

CARIM East – Consortium for Applied Research on International Migration

Co-financed by the European Union

Return, Readmission and Reintegration: The legal framework in Georgia

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CARIM-East Explanatory Note 13/76

Legal module

June, 2013





1. Relevant terms

In Georgian legislation the term "return" is not generally defined, though there is a term "return certificate". This is defined as "a one-way travel document issued to return to Georgia from foreign countries".

The term "readmission" is also not defined. This is not problematic as in Georgian legislation this term is employed only in the context of the implementation of relevant international agreements.

According to Georgian legislation a foreign citizen may voluntarily return to his or her country of origin or third country before the expiry of the legal term of stay in Georgia, but also within 10 days of the expiry of this term. Even after that the foreign citizen can voluntarily leave the country. However, in this case he/she has to pay a fine.

Georgian legislation, forced return is labeled "expulsion". There are two form of expulsion: 1) expulsion, meaning voluntary departure within the term set by the competent authority; 2) forced expulsion, meaning the enforcement of the decision on expulsion through the responsible authorities.

Furthermore, some confusion is caused by the fact that there is another term, namely "administrative expulsion", mentioned in the Code of Administrative Offences (Article 24). This may be imposed as a sanction on a foreign citizen who has infringed the law. As there are no further specific provisions with regard to "administrative expulsion" in Georgian legislation, it can be assumed that the abovementioned provision does not establish an additional form for expulsion. This kind of expulsion is also implemented under the general rules on expulsion as established by the Law on Legal Status of Aliens and Stateless Persons.

In contrast to the abovementioned terms, the term "non-refoulement" is not only used in the Georgian legislation, but its meaning is also given in the Law on Refugee and Humanitarian Status.² Georgian usage corresponds to the usage of this term at the international level.

2. Return to Georgia

A return certificate may be issued, if travel documents are expired or lost or if the travel document is invalid for travel (damaged). This would be issued for voluntary returns to Georgia or expulsion to the same or for the purpose of readmission. The issuance, validity and usage rules of the return certificate to Georgia is regulated by the Decree of the President of Georgia of 27 February 2012, No 142.³ In addition to the case mentioned above, it may also be issued with the purpose of returning persons about to be extradited or to persons returned through the implementation of court decisions.⁴

There is also the question of readmission agreements. Taking into consideration its territorial scope of application and its factual effects, the most important agreement is the Agreement between the European Union and Georgia on the Readmission of Persons Residing without Authorization.⁵ This was signed on 22 November 2010 and came into force on 1 March 2011. Prior to concluding this agreement Georgia concluded readmission agreements with Italy (signed in 1997, but which never

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¹ Article 3 of Decree of the President of Georgia of 27 February 2012, No 142.

² See below.

³ Decree No 142 of 27 February 2012 of the President of Georgia on Approval of Statute on Certificate to Return to Georgia. "Sakartvelos Sakanonmdeblo Matsne", www.matsne.gov.ge, 27/02/2012.

⁴ Article 3 of the Decree No 142 of 27 February 2012 of the President of Georgia on Approval of Statute on Certificate to Return to Georgia.

⁵ OJ L 52 of 25/02/2011, p. 47.

entered into force), Bulgaria (2003), Switzerland (2005), Germany (2008) and Latvia (2009). Most recently, an Agreement on Readmission of Persons Residing without Authorization was signed, 10 November 2011, between Georgia and the Kingdom of Norway which came into force on 3 February 2012. It should be noted that the Readmission Agreement concluded between the EU and Georgia does not supersede all previous agreements between individual Member States and Georgia. However, its provisions take precedence over the provisions of any bilateral agreement, in so far as the provisions of the latter are incompatible with them: Article 20 of the Agreement between the European Union and Georgia on the Readmission of Persons Residing without Authorization. For example, under the Agreement between the EU and Georgia, a readmission application must be replied to within 12 calendar days. The Agreement between Georgia and Bulgaria sets 30 days as the time limit for replying to a readmission agreement. In cases of difference like this, the provisions of the EU-Georgia Readmission Agreement take precedence.

The Decree of the President of Georgia of 26 April 2011, N225⁶ designates the Ministry of Interior of Georgia as the competent authority. The Ministry will be responsible, then, for the implementation of the Agreement between the European Union and Georgia on the Readmission of Persons Residing without Authorization and other readmission agreements concluded by Georgia with other countries.

The rules for the implementation of readmission agreements are approved by the joint Order of the Minister of Internal Affairs, the Minister of Justice, the Minister of IDPs from Occupied Territories, Accommodation and Refugees of 12 March 2012, N185-№35-№63-№22.⁷ This document regulates organizational and procedural matters for the secure return to Georgia of those Georgian citizens, foreign citizens and stateless persons who illegally entered, stayed or resided on the territory of the member states of the EU and in other relevant countries. In particular, this decree provides for the rules for submitting a readmission application⁸, the competences of state authorities participating in the decision-making process⁹, and also the term for examining a readmission application, which is oriented to the term stipulated by readmission agreements (12 calendar days).¹⁰

Finally, it should be stressed that the fact that a third-country national has been readmitted by Georgia does not have any particular impact on his or her status and that the general rules of stay/residence and return apply.

3. Return from Georgia

The legal framework of the process of voluntary and forced return of foreigners is primarily defined by the Law on the Legal Status of Aliens and Stateless Persons. 11

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⁶ Decree No 225 of 26 April 2011 of the President of Georgia on Implementation of Agreements on Readmission of Persons Residing without Authorization Concluded by Georgia. "Sakartvelos Sakanonmdeblo Matsne", www.matsne.gov.ge, 26/04/2011.

Joint Order N185-№35-№63-№22 of 12 March 2012 of Minister of Internal Affairs, Minister of Justice, the Minister of IDPs from Occupied Territories, Accommodation and Refugees on Apruval of the Rules for Implementation of Readmission Agreement. "Sakartvelos Sakanonmdeblo Matsne", www.matsne.gov.ge, 13/03/2012.

⁸ Article 2 of the Joint Order N185-№35-№63-№22 of 12 March 2012 of Minister of Internal Affairs, Minister of Justice, the Minister of IDPs from Occupied Territories, Accommodation and Refugees on Apruval of the Rules for Implementation of Readmission Agreement.

⁹ Article 3, 5-8 of the Joint Order N185-No35-No63-No22 of 12 March 2012 of Minister of Internal Affairs, Minister of Justice, the Minister of IDPs from Occupied Territories, Accommodation and Refugees on Apruval of the Rules for Implementation of Readmission Agreement.

Article 4 of the Joint Order N185-Ne35-Ne63-Ne22 of 12 March 2012 of Minister of Internal Affairs, Minister of Justice, the Minister of IDPs from Occupied Territories, Accommodation and Refugees on Apruval of the Rules for Implementation of Readmission Agreement.

¹¹ Adopted on 27 December 2005 (Last amended on 25 May, 2012). "Sakartvelos Sakanonmdeblo Matsne", 3, 16/01/2006.

3.1 Entry refusal

The law stipulates several grounds for the refusal of entry at the border. ¹² These are cases when: the foreigner does not have documents required for entry into the territory of Georgia; during his or her previous stay in Georgia the foreigner was found to have violated Georgian criminal law, or during the last 1 year prior to application was expelled or did not pay the fine for illegal stay on the territory of Georgia; the foreigner presented false information or documents in order to get a visa or to enter the territory of Georgia; the foreigner does not have sufficient financial means for staying and living in Georgia or for return; the foreigner's presence in Georgia may pose a threat to the public order and security, or to the protection of health, rights and the legitimate interests of Georgian citizens and other persons residing in Georgia; the foreigner's presence in Georgia will harm relations between Georgia and other foreign countries; the foreigner does not provide information or provides false information about himself/herself and the purpose of travel; other grounds for refusal as envisaged by Georgian legislation. Refusal of entry shall be made in a written form indicating grounds for refusal. ¹³

3.2 Carrier companies

In the process of return the carrier companies are involved. They are obliged to check documents of foreign citizens in order to find out whether they possess a Georgian visa or travel documents for entry into Georgia. They, then, have to return those foreign citizens who were refused entry into Georgia back to the country from which they came. ¹⁴ Furthermore, in this case, the carrier companies are obliged to cover all expenses necessary for transportation and staying prior to returning foreign citizens. ¹⁵

3.3 Expulsion

The law stipulates a general rule according to which foreigners are obliged to leave the territory of Georgia before the expiry of the term of legal stay in Georgia. However, if they leave the territory of Georgia within 10 days of the expiry of the period of legal stay in Georgia, they will not suffer any fine. According to Article 209 of the Code of Administrative Offences, the competent authority for imposing this kind of administrative responsibility is the Ministry of Interior of Georgia. The relevant decision may be appealed against before the court in accordance with the procedures established by Georgian legislation (see Article 272 of the Code of Administrative Offences).

Within 10 days of expiry of the period of legal stay in Georgia the foreigner is able to depart from Georgia voluntarily without any impediment if he or she has not been apprehended and no expulsion decision has been taken. Even a one-year entry ban is not imposed in such cases. However, the foreigner has to pay a fine before or after their departure from Georgia. The decision on the fine is taken by a border guard who sees that the foreigner has overstayed. If the foreigner cannot pay the fine, the foreigner will be *denied a visa and refused* entry to Georgia in the future until the fine is paid.¹⁸

¹² Article 14.1 of the Law on Legal Status of Aliens and Stateless Persons.

¹³ Article 14.2 of the Law on Legal Status of Aliens and Stateless Persons.

¹⁴ Article 15.1 of the Law on Legal Status of Aliens and Stateless Persons.

¹⁵ Article 15.2 of the Law on Legal Status of Aliens and Stateless Persons

Article 50.3 of the Law on Legal Status of Aliens and Stateless Persons.
Article 50.4 of the Law on Legal Status of Aliens and Stateless Persons.

¹⁸ Article 50.5 of the Law on Legal Status of Aliens and Stateless Persons.

The Law on the legal Status of Aliens and Stateless Persons provides grounds for expulsion of foreigners from Georgia. ¹⁹ In particular, a foreigner may be expelled from Georgia if:

- a) he/she illegally entered Georgia;
- b) there are no longer legal grounds for his/her stay in Georgia;
- c) his/her presence in Georgia works against the interests of national security and public order:
- d) his/her expulsion is necessary for the protection of public health, rights and the legitimate interests of Georgian citizens and other persons legitimately residing in Georgia;
- e) he/she regularly violates Georgian legislation;
- f) he/she obtained permission for entry into or stay in Georgia by providing false or invalid documents;
- g) he/she has been sentenced to at least 1 year of deprivation of liberty for one or more premeditated crimes after serving the sentence.

The decision regarding the expulsion of foreign citizens on grounds a) and b) is made by the Ministry of Justice. In other cases the decision is made by the court.²⁰ As a general rule, the law provides for a list of the circumstances which should be taken into consideration while making a decision on expulsion. These are: length of legal stay in Georgia, personal, social, economic and other links of the person with Georgia; possible consequences of the expulsion of a foreign citizen for his/her family members or persons permanently living with him/her.²¹

The decision on expulsion made by the Ministry of Justice includes the term for the voluntary departure from Georgia. The Decree of the President of Georgia of June 28, 2006, No 401, in which the provisions on expulsion are further specified, stipulates, *inter alia*, that the person, who, according to the decision of the Ministry of Justice, is to be expelled, is given a three-day term for voluntary departure from Georgia. If the foreign citizen does not leave the territory of Georgia within this term, he/she shall be removed. As to the court's decision on expelling a foreign citizen from Georgia, it should be implemented immediately. The decision on expulsion is executed by the National Bureau of Enforcement (under Ministry of Justice).

In addition to the provisions on expulsion of the Law on the Legal Status of Aliens and Stateless persons, the Code of Administrative Offences²⁶ provides for a general rule, according to which foreign citizens who commit administrative infringements may be expelled from the country when they grossly violate law and order.²⁷ Besides, the code imposes sanctions for infringing the rules concerning stay in and transit through the territory of Georgia.²⁸ Overstay by an alien for from 10 days up to 3 months is subject to a fine of 180 GEL. Overstaying for over 3 months is subject to a fine of

¹⁹ Article 55.1 of the Law on Legal Status of Aliens and Stateless Persons.

²⁰ Article 54.1 of the Law on Legal Status of Aliens and Stateless Persons.

²¹ Article 58.5 of the Law on Legal Status of Aliens and Stateless Persons.

²² Article 55.2 of the Law on Legal Status of Aliens and Stateless Persons.

²³ Decree No 401 of 28 June of 2006 of the President of Georgia on Approving the Provisions Governing the Issue of Expelling Aliens from Georgia. "Sakartvelos Sakanonmdeblo Matsne", 88, 30/06/2006.

²⁴ Article 55.4 of the Law on Legal Status of Aliens and Stateless Persons.

²⁵ Article 6 of the Decree No 401 of 28 June of 2006 of the President of Georgia on Approving the Provisions Governing the Issue of Expelling Aliens from Georgia.

²⁶ Adopted on December 15, 1984 (Last amended on 29 June 2012).

²⁷ Article 24.2 of the Code of Administrative Offences. On the issue of the relation of this provision to the articles of the Law on Legal Status of Aliens and Stateless Persons regulating the expulsion of foreign citizens see above section "Relevant terms".

²⁸ Article 190 of the Code of Administrative Offences.

360 GEL. A foreigner, subject to removal may be detained administratively.²⁹ According to Article 244 of the Code of Administrative Offences, the decision on detention is taken for the purposes of deterring administrative offences or identifying a person in the context of proceedings relating to an administrative offence or implementing a decision taken in an administrative offence proceeding. In this case he/she has to be presented to the court within 48 hours after being taken into detention, so that the decision about the expediency of his/her administrative detention is made. If the court does not issue a decision within the following 24 hours, the foreign citizen is to be released immediately. The foreigner may be further detained in administrative custody until: a) his or her identity, citizenship, country of their permanent residence or country he or she has entered Georgia from are determined; b) the execution of the expulsion of this person from Georgia is completed.³⁰ Georgian legislation does not provide any time limit for administrative detention of foreign citizens.

A foreign citizen after being expelled from Georgia will be *denied a visa and a residence permit and refused* entry to Georgia for one year. In addition, before or after the departure from Georgia, he/she is obliged to pay fine for the violation of the rules of stay in Georgia. If he or she fails to pay the fine, he/she will be *denied a visa and refused* entry to Georgia until the fine is paid.³¹

If a foreigner cannot be expelled he or she keeps his/her legal status.

3.4 Rights

The Law on the Legal Status of Aliens and Stateless Persons contains several articles which should protect the rights of foreign citizens in the process of their return/expulsion. The decision on the refusal of entry as well as expulsion may be appealed in accordance with the procedure established by Georgian legislation. Besides, the obligation of a foreign citizen to leave Georgia before the expiry of the term of legal stay in Georgia can be postponed on several grounds. For example, it may be postponed if: foreign citizens have applied for a Georgian visa, residence permit, Georgian citizenship, marriage registration, divorce or birth certificate of his/her child; in cases of illness or birth, if according to a medical report further travel would endanger his/her health; in case of *force majeure*, unforeseen circumstances or if for any other permissible excuse the foreigner cannot leave Georgia, etc.

In order to protect a foreign citizen who is a subject to expulsion from Georgia, the law prohibits his/her expulsion to the country, where: he/she is persecuted for political beliefs or activities which are not deemed as a crime under Georgian legislation; he/she is persecuted for protecting human rights and peace and for progressive social-political, scientific and other creative activities; his/her life and health is under a threat in the country in question.³⁴ In addition, the law generally prohibits the expulsion of particular categories of foreign citizens.³⁵ In particular, the following persons shall not be expelled from Georgia: a foreign citizen having a residence permit in Georgia and residing in Georgia for the last three years without committing any offence; a foreign citizen born in Georgia and having a residence permit in Georgia provided he/she resided in Georgia for the last year without committing any offences; a foreign citizen living in Georgia who is under the guardianship or custody of Georgian citizens; a foreign citizen where there is a reasonable assumption that he/she may be a victim of human trafficking as envisaged under the contemplation

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²⁹ The rules on administrative detention are stipulated in Articles 244-247 of the Code of Administrative Offences.

³⁰ Article 62 of the Code of Administrative Offences.

³¹ Article 61 of the Code of Administrative Offences.

³² Articles Article 3 e) and 56 of the Law on Legal Status of Aliens and Stateless Persons.

³³ Article 50.8 of the Law on Legal Status of Aliens and Stateless Persons.

³⁴ Article 58.2 of the Law on Legal Status of Aliens and Stateless Persons.

³⁵ Article 58.3 of the Law on Legal Status of Aliens and Stateless Persons.

term of the Law of Georgia On Combating Trafficking in Human Beings. All these persons may be expelled only if state security or public order will be specifically harmed.³⁶

As a general rule, the law provides for a list of the circumstances which should be taken into consideration while making a decision on expulsion. These are: length of legal stay in Georgia, personal, social, economic and other links of the person with Georgia; possible consequences of the expulsion of a foreign citizen for his/her family members or persons permanently living with his/her.³⁷

The Law on Refugee and humanitarian status³⁸ provides for guarantees against forced return for refugees, asylum seekers and persons holding humanitarian status. According to this law, Georgia sees itself obligated not to expel these persons to any state where his or her life and liberty are in danger for reasons of race, religion, denomination, nationality, membership of a particular social group or political opinion, or due to violence, foreign aggression, occupation, internal conflict, widespread human rights violations or other significant violations of public order.³⁹ In addition, it is prohibited to expel or extradite a person holding refugee or humanitarian status to another State where there are reasonable grounds for believing that he or she would be in danger of become a victim of torture or other cruel, inhuman or degrading treatment or punishment.⁴⁰

Conclusion

Georgian legislation in the field of migration is generally very liberal. This kind of approach finds its expression in the provisions on return from Georgia too. Though the legislation imposes an obligation on foreign citizens to leave the territory of Georgia before the expiry of the term of legal stay in Georgia, they get an additional 10 days within which they may leave Georgia without any legal consequences. Even after the 10 days term foreigners are allowed to leave Georgia voluntarily with the payment of a fine. Legislation establishes only two levels of fine: overstay for the period of 10 days up to 3 months and overstaying for over 3 months. The fact there is this option and the low fine in place (180 GEL/360 GEL is equal to 82 Eur/164 Eur) undermines the deterrent effect of these provisions. Besides, as to the consequences there are no difference between expulsion and forced expulsion. In both cases, a foreign citizen who has been expelled from Georgia will be *denied a visa and a residence permit and refused* entry to Georgia for one year. This provision does not facilitate voluntary departure within the term set by the Ministry of Justice.

³⁶ Article 58.4 of the Law on Legal Status of Aliens and Stateless Persons.

³⁷ Article 58.5 of the Law on Legal Status of Aliens and Stateless Persons.

³⁸ Adopted on 6 December 2011. www.matsne.gov.ge, 111220009, 20/12/2011. Entered into force on 18 March 2012.

³⁹ Article 21.1 of the Law on Refugee and humanitarian status.

⁴⁰ Article 21.3 of the Law on Refugee and humanitarian status.