Georgia and World Migration

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Annotation:

At the present stage of development of world civilization and democracy citizens' rights are widely protected on the international scale as well as in every democratic country. This also concerns the human right to free residence and the possibility to move and live where he finds the best living conditions. But his movements should be based on reason, confirming the thesis that one's abilities, talents and his potentialities may be manifested best at the place of the permanent residence he selects.

International acts regulate the legal relation of migrants fairly extensively and in detail. The propositions of these acts form the basis legislation of some states on migration, including Georgia. In this respect, mention should be made of the UN Convention of December 18,1990 "On the Protection of the Rights of All Working Migrants and Their Family members".

To acquire an immigrant's status Georgian legislation lays down a number of requirements; in particular, the immigrant should be a close relative of a Georgian citizen or a foreigner enjoying the right of permanent residence in Georgia. As to court guarantees of protecting human rights, they are basically applied in the sphere of infringement of the law by foreigners. Foreigners bear criminal and administrative responsibility equally with Georgian citizens. However, democratic conditions of bearing legal responsibility should be taken in to account in relation to foreigners too, in particular it is necessary to observe the rules of habeas corpus and other rules ensuring the private interests of foreigners.

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At the present stage of development of world civilization and democracy citizens' rights are widely protected on the international scale as well as in every democratic country. This also concerns the human right to free residence and the possibility to move and live where he finds the best living conditions. But his movements should be based on reason, confirming the thesis that one's abilities, talents and his potentialities may be manifested best at the place of the permanent residence he selects. Otherwise, free movement turns into legitimized aggression and annexation for as the result of mass use of the right to move one or another country with a small population may turn into an actual colony of the country with a large population.

That is why unlimited free movement of people and absolute free immigration are very dangerous. In general, democracy does not mean lack of discipline; on the contrary it is largely a manifestation, implementation and protection of law and order. Hence the necessity of legal regulation of immigration on the international as well as on intrastate level.

There are many international acts that, simultaneously with the right of free movement of people, regulate the conditions of immigration. In this connection the Declaration of Human Rights of December 10, 1948, should be mentioned; point 13 of the document declares that any person has a right of free movement and selection of residence within any country; any person has a right to leave any country, including his own, and also to return to his native country. According to point 14 of the Declaration, the right to asylum is also recognized; however this right cannot be used in case of prosecution for nonpolitical crimes or actions that contravene the principles and aims of the UN.

The international Pact of December 16, 1966 on Civil and Political Rights points out that anyone on the territory of that or this country has the right of free movement and of selecting his residence; any person has the right to leave any country, including his own one. The cited right - as stated in the Pact - cannot be the object of any restriction, except cases provided by law. It is

necessary for protecting the state security, public order, health or morals of the population or others' rights and freedoms under different rights recognized by the given Pact. Also, nobody can arbitrarily take away man's rights to return to his own country (point 12).

A foreigner legally residing in this or that country may be deported only according to a decision based on law. If imperative requirements of state security do not demand anything else, the foreigner has a right to present counter information about his deportation and demand a review of his case by a competent body or officials appointed by competent authorities, also he may be presented to the given government body by a relevant person or persons for the mentioned purpose (point 13).

The Final Act of the Helsinki meeting on Security and Cooperation in Europe of August 1, 1975 presents a number of aims and tasks on defending migrants towards solving economic, social, humanitarian and other problems. In particular, the given Act declares that the countries of origin should provide jobs to their citizens on their own territory through economic cooperation, which is relevant to the given purposes and is acceptable both to original country and to the receiving country; both parties should accept conditions that regulate the movement of workers. At the same time, their personal and social well-being will be protected and in case of need they can be brought together and be given elementary language and vocational training; equal rights of hired work and labour protection should be ensured, as well as social security for labor migrants and citizens of the receiver countries. Attention should be given to providing normal living conditions to labor migrants' special housing conditions. In case of unemployment, labor migrants should be provided, as far as possible, with equal opportunities with citizens of the receiver country in looking for work. Favorable attitude to migrants should enable them to gain vocational education, free study of the language of the receiver country; get information in his native language about the receiver country, as well as his original country. Migrants' children should get comprehensive education in the receiver country, like other children in this country. They should be given an opportunity to learn their original language, national culture, history and geography; as far as possible the process of reunification of migrants' families should be simplified. Favorable environment should be created for the original countries aims to invest the labor migrants' savings with a view of widening relevant employment opportunities within the frame of their economic development, as a result of which they will be supported in reintegration of these persons after their return to their native country.

The above Act of the Helsinki Meeting regulates in detail the inter-relationships and contacts, family relations, terms of families' unification, marriage, personal and professional business trips, migrants' collective and individual tourism, sport etc. As is seen, the mentioned Act assists immigrants in many ways to increase their economic, social and cultural level so that they will return to their countries of origin more developed. The immigrant is totally protected from illegal deportation of any kind. In particular, seven supplement-protocols (22 November 1984) of the European Convention (4 November 1950) on the Protection of Human Rights and Basic Freedoms states that a foreigner legally living on the territory of one or another country cannot be deported without a decision based on the law. In this case the foreigner is guaranteed to produce arguments against his deportation, demand a review of his case and to appear before a competent body or person. Before these guarantees are fulfilled his deportation is possible only on the basis of motivated interests of public order or state security.

International law pays special attention to the legal status of refugees, who are not considered immigrants, but have certain similar common features linking them to settlers in a foreign country. Hence note should be taken of the Charter of the UNHCR (14 December 1950) and the Convention of 28 July 1951 on the Status of Refugees. According to these Acts refugees are persons concerning whom there exists fully proven fear that they will be victims of persecution in connection with racial affinity, religion, nationality, membership of particular social groups or political creeds, hence they are outside the country of their nationality and are unable or are unwilling to avail themselves of the protection of that country, or who, not having a nationality and being outside the country of their former habitual residence as a result of such events are unable or

owing to such fear, are unwilling to return to it. Thus, a refugee is a person in a foreign country, but if in the country of his nationality he is forced to resettle to another part of his own country in connection with the above-mentioned reasons, then, according to these Acts, he will not be considered a refugee, which is wrong because according to the conventions of previous years and the recent period (12 May 1926, 30 June 1928, 28 October 1933, 10 February 1938, 14 September 1939 etc.), refugees are those persons who have been deprived of a chance to live at their permanent residence as a consequence of the above circumstances. Among the causes of forced flight from places of habitual residence and becoming refugees international acts do not mention national and ethnic conflicts but attention is drawn to a particular social group or political affiliations which, to certain extent, involves ethnic or national opposition, but does not reflect it fully.

The outstanding researcher of the legal status of refugees, Guy S. Goodwin-Gill notes rightly: "The number of persons, awaiting international protection is increasing and now added to them (at last, in some situations) are internally displaced persons". It is precisely such persons that should be covered by refugee status, which is a matter of special interest to Georgia where hundreds of thousands of refugees from Abkhazia and Samachablo are resettled, whose self-styled governments refuse to recognize their refugees. It should be noted also that the refugee status and international protection should be accorded not only to forced displaced persons but people deported en masse at various times, women and children who have been forced to flee their homes, as well as to persons demanding asylum. These persons are not immigrants and the legislation on immigration does not regulate their legal status, but they need special legal regulation.

International acts regulate the legal relation of migrants fairly extensively and in detail. The propositions of these acts form the basis legislation of some states on migration, including Georgia. In this respect, mention should be made of the UN Convention of December 18,1990 "On the Protection of the Rights of All Working Migrants and Their Family members".

The Convention notes that the significance and scale of migration are great. Millions of people are involved in it, affecting the interests of a vast majority of states of the international community. The stream of migrant-workers needs legal regulation and assistance, which should be expressed in the concerted positions of states through approval and protection of the basic principles of migration. The Convention recognizes that the rights of migrants and their family members are not defended appropriately anywhere, hence they need international protection. At the same time the Convention draws special attention to the serious problems created by migration through separating migrants from their families. Therefore the Convention calls on states to facilitate the reunification of families.

The document stresses that humanitarian problems of migration further aggravate it in the case of illegal migration, making it imperative to encourage activity aimed preventing and elimination of illegal and covert movement, and transportation. For their part workers with no documents or permanent status often get jobs on advantageous terms, which gives a chance to some employers to enlist such cheap workforce with a view to gaining profit from unfair competition. Besides, the Convention expresses the hope that wide recognition of the basic rights of migrants will prevent a foreigner without permanent status getting a job. Granting additional rights to migrants with permanent status and their family members will induce foreigners and employers to respect laws and existing procedures of migration passed on issues of migration. The Convention is recognized as a comprehensive act, whose application acquires universal character.

The Convention under discussion gives the concept of worker-migrant, implying a person who worked, works and will work at paid employment in the country whose citizens he is. On this basis the Convention established the following terms: "border worker", "seasonal worker", "sailor", "worker employed at a border facility belonging to him who crosses the border for the working process", "project worker", "special hired worker ", "unhired worker" etc. It is obvious from these terms that today work migration has many legal aspects.

Then the Convention touches upon the question of inadmissibility of various types of discrimination, stating that all types of discrimination are forbidden. The Convention regulates the rights of worker migrants and members of their family, as well as cases when migrants have

documents or permanent status, determines the rules that apply with respect to a concrete category of foreign workers and members of their families.

Finally, the Convention defines the possibilities of creating normal, just, humane and lawful conditions in the field of international migration of workers and their family members. To this end it gives the international organization structures that should monitor the implementation of the Convention under discussion. The highest body in the cited structure is the Committee for the protection of the rights of all migrant workers and their family members. The Convention also contains a general part and a conclusion.

Besides the above-mentioned, there are numerous recommendations and conventions concerning migration issues, passed by the International Labor Organization or other organizations at different periods since 1949 to the present day. The multiplicity of such acts in the field of migration is caused by the urgency of the problem and by the interest of each government in legal emigration as well as immigration in their country. However, solving the given problems is impossible without applying the provisions of international acts, for it will create a collision in relations with other countries. Hence the legislation of Georgia on migration is based on international acts and documents that determine the migration policy in Georgia.

Migration processes have acquired significance worldwide. Therefore, in 1951 an International Organization for Migration was established at the UN, which at the beginning constituted an intergovernmental committee in the sphere of European migration. To date it includes over 80 states. Its main line of activity is to protect free movement of men. The Act or Constitution adopted in 1953 (with amendments on 20 May, 1987)– and currently in force - notes that in the migration sphere on the international scale it is necessary to render assistance in the "regulation of migration flows in the world to facilitate the merging and integrating of migrants in the economic and social structures of the receiver country with most favorable conditions".

The purposes and functions of the International Organization on Migration (IOM) covers the management of regulated and planned migration aimed at employment, movement of particular categories of human resources and refugees, movement of persons that are forced to flee from their countries. It provides technical assistance and advisory service in migration issues, organizes forums to share ideas and experience with concerned countries and organizations. Modern practice shows that the role of the IOM is very great in the regulation of world migration processes.

The legislation of Georgia defines the concept of immigrant as a person living permanently in Georgia - as a rule a close relative of a citizen of Georgia or a foreigner permanently living in Georgia. Such concept covers only a definite part of foreigners in Georgia. But there are many foreigners coming to work or with scientific or cultural purposes. These persons should also have immigrant status, for international acts on work migration consider all foreigners coming to target countries with different aims and without any kinship with residents of the country as immigrants.

Despite such a narrow interpretation of immigrant, Georgian legislation on citizenship grants the right to immigrants as well as foreigners permanently living in Georgia for 10 years and satisfying the requirements of this legislation to become citizens of Georgia.

To acquire an immigrant's status Georgian legislation lays down a number of requirements; in particular, the immigrant should be a close relative of a Georgian citizen or a foreigner enjoying the right of permanent residence in Georgia. Without meeting the cited conditions, a foreigner is almost deprived of the chance of becoming immigrant and obtaining respective privileges granted to immigrants. This definition of immigrant does not cover work and other types of migration, nor does it conform to democratic requirements of ensuring equal rights of all foreigners before the law.

To ensure the normal status of an immigrant it is necessary to regulate the respective rights and duties of a foreigner. To that end the legislation of all countries, including Georgia, lays down administrative-legal and judicial guarantees of the rights of foreigners. Administrative-legal guarantees include measures of administrative bodies in the case of border crossing by immigrants. Legal migration implies crossing the border of a foreign country on the basis of visa or permission of the receiving country. Delay in issuing a visa causes negative consequences in the regulation of the foreigner's legal status, which in such a case may become, an illegal immigrant.

Legislation distinguishes illegal immigration through the immigrant's fault and with no fault of the latter. Illegal immigration without the foreigner's fault arises in connection with the violation of the time of issuing the visa, as a result of which the person may become an illegal immigrant. However, the application rules of responsibility for breach of the migration law cannot apply to such an immigrant.

Georgian legislation lays down administrative responsibility for breaches of rules of registration. Imposing such responsibility does not violate the universal right of movement and choice of a place of residence, but is one of the major means of combating illegal migration.

As to illegal immigration due to the immigrant's fault administrative bodies should take appropriate measures to prevent such an occurrence. An important method of fighting illegal migration is to introduce registration of foreigners in each country of the world. Relevant bodies of the Ministry of Internal Affairs, organizations and institutions, as well as private citizens receiving foreigners should pay special attention to the registration of migrants.

As to court guarantees of protecting human rights, they are basically applied in the sphere of infringement of the law by foreigners. Foreigners bear criminal and administrative responsibility equally with Georgian citizens. However, democratic conditions of bearing legal responsibility should be taken in to account in relation to foreigners too, in particular it is necessary to observe the rules of *habeas corpus* and other rules ensuring the private interests of foreigners.

The Constitution of Georgia lays down 72 hours as the term of detention of a person suspected of having committed a crime. During this period the respective bodies of inquiry and investigation must obtain permission from the court to arrest the person. Otherwise the detained person should be freed immediately. However, 72-hour term of detention of a person without the court's permission is too long a term. In any case, during the detention of the suspected person it is necessary to provide him with the rights guarantee to of all suspected persons and grant him the right of a use lawyer's assistance. Unfortunately Georgian legislation lacks consistency in this issue, in particular the Criminal-procedural Code of Georgia lays down 48 hours to bring an accusation since the moment of detention. There are some cases when the time is over without bringing an accusation and the person is discharged. However, for during 48 hours the person is kept in custody illegally, which is a gross violation of the rules of habeas corpus.

The Constitutional Court of Georgia on January 10, 2003 declared the relevant articles and provisions of Criminal-procedural Code of Georgia invalid. But unfortunately, the Parliament of Georgia did not make amendments in the mentioned Code and left the question unsolved.

Questions of foreigners' legal responsibility are directly connected with their deportation. This question should be discussed on two planes: 1) from the viewpoint of an administrative-legal measure and 2) that of criminal-legal extradition.

Deportation of a foreigner from Georgia is envisaged in the case of repeated administrative misdemeanor or action offending the country's customs and traditions. The law of Georgia on Foreigners lays down the latter. However, neither administrative-legal nor criminal legislation envisage the deportation of foreigners for the violation of customs and traditions. Hence the mentioned cause of deportation cannot serve as the basis of cutting short the immigrant's stay on the territory of Georgia.

As to extradition, such a measure should be used in the case of those foreigners with whose countries Georgia has a relevant agreement. According to article 6 of the Criminal Code of Georgia a person who is being persecuted for political conviction or who has committed an act that is not considered a crime in Georgia, or who may be sentenced to death in the country of deportation cannot be extradited to another country. This provision corresponds to the international convention on extradition; extradition of foreigners should be carried out conformably to the demands of international acts.

The natural result of an immigrant's status is his accession to Georgian citizenship. The law on the "Citizenship of Georgia" regulates this question. It lays down the naturalization of a foreigner in the usual way, as well as in simplified and special rules. Georgian legislation defines that a foreigner may accede to citizenship of Georgia if he has permanently lived on Georgian

territory for 10 years, speaks the Georgian language in the prescribed scope, and knows the history and legislation of Georgia. To acquire citizenship of Georgia it is necessary to have a definite job or real estate in Georgia. The simplified rule of accession to Georgian citizenship by a foreigner is envisaged in the case of his/her marrying a citizen of Georgia. And a special rule implies granting citizenship of Georgia to a person having rendered a great service to Georgia or is an outstanding scientist/scholar or specialist whose Georgian citizenship is in the republic's interests.

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