

GEORGIA

Information in Relation to the Human Rights of Migrants: Migration and the Human Rights of the Child

Introduction

Constitution of Georgia states that the issues in relation to citizenship, human rights and freedoms, emigration and immigration, entrance to and departure from the country, temporarily or permanently resident foreign nationals and stateless persons, within the territory of Georgia are in the exclusive power of Georgian supreme national bodies¹. Constitution corresponds with universally recognized norms and principles of international law. International treaties or agreements concluded with and by Georgia, if they do not contradict the Constitution of Georgia, take precedence over domestic normative acts². Implementation of the mentioned principle in practice results in harmonization of national legislation with the obligations that derive from international treaties and agreements. Hence international treaties that regulate the issues concerning migration and the obligations in this context are given superior power while taking decision in the mentioned field.

Georgia is a contracting party of various international treaties and conventions that regulate particular issues in relation to migration, including the Convention on the Rights of the Child, UN Convention against Transnational Organized Crime and its two Protocols against the Smuggling of Migrants by Land, Sea and Air and to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, as well as the Convention of 25th of October 1980 on the Civil Aspects of the International Child Abduction.

Separated and unaccompanied migrant children

Georgian legislation regulates the issues in relation to separated and unaccompanied migrant children. In particular, Georgian Law on Rules for citizens of Georgia in relation to the entrance to and departure from the country regulates the issues concerning minors in the context of migration. The law envisages the right to emigration from Georgia for all citizens, i.e. the right to go to other country permanently, as well as the right to temporary leaving from or entrance into Georgia³. It also states that this right shall not be restricted⁴. In relation to the minors under age of 18, the Law provides following framework:

- Minor may leave the country only with his/her legal representative.

¹ Article 3(1) of the Constitution of Georgia;

² Article 6(2) of the Constitution of Georgia;

³ Article 3(1) of the Georgian Law on Rules for citizens of Georgia in relation to the entrance to and departure from the Country;

⁴ Article 3(2) of the Georgian Law on Rules for citizens of Georgia in relation to the entrance to and departure from the Country;

- In case minor's legal representative is abroad than minor is allowed to leave the territory with an adult subject to the consent of his/her legal representative⁵.
- In case of disagreement between legal representatives on the topic of emigration of a minor, dispute will be resolved by the court⁶.
- While traveling abroad for a short term, a minor is granted a passport subject to the consent of his/her legal representatives⁷.

Access to social services

The issues related to the social welfare of the children are defined by the Georgian government through strategic directions and relevant programs in health care and social service system.

In general, the Minister of Labor, Health and Social Affairs of Georgia regulates the Child Care System by special annual programs. In particular the following program - "Children Care" which was approved in 2010⁸ by MOHLSA is directed towards creating domestic atmosphere promoting full development of a child, ensuring shelters for homeless children, including resting and recovery projects.

The Law on Health Care regulating healthcare system in Georgia prohibits discrimination of the patient on the ground of race, skin color, language, sex, religion, political and other beliefs, national, ethnic and social origin, property and title of nobility or place of residence, disease, sexual orientation or other personal negative frame of mind⁹.

As for education, accessibility of general education for children has been the primary focus for the state and the MoES. Constitution of Georgia guarantees right to education¹⁰. Citizens have the right to free primary, secondary, professional and tertiary education at state institutes within the framework established by law. Primary education is mandatory for all¹¹, thus the primary education is accessible for everyone. It should be noted that State provides free primary education for all that makes primary education accessible for everyone. According to the Georgian law on General Education each person has the equal right to education in order to develop his/her personality and gain the knowledge that is necessary in private and public life to achieve success. State ensures the right to education for each pupil in the official language or in his/her native language¹². In order

⁵ Article 23(1) of the Georgian Law on Rules for citizens of Georgia in relation to the entrance to and departure from the Country;

⁶ Article 23(2) of the Georgian Law on Rules for citizens of Georgia in relation to the entrance to and departure from the Country;

⁷ Article 8(3) of the Georgian Law on Rules for citizens of Georgia in relation to the entrance to and departure from the Country;

⁸ Order No.441/n of the Ministry of Labor, Health and Social Affairs of Georgia, December 30, 2009;

⁹ Article 6 of the Georgian Law on Health Care ;

¹⁰ Article 35 (1) of the Constitution of Georgia;

¹¹ Article 35 (3) of the Constitution of Georgia;

¹² Article 7 (1) of the Georgian Law on General Education;

to ensure general education, State establishes the system of general education and essential social-economic conditions¹³.

Legislative framework and practice in the context of detention and repatriation, including mechanisms to ensure protection from refoulement and to ensure family unity

In recent years Georgia has developed a comprehensive tool for fight against trafficking in human beings including trafficking in minors. Georgia is a contracting party to the Convention on Action against Trafficking (Council of Europe, May 16, 2005) as well as the party to UN Convention against Transnational Organized Crime and its two Protocols against the Smuggling of Migrants by Land, Sea and Air and to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children that envisage concrete measures to safeguard children from trafficking.

In the context of repatriation, the Convention on Action against Trafficking states that each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programs, involving relevant national or international institutions and non governmental organizations. These programs aim at avoiding re-victimization. Each Party should make its best effort to favor the reintegration of victims into the society of the State of return, including reintegration into the education system and the labor market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programs should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care institutions¹⁴. Convention stresses that child victim shall not be returned to a State, unless there is indication, following a risk and security assessment that his/her return would be in the best interests of the child¹⁵.

Furthermore, Georgian Law on Combating Human Trafficking which was entered into force in 16 June, 2006, determines the organizational and legal grounds for preventing and combating human trafficking¹⁶. With the consent of the victim of human trafficking, the state shall ensure his/her accommodation in a Service Agency for the Victims of Human Trafficking (Shelter) – a dwelling that is appropriate for decent and safe being¹⁷. It is defined that all Service Agencies for the Victims of Human Trafficking (Shelters) shall take into consideration the victims' age, sex and special needs, particularly special needs of the children in appropriate housing, education and care¹⁸. Thus, particular attention is being paid to the victims of trafficking who are minors.

¹³ Article 9 (1,2) of the Georgian Law on General Education;

¹⁴ Article 16(5) of the Convention on Action against Trafficking;

¹⁵ Article 16(7) of the Convention on Action against Trafficking;

¹⁶ Article 1 of the Georgian Law on Combating Human Trafficking;

¹⁷ Article 18 (1) of the Georgian Law on Combating Human Trafficking;

¹⁸ Article 18 (5) of the Georgian Law on Combating Human Trafficking;

In addition, 2009-2010 Action Plan on the Fight against Trafficking in Persons approved by the Decree N46 of the President of Georgia on 20 January 2009 envisages preventive measures against trafficking in minors including improvement of standards of teaching trafficking, trainings for preparation of teachers and pilot educational program development.

In relation to detention of a minor migrant, Article 37 (b) of the Convention on the Rights of the Child requires States parties to ensure that minors are detained in conformity with the law, as a measure of last resort and for the shortest possible period of time. In accordance with article 3 of the Convention, the best interests of the child shall be the primary consideration in any action taken by States parties.

Article 37 (d) of the Convention on the Rights of the Child states that “Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action”.

In relation to minor refoulement, Georgian Law on Legal Status of the Aliens states that an alien, who is underage, does have a permission of residence in Georgia and has been living in the country during the last one year shall not be banished from Georgia. The same rule is envisaged in relation to an alien who is under the guardianship/curator-ship of the citizen of Georgia¹⁹.

As for the family unity, State promotes the prosperity of the family and the rights of children by the law²⁰. A family has the right to ask for the financial assistance from the State. Financial assistance is a social aid and is intended for the poor families that are identified by the system of special assessment²¹.

Criminalization of irregular migration

Georgian legislation criminalizes actions relating to irregular migration. Criminal Code of Georgia foresees criminal liability for illegal transportation of migrants through state border of Georgia or creation of desirable conditions for their illegal presence in the territory of Georgia²². The code also sets up aggravating circumstances of the aforementioned crime. If irregular migration is committed for example repeatedly, or by posing threat to life and health of migrant, or by inhuman or degrading treatment of migrant, including his/her exploitation or by using false documents, in this case criminal liability is stricter²³.

Furthermore, Criminal Code of Georgia foresees criminal liability for trafficking in minors. In particular, Buying or selling a minor or subjecting him/her to other forms of illegal deals, as well as enticing, conveying, hiding, hiring, transporting, handing over,

¹⁹ Article 58 (1,2) of the Georgian Law on the Legal Status of the Aliens;

²⁰ Article 36 (1;2) of the Constitution of Georgia;

²¹ Article 7 of Georgian Law on Social Care;

²² Article 344¹ (1) of the Criminal Code of Georgia;

²³ Article 344¹ (2;3) of the Criminal Code of Georgia;

harboring or receiving a minor for the purpose of exploitation is punishable under the CCG²⁴.

Access to the right to identity, including birth registration

During last several years reforms have been successfully implemented in the field of documentation and registration of persons residing in Georgia. Birth registration represents the obligation of the Civil Registry Agency of Georgia according to the Georgia Law on "Registration of Civil Acts". The law envisages the specific procedures for this. In particular, a person concerned (parents of a child, maternity home, person attending the delivery and etc.) has the obligation to submit written statement on birth fact to the Civil Registry Agency²⁵ and require birth registration. Besides, the birth certificate is issued free of charge the day of submission of the application and the documents, stipulated in the law. The application on birth registration can be submitted to one of the parents' registration places or the respective territorial office of the Civil Register Agency according to the place of birth of a child²⁶.

In relation to birth registration Civil Registry Agency has been implementing the proactive project - "Documentation of Minors and Prevention of Problem of Birth Registration in the Kvemo Kartli Region and Sagarejo District". The aim of the project is to assist in the aforementioned regions registration process of minors via mobile groups, which will carry out a so-called "door-to-door" action.

National and international legislation, policies and practice as well as bilateral efforts including mechanisms to assess and address challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration

Migration Policy

Elaboration of national and international policies and practice for the protection of the child in the context of migration presents one of the primary focuses for the state. Since 2005, a new subdivision has been set up at Ministry of Refugees and Accommodation of Georgia that is responsible State agency for the issues in relation to migration management policy.

On November 20, 2009, Joint Declaration on a Mobility Partnership between the European Union and Georgia was concluded. The Mobility Partnership aims to improve management of legal migration including circular and temporary migration taking into account their labor market and socio-economic situation, to establish cooperation on migration and development, to prevent and combat illegal immigration and trafficking in and smuggling of human beings, as well as promote effective readmission and return

²⁴ Article 143². of the Criminal Code of Georgia

²⁵ Article 22 of Georgian Law on Registration of Civil Acts

²⁶ Article 23 (1) of the Georgian Law on Registration of Civil Acts

policy, while taking into account the situation of individual migrants. Furthermore, the Signatories intend to enhance their efforts against illegal migration and trafficking in human beings and to strengthen the implementation of the integrated border management. It includes cooperation on return and readmission, as well as to broaden application of readmission procedures through concluding and implementing the Readmission Agreement with the EU and to intensify cooperation with the EU Member States.

The work of National Human Rights Institutions and other relevant stakeholders

Constitution of Georgia defines that the defense of human rights and freedoms within the territory of Georgia is supervised by the Public Defender, i.e. the Ombudsman. This is an independent human rights institution that in line with the Paris Principles authorized to reveal facts about the violation of human rights and freedoms and to report on it to corresponding bodies and individuals²⁷. Georgian Law on the Public Defender states that the public defender shall independently monitor and assess the observance of human rights and freedoms and examine cases concerning alleged human rights violations, either based on the applications and complaints received or on his own motion when information warranting such examination comes to his attention²⁸.

Within the Office of the Public Defender Centre of Children's Rights is established The Center's activities are based on the principles of the UN Convention on Children's Rights and Georgian legislation, The Centre has the international mission to provide protection of children's rights, encourage changes in laws and procedural issues for children's benefit, facilitation real implementation of children's universally recognized rights and freedoms, implement the educational activities for popularization of basic children's rights and freedoms and rising of citizen's legal awareness in this sphere.

Main Functions of the Centre is to monitor the children care organizations examine/ investigate the specific cases of violation of children's rights and response to those. In the case of revelation of the fact of violation of the child's rights in the application, the issue will be studied by the Centre of Children's Rights.

Furthermore, a child, whose rights were violated, or a child's parent or relative, any third person-who considers that the child's rights were violated can apply the Centre. In the case of revelation of the fact of violation of the child's rights in the application, the issue will be studied by the Centre of Children's Rights.

²⁷ Article 43 (1,2) of the Constitution of Georgia

²⁸ Article 12 of the Georgian Law on Public Defender