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## The Right to Free Movement and to Choose Residence under the Georgian Constitution

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### 1. Protected Sphere

The right to free movement and to choose his/her residence is one of the fundamental rights of the individual. Article 22 of the Georgian Constitution provides for the right to free movement and choice of residence within Georgian territory. Under this Article:

- “1. Everyone staying legally within the territory of Georgia shall, within the territory of the country, have the right to free movement and freedom to choose his residence.
2. Everyone staying legally within the territory of Georgia shall be free to leave Georgia. A citizen of Georgia may freely enter Georgia.
3. These rights may be restricted only in accordance with law, in the interests of national security or public safety, protection of health, prevention of crime or administration of justice that is necessary for a democratic society”.<sup>1</sup>

Article 22 of the Georgian Constitution protects an individual's right to move freely and choose a place of residence throughout the territory of Georgia without state control and permission.

Article 22, para. 1 of the Constitution regulates freedom of movement of persons legally residing in the state within the territory of the state, whereas para. 2 of the same Article concerns leave and entry into the state.

The right to free movement and freedom of choice of residence on Georgian territory applies to any person and not only Georgian citizens, which is confirmed by the word “everyone” used in this article. Thus, the right to free movement and freedom of choice of residence is secured for everyone despite his/her citizenship. The constitution prohibits differentiation between citizens and stateless persons with regard to this right.

While the right to free movement and freedom of choice of residence applies to any person despite his/her citizenship, the Constitution emphasises the fact that this right

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<sup>1</sup> The right to free movement and choice of place of residence is guaranteed not only by the Georgian Constitution and legislation but also other international treaties in the human rights field (e.g. International Covenant on Civil and Political Rights (Article 12) and Protocol 4 of the European Convention on Human Rights (Article 2; Article 3.2) which Georgia is a party to.

applies to persons legally residing in Georgia. By making this reference it excludes persons illegally residing in Georgia (e.g. illegally crossing the Georgian borders or persons who despite legally entering the Georgian territory have exceeded the term of their legal stay).<sup>2</sup> Thus, persons illegally residing in Georgia are not entitled constitutionally to the guaranteed right to free movement and freedom of choice of residence. However, the wording (legally residing in Georgia) of the Constitution concerns the foreign citizens as a Georgian citizen may not be illegally residing within Georgian territory.

Article 22 of the Constitution guarantees the individual's right to leave freely his/her place of residence and choose another place of permanent residence as well as to move to another place for temporary residence (e.g. villa). Certainly, a person may have several places of residence. Article 22.2 of the Constitution provides for everyone legally residing in Georgia with the right to leave the country's territory. This right applies both to Georgian citizens and any person under the protection of another state. With regard to Georgian citizens it should be mentioned that the right to freely leave Georgia does not mean that he/she always has the right to enter another state's territory. A Georgian citizen leaving the territory of Georgia might not be granted the right of entry into another state.

Similar to the Constitution, the law on the rules of temporary leave of Georgia and entry into Georgia of the Georgian citizens specifies that "a Georgian citizen shall have the right to temporarily leave Georgia and enter Georgia".<sup>3</sup> Article 16 of the same law provides that "a Georgian citizen shall always have the right to enter Georgia without permission". According to this provision a Georgian citizen shall not be denied entry into Georgia. Pursuant to the Constitution the right to free entry into Georgia is ensured only for Georgian citizens. Consequently, foreign citizens are not guaranteed to freely enter Georgia.

The provisions of Article 22 of the Constitution regarding foreigners are specified in the Law on the Legal Status of Foreigners (3 June 1993) under which a foreigner is a citizen of a foreign state and a person permanently residing in Georgia but not having Georgian citizenship. The law providing for the legal status, rights and duties of foreigners in Georgia specifies that foreigners in Georgia are equal before the law despite origin, social and property state, race, nationality, sex, education, language, religion, political or other views, business and other circumstances.<sup>4</sup>

In line with the constitutional principle enshrined in Article 22, Article 18 of the above mentioned law defines that the foreigners shall enjoy the right to free movement and choice of residence within the territory of Georgia in accordance with the rule established by Georgian legislation. In addition, the law provides that "movement and choice of residence by a foreigner in Georgia may be restricted when it is necessary to protect national

<sup>2</sup> In this regard see the case of European Commission of Human Rights *Paramathan v. Germany*, No. 12068/86, 51DR 240.

<sup>3</sup> Para. 1 of Article 1.

<sup>4</sup> Para. 2 of Article 3.

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security, public order, public health, rights and legitimate interests of Georgian citizens and other individuals".<sup>5</sup>

Criminal legislation provides for criminal liability in case of violation of rights guaranteed by Article 22 of the Constitution. As for the Criminal Code of Georgia, unlawfully obstructing the exercise of the right to free movement, free choice of residence within the territory of Georgia or freely leaving Georgia by a person lawfully residing in Georgia as well as the right to free entry into Georgia by a Georgian citizen causing considerable damage shall be punishable with a fine or correctional work for a period of six months or deprivation of liberty for a period of up to one year.<sup>6</sup> The same action committed with violence, threatened violence or abuse of authority shall be punishable with the fine or correctional work for a period of up to one year or deprivation of liberty for a period of up to two years, deprivation of the right to hold office or to pursue business for a period of up to three years.<sup>7</sup>

## **2. Interference in the Protected Sphere**

Article 22 of the Constitution provides that under certain circumstances, the state may interfere in the exercise of the right to free movement and the free choice of residence. In other words, the state may restrict the right prescribed by this Article. Such interference means that the state prohibits or restricts the exercise of the right to liberty of movement and freedom to choose residence within the territory of Georgia of an individual.

An example of the restriction of the right under Article 22 is the taking of measures by the state authorities that obstruct or prohibit a person to freely move throughout the territory of Georgia or freely choose his residence. The restriction of this right could be manifested by requiring a person to notify about his movement in advance. An example of a restriction of the right to freedom to choose residence is to require a person to obtain a permit from the state without which he would not be entitled to change residence.

## **3. Constitutional and Legal Justification of Interference in the Protected Sphere**

Paragraph 3 of Article 22 of the Constitution prescribes that the right to free movement and freedom to choose residence within the territory of the country may be restricted. This provision directly establishes the conditions in case of the fulfilment of which the restriction of the right to free movement and free choice of residence would be justified. This paragraph states: "these rights may be restricted only in accordance with law, in the interests of national security or public safety, protection of health, prevention of crime or administration of justice that is necessary for a democratic society".

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<sup>5</sup> Article 18.

<sup>6</sup> see Article 152 of the Code.

<sup>7</sup> see Article 152.2 of the Code.

Thus, the restriction of the right to free movement and freedom to choose residence should meet three requirements in order to be deemed justified.<sup>8</sup> According to this provision the restriction must:

- a) be in accordance with law;
- b) serve for the achievement of a legitimate aim (e.g. in the interest of national security or public order, public health, prevention of crime or administration of justice); and
- c) be necessary for a democratic society.

Therefore, any restriction of the right to free movement and free choice of residence must meet three constitutionally-prescribed requirements. Otherwise the restriction of this human right will not be justified.

With regard to the first requirement envisaged by para. 3 of Article 22 of the Constitution under which the restriction must be in accordance with law i.e. prescribed by the law, the following should be mentioned. Several Georgian laws provide for the possibility of restriction of freedom of movement.

The Law on Legal Status of Foreigners provides for both entry into and exit from Georgia. Under the law a foreigner or stateless person shall be prohibited to leave Georgia:

- a) if his exit runs counter to the interests of state security – till the cessation of these circumstances;
- b) if he is suspected in or accused of the commitment of a crime – till the termination of proceedings against him;
- c) if he is convicted for the commitment of a crime – till serving the sentence or release;
- d) in other cases provided for by Georgian legislation.<sup>9</sup>

In addition the law states that a foreigner or a stateless person's leaving Georgia may be postponed until he fulfils his civil-law obligations.<sup>10</sup>

Moreover, the Law on Legal Status of Foreigners envisages that foreigners may appeal against a refusal of permission to leave Georgia in the court within 10 days.<sup>11</sup>

The Law of Georgia on the Rules of Temporary Exit and Entry into Georgia of Georgian Citizens provides for the grounds of restriction of the right to temporary leaving Georgia by Georgian citizens. Pursuant to the law a Georgian citizen may be refused permission to leave Georgia if:

- a) criminal proceedings are instigated against him;
- b) he has not served the punishment set by the court judgement;
- c) civil proceedings are instigated against him;

<sup>8</sup> Three conditions of restriction of this right are provided for by International Covenant on Civil And Political Rights (Article 12) and Protocol No. 4 of the European Convention on Human Rights (Article 2). With regard to European Convention see D. Harris, M. O'Boyle & Warbrick, *Law of the European Convention on Human Rights*, 1995, 560-561.

<sup>9</sup> Article 24.3.

<sup>10</sup> Article 24.4.

<sup>11</sup> Article 26.

- d) he has not fulfilled the obligation assigned by a court judgement;
- e) he submits false or invalid documents;
- f) there are other cases provided for by Georgian legislation.<sup>12</sup>

Freedom of movement may be restricted in accordance with the Laws on State of Emergency<sup>13</sup> and State of War.<sup>14</sup> Under the Law on the State of Emergency the state of emergency in Georgia shall be announced in the case of war or massive disorder, violation of the territorial integrity of the country, military coup, armed rising, ecological disaster or epidemic, natural calamities, casualties or other cases.<sup>15</sup> Among other rights which may be restricted in time of emergency, the Law provides for the restriction of rights guaranteed under Article 22 of the Constitution. Namely, Article 4 stipulates that in time of emergency in accordance with particular circumstances, citizens may be temporarily evicted from areas dangerous for living and provide them with necessary other accommodation (subparagraph "b"); Introduction of special regime for the entrance or exit of citizens (subparagraph "c"); in case of necessity restrict the citizens or stateless persons from the freedom of movement, prohibit leaving of their residence or other location without relevant permit, expel the violators of public order not residing at that place to the place of their permanent residence or outside the scope of application of state of emergency at their own expense (subparagraph "d").

The Law on State of War envisages measures similar to the restriction of the right to freedom of movement. Under this Law, a declaration of state of war aims at ensuring territorial integrity, state security and public order of the country.<sup>16</sup>

As for the second requirement under which the restriction of the right to freedom of movement is possible only for the purpose of protection of national security or public order, health, prevention of crime and administration of justice, the following should be mentioned. The Constitution specifies the objectives for achievement of which the right to free movement could be restricted. In other words, this right shall not be restricted for any other reason (e.g. country's economic welfare, protection of morals). The legitimate objectives for the achievement of which the rights guaranteed by Article 22 of the Constitution could be restricted, should be interpreted narrowly.

The Law on Legal Status of Foreigners stipulates in regard to the restriction of the right to freedom of movement, that this right may be restricted for achieving constitutionally guaranteed objectives. Respectively, the Law defines the restriction of the right to free movement for the achievement of objectives directly provided for by paragraph 3 of Article 22 of the Constitution (e.g. protection of national security, administration of justice).

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<sup>12</sup> Article 10.

<sup>13</sup> 17 October 1997.

<sup>14</sup> 31 October 1997.

<sup>15</sup> Article 1.

<sup>16</sup> Article 1.

The Laws on State of Emergency and State of War also stipulate the objectives for the achievement of which the freedom of movement could be restricted. The objectives set forth by these laws are also compatible with the objectives set under paragraph 3 of Article 22 of the Constitution where the right to free movement can be restricted.

With respect to the third requirement under which the restriction of the right to freedom of movement should be necessary for a democratic society, it establishes that a measure towards the restriction of this right should be proportionate to the achievement of one of the legitimate objectives pursued by the restriction of this right. In other words, the right to free movement may not be restricted more than absolutely necessary for the protection of a larger good. If the right to free movement is restricted more than required by the protection of others' rights, such a restriction should be considered as unjustifiable.

It should be mentioned that the Laws on State of Emergency and State of War directly stipulate the principle of proportionality. Article 4 of the Law on the State of Emergency envisages the measures restricting the human rights, and points out that in time of emergency, the state may take measures towards the restriction of human rights "in accordance with specific circumstances". Subparagraph "d" of the same Article concerning the restriction of the right to freedom of movement by citizens and stateless persons and prohibition of leave of their residence without relevant permit points out that such restriction shall be taken "in case of necessity". Such wording of these provisions provides that the right to freedom of movement is restricted not in every case, but only if it is necessary and only to the extent conditioned by the gravity of situation. Similar provisions are contained in the Law on State of War.<sup>17</sup>

In every specific case the state should compare, weigh up the rights and interests which in a particular situation contradict each other. On the basis of such a comparison, the state should determine which party's rights and interests deserve more protection in a particular situation.

The right of persons lawfully staying in Georgia to liberty of movement and freedom to choose residence is also ensured by the Law on Procedures of Registration and Identification of the Georgian Citizens and Foreigners Living in Georgia.<sup>18</sup> According to Article 2 of the Law, "in order to establish the identity of the citizens of Georgia and foreigners living in Georgia and to ensure the execution of the rights and the performance of the obligations thereof all citizens of Georgia and foreigners living in Georgia shall be subject to registration".<sup>19</sup>

Pursuant to the Law, citizens of Georgia and foreigners living in Georgia are obliged to be registered according to their place of residence and if there are several such places in one

<sup>17</sup> Article 4.2.

<sup>18</sup> 27 June 1996.

<sup>19</sup> Para. 1.

of such places.<sup>20</sup> The registration of Georgian residents shall be carried out by the department of the Ministry of Internal Affairs.<sup>21</sup> As a result of registration Georgian citizens obtain ID card and foreigners living in Georgia a residential card.<sup>22</sup>

The Law on Procedures of Registration and Identification of the Georgian Citizens and Foreigners Living in Georgia fully complies with Article 22 of the Constitution because the registration is not a system of permits (unlike the so-called system of *propiska*), but a regime under which a person independently chooses the residence and later notifies the state authorities and indicates his current residence.

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<sup>20</sup> Article 3.1.

<sup>21</sup> Article 7.

<sup>22</sup> Article 11.