

*Kryzys migracyjny – destrukcja czy szansa?
Społeczne i pastoralne aspekty*

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Foreign citizens and stateless persons rights according to the current Constitution of Georgia

In the current addition the second chapter of the constitution of Georgia contains regulations regarding the basic rights and freedoms of individuals and if we are interested in rights and the obligations of foreign citizens and stateless persons we should use 27 and 47 articles.

Georgian legislation determines who is the alien in Georgia, foreigner is an individual who:

- 1) isn't a citizen of Georgia and
- 2) stateless person in Georgia¹.

According to the constitution, According to our legislation, foreign citizens and stateless persons residing in Georgia have the equal rights and obligations to Georgian citizens with exceptions settled by the Constitution and law, e.g. political, economic and social rights and etc.

Stateless persons who live in Georgia constantly are using their rights highly, because at that point our country is considered to their protector, after that we have foreign citizens and last a person who lives in Georgia temporary, that kind of people have less rights than stateless person who lives in Georgia permanently.

What about 1 paragraph:

“Aliens and stateless persons living in Georgia shall have the rights and obligations equal to those of the citizens of Georgia except as provided for by the Constitution and law”².

The Constitution of Georgia provides certain rights only for the citizens of Georgia. The Constitution establishes a different regime between citizens and stateless persons. For example: it's inadmissible to eject Georgian citizen from Georgia, also it's very easy to enter to Georgia for them, Georgian citizens have the opportunity to form

¹ Law of Georgia, “About foreign citizens and stateless persons rights”.

² Constitution of Georgia, article 47 paragraph 1st.

a political party and to take part in its activities, from the age of 18 the citizen of Georgia has the right to participate in the election and referendum, also the citizen of Georgia has a right to get secondary, professional and highest education.

It's prohibited for foreigners to join the active political groups in Georgia, to participate in their activities and establish the political unions. Despite this foreigners can have their own public association. Aliens don't have a right to be elected in the Parliament of Georgia and to the other authorities or public bodies of the state.

The sphere of rights includes many aspects, such as: aliens who live in Georgia permanently have the right to be employed anywhere they want except public services. They have the right to own the property (except having agricultural land). One more important right is that this kind of people can get the state pension, if person has been living in Georgia during last 10 years. So, aliens and stateless persons residing in Georgia are having the rights and obligations equal to the rights and obligations of citizens of Georgia with exceptions established by the Constitution and law³.

Article 47 of the constitution contains regulation about the right of equality not in general, but it states equality between on the one hand the citizens of Georgia and on the other hand the aliens and stateless persons living in Georgia.

According to the article 27 of the constitution of Georgia: "The State may impose restrictions on the political activity of aliens and stateless persons"⁴.

The term "may impose" means that the state has the possibility of restriction access, it doesn't mean that all these things are necessary and compulsory, so it gives the state possibility to extension foreigner's future which must be realized in a reasonable framework and civil legal form. This was the actual reason why the constitutional changes were made in May, 2012. According to the article of 104, The citizens of those states who are the members of the European Union were allowed to participate in the parliamentary and presidential elections only if they were born and lived in Georgia about last 5 years⁵. This article worked almost 2 year and we can say that this part showed us the negative aspect of the Constitution of Georgia, because The Constitution should be general and connected to the distant perspectives and it shouldn't consist of short-term norms⁶.

In accordance with constitution 47 article consists of 3 paragraphs and this article is of particular importance for our legal system, because this is about aliens, stateless persons, citizens of Georgia and their equal rights and obligations in the country.

Hereby it should be noted, that the article 27 of the constitution provides the restriction of only political rights of foreigners, while the legislation contains some restrictions about economic and social rights. Hereby we should suppose, that political rights are emphasized because of its importance and also, because of the fact, that foreigners' political rights are fully restricted, while we have only partial restriction of economic and social rights.

It's important to take an attention on the article of 27, because it only speaks about foreigners and their political rights which is quite restricted. On the other hand we know that there are certain restrictions for foreigners in the legislation about socio-economic terms.

Article 47, paragraph 2 establishes:

³ Law of Georgia (2005, 23 December), "About the state pension".

⁴ Constitution of Georgia, article 27.

⁵ Archil Loria, Comment of the constitution of Georgia (in Georgian), published by Ltd "Petiti" (giz), Tbilisi 2013. second chapter Paragraph 3.2. pg.331.

⁶ The Constitutional Law of Georgia No. 6238-I of May 22, 2012, "About the constitutional changes".

“Georgia shall grant asylum to aliens and stateless persons according to universally recognised rules of international law, as determined by law”⁷.

Issues that are connected to this paragraph are detailed in law of Georgia about “international protection”.

In accordance with article 14, the forms of international protection in Georgia are the following:

- 1) Refugee status;
- 2) Humanitarian status;
- 3) The status of a person under temporary protection⁸.

Refugee status shall be granted to an alien or a stateless person, who is outside the country of origin, and has a well-grounded fear that he/she may become a victim of persecution on the grounds of his/her race, religion, nationality, affiliation to a certain social group or political views, and who does not wish to, or cannot, return to his/her country of origin or enjoy the right to be protected from such country due to such fear. This status has a person for a lifetime.

Humanitarian status shall be granted to an alien or a stateless person who does not comply with the conditions for granting refugee status as provided for by Article 15 of this Law where there is a real risk that upon returning to the country of origin he/she will face a serious threat of damage as provided for by Article 32(3) of this Law.

Humanitarian status shall be granted to an alien or a stateless person for the term of a year. The term may be extended by the same period on the basis of a decision of the Ministry, and it may be extended more than once if the circumstances on the basis of which the person was granted the status continue to exist.

The Ministry shall regulate the mass entry of people and make a decision on granting the status of a person under temporary protection to people entering in mass, who require international protection and cannot return to the country of their origin due to violence, aggression, international or internal armed conflict, or due to mass violation of human rights.

An individual administrative and legal act of the Minister shall be issued for the purposes of granting the status provided for by paragraph 1 of this article.

The status of a person under temporary protection shall be granted to a person for the term of a year. In the case of the continued existence of the conditions under paragraph 1 of this article, the above term may be extended by the same period on the basis of a decision of the Ministry, and it may be extended more than once where such circumstances continue to exist.

3rd paragraph of the 47 article is about:

“No asylum seeker shall be transferred to another state if he/she is persecuted for his/her political creed or an action not considered a crime under the legislation of Georgia”⁹.

Transmission of innocent people is not permitted in any situation. According to the article of 19: “Everyone has the right to freedom of speech, thought, conscience, religion, and belief. No one shall be persecuted because of his/her speech, thought, religion or belief, or be compelled to express his/her opinion about them. Freedoms listed in this article may not be restricted unless expression thereof infringes on the rights of others”¹⁰.

⁷ Constitution of Georgia, 47 article, paragraph 2nd.

⁸ Law of Georgia, “About international security”, article 14.

⁹ Constitution of Georgia, 47 article, 3rd paragraph.

¹⁰ Constitution of Georgia, article 19.

Georgia, as a democratic state where everyone has the right to freedom of speech, thought, conscience, religion, and belief protects and provides foreigners rights. Also the Constitution of Democratic Republic of Georgia in 1921 clearly demonstrated the tolerant and humane nature of Georgian law.

In addition, one more interesting issue is, that the changes made in constitution of Georgia, which have been worked out in 2017 and probably will come in force to the end of autumn this year, concerns to the content of article 47 too. In particular, according to the new formulation of this norm, the contravene (or infringement) of universally recognized principles and norms of international law is considered as a ground of the above-mentioned persons' exile and extradition from Georgia. That means, the new formulation of the article regulating the rights of aliens and stateless persons, gives the opportunity of broader interpretation than the existing one.

In conclusion we can say that country's democracy is significantly dependent on the way how are protected and recognized the rights and freedoms of foreign citizens and stateless people. Georgian legislation further expands the rights of foreigners in the country, which is reflected in the new edition of the constitution.