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Integration of migrants in the Republic of Azerbaijan

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Creating an Observatory of Migration East of Europe

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This project which is co-financed by the European Union is the first migration observatory focused on the Eastern Neighbourhood of the European Union and covers all countries of the Eastern Partnership initiative (Belarus, Ukraine, the Republic of Moldova, Georgia, Armenia and Azerbaijan) and Russian Federation.

The project's two main themes are:

- (1) migration from the region to the European Union (EU) focusing in particular on countries of emigration and transit on the EU's eastern border; and
- (2) intraregional migration in the post-Soviet space.

The project started on 1 April 2011 as a joint initiative of the European University Institute (EUI), Florence, Italy (the lead institution), and the Centre of Migration Research (CMR) at the University of Warsaw, Poland (the partner institution).

CARIM researchers undertake comprehensive and policy-oriented analyses of very diverse aspects of human mobility and related labour market developments east of the EU and discuss their likely impacts on the fast evolving socio-economic fabric of the six Eastern Partners and Russia, as well as that of the European Union.

In particular, CARIM-East:

- builds a broad network of national experts from the region representing all principal disciplines focused on human migration, labour mobility and national development issues (e.g. demography, law, economics, sociology, political science).
- develops a comprehensive database to monitor migration stocks and flows in the region, relevant legislative developments and national policy initiatives;
- undertakes, jointly with researchers from the region, systematic and *ad hoc* studies of emerging migration issues at regional and national levels.
- provides opportunities for scholars from the region to participate in workshops organized by the EUI and CMR, including academic exchange opportunities for PhD candidates;
- provides forums for national and international experts to interact with policymakers and other stakeholders in the countries concerned.

Results of the above activities are made available for public consultation through the website of the project: <http://www.carim-east.eu/>

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Summary

The main objective of this report is to analyze Azerbaijani legislation in the field of integration of foreigners, stateless persons and forced migrants, in order to see if it complies with international documents that Azerbaijan has signed. The authors also examine the application of this legislation and identify key public agencies and positions dealing with different aspects of integration. They also offer recommendations on how to resolve existing problems. It is established that Azerbaijan has signed key international documents and that legal framework has been formed to regulate foreigners' entry to, departure from, and residence in Azerbaijan, as well as acquisition of Azerbaijani citizenship.

The section "Foreigners and stateless persons" deals with temporary and permanent residence of foreigners and stateless persons in Azerbaijan.

The section "Rights of foreigners and stateless persons" examines the main rights that foreigners and stateless persons enjoy in Azerbaijan.

The section "Integration of foreigners and stateless persons married to Azerbaijani citizens" touches upon integration of such persons and incompliance of Azerbaijani legislation with international documents covering integration of foreigners married to the country's nationals.

Legislation covering refugees and forced migrants is dealt with in the section "Refugees". Here we touch upon the problems that refugees face in the course of integration in Azerbaijan.

The final report sections are devoted to recommendations. Most of the norms envisaged by international legislation are also reflected in the national legal acts. However, Azerbaijani legislation is not yet in complete compliance with international documents that Azerbaijan has signed. As was mentioned above, legal acts in the field of naturalization of persons married to Azerbaijani citizens, legal acts stipulating refugee rights, and legal acts covering stateless persons have many flaws, moreover there are additional problems, when it comes to application. Thus, these legal provisions ought to be brought into compliance with the corresponding international conventions.

Introduction

In 1992 Azerbaijan started adopting legal acts dealing with migrants and their integration¹. At the same time necessary structural changes were introduced to regulate relations in this field as required by normative legal acts. In 1989 the State Committee was established to work with persons forced to leave the place of their permanent residence (on 5 January 1993 it was renamed the State Committee for Refugees and Forced Migrants). In 1999 Migration Department was established at the Ministry of Labor and Social Protection and in 2000 at the Ministry of Interior, and in 2007 the State Migration Service was created to directly deal with integration of migrants, including refugees.

Normative documents identified executive bodies in charge, funds were allocated from the budget, and databases containing legal acts in different languages (mostly Azerbaijani, Russian and English) were created².

Despite the fact that during the Soviet time and right after gaining independence Azerbaijan was a country of emigration, it has recently turned into the country of immigration. Citizens of Central Asia countries, Middle East, Turkey and Georgia come to Azerbaijan seeking employment (often in construction sector)³ or to reunite with members of their families who are Azerbaijani nationals.

Foreigners and stateless persons staying in Azerbaijan enjoy the same rights and have the same obligations as Azerbaijani nationals, if it is not otherwise stipulated in the law or international treaty that Azerbaijan is party to⁴. Despite the fact that this norm establishes equal rights and obligations for Azerbaijani citizens and foreigners and stateless persons, there are some exceptions that will be dealt with later.

Adoption of the Law “On the citizenship of the Republic of Azerbaijan” in 1998 became one of the most important steps in the field of foreigners’ and stateless persons’ integration. This Law was crucial for foreigners and stateless persons who underwent social and cultural integration⁵ in Azerbaijan from the standpoint of acquisition of Azerbaijani citizenship by them. The Law gave an opportunity to obtain Azerbaijani citizenship to persons who were not citizens of Azerbaijan or another state before 1 January 1992, but are registered at their domicile in Azerbaijan⁶. Besides, part 3 of article 5 of this Law establishes that refugees who settled in Azerbaijani territory between the 1st of January 1998 and the 1st of January 1992 are also Azerbaijani nationals. Thus, 300 thousand people benefitted from this Law⁷.

However, further changes in the legislation, new public organizations working in the field, lack of public officials’ experience, and absence of the general judicial practice regarding settlement of disputes resulted in the increase in the number of persons residing without citizenship and without valid documents. Besides, governmental policy is more aimed at creating conditions for the residence of

¹ The Law “On legal status of refugees and forced migrants” was adopted in 1992; it was followed by the Laws “On departure from the country, entry to the country, and passports”, “On immigration”, “On labor migration”, “On legal status of foreigners and stateless persons”, “On citizenship of the Republic of Azerbaijan” and other normative acts associated with application of these laws.

² www.migration.gov.az

³ www.migration.gov.az

⁴ Article 69 of the Azerbaijani Constitution;

⁵ Thus, they knew Azerbaijani language and were familiar with local customs and traditions, most of them had accommodation and a job;

⁶ Article 5 of the Law “On citizenship of the Republic of Azerbaijan”;

⁷ Committee for Refugees and Forced Migrants, Collection of normative legal acts on refugees and forced migrants, Introduction, page 3, Baku-2005;

foreigners in Azerbaijan without integration, rather than at their integration. The government does not try to turn foreigners into its citizens. We will try to clarify the above-mentioned issues in the present report.

Foreigners and stateless persons

According to the State Migration Service, the number of foreigners and stateless persons has been growing⁸. The government introduces restrictions into its migration policy, in order to discourage foreigners. According to the State Migration Service, approximately 52,271 applications were submitted to them in 2012 only⁹. As a rule, these applications are aimed at obtaining a temporary or permanent residence permit, extending the term of legal stay in the country, obtaining an employment permit, or acquiring citizenship and immigrant or refugee status. This figure is higher than in previous years.

Azerbaijani legislation establishes procedures for foreigners and stateless persons coming to Azerbaijan for permanent or temporary residence or temporarily staying in Azerbaijan¹⁰. However, a foreigner who came to Azerbaijan cannot directly apply for permanent residence permit (immigrant status). Thus, a foreigner who came to Azerbaijan ought to live for two years on the basis of a temporary residence permit and only after that he or she has a right to apply for immigrant status (permanent residence permit)¹¹.

Foreigners and stateless persons intending to reside in Azerbaijan temporarily ought to obtain a permit from the corresponding executive body¹² according to procedure established by law¹³.

Permits for temporary residence are issued to foreigners and stateless persons in the following cases:

- If this person is a close relative of an Azerbaijani citizen;
- If this person marries an Azerbaijani citizen;
- If this person makes an investment to the national economy of a size set by the relevant executive body¹⁴;
- If this person deposits the sum of money stipulated by the relevant executive body¹⁵ into an Azerbaijani bank;
- If this person obtains an employment permit established by Azerbaijani legislation;
- If this person receives full-time education at an Azerbaijani educational institution;
- If this person is a highly qualified professional in the field of economics, production, science, culture, sports etc.;
- In other cases established by law¹⁶.

Permit for temporary residence in Azerbaijan is issued for the period of up to one year and can be extended no more than four times¹⁷.

⁸ <http://migration.gov.az/?section=009&subsection=041&lang=az&pageid=4140>;

⁹ www.migration.gov.az

¹⁰ Article 5 of the Law “On legal status of foreigners and stateless persons”

¹¹ Paragraph 7 part 3 article 4 of the Law “On immigration”

¹² This body is the State Migration Service of Azerbaijan

¹³ Article 5 of the Law “On legal status of foreigners and stateless persons”

¹⁴ The ruling of the Cabinet of Ministers of 30 June 2009 No. 102 sets the minimal size of foreigners’ investment into the national economy at 500,000 manats

¹⁵ The ruling of the Cabinet of Ministers of 30 June 2009 No. 102 sets the minimal size of foreigners’ deposit at an Azerbaijani bank at 50,000 manats

¹⁶ Article 5 of the Law “On legal status of foreigners and stateless persons”

Applications for temporary residence permits are considered by the State Migration Service within 20 days, taking into account the decision of the Ministry of National Security¹⁸.

The state duty for the residence permit for the period of up to 3 months is 30 manats (30 euro), up to 6 months – 60 manats (60 euro), up to 1 year – 120 manats (120 euro)¹⁹.

Foreigner or stateless person who resided in Azerbaijan on legal grounds for 2 years has a right to obtain a permit for permanent residence²⁰. The Law “On immigration” stipulates that permanent residence permit is equivalent to immigrant status²¹.

A person applying for immigrant status must fill in the application for immigrant status and submit the following documents:

- Birth certificate or an equivalent document;
- Certificate of family composition (names of family members, surname, birth year, occupation, place of residence or place of stay), copy of birth certificate, written consent of children 14 to 18 years old immigrating with parents;
- Health certificate of the persons applying for immigrant status;
- Document certifying foreigner’s citizenship or lack thereof in case of stateless persons;
- Document certifying profession of the foreigner or stateless person;
- Permit for temporary residence in Azerbaijan;
- Document certifying that the person in question has sufficient funds to satisfy their own and their family members’ minimal needs, with the exception of cases when Azerbaijani citizen or immigrant residing in Azerbaijan undertakes to satisfy minimal needs of the person applying for immigrant status;
- Documents certifying the presence of conditions under which the person obtained a temporary residence permit²².

A person applying for immigrant status is to pay the state duty of 300 manats (300 euro)²³. One should take into account that each time foreigner will have to submit a health certificate when extending temporary or permanent residence permit. In order to obtain this certificate, one has to pay

(Contd.) _____

¹⁷ Article 5 of the Law “On legal status of foreigners and stateless persons”; In order to obtain this permit, one must submit the following documents to the State Migration Service:

- Application / form for temporary residence permit;
- Copy of passport or substituting document with which this foreigner entered the country, copy of identity card of the stateless person;
- Notarized copy of the document stating conditions enabling the person to obtain a temporary residence permit;
- Foreigner’s or stateless person’s health certificate;
- Copy of the document giving foreigner or stateless person the right to temporarily stay or reside in Azerbaijan;
- Biometric fingerprints and 2 photographs (size 3.5x4.5);
- Written notarized consent of 14-17 year old children;
- Document giving the right to move into a living space (excerpt from the state real estate registry, housing order, lease contract or other document stipulated by Azerbaijani legislation) or written statement of a person offering living space to the foreigner or stateless person;
- State duty receipt (paragraph 8 of the Rules of issuance of a temporary residence permit to foreigners and stateless persons).

¹⁸ Paragraph 9 of the Rules regulating issuance of temporary residence permits to foreigners and stateless persons

¹⁹ Article 8 of the Law “On state duty”

²⁰ Article 5 of the Law “On legal status of foreigners and stateless persons”

²¹ Part 1 article 4 of the Law “On immigration”

²² Paragraph 3 of the Rules regulating processing of applications for immigration to Azerbaijan

²³ Paragraph 3 of the Rules regulating processing of an application for immigration to Azerbaijan

no less than 90 manats (90 euro). Besides, there are certain expenses associated with notarial translation and attestation of the necessary documents. Therefore, the sum required for obtaining or extending the temporary or permanent residence is not small, which is why some migrants choose to reside in Azerbaijan illegally.

The State Migration Service sends documents of persons applying for immigrant status to the Ministry of National Security. The Ministry of National Security checks these documents within one month and returns them to the State Migration Service. In addition to that, the State Migration Service sends inquiries to the Ministry of Interior and other public bodies to obtain necessary information²⁴.

The State Migration Service considers the application of a person applying for immigrant status within 2 months and makes a decision²⁵.

The person who obtained immigrant status is registered at his or her domicile and obtains an immigrant certificate (permanent residence permit). Immigrant status is given for 5 years²⁶, it is granted by the State Migration Service²⁷.

According to the Law “On the citizenship of the Republic of Azerbaijan”, only foreigners who resided in Azerbaijan for 5 years are considered as persons who underwent the process of integration and thus have a right to apply for Azerbaijani citizenship²⁸.

Immigrant is given an opportunity to study Azerbaijani language, the Constitution and laws of Azerbaijan, if he or she is willing to do so²⁹. Following part 2 of article 16 of the Law “On immigration”, the rules of immigrants’ adaptation to local conditions in Azerbaijan are set by the relevant executive body. According to the Presidential Decree “On application of the law of Azerbaijan “On immigration”, the Cabinet of Ministers is such an executive body. However, until present there have been no information on adoption of such rules.

Foreigner or stateless person continuously residing in Azerbaijan on legal grounds for the last 5 years³⁰, having the legal source of income, undertaking an obligation to observe the Constitution and laws of Azerbaijan and presenting a document proving knowledge of the state language³¹ of Azerbaijan, can accept the citizenship of Azerbaijan based on his or her application, regardless of the background, race, nationality, or political and other beliefs³². Continuous residence in Azerbaijan for 5 years counts if the person did not leave the country for more than 3 months a year.

Azerbaijan has not ratified the European Convention “On citizenship” of 6 November 1996. In our opinion, one of the reasons for that is that Azerbaijan wants to avoid situations when its nationals have double or multiple citizenships.

²⁴ Paragraph 7 of the Rules regulating processing of an application for immigration to Azerbaijan

²⁵ Paragraph 6 of the Rules regulating processing of an application for immigration to Azerbaijan

²⁶ Article 10 of the Law “On immigration”

²⁷ Paragraph 2 of the Rules regulating processing of an application for immigration to Azerbaijan

²⁸ Article 14 of the Law “On citizenship of the Republic of Azerbaijan” states that foreigner and stateless person residing for the last 5 years in Azerbaijan and presenting a document proving knowledge of the state language of Azerbaijan, can acquire Azerbaijani citizenship following his or her application, regardless of the background, race, nationality, or political and other beliefs.

²⁹ Article 16 of the Law “On immigration”

³⁰ Period of permanent residence of a foreigner or stateless person starts when permanent residence permit is issued to him or her.

³¹ People contact the special office of the Ministry of Education, where their knowledge of Azerbaijani language is tested and certificate is issued proving their knowledge of the Azerbaijani language.

³² Article 14 of the Law “On citizenship of the Republic of Azerbaijan”

Stateless persons

According to relevant normative legal acts, stateless persons are divided into the following categories: stateless persons permanently residing in Azerbaijan and stateless persons permanently residing in the territory of another country who came to Azerbaijan for permanent or temporary residence. “Regulation on documents required for foreigners willing to reside in the territory of Azerbaijan for more than 30 days, as well as stateless persons permanently residing in the territory of Azerbaijan”³³ envisages only the procedure for documentation of stateless persons who came to Azerbaijan for permanent or temporary residence. Procedure for documentation of stateless persons permanently residing in Azerbaijan is based on the Regulation “On special documents of foreigners and stateless persons permanently residing in the territory of Azerbaijan”. According to paragraph 2 of this Regulation, identity card of the stateless person is issued to stateless persons who obtained permit for permanent residence in Azerbaijan before 1 January 1992 and their children born before the Law “On citizenship of the Republic of Azerbaijan” entered into force. This in turn means that Azerbaijani legislation does not envisage procedure for documentation of persons who found themselves stateless in Azerbaijan after 1 January 1992. According to Azerbaijani legislation currently in force and responses that the State Migration Service gives to applications, a stateless person is a person provided with an identity card of the stateless person in Azerbaijani or another country.

Convention relating to the Status of Stateless Persons a stateless person is a person not considered a citizen by any state³⁴. According to Azerbaijani legislation, a stateless person is someone who does not have Azerbaijani nationality and is not a national of another state³⁵. As one can see, Azerbaijani legislation does not envisage procedure for documentation of those who found themselves stateless in Azerbaijan after 1992. That is why many persons who lost citizenship of the country where they used to reside earlier³⁶ and whose application for Azerbaijani citizenship was rejected suffer because of discrepancy between Azerbaijani legislation and international documents that Azerbaijan has signed. These persons continue residing in the country without valid documents.

Under the above-mentioned Convention, personal status of a stateless person is defined by the law of the country of his or her domicile or, if he or she does not have one, by the laws of the country of residence³⁷. However, one should note once again that national legislation does not envisage procedure for determination of the stateless person’s status. As a result there are persons who live in the country without valid documents, but having underwent social and cultural integration.

Refusal to provide documents to stateless persons strips them of the right to obtain Azerbaijani citizenship by way of naturalization. According to the unofficial information provided by the media

³³ “Regulation on documents required for foreigners willing to reside in the territory of Republic of Azerbaijan for over 30 days, as well as stateless persons permanently residing in the territory of Azerbaijan” of 30 December 1997 No. 421-İQD

³⁴ Paragraph 1 article 1 of Convention relating to the Status of Stateless Persons

³⁵ Article 1 of the Law “On legal status of foreigners and stateless persons”

³⁶ These persons have certain certificates from the embassy of the country, whose citizenship they used to have, proving that they are no longer citizens of that country

³⁷ Article 12 of the Convention relating to the Status of Stateless Persons states that rights earlier acquired by the stateless person and associated with his or her personal status, such as rights stemming from marriage, will be observed by the contracting states when executing, if necessary, formal procedures set forth in the laws of this state, provided that the right in question is one of the rights that would have been acknowledged by the laws of this state, if this person had not become stateless

³⁷ Article 32 of the Convention relating to the Status of Stateless Persons states that contracting states will undertake steps to facilitate assimilation and naturalization of stateless persons. For instance, they will do their best to expedite document processing in the course of naturalization and reduce associated duties and expenses.

and NGOs, at present approximately 30 thousand stateless persons reside in the country³⁸ without identity cards of the stateless person. According to the information of government bodies, the number of officially registered persons is 2000³⁹. These two thousand stateless persons are provided with identity cards of the stateless person.

By joining the Convention relating to the Status of Stateless Persons Azerbaijan undertook an obligation to expedite and simplify naturalization of stateless persons. However, as of now Azerbaijani legislation does not envisage a facilitated procedure for the stateless persons' naturalization. After the State Migration Service was established, documentation of stateless persons became more complicated. For instance, according to the Regulation "On special documents of foreigners and stateless persons permanently residing in the territory of the Republic of Azerbaijan", persons who found themselves stateless in Azerbaijan after 1992 are not acknowledged as stateless persons and are not provided with any documents. If a stateless person applies for Azerbaijani citizenship, he or she is to present a certificate from employer and place of residence, certificate on the source of income and other documents that the person without a valid identity document cannot provide. According to article 1 of the 1961 UN Convention "On the reduction of statelessness", a contracting state grants its citizenship to the person born in its territory who otherwise does not have an opportunity to obtain citizenship. Despite the fact that Azerbaijani legislation envisages a similar norm, i.e. the legislation stipulates that a person born in Azerbaijan is a citizen of Azerbaijan⁴⁰, the law does not envisage procedure for documentation of these persons as Azerbaijani citizens. Thus, it does not envisage procedure for documentation of children born from refugees residing in Azerbaijan and not having any valid documents (de facto stateless) as citizens of Azerbaijan.

According to article 7 of this Convention, citizen of the contracting state who wants to be naturalized in the foreign country, does not lose his or her own citizenship, if he or she does not obtain or is not assured of acquisition of the citizenship of this foreign country. However, this norm was not reflected in Azerbaijani legislation. In some cases Azerbaijani citizens leave Azerbaijani citizenship and cannot acquire citizenship of another country. In such a case these persons live without citizenship for a long time before they acquire citizenship. In Georgia, in order to eliminate such cases the second paragraph was added to the decree on renunciation of citizenship, where it is noted that if a person fails to acquire citizenship of another country, the decree is not considered in legal force. Application of this practice would reduce the number of stateless persons.

This Convention also includes norms according to which the duty is to be reduced, along with costs of documentation of stateless persons. However, this provision is absent from national legislation.

According to article 28 of the Convention relating to the Status of Stateless Persons, contracting states will issue travel documents to stateless persons legally residing in their territory for trips outside their territory, if it is not prevented by reasonable considerations of national security and public order. As far as national legislation does not envisage procedure for documentation of persons who found themselves stateless after 1 January 1992, neither it envisages provisions on provision of stateless persons with travel documents.

Integration of stateless persons is impossible without them being provided with identity cards of the stateless person. That is why Azerbaijan needs to bring the national legislation in compliance with international documents, ensure documentation of stateless persons and thus expedite their integration.

³⁸ www.migration-az.org, report of the Azerbaijani Migration Center "On cases creating conditions for the increase in the number of stateless persons"

³⁹ www.migration-az.org, report of the Azerbaijani Migration Center "On cases creating conditions for the increase in the number of stateless persons"

⁴⁰ Article 52 of the Constitution of Azerbaijan states: a person born in the territory of the Republic of Azerbaijan or from the citizen of Azerbaijan is a citizen of Azerbaijan

Rights of foreigners and stateless persons

Foreigners and stateless persons enjoy the same rights and freedoms and have the same obligations as citizens of Azerbaijan, if it is not otherwise provided for in the Constitution of Azerbaijan, other legal acts of Azerbaijan and international treaties that Azerbaijan is party to⁴¹.

The Labor Code of Azerbaijan considers foreigners and stateless persons as subjects of labor relations. Article 13 stipulates that foreigners and stateless persons have the same labor rights and obligations as Azerbaijani citizens. The Code forbids any restrictions on any labor rights of foreigners and stateless persons. Article 13 also envisages that foreigners and stateless persons have a right to be engaged in labor activities in Azerbaijan after obtaining a special labor permit. In accordance with the above-mentioned normative act, foreigners and stateless persons can be engaged in labor activities in Azerbaijan only on the basis of a special permit issued by the State Migration Service⁴². To obtain this permit foreigners contact the State Migration Service through their employers. The term of this permit is 1 year⁴³. According to the Law, a labor migrant has a right to annul the labor contract according to procedure stipulated by law and to freely leave the Republic of Azerbaijan⁴⁴. Foreigners are issued permits for temporary residence in Azerbaijan for the duration of the individual permit⁴⁵. Article 307 of the Labor Code establishes the right of foreigners and stateless persons to acquire medical insurance.

Foreigners and stateless persons residing in Azerbaijan have the same right to secondary and higher education as Azerbaijani citizens (if legislation does not stipulate otherwise). If Azerbaijani legislation or international documents that Azerbaijan is party to do not stipulate otherwise, education is paid for (except for secondary education). With the exception of cases provided for by international documents that Azerbaijan is party to, foreigners do not have a right to acquire education in specialized educational institutions of the country. Education is received by foreigners or stateless persons in Azerbaijan on the basis of Azerbaijani legislation currently in force⁴⁶.

The issues of recognition of diplomas and certificates of foreigners and stateless persons were reflected in the Regulation of the Council of Ministers of 13 May 2003 “Rules of recognition and equivalency of degrees in the field of higher education of foreign states”. This document envisages procedure for recognition and equivalency of degrees.

According to the Land Code of Azerbaijan, foreigners do not have a right to purchase land lots as their property, they only have a right to rent land lots. According to article 88 of the Land Code, when construction objects are sold to foreigners and stateless persons, land lots they are on are leased out to them.

The Electoral Code of Azerbaijan stipulates that stateless persons permanently residing in Azerbaijan for no less than 5 years can vote at presidential, parliamentary and municipal elections or referendums⁴⁷. Foreigners residing within the corresponding municipal territory for no less than 5 years can vote at municipal elections⁴⁸. Foreigners, stateless persons, foreign legal persons, their branches and offices (hereinafter referred to as foreign legal persons) cannot nominate or register

⁴¹ Article 4 of the Law “On legal status of foreigners and stateless persons”

⁴² Article 6 of the Law “On labor migration”

⁴³ Paragraph 3.1 of the Rules regulating issuance of a personal permit for gainful labor in the territory of the Republic of Azerbaijan and sample of this personal permit

⁴⁴ Article 8 of the Law “On labor migration”

⁴⁵ Article 8 of the Law “On labor migration”

⁴⁶ Article 19 of the Law “On legal status of foreigners and stateless persons”

⁴⁷ Article 12.2 of the Electoral Code of Azerbaijan

⁴⁸ Article 12.3 of the Electoral Code of Azerbaijan

candidates and cannot participate in electoral campaigns of registered candidates⁴⁹. Foreigners, stateless persons, foreign legal persons, their branches and offices cannot campaign for or against the referendum agenda and cannot be part of the campaign group, initiate creation of such group or take part in its activities in any form⁵⁰.

The Housing Code of Azerbaijan states that living space are not offered to foreign citizens and stateless persons under social rent contracts, if it is not otherwise provided for by international treaties that Azerbaijan is party to⁵¹.

Retirement coverage of labor migrants and members of their families is regulated by bilateral and multilateral treaties of Azerbaijan⁵². These international treaties are, for instance, “CIS agreement on cooperation in the field of labor migration and social protection of labor migrants”, “Agreement on cooperation between the Ministry of Labor and Social Protection of Population of the Republic of Azerbaijan and the Ministry of Healthcare and Social Protection of the Republic of Georgia in the field of labor and social protection of population”, “Agreement on cooperation between the Ministry of Labor and Social Protection of Population of the Republic of Azerbaijan and the Ministry of Labor and Social Policy of Ukraine in the field of labor, employment and social protection of population”, “Protocol on intent to cooperate between the Ministry of Labor and Social Protection of Population of the Republic of Azerbaijan and the Ministry of Labor and Social Policy of Population of the Republic of Italy” and a number of similar agreements with some other countries.

Integration of foreigners and stateless persons married to Azerbaijani citizens

Some international documents that touch upon integration process⁵³ envisage the simplified procedure for documentation or naturalization of foreigners who are family members of the country’s nationals. For instance, in accordance with these Conventions, Ukraine and Georgia established a norm in the national legislation, under which a foreigner who married a citizen of Ukraine or Georgia has a right to obtain permit for temporary or permanent residence in the country according to the simplified procedure⁵⁴. Some international documents even envisage a simplified procedure for naturalization of persons who married the citizen of the country’s nationals⁵⁵.

⁴⁹ Article 15.3 of the Electoral Code of Azerbaijan

⁵⁰ Article 15.4 of the Electoral Code of Azerbaijan

⁵¹ Article 48.3 of the Housing Code of Azerbaijan

⁵² Article 10 of the Law “On labor migration”

⁵³ Article 6 of the European Convention on Nationality stipulates that each state party shall facilitate in its internal law the acquisition of its nationality for the following persons:

- a) spouses of its nationals;
- b) children of one of its nationals, falling under the exception of Article 6, paragraph 1, sub-paragraph a;
- c) children one of whose parents acquires or has acquired its nationality;
- d) children adopted by one of its nationals;
- e) persons who were born on its territory and reside there lawfully and habitually;
- f) persons who are lawfully and habitually resident on its territory for a period of time beginning before the age of 18, that period to be determined by the internal law of the State Party concerned;
- g) stateless persons and recognised refugees lawfully and habitually resident on its territory.

Article 3 of the Convention on Nationality of Married Women stipulates that each Contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures; the grant of such nationality may be subject to such limitations as may be imposed in the interests of national security or public policy.

⁵⁴ Article 3 of the Law of Georgia “On immigration”; article 4 of the Law of Ukraine “On immigration”

⁵⁵ Article 3 of the Convention on Nationality of Married Women

The Law “On legal status of foreigners and stateless persons” at the time of adoption⁵⁶ envisaged an opportunity for persons who entered into the legal marriage with Azerbaijani citizens to obtain immigrant status outside the quota⁵⁷. Immigrant status outside the quota can be granted to the following persons:

- close relatives of Azerbaijani nationals;
- persons marrying Azerbaijani nationals;
- in other cases stipulated by Azerbaijani legislation.

However, after the State Migration Service was established⁵⁸ the above-mentioned Law was amended on 24 June 2008 in accordance with restricted migration policy. The above-mentioned norm was excluded from the Law. At present there is no simplified procedure for obtaining immigrant status or citizenship for persons who married Azerbaijani nationals. In one case only the marriage to a citizen of Azerbaijan is a foundation for obtaining legal grounds for residence in Azerbaijan – in case one applies for temporary residence permit⁵⁹.

According to Azerbaijani legislation, foreign citizens and stateless persons can conclude and dissolve marriages with Azerbaijani citizens and other persons. Foreign citizens and stateless persons enjoy rights and fulfill obligations in marital and family relations in the same way as citizens of Azerbaijan⁶⁰. However, the Law “On citizenship of the Republic of Azerbaijan” does not envisage simplified procedure for acquiring citizenship by persons who married Azerbaijani citizens and norms of national legislation are not yet in line with international documents.

The Law “On labor migration” that regulates relations in the field of labor migration forbids restrictions on reunion of labor migrants’ families⁶¹. At the same time labor migrants and members of their families enjoy equal rights to social protection (which includes the right to free medical insurance, the right to receive social benefits etc.)⁶² provided by legislation for citizens of Azerbaijan involved in labor activities and their family members⁶³.

According to the Law “On legal status of refugees and forced migrants”, family members of the person (husband, wife or underage children) acknowledged as a refugee in Azerbaijan are also acknowledged as refugees⁶⁴. For detailed information on procedure of providing refugees and their family members with refugee certificates see “Rules regulating processing of an application for refugee status”.

Absence of the simplified procedure of the immigrant status or citizenship acquisition for persons who married Azerbaijani nationals results in breakdown of many families, children growing up without parents, persons living without valid documents. Hence it is important to bring Azerbaijani legislation in line with international norms.

⁵⁶ This law was adopted on 13 March 1996

⁵⁷ States that signed international documents ensure facilitated procedure of family reunion and usually do not establish a quota for this type of migration

⁵⁸ Decree of the Azerbaijani President of 19 March 2007 No. 560 “On establishment of the State Migration Service”

⁵⁹ Article 5 of the Law “On legal status of foreigners and stateless persons”

⁶⁰ Article 13 of the Law “On legal status of foreigners and stateless persons”

⁶¹ Article 5 of the Law “On labor migration”

⁶² This social protection includes the right to free medical insurance, social benefits etc.

⁶³ Article 10 of the Law “On labor migration”

⁶⁴ Article 12 of the Law “On legal status of refugees and forced migrants”

Refugees

Despite the fact that legislation stipulates the right of refugees and forced migrants to work at public bodies, study Azerbaijani language, the right to housing, the right to participate in various educational programs, none of these norms is put into practice. These norms are applied with regards to forced migrants, but not refugees. There are also serious problems in the field of naturalization of children born in families of refugees. As one can see, national legislation in this field does not comply with 1951 UN Convention “On legal status of refugees”⁶⁵.

In 1998 the Law was adopted in Azerbaijan “On citizenship of the Republic of Azerbaijan”. This law acknowledged 300 thousand refugees as Azerbaijani citizens (around 250 thousand Azerbaijanis from Armenia and around 50 thousand Meskhetin Turks). It also granted the right to simplified procedure of acquiring Azerbaijani citizenship to 7 thousand stateless persons⁶⁶. If these 300 thousand refugees had not acquired Azerbaijani citizenship, then in subsequent years they would have become stateless persons for Azerbaijan and it would have taken them years to naturalize. From the standpoint of naturalization of refugees and potential stateless persons this was a positive development.

However, this step did not resolve all problems associated with refugees and stateless persons. The Law acknowledged as Azerbaijani citizens only persons forcefully moved from Armenia and Meskhetin Turks forcefully moved from Central Asia. But despite that, at present many refugees continue to live in the country without any real naturalization prospects. Unfortunately, the Law “On citizenship” does not envisage naturalization of refugees and the same norms apply to refugees and immigrants. Taking into account that the law on citizenship requires presenting a permanent residence permit and the fact that certificates issued to refugees that prove their status still do not have legal force (samples of such documents were not approved by law) and are not residence permits, refugees’ applications for citizenship are not accepted.

At present there are 55 persons in Azerbaijan who are acknowledged refugees by Azerbaijan and 1664 refugees who are under protection of the Office of the United Nations High Commissioner for Refugees in Azerbaijan.

Certificates issued to refugees by the state are not high-security forms⁶⁷ and are not acknowledged by other public bodies as documents proving identity of refugees. They do not give a right to conclude labor and notarial contracts and to marry; children born from refugees residing with these certificates do not have a right to obtain documents. It is even impossible to exercise the right to education based on these certificates.

There are also serious problems in the field of acquisition of citizenship by refugees who continuously resided in Azerbaijan on legal grounds for more than 5 years⁶⁸. Refugees applying for citizenship need to present a certificate from employer, though the state body accepting applications for citizenship knows perfectly well that refugees cannot present such a certificate, as far as refugee certificate does not give them the right to sign a labor contract. As a result refugees fail to present a certificate from employer. If a person fails to present this certificate, his or her documents are not accepted for citizenship purposes. As one can see, the Law “On citizenship” does not envisage procedure for acquisition of citizenship by refugees who settled in Azerbaijan.

⁶⁵ Article 2 of the UN Convention relating to the Status of Refugees envisages legal status of refugees (right of association, right of access to court, right to have movable property and real estate), article 3 determines gainful occupations for refugees (payroll job, self-employment, freelance), article 4 establishes social welfare for refugees (allowance, housing, public education, government aid, labor legislation and social protection)

⁶⁶ According to article 5 of the 1998 Law “On citizenship of the Republic of Azerbaijan”, refugees settled in the territory of the Republic of Azerbaijan from 1 January 1988 to 1 January 1992 are citizens of Azerbaijan

⁶⁷ As of now, there are no refugee certificates, the samples of which would be set by the legislative body of Azerbaijan

⁶⁸ As was mentioned above, the main condition for acquisition of Azerbaijani citizenship is that the person is question to continuously reside in the country on legal grounds for over 5 years.

Amendments ought to be introduced into the Law “On citizenship” and mechanism ought to be established for acquisition of citizenship by refugees, as well as facilitation of their naturalization.

Samples of refugee certificates, as well as travel documents (in accordance with 1951 convention) ought to be approved. These documents ought to become legitimate and give refugees the right to enter into labor relations, receive education, sign notarial contracts, as well as cross the country borders.

Main obligations of the state in the field of integration

International and regional documents, as well as bilateral treaties that Azerbaijan is party to include the norm dealing with integration of foreigners and stateless persons. For instance, as a member of ILO, UN and European Conventions Azerbaijan undertook certain obligations related to major rights and freedoms of citizens, as well as integration of foreigners, stateless persons, refugees and forced migrants. They included such as obligations as assistance in obtaining education, provision of housing and jobs, creation of conditions to study the local language, assistance in acquisition of citizenship etc.

Most norms stipulated in the international legislation were also reflected in national legal acts.

The Law “On the status of refugees and forced migrants” envisages certain guarantees provided to refugees and forced migrants (providing temporary place of residence, adaptation to local conditions, provision of necessary documents, language courses, opportunity to learn about one’s rights and freedoms)⁶⁹.

Foreigners and stateless persons permanently residing in Azerbaijan have the right to receive housing from state, agency and societal funds on a common basis and according to procedure established for Azerbaijani citizens, if it is not otherwise provided for by Azerbaijani law⁷⁰. Provision of refugees with temporary or permanent place of residence is done by the relevant executive body according to procedure stipulated by Azerbaijani legislation⁷¹. Expenses borne by the refugee and associated with movement from temporary to permanent place of residence are covered according to the established procedure. The Cabinet of Ministers adopted numerous legal acts regulating social status of refugees, providing them with temporary and permanent place of residence, providing them with products, social benefits and so on, however all these legal acts only cover the refugees from Armenia who settled in Azerbaijan after the war in Nagorno-Karabakh. At the will of the refugee or forced migrant (person resettled within the country) he or she is given an interest-free loan for ten years, as well as, depending on the place of residence, a land lot, the size of which is set by the legislation. When a refugee or forced migrant (person resettled within the country) buys a flat or a house, these transactions are carried out without notarial fees⁷².

Labor contracts concluded between legal or physical persons and a labor migrant can envisage other terms aimed at improving the social protection of the labor migrant.

The main problems and recommendations in this field

1. Azerbaijani legislation is not yet completely in line with international documents that Azerbaijan is party to. As it was mentioned above, legislation in the field of naturalization of persons who married Azerbaijani citizens, legislation in the field of refugee rights, and legislation covering

⁶⁹ Article 6 of the Law “On status of refugees and forced migrants”

⁷⁰ Article 7 of the Law “On legal status of foreigners and stateless persons”

⁷¹ President’s Decree of 8 June 1999 on application of the Law “On status of refugees and forced migrants”, article 2.4

⁷² Article 17 of the Law “On legal status of refugees and forced migrants”

stateless persons are flawed. There are also problems with application. Thus, these legal provisions ought to be brought in line with relevant Conventions mentioned above.

2. Azerbaijan signed the UN Conventions that regulate relations involving stateless persons⁷³, however, majority of provisions of these international documents were not properly reflected in the national legislation. Stateless persons are in fact deprived of an opportunity to acquire Azerbaijani citizenship. Persons who found themselves stateless in Azerbaijan after 1 January 1992 reside without documents. Significant amendments need to be introduced into the legislation.
3. Absence of simplified procedure for integration of persons who married Azerbaijani citizens results in breakup of families. Absence of such international programs in Azerbaijan as “Family reunion” results in serious problems. Following the example of Ukraine and Georgia, Azerbaijan should introduce certain legal norms offering benefits in the course of intergration of persons who married Azerbaijani nationals.
4. Samples of refugee certificates, as well as travel documents (in accordance with 1951 Convention requirements) ought to be approved. These documents ought to become legitimate and give refugees the right to enter into labor relations, acquire education, sign notarial contracts, as well as cross the country borders.
5. Amendments ought to be introduced into the Law “On citizenship” that would touch upon the process of refugee integration and mechanism ought to be established for acquisition of citizenship by refugees, as well as facilitation of their naturalization.
6. By and large, Azerbaijan ought to bring national legislation in line with international documents, ensure procedure for documentation of stateless persons and thus expedite their integration.

⁷³ UN Convention relating to the Status of Stateless Persons, UN Convention “On reduction of statelessness”