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# REPORT ON CITIZENSHIP LAW: AZERBAIJAN

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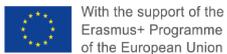
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# Report on Citizenship Law

## Azerbaijan

*Maxim Tabachnik, Ph.D.*

### 1. Introduction<sup>12</sup>

Delayed by the bloody armed conflict with Armenia over the Nagorno-Karabakh region and the tumultuous changes of political regimes, the citizenship legislation in Azerbaijan had to wait seven years to see light after the country's independence from the Soviet Union in 1991. The Law on Citizenship of Azerbaijan was only adopted in 1998. The 1995 Constitution addressed basic citizenship principles, evenly balancing between citizenship by birth on the territory (*ius soli*) and by descent (*ius sanguinis*) (Art. 52) and declaring that the state cannot deprive Azerbaijani citizens of their citizenship (Art. 53).

All the country's residents as of 1 January 1992 were included into the initial body of the newly-independent nation (a so-called "zero option" adopted by some, but not all, post-Soviet states). In an attempt to calm inter-ethnic tensions on the country's borders with Russia and Iran, the Constitution proclaimed anyone born to an Azerbaijani parent or on Azerbaijan's soil a citizen. The introduction of unconditional *ius soli* was unmatched in the post-Soviet space or the European continent (Ireland was the only country with unconditional *ius soli* at the time and none of the post-Soviet states had it). To underline the multi-ethnic character of the nation no preference was given to ethnic Azeris in citizenship acquisition – in contrast with policies that prioritised titular ethnicities in other post-Soviet states.

Yet, the need to demonstrate residence registration as of 1 January 1992 left many out of the initial body of the nation. Due to unwritten citizenship policy preferences of the executive branch, citizenship by *ius soli* was not extended to the children born in the country to the thousands of ethnic Azeri migrants fleeing inter-ethnic tensions and lack of opportunity in neighbouring Georgia as well as to immigrants from some Islamic countries. Dual citizenship was not offered either to the extensive émigré community outside of Azerbaijan, most of whom reside in Russia.

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<sup>2</sup> The author expresses sincere gratitude to Azerbaijani human rights lawyer Asima Nasirli for her invaluable help during his field research and the preparation of this report.

As such *ius soli* applications kept being rejected, court cases on behalf of children born in Azerbaijan were filed and culminated in eventual victories in lower courts and the Supreme Court. Under these circumstances and in the atmosphere of fears about foreign intervention after Russia's takeover of Crimea in 2014, citizenship policy became much more restrictive. This shift reflected the overall repressive turn in the country's political situation. A number of amendments to the 1998 Citizenship Law abolished unconditional *ius soli*, made concealing dual citizenship a crime and listed many causes leading to an automatic loss of citizenship. Such causes included voluntary acquisition of a foreign citizenship, service in a foreign army, anti-state activity, terrorism and religious extremism. Amendments to the Constitution allowed for deprivation of citizenship and delegated all matters of citizenship to the President.

Statelessness remains an issue in Azerbaijan, both for foreigners and those who moved there when the USSR dissolved. The citizenship situation of thousands of Azeri migrants from neighbouring Georgia remains unresolved.

## 2. Historical Background

### 2.1 The Initial Body of the Nation

The adoption of citizenship legislation in the aftermath of independence from the Soviet Union in 1991 was delayed in Azerbaijan compared to other post-Soviet countries. This is explained by the military conflict with Armenia over the Armenian-majority region of Nagorno-Karabakh (1992-1994), which Azerbaijan lost, and the change of political regimes in the country. The Law on Citizenship of Azerbaijan was finally adopted in 1998 but the Constitution adopted by referendum in 1995 already addressed some important principles of citizenship policy, such as the simultaneous application of citizenship by birth in the territory (*ius soli*) and by descent (*ius sanguinis*) and the impossibility of citizenship deprivation. Changes to the Constitution require a constitutional referendum.

Just like the majority of post-Soviet states, with the important exception of the Baltics, Azerbaijan opted for the so-called “zero option” in defining its initial body of citizens. All the country's permanent residents were recognized<sup>3</sup> as citizens. However, Article 5.1 of the 1998 citizenship law required *propiska* (residency registration) documenting residence in Azerbaijan as of 1 January 1992, which led to thousands of cases of statelessness for those who did not have the *propiska* stamp for one reason or another, as well as for the numerous migrants from other post-Soviet states who arrived in Azerbaijan after 1992 (Anonymous Interview 2014b; Nasirli 2014).

The “zero option” was still very inclusive as it absorbed all registered legal permanent residents into citizenship by recognition and did not require an application process (Makili-Aliyev 2014). As a result, the vast majority of the population of Azerbaijan obtained its citizenship, including 1.2 million Azeri refugees from Nagorno-Karabakh and Armenia (Cornell 1998:56) who benefitted from a special clause in the Citizenship Law (Article 5.3).

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<sup>3</sup> Recognition refers to automatic acquisition of citizenship given the fulfillment of certain conditions versus citizenship granted by claim through an application process.

Azerbaijani law provides no special provision for including the current residents of Nagorno-Karabakh into the body of Azerbaijani citizens and does not count them automatically as such, in contrast to neighbouring Georgia's policy towards its separatist regions. Not only does Georgia count the residents of Abkhazia and South Ossetia as its citizens (at least those who lived there at the time of the separation from Georgia) but Georgian citizenship law also allows them to claim Georgian citizenship by recognition. While there is general understanding that any possible peace settlement will require a resolution of this issue, not much thought has been given to it since the possibility of the return of Nagorno-Karabakh remains remote and the inter-ethnic tensions between Azeris in Azerbaijan and Armenians in Nagorno-Karabakh and Armenia proper remain high. There is also an awareness of the on-going migration between Nagorno-Karabakh and Armenia.

## 2.2 Unconditional *Ius Soli* as Response to Ethnic Nationalism

The real uniqueness of the 1998 Citizenship Law comes from its principle of unconditional *ius soli* guaranteed in Article 1. With the exception of Ireland, no such citizenship law existed at the moment anywhere else in the post-Soviet space or on the European continent. While the desire to connect to the émigré community outside of Azerbaijan (most of whom are in Russia) was a factor, the main driver for unconditional *ius soli* came from the deliberate decision by the administration of President Heydar Aliyev to define the nation by territory and not by ethnic affiliation (Aliyev 2014a; Aliyev 2015; Mirzoyev 2014).

Previously, President Ebulfez Elcibey (1992-1993) subscribed to pan-Turkism (an ideology that called for the unification of Turkic peoples) and the vision of Azerbaijan as a state for ethnic Azeris first. Under his leadership, the country underwent profound Turkification. Turkish music and pop culture flooded Azerbaijan. The Gülen movement, based in Turkey, promoted Islamic and pan-Turkic discourse (Landau and Kellner-Heinkele 2011:34). The presidents of both countries widely proclaimed the “one nation-two countries” motto (Ismailzade 2005:1–3). Turkification culminated in the Law on State Language of Azerbaijan from December 22, 1992, which renamed the language as Turkish following intensive debates with those trying to prove that the languages are not identical (Landau and Kellner-Heinkele 2011:25).

Understandably, pan-Turkism led to a rise in separatism, allegedly with the help of Russia and Iran, of minority ethnic groups who “were ready to be Azerbaijanis but not Turks” (Aliyev 2014a), such as the Talysh and the Lezghins (Tokluoglu 2005:737). Azerbaijan's territorial integrity was threatened again, for the first time since the Nagorno-Karabakh conflict.

Fighting an ideological battle against pan-Turkism became a vital priority – a matter of saving the country's territorial integrity – for Heydar Aliyev who came to power in 1993. He shifted the country's foreign policy away from Turkish dominance and towards a balance between the East and the West, which remains Azerbaijan's policy up to now. Under his leadership, Azerbaijan re-entered the Russia-led Commonwealth of Independent States (CIS) and re-established the relationship with Iran. Article 23 of the 1995 Constitution restored the name of the state language to Azeri. Turkey's implication in the unsuccessful coup d'état in Baku in 1995 further deteriorated the relationship between the two countries (Ismailzade 2005:3–4). Yet, the pragmatically-minded Aliyev was able to mend it in order to bring to life the Baku-Tbilisi-Ceyhan oil pipeline (opened in 2005), a lifeline for Azerbaijan's economy based on the export of oil and natural gas.

A new concept of national identity was introduced that was disconnected from ethnic nationalism and pan-Turkism and became known as *Azerbaijanism* (Tokluoglu 2005:728). Its main goal was to calm inter-ethnic tensions (Hadjy-Zadeh 1996) and the separatist movements on Azerbaijan's borders (Aliyev 2015). Abandoning the ethnic understanding of the nation also was seen as helpful in obtaining membership in the Council of Europe (Mirzoyev 2014), the most advanced step the country has made toward its integration in the Western-led supranational structures.

*Azerbaijanism* included unconditional *ius soli* guaranteed in the Constitution, whose authors sought to define the nation by territory and not by ethnicity (Алиев 2000:15; Aliyev 2014b). Article 52 defined as a citizen a person born on the territory of the Azerbaijan Republic or with one parent who is a citizen of Azerbaijan, thus giving equal weight to *ius soli* and *ius sanguinis*, a deliberate step beyond the general dominance of either *ius soli* or *ius sanguinis* in most states (Алиев 2000:212).

In international practice, *ius sanguinis* remains the prevailing legal standard in birthright citizenship. It is prescribed by international conventions such as the 1997 European Convention on Nationality (Article 6.1a) while *ius soli* is only required for foundlings or otherwise stateless children (Article 6.1b and 6.2 of the same document). While some constitutional scholars warned that unconditional *ius soli* connects the state to accidental citizens and incentivises dual citizenship and immigration (Исмаилов 2004:111–112), the architects of the law put these concerns aside (Алиев 2000:212) believing in the principle's value of building an ethnically-harmonious society. *Azerbaijanism*, together with unconditional *ius soli*, is now seen by many as foundational for the virtual absence of ethnic nationalism (Mustafa 2014).

Unconditional *ius soli* was also a response to the legal precedent from Azerbaijan's first period of independence (Aliyev 2015). The 1919 Law on Citizenship offered it to “all former subjects of the Russian state without the distinction of nationality, religion and civil status, born on the territory of Azerbaijan” (Алиев 2000:210) “independent of their ethnicity or religion”.<sup>4</sup> Additionally, Azerbaijan used the *ius soli* experience of other countries, both Western and non-Western (Aliyev 2015): the United States was the main example but Latin American and Asian countries were also considered (Mirzoyev 2014).

Reviewing the debates of the law in the parliament reveals the same inclusive reasoning: when asked whether the child of a Russian or American diplomat or a businessman who came to be temporarily on the territory of the state can get citizenship, the answer was affirmative, “if they so desire” (Minutes of Parliamentary Debates 1998:659–664), just as in the case of the child of a tourist (Minutes of Parliamentary Debates 1998:671). While later seen as overly “euphoric” and “emotional” (Ismailov 2014; Mirzoyev 2014; Nasirov 2014), unconditional *ius soli* made Azerbaijani citizenship law one of the most unique ones in Eurasia and the post-Soviet space (Makili-Aliyev 2014).

Last but not least, the importance of unconditional *ius soli* to immigrants and refugees stems from the opportunity it presents to obtain legal residency. Having a citizen child gives one the right first to a temporary and then to a permanent residency permit, thus opening way to the legalisation of their immigrant status for those who are in the country illegally or temporarily and eventual naturalisation (Nasirli 2018).

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<sup>4</sup> Law on Citizenship of Azerbaijan Republic No. 60 from August 11, 1919.

### 2.3 The Failure of Unconditional Ius Soli

In practice, however, unconditional *ius soli* did not work as well as intended by the Constitution and the Citizenship Law (Alibeyli 2014). To begin with, foreign parents already had to apply for their children's citizenship as opposed to getting it automatically (Aliyev 2014b). Furthermore, starting with 2008, the State Migration Service routinely denied citizenship applications based on unconditional *ius soli* (Huseynli 2014) due to an unwritten directive from the presidential administration against Azeri migrants from Georgia and Iran as well as some other Muslim countries (Anonymous Interview 2014a; Anonymous Interview 2014b).

While Iran has many more ethnic Azeris than Azerbaijan (20 million v. 8 million), Georgia has been the main source of ethnic Azeri immigration since the breakdown of the USSR and the influx of refugees from the Nagorno-Karabakh conflict (Huseynli 2014). In 1991-1992, almost 2,000 Georgian Azeri families fled Georgia fearing for their lives among growing inter-ethnic tensions (Mammadli 2014). While the Georgian Azeri efforts to lobby for access to citizenship have been unsuccessful (Mammadli 2014), their immigration to Azerbaijan continues unabated (Rumyantsev 2014:90).

While some migrants with economic means have been able to get *propiska* and citizenship, many have remained either stateless or used their Georgian passports. As of 2014, almost 100,000 Georgian Azeris have settled in Azerbaijan, but only a third were able to get citizenship (Mammadli 2014; Musabayov 2014). These are rough estimates because many of these migrants remain in the country illegally. Other estimates range wildly from 30,000 to 500,000 (Rumyantsev 2014:84; Mamedov 2014). While around 400,000 Azeris have remained in Georgia (Shiriyev and Kakachia 2013:73), many Georgian Azeris living in Azerbaijan are forced into a biannual "migration" back to Georgia in order to avoid deportation from Azerbaijan due to the limited number of days they can stay there on a Georgian passport at a time (Bayramov 2014; Mamedov 2014). Their work opportunities in Azerbaijan are extremely limited (Aliyeva 2014).

Similar restrictions were applied against migrants from countries known for Islamic fundamentalism such as Pakistan and Afghanistan (Anonymous Interview 2014a; Anonymous Interview 2014b). While the state's logic, in this case, is clear, its reasons for discouraging citizenship for Georgian Azeri migrants are more complex.

On the one hand, while Azerbaijani scholars of constitutional law admit a theoretical possibility of preferential treatment of co-ethnics in granting Azerbaijani citizenship (Исмаилов 2004:79, 85), the state has been standing firm in its ethnic blindness (Aliyev 2014a; Ganizade 2014; Huseynli 2014) and was unwilling to make exceptions even for the titular ethnic group (Aliyev 2014a; Mirzoyev 2014), a sharp contrast with neighbouring Georgia's special status for the co-ethnics abroad (Aliyev 2014a). Similarly, even the notion of diaspora is conceptualised territorially, through *ius soli*, as "people born in Azerbaijan independently of their ethnic belonging" (Mirzoyev 2014).

On the other hand, Georgia is of crucial strategic importance to Azerbaijan. The Azerbaijani exports of oil and gas pass through it conditioning the relations between the countries (Huseynli 2014). Through this alliance, Azerbaijan gains access to the Black Sea (and, therefore, the European and global markets) while Georgia gets access to the Azerbaijani energy resources through the Baku-Tbilisi-Ceyhan oil and the Baku-Tbilisi-Erzurum gas pipelines (Shiriyev and Kakachia 2013:10-13). Without Georgia, Azerbaijan cannot remain completely independent (Gadirli 2014). An upwardly-mobile Azeri elite

ensures Azerbaijan's leverage in Georgian politics (Abbasov 2011).

Some of those who had been refused citizenship based on *ius soli* turned to the court system. The judges, while usually complying with the State Migration Service opinions, were caught between the need to uphold the Constitution and the restrictive policies of the State Migration Service (Gahramanov 2014).

In 2011, however, a judge upheld the claim to citizenship for two sons of an Afghani refugee.<sup>5</sup> The judge explained his decision by the need to defend the Constitution (Mammadov 2015). In 2013, the case of a child born to Georgian Azeris denied citizenship on the basis of *ius soli* made it to the Supreme Court,<sup>6</sup> which sided with the child, in the absence of legal representatives from the State Migration Service to present the agency's case. The High Court cited Article 52 of the Constitution and Article 11 of the 1998 Law on Citizenship. Other similar successful cases followed in lower courts thereafter (Nasirli 2014).

Additionally, a large number of the stateless persons, whether or not ethnic Azeris, could not get citizenship because of the lack of *propiska*, as mentioned previously. Since many of them were born in Azerbaijan, the lack of implementation of *ius soli* prevented them from getting citizenship. Since the state was reluctant to recognize these people as stateless, as of 2014 the United Nations High Commission on Refugees (UNHCR) was aware of only a couple of hundred of stateless people (Nasirli 2014).

If both parents were stateless, then the child received citizenship through *ius soli*. A problem arose when a parent could not transmit citizenship because of the other country's laws, such as Iranian women, or in cases when other countries restrict access to citizenship for children of citizens born abroad. In these cases unconditional *ius soli* was actually implemented (Anonymous Interview 2014b). While the presence of unconditional *ius soli* in Azerbaijan law deviates thus remarkably from most other European and Asian states, state practice has resembled the limited implementation of *ius soli* for the sake of preventing statelessness (Anonymous Interview 2014b), which is more common in these world regions. At the same time, children from countries not affected by the above restrictions (Russia, China, Thailand) have been able to take advantage of unconditional *ius soli* (Nasirli 2014), which testifies to a certain level of inclusiveness in the country's citizenship and national identity policy.

#### 2.4. The 2013 Political Controversy over Dual Citizenship

Although dual citizenship was not recognised in Azerbaijan, many emigrants, primarily to Russia, in practice maintained their citizenship of origin alongside a foreign citizenship obtained abroad. In 2013, dual citizenship came to the forefront of the country's political debates during the presidential elections. It turned out that the candidate from the united opposition, Rustam Ibragimbekov, an Oscar-winning screenwriter and director, was a dual citizen of Azerbaijan and Russia. While his chances of winning might have been small, the administration of President Ilham Aliyev (the son of Heydar Aliyev) was preoccupied with Ibragimbekov's candidacy and the role of Russia in the outcome of presidential elections due to Ibragimbekov connections to the Azerbaijani business community in Russia.

Initially, Azerbaijan's Central Election Committee rejected Ibragimbekov's candidacy

<sup>5</sup> Case № 2inz (81)- 1154/2014 from September 14, 2011.

<sup>6</sup> Case № 2-2 (102)-88/13 from February 13, 2013.

because of his citizen obligations to the Russian government and an insufficient period of residency in the country (Ибрагимбеков пожалуется в ООН 2013). In order to be able to stand in the elections, Ibragimbekov renounced his Russian citizenship appealing directly to Russia's President Vladimir Putin in the hope of a speedy release from his citizenship obligations, as had happened in the similar case of Georgia's President Bidzina Ivanishvili (Азербайджанская оппозиция обратилась к В.Путину (Фотофакт) 2013). The Russian authorities eventually declared that they would handle his petition only in 2014, which effectively disqualified Ibragimbekov from standing in the elections (Федеральная служба миграции России: Вопрос Ибрагимбекова рассмотрят в 2014 году 2013). The media further delegitimised him by reporting that he had a third passport, that of the United States (Еще одна проблема Ибрагимбекова: третий паспорт и дом в Лос-Анджелесе 2013).

## 2.5 The 2014 Amendment to the 1998 Citizenship Law

Unconditional *ius soli* and dual citizenship are inherently connected (Shevchuk 1996:63; Spiro 2011:113). Foreign resident parents can transmit their citizenship through *ius sanguinis*, which most countries use, while the child acquires also the citizenship of his or her country of birth through *ius soli* (Brøndsted Sejersen 2008:529). In the post-Soviet space, however, dual citizenship is associated with issues of state sovereignty and fears of subversive actions by neighbouring states (Shevel 2017). Furthermore, Russia has used an expansive citizenship policy in its foreign policy toward its "Near Abroad", especially through "passportisation" of the residents of post-Soviet frozen conflicts. A notorious example is Russia's justification of its war with Georgia in 2008 by the need to protect its citizens (Spiro 2010:116). The Russian takeover of Crimea in 2014 sent shivers throughout the post-Soviet space, paving the way for drastic changes in Azerbaijan's Citizenship Law that were officially explained by the internal and external political situation (Aliyev 2014b; Nasirov 2014).

On May 30, 2014, the Parliament of Azerbaijan amended the 1998 Citizenship Law on the matters of dual citizenship, deprivation of citizenship and unconditional *ius soli*. On the one hand, the amendment listed multiple reasons for involuntary loss of citizenship. They included voluntary acquisition of another country's citizenship, voluntary service in state bodies and armed forces of a foreign country and behaving in a manner damaging state security. Additionally, those who obtained foreign citizenship and did not inform the authorities within a month now bore criminal responsibility (Aslanov 2014). The "national security of the state" was deemed as stake (Междид 2014). On the other hand, Article 12 of the amended 1998 Citizenship Law now proclaimed that a "child born on the territory of Azerbaijan and whose parents are foreigners is not a citizen of the Azerbaijan Republic". Article 6 was similarly amended removing the certificate of birth from the list of documents confirming citizenship (Aslanov 2014).

Leading legal scholars saw the amendment as an adjustment to the "liberal excess" of the 1995-1998 legislation and even of the "zero option" (Musabayov 2014). The critics of the amendment voiced their concerns strongly, however, especially about the part facilitating citizenship deprivation, which received the most attention in the media. Since the Constitution still guaranteed that no one could be deprived of citizenship, human rights advocates called the amendment anti-constitutional (Bahyshov 2014; Междид 2014). According to them, it opened the way for political persecution and damaged the relationship with the diaspora (Междид 2014).

A judge of the Constitutional Court agreed that the 2014 *ius soli* amendment most

likely would require an eventual harmonisation with Article 52 of the Constitution through a referendum (Ismailov 2014). In 2016, such a constitutional referendum was held removing the prohibition of deprivation of citizenship from Article 53. However, the amendment to unconditional *ius soli* was not included among 29 proposed changes, thus leaving Article 52 intact. The provisions on the loss of citizenship were further tightened later in the year and in 2015: an oath of allegiance during naturalisation was introduced; terrorism and religious extremism were added to the list of reasons leading to the loss of citizenship.

The 2014 restriction on dual citizenship was immediately felt, even if the state has relaxed its attitude since then in order to preserve its relationship with the Azerbaijani diaspora abroad (Nasirli 2018). The 2014 detention of Said Nuri, an Azerbaijani dissident who had left the country in 2006 for the United States, is a case in point. He had visited Azerbaijan a few times since he emigrated, using each time his US passport and an Azerbaijani visa. Yet he never gave up his Azerbaijani citizenship. On September 4, 2014, Nuri was detained at Baku airport when leaving the country. The State Prosecutor's Office announced that Azerbaijan still considered Nuri an Azerbaijani citizen and retained him in the country for questioning in regards to a criminal case. However, after pressure from the US State Department, which diplomatically protected Nuri as a US citizen, Nuri was freed from custody and deported from the country (Саид Нури депортирован из Азербайджана 2014; Гражданин США Саид Нури депортирован из Азербайджана 2014).

## 2.6 Current Issues

In April 2018, the European Court of Human Rights admitted a case argued by Azerbaijan's prominent human rights lawyer Asima Nasirli on behalf of 15 children born in Azerbaijan, primarily to Afghani immigrants, and denied citizenship on the basis of *ius soli*, in *Hashemi v. Azerbaijan*.<sup>7</sup> These children were born before the 2014 amendment cancelled unconditional *ius soli* but still had been denied citizenship. Prior to 2014, Mrs. Nasirli represented other cases of children born in Azerbaijan to migrants and denied citizenship on the basis of *ius soli*.

Azerbaijan has been reported to strip political opponents of their citizenship. For example, the leader of the unrecognised Talysh-Mugan Autonomous Republic (TMAR), Aliakram Hummatov, was stripped of citizenship upon his release from prison in 2004 and is now exiled in the Netherlands (Rumyantsev 2011:4; Azerbaijan Challenged Over Deprivation of Citizenship 2016). More recently, Emin Huseynov, the former director and founder of the Institute for Reporters' Freedom and Safety (IRFS), was stripped of his citizenship in 2015 after Azerbaijan finally allowed him to emigrate to Switzerland after spending ten months at the Swiss Embassy where he had sought refuge from political persecution. This rendered Huseynov effectively stateless (Azerbaijan Challenged Over Deprivation of Citizenship 2016). In 2016, he sued Azerbaijan in the European Court of Human Rights in *Emin Huseynov v. Azerbaijan*. In September of 2018 the Council of Europe's Commissioner for Human Rights, Dunja Mijatović intervened in the legal case describing Huseynov's deprivation of Azerbaijani nationality as part of the government's repressive measures against critics and a breach of the international conventions on statelessness (Mijatović 2018). A human rights NGO Committee to Protect Journalists (CPJ) submitted an amicus brief to the court in support of Huseynov's case at the same time (Said

<sup>7</sup> (Requête No 1480/16 Said Anwar HASHEMI Contre l'Azerbaïdjan et 6 Autres Requêtes 2018; ECHR to Consider Complaints about Refusal to Grant Azerbaijani Citizenship 2018).

2018).

The lack of Azerbaijani citizenship has been also reported as problematic for religious leaders since, by law, foreigners cannot address the Ministry of Religion of Azerbaijan. For example, in 2016, the Georgian Catholicos Ilya II appealed to the President of Azerbaijan to admit to citizenship Fr. Petre Khumarashvili, a Georgian Orthodox priest who had been denied entry into the country while on the way to his parish.<sup>8</sup> Previously, a Georgian priest was ordered by the authorities to take Azerbaijani citizenship because by law a non-citizen cannot represent a religious organization (Власти Азербайджана Потребовали От Священника Грузинской Церкви Немедленно Принять Азербайджанское Гражданство 2007).

### 3. The Current Citizenship Regime

#### 3.1. Acquisition of citizenship at birth

While Article 52 of the Constitution still proclaims unconditional *ius soli* for anyone born on the territory of Azerbaijan, the 1998 Citizenship Law has been modified by severely restricting territorial birthright, as described previously. Article 12 of the law excludes the children born in Azerbaijan to foreigners or to a foreigner and a stateless person from unconditional *ius soli*. However, children born to two stateless parents are still given citizenship, as are the children of unknown parents (Article 13), which satisfies the international conventions on the prevention of statelessness.

If both parents, or the only known parent, become citizens, the child under 14 years of age automatically acquires Azerbaijani citizenship (Article 19). If one parent of the two becomes a citizen, the child acquires citizenship through the petition of the citizen parent. If one parent becomes a citizen and lives in Azerbaijan, and the other parent is stateless, the child acquires citizenship automatically. If one parent becomes a citizen and lives outside of Azerbaijan, the child's citizenship is acquired through a petition of the citizen and the consent of the stateless person (Article 21).

*Ius sanguinis*, as opposed to *ius soli*, hasn't led to any controversy or difficulties in obtaining citizenship. A child born to an Azerbaijani citizen abroad is recognised as citizen (Nasirli 2018). It remains inclusive, allowing citizenship acquisition through one parent only and making no distinction by birthplace (in Azerbaijan or abroad) or by gender of the parent (as is the case in some Muslim countries where *ius sanguinis* transmission by women can be restricted). While theoretically, there are no restrictions on acquiring citizenship or transmitting it to subsequent generations for children of Azerbaijani citizens born abroad, the recent criminalisation of dual citizenship complicates these cases since theoretically such children can obtain another citizenship through *ius soli* or naturalisation, which would theoretically then annul their Azerbaijani citizenship. In practice, however, as mentioned previously, many members of the diaspora maintain dual citizenship.

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<sup>8</sup> Compliance of the Republic of Azerbaijan with the International Covenant On Civil And Political Rights 2016:19.

### 3.2 Naturalisation and statelessness

The naturalisation process has also become more restrictive with the recent amendments. It is available for those who have “continuously and permanently” (the person cannot leave the territory for longer than three months) lived in Azerbaijan legally for the last five years, calculated from the date of the receipt of the residence permit, and with a legal source of income, who have committed to respecting the Constitution and the law and have demonstrated knowledge of the state language. The requirement for a legal source of income makes naturalisation harder for those living in poverty. The commitment to the respect of the law can also be interpreted in various ways, e.g. by excluding those who have engaged in anti-state activities.

The text of the aforementioned oath (Article 15 of the Citizenship Law), adopted in 2015, starts by the applicant swearing the absence of citizenship obligations to other states. There is no mention in the law, however, of the need to submit any documentation proving renunciation of previous citizenship. There is no issue with those whose country may not release them from citizenship since the oath suffices. The text of the oath is signed by the naturalisation applicant and is kept on file by the state.

As mentioned previously, many Georgian Azeris migrate between Azerbaijan and Georgia constantly and the requirement for the continuous residency complicates their situation further. Many, possibly thousands, of Georgian Azeris living in Azerbaijan have no access to citizenship or even permanent residency, and, therefore, the right to work. However, due to Georgia’s facilitated travel arrangement with the European Union, there has been a recent trend of younger Georgian Azeris from Azerbaijan attempting to receive Georgian citizenship, with varying success (Nasirli 2018).

Those with high achievements in science, technology, culture and sports as well as persons of “special interest” to Azerbaijan and “other exceptional cases” can obtain citizenship without having to meet the above naturalisation requirements.

A naturalisation application will be rejected if the applicant has been accused of the attempted forced overthrow or change of the state and social system, violation of territorial integrity, activities damaging state security, public order, health or morality of the population, propagating hostility, racial, religious, national exclusiveness and terrorism. The president has the final say on issues of naturalisation, as well as on reinstatement to citizenship (Article 15). The Azerbaijani state has made considerable progress in reduction of statelessness, which remains an important issue in the country. Article 5 of the Citizenship Law allows citizenship acquisition by recognition for those who had been registered as residents in the country before 1 January 1992. However, there were many people who moved to the country from other post-Soviet states after that date and only have Soviet passports. As these passports were no longer recognised after 2005, these people had no identification documents but were not officially recognised as stateless. A recent amendment to Article 14 of the law now opens the way for those who moved to the country between 1992 and 2005 to obtain citizenship by naturalisation. For that, a court procedure needs to establish their stateless status first, which is a commendable development since the court can look at specific personal circumstances (Nasirli 2018).

This development, advocated by the UNHCR, represents an important step toward the reduction of statelessness. However, many people in this category live in border regions and have no financial means to make a trip to Baku or to hire a lawyer. Moreover, many of them were not able to get an education (including basic literacy) and remain effectively cut off

from the informational space thus not even realising that there is now a legal way out of their stateless status (Nasirli 2018).

### 3.3. Dual citizenship and loss of citizenship

As described in detail previously, Azerbaijan tightened its legal policy on dual citizenship in 2014-2015. Article 10 of the Citizenship Law states that Azerbaijan does not recognise dual citizenship of its citizens. In the case of acquisition of a foreign citizenship, the Azerbaijani citizen is to notify the executive within one month. Not doing so leads to prosecution under the Criminal Code.

Furthermore, Article 18 of the Citizenship Law penalises voluntary acquisition of a foreign citizenship with an automatic loss of the Azerbaijani one.

Other causes leading to involuntary loss of citizenship are focused on preventing anti-state activities and include: voluntary military service in the state or municipal authorities or the armed forces or other armed groups of a foreign state, behaviour causing damage to national security, participation in a terrorist activity or actions directed at forcible change of a constitutional order, participation in religious extremist activity including the dissemination of religious study based on religious hate, participating in an armed religious conflict, attracting another person to such conflict, establishing a stable group for such purpose as well as undertaking military training abroad under alleged religious studies. Finally, falsification of information or documents presented for the acquisition of citizenship also leads to its loss.

The court decides on issues of citizenship withdrawal. In theory, this is commendable. In reality, courts take decisions in a matter of days. As a result, the defendant is often not able to present his or her case due to time, financial or geographical constraints. For example, the State Migration Service has been prosecuting Azerbaijani citizens allegedly involved in ISIS activities, most of whom remain in Syria. On the basis of security reports, the courts are given ten days to decide on stripping these people of citizenship. The brevity of the legal process and the absence of the defendants from the country leave them with no opportunity to counteract and present their case in person in a hearing. A deprivation decision also effectively renders them stateless (Nasirli 2018).

While Article 10 of the Citizenship Law threatens criminal proceedings for not reporting the acquisition of a foreign citizenship within one month in writing, in practice, the State Migration Service has almost stopped prosecuting dual citizenship cases as it has realised that some of those who were prosecuted were important representatives of the Azerbaijani diaspora abroad with links to the Azerbaijani state (Nasirli 2018). Expatriates are not given any additional status or rights by the law, unlike, for example, in neighbouring Georgia.

In theory, Article 17 allows voluntary renunciation of the citizenship of Azerbaijan. In practice, this can be complicated. The media have reported cases of ethnic Lezghins who had given up Azerbaijani citizenship for the Russian one but were still wanted in Azerbaijan to perform military service (Former Azerbaijani Citizens in Daghestan Called for Military Service in Azerbaijan 2017). Underneath this issue lies the stipulation of Article 17 of the law that doesn't allow citizenship renunciation if one has "unfulfilled liabilities before the state", and army service is considered such a liability. Renunciation is also rejected if one has property obligations, which are connected with "vital interests" of physical persons and legal entities. Additionally, thanks to the recent amendments to the Constitution, it is the President

who decides on citizenship renunciation, and such applications are generally denied (Nasirli 2018).

The continuous consolidation of power within the executive is reflected in citizenship policy. Due to the recent legal changes, Article 109.20 of the Constitution gives the President the final decision on all matters of citizenship.

#### 4. Conclusion

Since its liberal and inclusive beginnings, the Azerbaijani citizenship policy has increasingly become more restrictive while at the same time leaving more and more room to state discretion with significant oversight from the executive branch. This mirrors the overall political situation in the country characterised by increasing repression and the consolidation of executive branch power. The restrictive turn in citizenship policy started as early as 2008 when the executive directed the State Migration Service to deny *ius soli* citizenship applications of children born to Georgian Azeris as well as to citizens of Iran and the states with known presence of Islamic terrorism, such as Afghanistan and Pakistan. This led to a string of legal cases with an eventual victory in the Supreme Court against the State Migration Service in 2013. The same year, the issue of dual citizenship came to the forefront of the country's political life as the presidential candidate from the united opposition was prevented from running in the elections due to his Russian dual citizenship.

In 2014-2015, the original constitutional guarantees of unconditional *ius soli* and the prohibition of deprivation of citizenship under any circumstances have been eliminated from citizenship legislature in the aftermath of the post-Crimean fears of foreign meddling into Azerbaijani domestic politics, in addition to the factors described above. Criminal penalties have been added for the concealment of dual citizenship. Reasons for involuntary loss of citizenship now included a long list of anti-state activities, as well as the voluntary acquisition of a foreign citizenship. While Article 53 of the Constitution has been modified during the constitutional referendum of 2016 to allow for citizenship deprivation, Article 52, which guarantees unconditional *ius soli*, has remained intact. This creates a problematic conflict between constitutional and ordinary legal norms and will require an eventual resolution. The government has been accused of using citizenship deprivation against its political opponents as well as refusing to grant citizenship based on *ius soli* to children born before the 2014 amendments. Both concerns have led to pending cases in the European Court of Human Rights.

The 2014-2015 changes also worsen the situation of current and future refugees in Azerbaijan. All European Council countries extend protection to people fleeing military conflict zones. In the current geopolitical situation in the region, the flow of refugees is likely to continue to Azerbaijan. The country also doesn't have a quota on the number of refugees admitted, as some others do. Currently, many refugees entering the country are from Afghanistan and Pakistan. They usually enter the country legally on a tourist visa and then apply for asylum. Many of these people are indeed fleeing for their lives and cannot go back to their countries of origin. According to the 1954 Convention on the Reduction of Statelessness (Art. 32) and the 1951 Geneva Refugee Convention (Art. 34), host states should facilitate the naturalisation of refugees and stateless persons. This happened with great

difficulties even before the 2014 changes and now will become more of a problem since unconditional *ius soli* was helpful to refugees (Anonymous Interview 2014b). As mentioned previously, citizenship of a child gives the parent the right to legal residency, and, therefore, the right to employment and the use of state services; and, even more importantly, a path to citizenship by naturalisation. Human rights advocates warn that the denial of citizenship to people who have their lives in the country will both make their lives impossible and at the same prevent them from leaving the country because many of them remain stateless or cannot return to their countries of origin (Bahyshov 2014).

The amendments further complicate the situation of Georgian Azeris in Azerbaijan. Some have even suggested that these amendments actually target Georgian Azeris specifically and are designed to prevent further migratory flows of ethnic Azeris from Georgia to Azerbaijan (Anonymous Interview 2014b; Mustafa 2014) in order to avoid a “demographic catastrophe” (Mustafa 2014).

On a positive note, the amendments have opened the way to naturalisation for those who have migrated to the country from other former Soviet republics after the previous cut-off date of 1992. A court process can now establish their eligibility, which allows for the consideration of special circumstances.

The future of citizenship policy in the country remains linked closely to the domestic and international political situation. However, Azerbaijan’s membership in the Council of Europe and the pending cases in the European Court of Human Rights, as well as the country’s willingness to accept the UNHCR recommendations on statelessness reduction, leave room for international human rights to continue impacting Azerbaijan’s citizenship policy.

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