade as a result of liberal economy pursued by the Government. Legal regulation of labour migration was quite loose. There is a clear lack of relevant legal provisions: no legal regulation is in place for employment of Georgian citizens abroad; there is no legislation limiting the employment of Aliens in Georgia except for public sector; and, there is no requirement for aliens to obtain a work permit in Georgia. The Georgian labour market is open and not protected from foreign the work force.

7.2. Legal framework on labour Migration

The following international treaties concerning labour migration are binding for Georgia:

1. Convention concerning Discrimination in Respect of Employment and Occupation (binding for Georgia since 22 June, 1997);¹¹⁹
2. Private Employment Agencies Convention, 1997 (binding for Georgia since 27 August 2002);¹²⁰
3. European Social Charter (revised) (binding for Georgia since October 1, 2005);¹²¹
4. IMO Charter (binding for Georgia since 7 June 2001).¹²²

There are no bilateral treaties on labour migration binding for Georgia.

Labour migration should be discussed in the light of instruments, including “Mobility for Partnership”, between Georgia and EU (see above chapter 2).

The simplified procedures under the “Mobility Partnership” do not circumvent local laws and regulations concerning employment. Geor-

¹¹⁹ See, http://mfa.gov.ge/index.php?lang_id=GEO&sec_id=107

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² *Ibid.*

gian migrant workers are still under an obligation to comply with national residence and work permit requirements.

The simplified procedures under the “Mobility Partnership” do not circumvent local laws and regulations concerning employment. Georgian migrant workers are still under an obligation to comply with national residence and work permit requirements.

Negotiations on the Agreement on Circular Migration and Residence of the Professional Workers have been launched within the framework of “Mobility Partnership”. An agreement has been reached on the text of the treaty¹²³. The main component of the agreement is the opportunity for 500 Georgian citizens to seek legal employment in the EU in accordance with professional demand and quotas in the French labour market. The agreement also aims to grant 150 temporary residence permits to Georgian specialists and students to exchange knowledge and improve their qualification.

Basic national legal acts regulating labour migration are the following:

1. Labour Code,¹²⁴
2. Aliens’ Law.¹²⁵

The legislation on labour migration lacks details, but this does not make it deficient. Labour migration legislation should be limited to promoting migration, providing necessary information to potential migrants, and protecting the rights of labour migrants. The aim of the legislation should be to protect the rights of migrant workers in line with international standards, and prevent and decrease irregular migration, including human trafficking. In addition, the state should strive to conclude agreements on circular migration. These agreements are important for the employment of Georgian citizens abroad and for promoting legal immigration in Georgia. Circular migration agreements are being negotiated with EU countries. It is important to initiate negotiations with African, Asian and North American states taking into account the increased immigration from these countries.

¹²³ *Ibid.*

¹²⁴ Amendments to the Labour Code is being discussed by the Georgian Government. The draft code is available : www.matsne.gov.ge

¹²⁵ Article 31 of the Aliens’ Law.

It is obvious that labour migration legislation should be developed on the basis of labour market and labour migration studies.

Recommendation 37. It is recommended to initiate negotiations on circular migration treaties to promote legal migration.

7.3. Employment of Georgian Citizens Abroad

Georgian legislation does not regulate emigration of Georgian citizens for employment purposes. Accordingly general rules regulating exit and emigration of Georgian citizens should be applied. The main legal framework is the Law of Georgia on Leave from and Entry into Georgia by Citizens of Georgia¹²⁶.

Article 30.3 of the Constitution of Georgia states “[o]n the basis of international agreements governing labour relations, the state shall protect the labour rights of the citizens of Georgia abroad.” The treaties mentioned above constitute “international agreements” as referred in the Constitution. Article 18 “The right to engage in a gainful occupation in the territory of other Parties” of the European Social Charter (revised)¹²⁷ should be highlighted in this context. This article states:

“With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:...

and recognise:

4. the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties.”

Paragraphs 1-3 and article 19¹²⁸ of the European Social Charter (revised) bind a state to guarantee the rights of labour migrants on its territory and, entitles a state to require from other Member-States to guarantee the same rights on their territories to their citizens, pro-

¹²⁶ See above chapter 5.

¹²⁷ European Social Charter (revised) was ratified by the Parliament of Georgia on July 1, 2005 by the Resolution №1876-rs recognizing 18 binding for Georgia.

¹²⁸ See further below in chapter 7.4.

vided labour migrants are staying legally therein.

Finally, it should be highlighted that it is not allowed to deprive citizenship of an emigrant¹²⁹ and he/she is entitled to return to Georgia any time.¹³⁰

7.3.1. Recognition of Education

The migration process is closely connected with recognition of education in Georgia and abroad. Georgia is a party to the Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region 1979. This agreement binds more than 30 states, including Turkey, USA, Austria, Greece, Germany, Denmark, etc.¹³¹

In 1999, Georgia became a party to CoE Convention on the Recognition of Qualifications concerning Higher Education in the European Region.¹³² The convention binds 53 countries, including Australia, USA, Kazakhstan.¹³³

There is also an Agreement with Ukraine on Recognition and Equivalency of Education and Scientific Degrees Documents.¹³⁴

Documents issued by Georgian education institutions need to be fully validated before being submitted for recognition in other countries. The National Centre for Educational Quality Enhancement is responsible for the validation of education documents issued in Georgia notwithstanding whether the document is attesting high, professional or general education.¹³⁵

¹²⁹ Article 13.2 of the Constitution of Georgia.

¹³⁰ *Ibid*, article 22.4.

¹³¹ For further details see: http://portal.unesco.org/en/ev.php-URL_ID=13516&URL_DO=DO_TOPIC&URL_SECTION=201.html#STATE_PARTIES). Reservations made by Member-States is also available therein.

¹³² Information on Member-States and reservations see: <http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=165&CM=8&DF=28/03/2013&CL=ENG>

¹³³ However Georgia is not a party to other CoE conventions on recognition of education.

¹³⁴ In force since 17.08.2002.

¹³⁵ Order # 98/n of the Minister of Education and Science dated October 1, 2010 on Approval of Rules and Fees of Validation of Educational Documents Issued in Georgia and Recognition of Foreign Education

In the context of migration, the recognition of foreign education in Georgia is very important. A person may undertake high or professional education programs, while emigrating. It is vital to ensure recognition of qualification/education obtained abroad. The National Centre for Educational Quality Enhancement is responsible for recognition of foreign education in Georgia.¹³⁶

The Migration Strategy (see chapter 4.1.1) highlights the importance of recognition of education for the purposes of reintegration of returned emigrant into society.

7.4. Labour Immigration to Georgia

National legislation on immigration is also liberal and there is an evident lack of legal provisions regulating immigration. The liberal economy shaped the policy on labour immigration in Georgia.

It is noteworthy that no government institution is responsible for conducting research of labour market with an aim to identify whether the local labour force meets the needs of Georgian economy and the foreign labour is necessary.

Article 47 of the constitution of Georgia states: *“Foreign citizens and stateless persons residing in Georgia shall have the rights and obligations equal to the rights and obligations of citizens of Georgia with exceptions envisaged by the Constitution and law.”* Accordingly, all rights related to employment in Georgia are equally applicable to immigrants save the exceptions provided by the law. Such exceptions are discussed below.

The Aliens’ Law, the Constitution of Georgia and binding international treaties create the legal framework for immigration in Georgia.

Georgian legislation does not provide define the term “migrant worker” or “labour migrant”. The European Social Charter (revised) refers to “migrant workers” without defining them. There is a need to introduce a definition in national legislation in order to identify the circle of persons who are entitled to benefits for migrant workers.

¹³⁶ *Ibid.* Additional information on recognition of foreign education in Georgia see below.

Articles 18 and 19 of the Social Charter (revised)¹³⁷ deal with persons engaged in economic activities abroad and migrant workers and their families, as well as their assistance and protection.¹³⁸

Recommendation 38. It is recommended that national legislation defines “migrant worker” and his/her legal status in Georgia.

*“With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance” Georgia has an obligation:*¹³⁹

- To maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;
- To adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
- To promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;
- To secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:
 - Remuneration and other employment and working conditions;
 - Membership of trade unions and enjoyment of the benefits of collective bargaining;
 - Accommodation;

¹³⁷ Article 18 and 19 of European Social Charter (revised) are binding for Georgia.

¹³⁸ These articles are applicable to emigrants and immigrants, as well as their rights.

¹³⁹ Article 19 of European Social Charter (revised).

- To secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;
- To facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;
- To secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;
- To secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;
- To permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;
- To extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply;
- To promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;
- To promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

All the aforementioned obligations of state are also applicable to self-employed emigrants.

Article 18 of the Social Charter (revised) is also applicable to labour migration; this article provides for the following obligations of a Member-State "[w]ith a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party":

- To apply existing regulations in a spirit of liberality;
- To simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
- To liberalise, individually or collectively, regulations governing the employment of foreign workers;

- To recognize the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties.

Articles 18 and 19 are not efficiently applied in Georgia and accordingly the migrant workers cannot enjoy all rights and obligations. These articles are non-self executing and require adoption of relevant national legislation for implementation. As already mentioned, the main challenge for application of these articles is the non-existence of definition of “migrant worker”.¹⁴⁰

Aliens enjoy the same labour rights in Georgia as Georgian citizens except, if expressly stated differently by the Constitution or the law. Only Georgian citizens have the following rights:

- Be employed in public service;¹⁴¹
- Become judge¹⁴² and prosecutor;¹⁴³
- Become notary.¹⁴⁴

Labour Code of Georgia¹⁴⁵ and Law on Entrepreneurs do not provide limits on employment, entrepreneur activities of or registration of legal persons by foreigners.

¹⁴⁰ Law of Georgia on International Treaties of Georgia requires adoption of all national laws before Georgia adheres to an international treaty. However this requirement was not observed in the process of ratification of European Social Charter 9(revised).

¹⁴¹ Article 15 and 16 of the Law of Georgia on Public Service. Article 104⁴ of the Constitution allows persons born in Georgia, permanently residing in Georgia for the last five years and holding the nationality of any EU member state to participate in and vote for presidential and parliamentary elections before January 1, 2014.

¹⁴² Article 86 of the Constitution of Georgia.

¹⁴³ Article 31 of the Law of Georgia on Prosecutor’s Office

¹⁴⁴ Article 11 of the Law of Georgia on Notary.

¹⁴⁵ Article 1 of the Code defines the scope of application of the Code – to regulate labour and related relations on the territory of Georgia notwithstanding to the nationality of individuals engaged in those relations. It is clear that Labour Code is applied to aliens and Georgian citizens equally. Labour relations, under article 2 of the Labour Code, “*means performance of paid labor by the employee to the employer in terms of organized labor arrangement.*” The Amendments to the Labour Code are being discussed by the Government (draft code is available on the official web-side of “Sakartvelos Sakanonmdblob Matsne” https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1829489&lang=ge# – last seen on March 31, 2013); the proposed amendments do not influence the issues discussed in the research.

Article 31 of Aliens' Law states “[a]liens shall have the right to conduct labour activities, in accordance with the rules established by the Georgian legislation.” Article 30 of the same Law provides that “[i]n Georgia aliens shall have the right to conduct investment and business activities, in accordance with the Georgian legislation. In such cases they shall have the same rights and obligations as those of citizens of Georgia, unless otherwise provided by the Georgian legislation and its international agreements.” National Legislation does not have “the rules established by the Georgian legislation” concerning employment or entrepreneur activities of aliens.

Georgian labour market is completely open for foreign migrant workers. Georgian legislation does not provide any limitations for aliens to be employed in Georgia, if they are legally staying on the territory of the country¹⁴⁶. However, the Aliens' Law states that one of the grounds for issuing a visa would be “[w]ork permit in Georgia, in the cases envisaged by the Georgian legislation”.¹⁴⁷ However, like in case of article 30 and 31, national legislation does not specify the rules on residence permit.

The introduction of work permits will require the development of further regulations. The government has to decide who will be responsible for obtaining work permits: the employer or employee. Government supervision will be easier and more efficient if the employer is burdened with this obligation. Legislation will have to identify the responsible agency for issuing and monitoring work permits. It is recommended that this function be entrusted to the Ministry of Labour, Health and Social Care. Another challenge will be to establish a monitoring system for illegal employment of aliens and introduce administrative responsibility upon employers for illegal employment of aliens.

¹⁴⁶ Migrant workers may legally stay in Georgia on the same basis as aliens. Article 3.c.a of Ordinance #400 of the President of Georgia (dated 28 June 2006) on Approval of Regulations on Rules of Discussing and Deciding on Granting Residence Permit in Georgia specifies if a person wants to acquire temporary residence permit on the basis of labour activities or relations in Georgia, he/she has to submit “a document proving his/her employment in Georgia (work contract or any other document verifying his admission to work)”. A self-employed migrants has to submit notice from the bank on turnover of funds on his/her account.

¹⁴⁷ Article 11.2.e of Aliens' Law.

Recommendation 39. It is recommended to introduce work permits in Georgia in order to improve management of labour market in Georgia.

A residence permit may be issued on the basis of work contract.¹⁴⁸ Termination of labour relations may cause termination of term of stay in Georgia.¹⁴⁹

There is a deficiency in law providing that if a relation on the basis of which a temporary residence permit was issued is terminated, the residence permit will also be terminated. It may be that an alien has terminated the mentioned labour relations he is engaged in economic activities that are equally profitable. In such a case, under Georgian legislation, there is a risk that a residence permit is terminated and a regular migrant becomes irregular. It should be noted that legislation does not exclude the possibility to re-apply to the PSDA for a temporary residence permit. Of course, applying to PSDA for new residence permit every time an alien finds a new job is costly. It is recommended to address this issue. Another challenge of the discussed provisions is the fact that the provisions of Law and the Decree of the President refer to cases when labour relations are initiated by the employee. What are legal consequences of termination of labour relations by an employer are not clear.

It is noteworthy that any alien who entered Georgia, including tourists, may find a job, sign a contract, while he/she holds valid visa, and

¹⁴⁸ *Ibid*, article 19.1 states: “temporary residence permit in Georgia may be issued ... to the alien, willing to stay in Georgia: a) Who conducts labour activities in Georgia in accordance with the rules established by the Georgian legislation, including persons with free profession.” The same provision is reflected in Ordinance #400 of the President of Georgia (dated 28 June 2006) on Approval of Regulations on Rules of Discussing and Deciding on Granting Residence Permit in Georgia (article 2).

¹⁴⁹ *Ibid*, article 25.1.d states: “The term of stay of an alien in Georgia may be terminated: ... d) If he/she has terminated labour activities and relations on the ground of which his/her residence permit in Georgia was issued”. Ordinance #400 of the President of Georgia (dated 28 June 2006) on Approval of Regulations on Rules of Discussing and Deciding on Granting Residence Permit in Georgia (article 4.2'.c) slightly differently regulates this issue: PSDA is entitled to terminate temporary residence permit if “before the expiration of term he/she terminated the relations on the ground of which his/her residence permit in Georgia was issued”.

based on the labour contract get a residence permit. As discussed above, it is not recommended to allow change of status of alien while staying in Georgia.

Recognition of foreign education is mandatory for aliens and Georgians. High, professional and general education might be recognized in Georgia. The National Centre for Educational Quality Enhancement is responsible agency.¹⁵⁰ Legislation does not provide specific rules for aliens concerning recognition of education. Procedures are transparent enough and full information is available on the website of National Centre for Educational Quality Enhancement.: <http://www.eqe.ge/>

¹⁵⁰ Order # 98/n of the Minister of Education and Science dated October 1, 2010 on Approval of Rules and Fees of Validation of Educational Documents Issued in Georgia and Recognition of Foreign Education

8. Internal Migration

There are different forms of internal migration: Internal labour migration, internal migration caused by natural disasters and internal displacement.

8.1. Labour Migration within Georgia

Georgian legislation does not regulate internal labour migration. There are no limits to move in the country for employment purposes. The only requirement applicable to a person would be registration within 6 months of change of permanent residence. Failure to register may be sanctioned with a fine.

8.2. Ecomigration

Migration Strategy of Georgia does not deal with ecomigration. The state has never developed a policy on ecomigration in Georgia.

In 1998 and 2002 there were attempts to address all problems of ecomigrants and a state programme on addressing socio-legal problems of families suffering from ecomigration was established. A Special commission implementing the programme,¹⁵¹ as well as a state commission on resettlement of families suffering from natural disasters and addressing socio-legal problems were established.¹⁵² Both attempts failed and did not result in improvement of conditions of ecomigrants.

There is no legislation on ecomigration. The term “ecomigrant” is not defined and accordingly there are no standards and procedures for acquiring the status and social guarantees for ecomigrants. Article 7.3 of the Regulations of MRA¹⁵³ provides that the functions of the Ministry also include the following:

¹⁵¹ The programme and Commission were established by the Ordinance #67 of the President of Georgia of 1998; the Ordinance is invalid since 2005.

¹⁵² The Ordinance #134 of the President of Georgia of 2002 was declared invalid in 2007.

¹⁵³ Approved by the Resolution #34 of the Government of Georgia of 2008 on Approval of Regulations of MRA.

“j) to develop efficient system and its implementation of migration caused by natural disasters; monitoring of migration on the territory of Georgia within its competencies;

k) to forecast of migration from the areas with high natural-disaster risks and implementation of resettlement programmes for ecomigrants; organise ecomigrants’ resettlement; to develop and promote implementation of programmes for adaptation-integration of ecomigrants on new places of settlement; to create a ecomigrants’ database.”

Local authorities do have responsibility for ecomigrants. Article 42.4.f of Organic Law of Georgia on Local Self-Government states that “Rcmunebuli” shall submit information to “Gangebeli” (Mayor) concerning the number of resettled ecomigrants and IDPs and their conditions.¹⁵⁴

Both legal acts refer to the obligations of the MRA and local municipalities in relation to ecomigrants; however, both of them fail to identify who are ecomigrants.

There is no legally binding international instrument that defines ecomigrant and a state’s obligations to protect persons suffering from natural disasters. International organizations use different terms for identifying persons displaced due to natural disasters. They are often referred to as persons suffering from natural disasters. Georgian legislation uses the term “eco-migrants” to identify this category of individuals.

IOM uses the term environmental migrant and defines it as follows: *“Environmental migrants are persons or groups of persons, who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or chose to do so, either temporarily or permanently, and who move either within their country or abroad”*.¹⁵⁵

In Georgia, there are no general regulations¹⁵⁶ concerning social guarantees and state assistance for eco-migrants, their status and criteria

¹⁵⁴ This provision is repeated in regulations of every local municipality.

¹⁵⁵ Migration and Climate Change, IOM Migration Research Series, 2008, p. 15. Available: http://publications.iom.int/bookstore/free/MRS-31_EN.pdf

¹⁵⁶ Tax Code of Georgia exempts ecomigrants from profit tax for the profit out of receiving t new accommodation.

for obtaining such a status, as well as their privileges, social guarantees and states obligations. State assistance and social guarantees are granted to persons who suffered from natural disaster on a case-by-case basis. Government's attention should focus on resettlement of the population from the high-risk zones. It is reasonable to grant to eco-migrants the same protection and guarantees as internally displaced persons as eco-migration is one of the forms of internal displacement of individuals or groups. The measures should be immediate as the number of eco-migrants, or people living/residing in the regions with eminent threat of natural disasters, is quite high. It is also recommended that legislation precisely define the obligations of local and central authorities, including the MRA towards eco-migrants. It is also recommended that an integral data-base is created that will incorporate information on ecomigrants and people living in the high-risk zones. If such information is available to competent authorities, they will be able to forecast expenses and incorporate relevant finances in the state budget. In addition, comprehensive information on ecomigrants is extremely important for shaping state strategy on ecomigration.

A 2010 IOM report provides states need to implement effective measures in the following ten areas:¹⁵⁷

1. Establishing a better evidence base;
2. Disaster risk reduction;
3. Developing adaptation strategies;
4. Preparing evacuation plans;
5. Filling gaps in the legal and normative framework;
6. Implementing national laws and policies on internal displacement and national immigration laws and policies;
7. Upgrade of national migration laws and policy;
8. Establishing proactive resettlement policies;
9. Providing humanitarian assistance;
10. Planning for return and resettlement.

¹⁵⁷ World Migration Report 2010 - The Future of Migration: Building Capacities for Change, IOM. Available at: http://publications.iom.int/bookstore/free/WMR_2010_ENGLISH.pdf

MRA has the power to purchase accommodation and deliver them to ecomigrants. However, there are no rules, procedures or criteria for implementing the mentioned competence of MRA. It is also ambiguous what title over property is granted to ecomigrant or person displaced as a result of eminent threat. Neither privatization rules of such property is regulated.

Recommendation 40. It is recommended to shape state policy on persons who are forced to change their habitual residence because of natural disasters.

Recommendation 41. It is recommended to define term “ecomigrant”, requirements for granting status and social guarantees of ecomigrants

Recommendation 42. It is recommended to create unified database for ecomigrants and persons living in high-risk zones.

8.3. Internally Displaced Persons from the Occupied Territories of Georgia

IDPs, their status and social guarantees are regulated comprehensively by the national legislation.

The Law of Georgia on Forcibly Displaced Persons (Persecuted) from the Occupied Territories of Georgia states: “A citizen of Georgia, or a stateless person permanently residing in Georgia, who was forced to leave his place of permanent residence due to the threat to his or his cohabitant family member’s life, health or freedom because of occupation of territory, aggression or mass violation of human rights by a foreign country, or in cases stipulated in the 11th subparagraph of the Article 2 of this Law, shall be considered to be an IDP - a person displaced forcibly from the occupied territory of Georgia”. “A child is eligible to be granted IDP Status on the grounds of the consent of parent(s) or an-

*other legal representative, if both or one of the parents has and/or had an IDP Status.”*¹⁵⁸

The source of threat is not relevant for obtaining the IDP status under international standards. Georgian legislation refers to the specific source of threat – “*occupation of territory, aggression or mass violation of human rights by a foreign country*”. Such definition narrows the circle of persons who may be granted IDP status notwithstanding to their real conditions.

Recommendation 43. It is recommended that the term IDP in national legislation is defined in full compliance with UN standards.

Discrimination of IDPs is prohibited. The definition of IDP is itself discriminatory in relation to individuals or groups of persons who had to leave their habitual residence that is not located on the occupied territory.

MRA is a competent authority to decide granting, suspension or withdrawal of IDP status.¹⁵⁹ A person wishing to acquire a status of IDP needs to apply to MRA or its territorial body.

The Status of IDP may be withdrawn, terminated and restored. Status will be terminated in the following cases:

- An IDP status is removed based on personal application;
- Georgian jurisdiction is restored on the occupied territories;
- The court has recognized him to be missing or declared dead
- A person died;
- A person lost Georgian citizenship.¹⁶⁰

When a person loses Georgian citizenship he/she may become a stateless person permanently residing in Georgia. The latter are entitled to the status of IDPs in Georgia. Accordingly, it is recommended

¹⁵⁸ Articles 1.1 and 2.11 of the Law of Georgia on Forcibly Displaced Persons (Persecute) from the Occupied Territories of Georgia.

¹⁵⁹ *Ibid*, articles 2.7 and 6.

¹⁶⁰ *Ibid*, article 6.1.

that the loss of status of stateless person be added to the grounds of termination of IDP status. Acquiring the status of stateless person should be the basis of restoring IDP status if a person lost Georgian citizenship.

The status of IDP will be withdrawn if he/she obtained this status by submitting false documents and information. It is not possible to restore the IDP status if it was withdrawn. The status may be restored only if the condition for status termination is eliminated.¹⁶¹

Recommendation 44. It is recommended that termination of stateless person's status be added to the grounds of termination of IDP's status.

Recommendation 45. It is recommended that legislation provides restoration of status of IDP if a person loses citizenship of Georgia and becomes stateless.

¹⁶¹ *Ibid*, article 6.

ABBREVIATIONS

CoE - Council of Europe

CSO – civil society organization

DRC - Danish Refugee Council

ENP AP _European Neighbour Policy Action Plan

EU – European Union

GIZ - Deutsche Gesellschaft für Internationale Zusammenarbeit

GYLA - Georgian Young Lawyers Association

ICMPD - International Centre for Migration Policy Development

IDP - Internally Displaced Person

ILO - international Labour Organisation

IOM _International organization of Migration

IOM- International Organization for Migration

LEPL - Legal Entity of Public Law

MESD - Ministry of Economy and Sustainable Development

MIA -Ministry of Foreign Affairs

MOJ- Ministry of Justice

MRA - The Ministry of IDPs from the Occupied Territories,
Accommodation and Refugees of Georgia

NATO - North Atlantic Treaty Organization

PSDA - Public Service Development Agency

SMDI -State Ministry on the Diaspora Issues

SMEEAI - State Ministry for European and Euro-Atlantic Integration

TIG - Targeted Initiative for Georgia

UNHCR - United Nations High Commissioner for Refugees

VLAP - visa liberalization Action plan

MLHSA -Ministry of Labour, Health and Social Affairs

ECHR - European Convention of Basic Human Rights and
Fundamental Freedoms