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The Legal Framework For Circular Migration In Georgia

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1. Georgian Legislation

In Georgian legislation the term “circular migration” is not used. Though, there are several provisions which are relevant to the fact of circular migration.

1.1 Freedom of Movement

According to the *Constitution of Georgia*,¹ everyone legally in Georgia shall be free to leave Georgia.² This right may be restricted only: in accordance with the law; in the interests of securing national security or public safety; for the protection of health; for the prevention of crime; and for the administration of justice that is necessary for maintaining a democratic society.³ This reservation does not limit the right of citizens of Georgia to freely enter Georgia.⁴ Special restrictions regarding the exit of citizens of Georgia are set in the *Law on the Rules of Georgian Citizen's Entry into and Exit from Georgia*.⁵ In particular, a Georgian citizen may be refused to exit Georgia if he/she is wanted by the law enforcement agencies of Georgia or if he/she has presented any invalid or false documents.⁶ Reference should also be made to the *Decree of the President of Georgia of 27 February 2012, No 142*⁷ regulating the issue, validity and use of the return certificate to Georgia, which is a document to be issued to Georgian citizens in specific cases so that they can return to Georgia.

1.2 Citizenship

To some extent, one of the provisions of the *Organic Law on the Citizenship of Georgia*⁸ may be regarded as problematic with regard to the circular migration of Georgian citizens. Namely, a citizen of Georgia permanently living abroad can lose Georgian citizenship if he or she has not been registered at the Georgian Consulate within two years.⁹ At the same time, while generally prohibiting dual citizenship, the *Constitution of Georgia*¹⁰ provides for an exemption which allows the President of Georgia to grant citizenship to a citizen of a foreign country who has a special merit for Georgia or grant the citizenship of Georgia to him/her for state interests.¹¹ In practice, this competence is used extensively. This *de facto* dual citizenship may allow circular migrants to leave Georgia and return without legal impediments. Here should be mentioned too the provisions of the *Law on Legal Status of*

¹Adopted 24 August, 1995. „Sakartvelos Parlamentis Utskebebi“31-33, 24/08/1995.

² Article 22.2.

³ Article 22.3.

⁴ Article 22.4.

⁵See Articles 17-18.The Law was adopted 7 December 1993 (Last amended 25 May 2012). „Sakartvelos Parlamentis Utskebebi“, 1993, 12-13.

⁶ Article 10.

⁷Decree No 142 of 27 February 2012 of the President of Georgia on Approval of Statute on Certificate to Return to Georgia. „Sakartvelos Sakanonmdblo Matsne“, www.matsne.gov.ge, 27/02/2012.

⁸Adopted on 25 March 1993 (Last amended 25 May 2012). „Sakartvelos Respublikis Uzenaesi Sabchos Utskebebi“, 25/03/1993.

⁹ Article 32.1.

¹⁰Adopted 24 August 1995. „Sakartvelos Parlamentis Utskebebi“, 31-33, 24/08/1995.

¹¹ Article 12.2.

*Aliens and Stateless Persons*¹² which foresees the possibility of granting a temporary and permanent residence permit to a person whose citizenship of Georgia has been suspended.¹³

1.3 Recognition of Diplomas

The recognition of education obtained abroad, which might be relevant for supporting circular migration, is a competence of the National Center for Educational Quality Enhancement. The recognition process is regulated by the *order of the Minister of Education and Science of Georgia of 1 October 2010*.¹⁴ It covers the recognition of general education as well as higher and vocational education. Within the recognition process the National Center for Educational Quality Enhancement verifies the authenticity of diplomas issued by the educational institutions of foreign countries. It determines the compatibility of the qualification in these diplomas and the learning outcomes attained during the study period with Georgian qualifications.¹⁵

1.4 Legal framework facilitating circular migration of aliens

Although the Georgian legislation does not define the term “circular migration”, its provisions allow back and forth mobility of foreign citizens. In this context, reference should be made to *the law on Legal Status of Aliens and Stateless Persons*,¹⁶ stipulating the conditions for entry and residence in Georgia. It determines *inter alia* categories of visas,¹⁷ their validity period and the persons entitled to obtain them.¹⁸ It sets too a list of countries whose citizens or permanent residents do not require visas for entering and staying in Georgia for up to 360 days¹⁹. Moreover, the law contains the same provisions on the right to leave Georgia as Article 22.3 of the Constitution of Georgia (see above) but with regard to foreign citizens.

Economically-active foreign citizens who want to enter Georgia may generally obtain an ordinary or study visa.²⁰ The long validity period of such visas can be useful for circular migration: ordinary visas are issued either with the validity period of 360 days, which includes the right of multiple entries to Georgia or with the validity period of 90 days with the right of multiple or single entry to Georgia.²¹ Study visas are issued with the validity period of 360 days. In the context of circular migration, the possibility of issuing a multiple-entry visa may also support the intention of foreign citizens to travel to Georgia on several occasions. It should also be noted that for performing labour activities in Georgia there is no need to obtain a work permit. After the expiry of the validity period of the ordinary visa, an alien willing to work or study in Georgia has only to obtain a temporary residence permit.²²

¹² Adopted 27 December 2005 (Last amended 25 May 2012). „Sakartvelos Sakanonmdeblo Matsne“, 3, 16/01/2006.

¹³ Articles 19.2 and 21 (e).

¹⁴ Order No 98/n of 1 October 2010 of the Minister of Education and Science of Georgia on the Approval of the Procedure of Validation of Georgian Educational Documents and Recognition of Foreign Education and Fees. „Sakartvelos Sakanonmdeblo Matsne“, 126, 01/10/2010.

¹⁵ Article 4.4.

¹⁶ Adopted 27 December 2005 (Last amended 25 May, 2012). „Sakartvelos Sakanonmdeblo Matsne“, 3, 16/01/2006.

¹⁷ Article 6.

¹⁸ Articles 7-10.

¹⁹ Article 4.5. Generally, Currently citizens of 76 states need no visa to enter and stay in Georgia.

²⁰ Article 9-10.

²¹ Article 9.2.

²² Article 9.1¹.

The *Law on Legal Status of Aliens* also determines types of residence permit (temporary and permanent residence permits),²³ designates authorities responsible for issuing entry²⁴ or residence permits²⁵ and regulates all other procedural or substantive issues.²⁶ It should be mentioned that while a temporary residence permit shall be issued to those foreigners willing to stay in Georgia on several occasions for not more than six years,²⁷ having legally lived in Georgia for at least 6 years is just one of options for obtaining a permanent residence permit.²⁸ More importantly, the law does not differentiate between the rights of persons having a temporary residence permit with those with permanent residence permit.²⁹

Georgian legislation does not contain provisions on absence and re-entry: foreign citizens residing in Georgia are allowed to leave the country with the prospect of re-entry at a later stage without losing their residence status. At the same time, the *Law on Legal Status of aliens and Stateless Persons* provides for the termination of the term of (temporary or permanent) stay in Georgia, the cessation of labor activities or other relations for which the residence permit was obtained.³⁰ This provision gives wide discretion to authorities thus undermining the residence status of those foreign nationals who even temporarily cease to work in Georgia.

2. International Cooperation

From the instruments elaborated within the framework of international cooperation the Mobility Partnership initiative between the European Union and Georgia needs to be flagged up. The joint declaration of the Mobility Partnership was signed 30 November 2009. One of the purposes of this initiative was the development of circular and temporary labour migration schemes.

17 June 2010 the Agreement between the European Union and Georgia on the Facilitation of the Issuance of Visas³¹ and 22 November 2010 the Agreement between the European Union and Georgia on the Readmission of Persons Residing without Authorization³² was signed. Both Agreements came into force 1 March 2011.

As a part of the Mobility Partnership initiative, Georgia and France are working on a bilateral agreement on Circular Migration and the Residence of Professional Workers. The implementation of the Targeted Initiative for Georgia “Support reintegration of Georgian returning migrants and the implementation of EU – Georgia readmission agreement” is also based on the objectives of the Mobility Partnership. It started 16 December 2010. The project was implemented by 9 EU member states (Belgium, the Czech Republic, France, Germany, Italy, the Netherlands, Poland, Romania and Sweden) and the IOM.

²³ Article 16.

²⁴ Article 13.

²⁵ Article 18.

²⁶ See Article 14 (grounds for refusal of such permission); Articles 19-20 (conditions and procedures for issuing temporary and permanent residence permits); Articles 19-20 (conditions and procedures for issuing temporary and permanent residence permits); Article 23 (grounds for refusing to the Residence Permit); Article 25 (grounds for termination of the term of stay in Georgia); Article 26 (duty for the registration of aliens in Georgia, terms and exemptions); Article 26 (duty for the registration of aliens in Georgia, terms and exemptions).

²⁷ Article 19.1.

²⁸ Article 20.

²⁹ Article 27-48.

³⁰ Article 25.1 (d).

³¹ OJ L 52 of 25/02/2011, p. 34.

³² OJ L 52 of 25/02/2011, p. 47.

There are also other measures of a unilateral character which aim to support circular migration. In particular, as the citizens of a country with which Poland cooperates within the Mobility Partnerships, Georgian Citizens can take up temporary employment in Poland without a work permit. Germany allows Georgian citizens who have legal residence permits in Germany to leave Germany for longer periods than the usual six months without losing their residence titles.

Georgia has concluded bilateral agreements on visa-free travel with several third countries.³³ While visa-free travel can help the mobility of Georgian citizens in general, the effects of these agreements on circular migration are rather limited. They provide for visa-free regimes for up to 90 days, as a rule, whereas, the Georgian citizens need to obtain labour visas and work permits for performing labour activities in these countries.

Conclusion

Generally, the Georgian legislative framework in the field of migration is extremely liberal. With regard to mobility and employment there are no or minimal limitations. Therefore, notwithstanding the absence of the definition of “circular migration”, there are several provisions which support repetitive back and forth mobility.

³³For example, with Ukraine, Armenia, Turkey, Kazakhstan, Azerbaijan, etc.