

Law

Rights of Foreigners and Stateless Persons in Georgia – Legislation and Constitutional Court Practice

Vasil Gonashvili* and Levan Darbaidze**

**Member of the State Constitutional Commission of Georgia; Ivane Javakhishvili Tbilisi State University, Tbilisi, Georgia*

***Ivane Javakhishvili Tbilisi State University, Tbilisi, Georgia*

(Presented by Academy Member Levan Aleksidze)

ABSTRACT. The paper describes the rights of foreigners and stateless persons in Georgia. Their constitutional status, the changes in the Constitution of Georgia and the rights defined by law are considered. In Georgia, the Foreigners have the same rights as the citizens of Georgia unless some exceptions are provided for in the Constitution and the laws of Georgia. The peculiarities in terms of political, labor, social security, pension rights and the rights of agricultural land ownership, the right of access to the Constitutional Court, etc. are discussed and the judgments of the Constitutional Court of Georgia concerning the rights of foreigners and stateless persons are analyzed. © 2018 Bull. Georg. Natl. Acad. Sci.

Key words: Foreigner, stateless person, human rights and freedoms, constitutional court practice

Migration of persons is quite common in the world. Approximately 191 million individuals – or 3 percent of the world’s population – currently reside in a country other than where they were born [1].

In a formal sense, aliens are persons who do not have nationality. Most of them have foreign nationality. However, there are a lot of stateless persons in the world. For example, there are about 2,186 registered stateless persons in Japan [2]. Two Particularly vulnerable groups of non-citizens are undocumented, or ‘illegal’ immigrants, and irregular migrants [3].

According to the legislation of Georgia, a person who is not a citizen of Georgia and those,

who have the status of a stateless person, shall be deemed to be an alien. A stateless person (apatride) means a person who is not regarded as a citizen by any state.

Firstly, we analyze the concept of citizenship and nationality. On the one hand, the British Nationality Act is the official name of the citizenship legislation in Britain, while Germany, France, the Netherlands and Japan also officially translate their laws as ‘Nationality Act’. On the other hand, Sweden, Australia, New Zealand and Canada use the term ‘Citizenship Act’ [4].

According to Article 33 of the Constitution of Georgia, aliens have the same rights as the citizens of Georgia unless the exceptions are provided for in the

Constitution or the laws of Georgia. These exceptions might be related to their political activity. The Constitutional Court considered question whether the aliens and stateless persons have the right to appeal to the Constitutional Court, if they do not live in Georgia, and established: a) aliens and stateless persons are the subjects of human rights recognized by the Constitution; b) under Paragraph 1 Article 42 of the Constitution the legal subject is any person (including aliens and stateless persons living on the territory of Georgia); c) this paragraph provides for the possibility of appealing to the Constitutional Court by these persons [5].

In the law `on the Legal Status of Aliens and Stateless Persons` a special section is devoted to foreigners establishing the equality of a foreigner and a Georgian citizen unless otherwise provided for in Georgian legislation. All foreigners in Georgia are equal before the law, regardless of origin, social and property status, race, nationality, sex, education, language, religion, political and other opinions, activities and other circumstances. Georgia protects the life, privacy, rights and freedoms of a foreigner living on its territory.

The law provides for the equality of some rights, but notes that the legislation may take into consideration other exceptions, e.g., in the investment and entrepreneurial activity, as well as in taxation.

The rules different from the rights of the Georgian citizens are also established for labor immigrants – foreigners who have no permanent residence permits in Georgia [6]. Their employment is subject to state registration and comprehensive information. Although an immigrant who legally stays in Georgia has the right to labor, the employer shall send the Social Service Agency the notice in connection with his/her employment. The labor contract with an immigrant shall be made only for a specified term and in written form [7].

The social security right is also different as the legislation distinguishes permanently residing and

temporarily residing foreigners in Georgia and establishes that permanent residents have the same right to aid, pension and other social security as a Georgian citizen. However, a temporary resident is not directly guaranteed such right and the issue of his or her social security is solved in accordance with the legislation and international treaties of Georgia. For example, according to Article 6 of the `Law on State Pensions`, a foreigner has the right to pension if he or she has been living legally on the territory of Georgia for the last 10 years by the moment of application.

The issue of access of a foreigner to the state secrets and cancellation thereof is strictly regulated [8]. The decision on the expediency of access to a person to the state secret shall be sent by the Head of the State Security Service to the Prime Minister, whereupon the latter publishes an order on the access of the person to the state secret [9]. A similar rule applies to the cancellation of access.

Unlike a Georgian citizen, a foreigner is limited and does not have the right to political activity in Georgia, in particular, he or she has no right to become a Georgia-based political union member, to take part in activities of such union or to establish it, to participate in elections and be elected to local self-government and state authority bodies, as well as to take part in the referendum.

Foreigners have the right to receive Georgian citizenship and shelter. These rights cannot be granted to a citizen of Georgia, as proceeds from the essence of the right, but foreigners have such right.

A foreigner may possess a property in Georgia, take or transfer any property by succession, can also have non-property rights; however, these rights may be restricted only by the legislative act of Georgia. The judgment of the Constitutional Court deals with the property right of the foreigner, where the subject of the dispute was the norm of the law On Ownership of Agricultural Land that imposes restrictions on the property rights of foreigners because a foreigner had the property right only on

the agricultural land, which she or he had inherited, or lawfully owned as a citizen of Georgia [10]. The Constitutional Court recognized these norms as unconstitutional and noted that the right of ownership guaranteed by the Constitution applies to everyone and that the constitutional norm does not determine the exclusive circle of legal subjects, including by their citizenship.

As a result of the constitutional reform of 2016-2017, the Constitution was revised and now it states that “the agricultural land as a resource of special importance may only be the property of the state, self-governing unit, a citizen of Georgia or a union of citizens of Georgia. Exceptional cases can be determined by the organic law to be adopted by a majority of 2/3 of the total composition of Parliament” (Article 19.4). Thus, the Constitution itself restricted the right of foreigners to ownership of agricultural lands and gave the lawmakers the right to regulate possible exceptions. However, the law of this kind has not been adopted yet.

The equality of the foreigners was referred to in other judgments of the Constitutional Court, where the subject of the dispute was the constitutionality of Paragraph 1 of Article 117 of the Administrative Offenses Code with respect to Article 14 of the Constitution. The impugned provision exposed inequality and envisaged different sanctions for a citizen of Georgia and a foreigner or a stateless person living on the territory of Georgia for avoiding the drug and alcohol tests when driving. The Constitutional Court recognized this provision as unconstitutional and explained that in this case the nationality was a differentiation sign, where we face a different legal treatment of Georgian citizens and foreigners by the nationality criterion [11].

Thus, according to the Constitution of Georgia, the foreigners may be restricted only in their right to political activity, but some legislative and regulatory acts of Georgia place the foreigners and Georgian citizens in an unequal position in other respects, namely, limitations and additional requirements are imposed on the foreigners

regarding labor, social security and other matters, which are not attributed to political activities and, therefore, may be in conflict with the requirements of the Constitution of Georgia.

Stateless Persons. Non-citizens are entitled to equal Protection and recognition before the law [12]. A person may become stateless if he or she has renounced the nationality of his/her country or has not received the nationality of another country or if Georgia does not recognize the territory of which the person has a nationality as a state. In this case, the person shall be officially established as a stateless person in order to have the right to live in Georgia and to enjoy the rights granted to a foreigner. Any person who stays in Georgia has the right to request a determination of status. For this purpose, he or she shall submit an application to the Public Service Development Agency. The period of stay in Georgia during status determination shall be regarded as lawful stay for a status seeker [13].

Any person having the status of a stateless person enjoys the rights granted to a foreigner in Georgia and undertakes the same obligations. Their rights are referred to in one of the judgments of the Constitutional Court.

The Law on Assemblies and Manifestations stated that stateless persons could not be regarded as responsible persons in holding meetings and manifestations. The Constitutional Court recognized this restriction as unconstitutional because it considered that the activity of a responsible person could include non-political activities as well, while the Constitution of Georgia does not allow the possibility of such a restriction [14].

One of the cases of the Constitutional Court concerned the norm of the law on General Education, which defined the circle of subjects whose education costs were fully funded with the grants issued by the state and this circle did not include all foreigners residing in Georgia. According to the Constitutional Court, the impugned norms contradict the fundamental right of equality and are unconstitutional, as the state

should be equally concerned with the citizens of Georgia as well as foreigners residing in Georgia in terms of funding the general education [15].

In certain cases a stateless person is also subject to pension provision. In this regard, he or she has the same rights as the citizens of Georgia, unless otherwise specified by international treaties and agreements of Georgia.

Pursuant to Paragraph 2 of Article 2 of Decree of the Government of Georgia on Approval of the Procedures for Determining the Status of a Stateless Person in Georgia “Any person staying in Georgia, may request a determination of the Status. According to this Regulation, every person who arrives in Georgia and will be on the territory of Georgia at the moment of submission of application shall have the right to apply to the Agency for the determination of the status of a stateless person. An applicant may be refused the determination of the status of stateless person in Georgia if:

- a) it is established that he/she has Georgian or foreign Citizenship;
- b) he/she has submitted false documents or incorrect information on circumstances essential for determining the status;
- c) there is an opinion of a competent authority that it is not recommended for the person to reside in Georgia due to national and/or public security interests;
- d) he/she cannot be identified;
- e) circumstances under Article 1(2) of UN Convention relating to the Status of Stateless Persons of 28 September 1954 apply to him/her (Article 10).

Hence, if a person with no relation with Georgia arrives in Georgia, submits an application, presents relevant documents and has no problem in terms of

security and citizenship of other country, the Agency shall determine the status of a stateless person, which implies a permanent residence permit that shall be terminated if a person obtains citizenship. However, there are millions of people in the world whose territory of residence is not recognized by Georgia and the international community. Therefore, it is reasonable to make changes in the relevant Decree of the government of Georgia and not to grant the right to the status ‘to any person staying in Georgia’, but to ‘any person residing or staying in Georgia on the basis of residence permits’.

Thus, certain problematic issues related to the rights of foreigners and stateless persons were regulated by the constitutional reform itself, according to which foreigners and legal entities created through their participation do not have ownership rights to agricultural land except for the exceptions prescribed by the Organic Law. However, certain aspects of rights needs to be resolved, namely according to the Constitution of Georgia, a foreigner may only be restricted to carry out political activities, under certain norms, limitations. Additional requirements are imposed on the foreigners regarding labor, social security and other matters, which are not attributed to political activities. The entities with the right to request the status of stateless persons should be changed as well and this right shall be granted not to any person staying in Georgia “but to any person residing or staying in Georgia on the basis of the residence permit”.

The scientific paper is published in the framework of the LEPL Shota Rustaveli National Science Foundation grant # 217232.

სამართალი

უცხოელთა და მოქალაქეობის არმქონე პირთა უფლებები საქართველოში - კანონმდებლობა და საკონსტიტუციო სასამართლოს პრაქტიკა

ვ. გონაშვილი* და ლ. დარბაიძე**

*სახელმწიფო საკონსტიტუციო კომისიის წევრი, ივანე ჯავახიშვილის სახელობის თბილისის სახელმწიფო უნივერსიტეტი, თბილისი, საქართველო

**ივანე ჯავახიშვილის სახელობის თბილისის სახელმწიფო უნივერსიტეტი, თბილისი, საქართველო

(წარმოდგენილია აკადემიის წევრის ლ. ალექსიძის მიერ)

სტატიაში აღწერილია უცხო ქვეყნის მოქალაქეთა და მოქალაქეობის არმქონე პირთა უფლებრივი მდგომარეობა საქართველოში. განხილულია მათი კონსტიტუციური სტატუსი და, ამ მხრივ, საქართველოს კონსტიტუციაში განხორციელებული ცვლილებები, ასევე კანონით განსაზღვრული უფლებები. უცხოელებს საქართველოს მოქალაქის მსგავსი უფლებები გააჩნიათ, გარდა კონსტიტუციითა და კანონით დადგენილი გამონაკლისი შემთხვევებისა. ნაშრომში განხილულია მათი უფლებების თავისებურებები პოლიტიკური, შრომის, სოციალური უზრუნველყოფის, საპენსიო, სასოფლო-სამეურნეო დანიშნულების მიწის საკუთრების, საკონსტიტუციო სასამართლოსათვის მიმართვის კუთხით და სხვ. ასევე გაანალიზებულია საქართველოს საკონსტიტუციო სასამართლოს გადაწყვეტილებები, რაც ეხება უცხო ქვეყნის მოქალაქეთა და მოქალაქეობის არმქონე პირთა უფლებებს.

REFERENCES

1. Weissbrodt D. (2008) The human rights of non-citizens, p. 1. Oxford University.
2. Kondo A. (2001) Citizenship in a Global World: comparing citizenship rights for aliens, p. 11.
3. Weissbrodt D. (2008) The human rights of non-citizens, p. 2. Oxford University.
4. Kondo A. (2001) Citizenship in a Global World: Comparing Citizenship Rights for Aliens, p. 2.
5. Judgment of the Constitutional Court “Public Defender of Georgia vs. the Parliament of Georgia”, point 21, Legislative Herald of Georgia, 28.06.2010, no 1/466.
6. The Law on labor migration, article 3, point `h`; Legislative Herald of Georgia, 01.04.2015, no 3418-IIIb.
7. Decree of the Government of Georgia on “approval of the rules for labor arrangement and performance of paid labor activities of a labor immigrant (a foreigner not having the permanent residence permit in Georgia) with the local employer”, article 3; Legislative Herald of Georgia, 07/08/2015, no 417.
8. The Law on state secrets, article 20.3; Legislative Herald of Georgia, 23/12/2005, no 2442.
9. Decree of the Government of Georgia on “approval of the rules of access and cancellation of access of a foreigner and stateless person to the state secret”, article 4; Legislative Herald of Georgia, 04/08/2014, no 462.
10. Judgment of the Constitutional Court of June 26, 2012 “Citizen of Denmark Heike Cronqvist vs. the Parliament of Georgia”; Legislative Herald of Georgia, 26/06/2012, no 3/1/512.
11. Judgment of the Constitutional Court of Georgia of August 6, 2013, point 11; Legislative Herald of Georgia, 06.08.2013, no 1/4/535.
12. Office of the High Commissioner for human rights. (2006) The rights of non-citizens, By United Nations. p. 21. New York and Geneva.
13. Decree of the Government of Georgia on “approval of the rule for determining the status of a stateless person in Georgia”; Legislative Herald of Georgia, 01/09/2014, no 523.
14. Judgments of the Plenum of the Constitutional Court; Legislative Herald of Georgia, 27.04.2011, no №2/482,483,487,502.
15. Judgment of the Second Collegium of the Constitutional Court of September 12, 2014. Legislative Herald of Georgia, 12.09.2014, no 2/3/540.

Received May, 2018