

# **Baseline Study on Visa Facilitation between Georgia and EU**

*By Tamara Patariaia  
Caucasus Institute for Peace, Democracy and Development*

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## **Introduction**

The report represents a short overview of the state of affairs in the visa facilitation process between Georgia and EU. The report has been developed prior to an in-depth analysis of the EU requirements for reforms in Georgia in the area of documents security, border management, the fight against illegal migration, organized crime and corruption, as well as protection of fundamental rights. On the basis of in-depth Country Report it is planned to produce a comparative analysis of the state of affairs with the visa facilitation process in the Eastern Partnership countries.

The report was produced using a questionnaire which had been prepared and approved in advance. It consists of four parts and follows the guideline document that was preliminarily agreed by all parties involved in the research.

### **1. The State of Affairs in relations between Georgia and the EU**

#### **a) The history of relations between Georgia and the EU – key events and institutions**

Georgia officially became an official recipient of the EU assistance programmes in the framework of the ENP on 14 November 2006 when the EU-Georgia Action Plan (AP) was inaugurated. Before the ENP the EU assistance was delivered under the Partnership and Cooperation Agreement (PCA) concluded in 1996 and enacted in 1999. The EC's assistance to Georgia in 1992-2006, including humanitarian aid and the TACIS national indicative programme, amounted to EUR 505.2 m<sup>1</sup>.

From 1 January 2007 the TACIS and other programs were replaced by a single EC assistance instrument - the European Neighbourhood and Partnership Instrument (ENPI). Georgia and other partner countries get financial assistance, apart from ENPI funds, from the following programmes: European Instrument for Democracy and Human Rights (EIDHR), Neighbourhood Investment Facility (NIF) and Governance Facility, and, in extraordinary cases, Instrument for Stability (focusing on democratic elections, crisis management), as well as Instrument for Nuclear Safety Co-operation (INSC).

The Eastern Partnership Initiative (EaP) (2009) offers Georgia new opportunities, in particular the beginning of negotiations on Association Agreement that is considered as a successor document to the PCA. The Georgian government has repeatedly confirmed its readiness to widen bilateral cooperation with the EU with the aim to achieve comprehensive free trade agreement, implement comprehensive institutional building programs, meet requirements under mobility and security pacts, promote visa free movement, deal with energy security, and strengthen multilateral cooperation with EaP countries.

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<sup>1</sup> European Neighbourhood and Partnership Instrument, Georgia, Country Strategy Paper, 2007-2013

The institutionalization of bilateral relationship between the EU and Georgia supported long-term cooperation on political level and made it possible to gradually update its current political agenda. The **EU-Georgia Cooperation Council** is the main body to supervise EU-Georgia cooperation. It is made up of members of Georgian government on the one hand and members of the EU Council and the European Commission on the other. The Council's work is supported by a **Cooperation Committee** that meets once a year at a senior official's level.

Another forum that supports EU-Georgian cooperation on political level is the **Parliamentary Co-operation Committee (PCC)**, that consists of members of the Georgian Parliament and the European Parliament<sup>2</sup>.

Taking into account the existence of unresolved conflicts in the South Caucasus region in 2003 the European Council appointed the EU **Special Representative for the South Caucasus**, aiming to contribute to the peaceful resolution of conflicts in the South Caucasus and deepen EU relations with the regional states - Georgia, Armenia and Azerbaijan. After the ENP AP was inaugurated Special Representative actively engaged in the accomplishment of the AP goals. Besides, after the Russia-Georgia war 2008, the EU established Monitoring Mission (EUMM) in Georgia on 15 September 2008. The EUMM began to operate in October 2008 in accordance with the EU-mediated ceasefire agreements signed on August 12 and September 8 in the wake of the August 2008 war. The EUMM is deployed to monitor implementation of these agreements and its mandate covers Georgia's entire territory. Up to now, however, the EUMM has been denied access to the conflict regions on Georgian territory<sup>3</sup>.

The establishment of bilateral mechanisms to promote/facilitate EU-Georgia cooperation led to institutional changes in the government of Georgia. The government set up and strengthened institutional mechanisms to coordinate its activities with the EU. The following governmental agencies have been established since 2004 and entitled to deal with cooperation issues:

- a) the office of the State Minister for European and Euro-Atlantic Integration;
- b) the governmental Commission on European Integration chaired by the Prime-Minister of Georgia and a number of task forces under the commission;
- c) departments/divisions for the European Integration at the line ministries;

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<sup>2</sup> "In 2009 the other Parliamentary format of cooperation within Eastern Partnership - EURONEAST was created: On 18 May, 2009 Georgia, Ukraine and Azerbaijan signed joint Statement about Parliamentary Cooperation dimension within Eastern Partnership; in 20-21 October, 2009 in Sweden during consultations among representatives of European Parliament, Member State National Parliaments and EaP Countries' Parliaments created working group to elaborated vision for Parliamentary Assembly formation within EaP format". - GEO progress Report On Implementation of the ENP AP, January-June 2010

<sup>3</sup> The activities of the EU Special Representative for the South Caucasus and the EU monitoring Mission (EUMM, established in 2008) in Georgia are financed from the EC's Common Foreign and Security Policy (CFSP) budget. It is planned that in 2011 the Special Representative for the Crisis in Georgia will succeed the EU Special Representative for the South Caucasus.

- d) Parliamentary committee on European integration with the key objective to encourage and promote Georgia's European aspiration.

In 2010 the government of Georgia formed a coordination mechanism for the Eastern Partnership. In order to strengthen the coordination, the EU Assistance and Coordination Centre was also set up at the Office of the State Minister for European and Euro-Atlantic Integration. The Office of the State Minister for European and Euro-Atlantic Integration is authorized to coordinate activities of relevant ministries. To this end, the coordination board includes deputy ministers from all ministries. The office of coordination for Twinning as well as CIB Programmes are located in the Office of the State Minister for European and Euro-Atlantic Integration. The minister himself is responsible for co-ordination of the process.

#### **b) Civil society institutions that provide policy advise on EU affairs in Georgia**

The European Commission funds civil society institutions in neighbouring countries in order to promote development of civil society and facilitate strengthening of the civil sector using specific EIDHR and the Thematic Programme for Non-State actors and Local Authorities instruments. According to Georgian civil sector representatives, in 2007-2010 the majority of the civil society institutions supported political objectives outlined in the ENP Action Plan and actively facilitated their implementation, monitoring and evaluation.

With the help of international donors, some of the NGOs were involved in developing and monitoring of the ENP Action Plan in 2006-2010. Recommendations entitled "Georgia's civil sector on the priorities of the EU-Georgia Action Plan - 2007-2008" were elaborated within the framework of the initiative of local donor foundations and submitted to European Commission representatives in Brussels in 2007, 2008, 2009, 2010. The "European Neighbourhood Policy and Georgia" monthly bulletin was published in 2007-2008 for the purpose of monitoring the Action Plan. Discussions on various issues of EU-Georgia relations were periodically held to promote public debate. All interested sides were free to participate. About 70 experienced NGOs were engaged in monitoring of EU-Georgia AP. For the year 2009 little more than 20 organizations had received EC assistance through TACIS, EIDHR instruments, and Community action programs. Only half of them had the experience of working as a leading organization, and the rest used to be ordinary partners.

The establishment of Georgian National Civil Society Platform in the framework of the Eastern Partnership further promoted civil society cooperation in the area. It was inaugurated on November 13, 2010. About 71 NGOs have become members of the Georgian National Platform (NP). The functions of the NP is to ensure cooperation among Georgian civil society, the government and the EU, promote interest of civil society organizations to work in the areas defined in the framework of Eastern Partnership thematic platforms and build awareness about the EaP goals among wider public. Currently Georgian civil society firmly supports the Georgian government's European integration policy. At the same time, the government is criticized for not doing enough to fulfil the country's obligations under the ENP AP.

### c) Public Opinion polls on the EU

There are several, relatively recent surveys on the attitudes of Georgian citizens towards the West and towards the European Union in particular<sup>4</sup>.

Georgian Public Opinion Survey conducted in 2009 by Eurasia Partnership Foundation/EPF produced the following results:

- Attitudes. 51 % of Georgians have very or somewhat positive general attitude towards the EU; while perception of only 4% of respondents is negative.
- Aspiration to the EU. More than 80% of respondents think Georgia must become a EU member country, and just 5 percent think it should not belong to the EU.
- Mobility towards the EU. Georgians want to have more freedom to move across EU borders. Overall, 42 percent of the respondents under 35 expressed interest in working in the EU (29 percent total), and 37 percent of those under 35 would like to study in the EU. Nevertheless, only 8 percent of the respondents would like to live in the EU permanently, a choice determined by high living standards, cultural aspects, and job opportunities.
- 30% of the respondents say Georgia's EU accession would increase emigration. However, another 30 percent believe that the effect would be the opposite.

The Gallup Poll looked into differences in public attitudes towards Russia and EU. Quite a lot of people (34%) think that it is important to have close relations with Russia and EU at the same time, a number of those who favor relations with EU over Russia almost doubled after the war (14% in 2008 and 27% in 2009). Main explanation given by some Georgian experts is that the Georgian society strongly supports the country's integration into the West (EU/US/ NATO) and western institutions, because their hopes and expectations towards Russia as a strategic partner were dashed by the August 2008 military invasion and the following occupation of Georgia.

The NDI survey (which involved a total of 2053 respondents) was conducted in July 2010. Its results show that when asked about the most important national issues only 3% of respondents named EU membership, while at the same time NATO membership was named by 16%. This data demonstrate that despite strong European aspiration, Georgian public does not consider EU membership as a top national priority issue.

Besides, it should be also mentioned that according to the public opinion, interest and willingness of Georgian citizens to be more acquainted with the values they attribute to the EU are very strongly influenced by their perception of the official EU-Georgian cooperation framework. According to the various opinion polls, current Georgian public perceptions are very positive towards EU involvement in the country affairs. General public supports the EU greater involvement in economic development, democratic institution building and establishment of the rule of law, reforms in security and defense sector, external policy, but in reality it has little knowledge about EU institutions and

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<sup>4</sup> The following sources have been selected: the Gallup Poll<sup>4</sup> published in February 2009, Eurasia Partnership Foundation/EPF Georgian Public Opinion Survey Results on European Integration released in October 2009, and NDI - in July 2010 survey on Public Attitudes towards Elections in Georgia

their policies<sup>5</sup>. This shows that there is a potential for public to play a more intensive role in supporting the EU initiatives and democracy promotion in general.

The results of the EU-funded **Opinion Polling and Research** (OPPOL) project, which was carried out in 2009-2010 across the countries benefiting from the ENPI, confirmed the findings of earlier surveys. About 70% of the Georgian general public believes that Georgia has benefited from EU policies as they say that the EU has appropriate level of involvement in the country, promotes democracy and it can help bring peace and stability to the country and the Caucasus region in general<sup>6</sup>.

## 2. The Visa Facilitation Process

### a) Visa facilitation Agreement

EU-Georgia negotiations on visa facilitation and readmission agreements appeared to be quite efficient as objectives set out in the framework of the ENP AP have encouraged large-scale reforms in such areas as asylum, migration, visa policy and border control, fighting organized crime and corruption. The scale of reforms undertaken in Georgia since 2007 has helped to speed up negotiations on visa facilitation and readmission issues.

In September 2008 the extraordinary EU council decided to step up relations with Georgia and promote visa facilitation measures. In November 2009 negotiations on visa facilitation and readmission agreements were technically concluded. Agreement on the Visa **Facilitation** between European Union and Georgia was signed on June 17, 2010. It aims at making easier for Georgian citizens to acquire short term visas. It also provides a reduced visa fee of 35 Euro instead of 60 Euro for all Georgian citizens, offers total exemption from the visa fee for certain categories of applicants - children below age of 12, pensioners, disabled persons, close relatives of those Georgian citizens who reside in the EU countries. The agreement streamlines the necessary documents for supporting a visa application to certain persons. In particular, the agreement defines categories of citizens to whom the EU consulate officials are obliged to issue bona fide frequent travelers multi-entry visas with long periods of validity; exempts holders of diplomatic passports from visa obligation and limits the decision-making process on issuing visas to 10 days.

Four months later, on 22 November 2010, the EU-Georgia readmission treaty was signed in Brussels which set out clear procedures for Georgia and the EU how to deal with the illegal migrants and when to take back those who are illegally residing on their territories. The readmission agreement provides good instrument for Georgia to achieve much more simplified regime of issuing the EU visas and even visa-free movement in the future. With the help of the agreement authorities would be able to better cope with the illegal migration and address the third country nationals and

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<sup>5</sup> [http://www.enpi-info.eu/maineast.php?id=183&id\\_type=3&lang\\_id=450](http://www.enpi-info.eu/maineast.php?id=183&id_type=3&lang_id=450)

<sup>6</sup> [http://www.enpi-info.eu/maineast.php?id=183&id\\_type=3&lang\\_id=450](http://www.enpi-info.eu/maineast.php?id=183&id_type=3&lang_id=450)

stateless persons in a manner required in the agreement. The new procedures relate to time-limits and conditions how to transfer returnees, cost of the transfer and management of their data protection not violating their rights.

European Parliament ratified both agreements, on visa facilitation and readmission, on 14 December 2010. The Council of the EU concluded both agreements on January 18, 2011 and stated that both agreements would come into force on 1 March 2011.

Georgian public welcomes the new dimension in the deepening relationship between Georgia and the EU. No doubt, the initiative on easing procedures for issuing visas for Georgian citizens attracted serious public attention. At the same time, the provisions of the visa facilitation agreement do not fully meet the Georgian public's expectations. People are much more demanding towards the government to negotiate better conditions of the treaty.

According to the agreement, the categories of persons eligible to use simplified procedures are limited and do not ensure that the wider public has better access to the EU countries and can travel intensively to the EU member states. In particular, the agreement simplifies requirements for necessary supporting documents in visa application for certain categories of persons – close relatives who are visiting Georgian citizens residing in the EU, businessman, scientists, journalists, students, representatives of non-governmental sector as well as some other civil society interest groups. The agreement offers visa exemption to only government officials holding diplomatic passports. But some commentators are concerned that the agreement divides the society into categories which is quite a vague approach and difficult to introduce. In addition, the new procedures do not ease visa issuing process for those who travel for tourism. According to certain opinions, the visa facilitation agreement has only legalized, not simplified, the already existing procedures for ordinary citizens which have been in effect in the last years in Schengen member countries' consulate offices in Georgia.

Besides, even though the agreements reduced the cost of short stay visas allowing citizens to travel to and throughout the EU, new arrangements can not ease financial burden on the Georgian citizens very much, because travel expenses to the EU are very high anyway because of geographic distance and limited transportation options for travel.

In addition to the above mentioned challenges Georgian citizens have difficulty in addressing any Schengen member state's consulate offices in Georgia. The visa facilitation agreement allows Georgian citizens apply for a visa to travel to and within the Schengen area only in those consulate offices that are located in Tbilisi and represent a Schengen country. But unfortunately not all of them have representations and consular services in Georgia. It has been problematic already for years to receive visa for entry into Austria, Belgium, Denmark, Finland, Hungary, Luxemburg, Malta, Portugal, Slovakia, Slovenia, Sweden and Spain. In case a Georgian citizen wants to travel to the above mentioned countries he/she has to obtain a visa from other country consulates, which also increases expenses for ordinary citizens, especially it becomes expensive for short term travellers. For example, to apply for visa to Belgium one has to visit the

Belgium consulate office in Ankara, which makes the travel more money- and time-consuming for local citizens<sup>7</sup>.

It seems to be very urgent for Georgians to ask the government and EU Schengen member states to negotiate and set up representations of those countries that have not had consulates in Georgia before, or negotiate the possibility of opening Common Visa Application Centre for Schengen member states in the capital (like it was done in Moldova). This demand also looks reasonable as the EU citizens have enjoyed visa-free travel to Georgia for several years already. To enter Georgia, EU citizens no longer need a visa for a visit of 90 days or less (in 365 days). This means that Georgian government allows free entry of Schengen citizens and reciprocity principle addressed in the agreement has not been properly implemented yet.

There are also official concerns of Georgian government in regard with the prospects of visa-liberalization among ENPI countries<sup>8</sup>. According to Georgian officials, in the light of the expected EU-Russia dialogue on the possibility of a visa-free regime, granting this regime to Russia will place the illegal Russian passport holders in the occupied regions of Georgia in a more advantageous position compared to Georgian passport holders. Such a possibility is considered by Georgian government as a serious threat to Georgian territorial integrity. Accordingly, it is expected that the possibility of visa-liberalization among ENPI countries should take into account Georgian national interests.

Thus, although Georgian public welcomes the possible outcomes of the EU-Georgia visa facilitation agreement, several problem areas need to be addressed urgently. In particular, it remains important to improve communication with the wider public in order to better deliver aims of the EU supported programs and policy; to set up representations of those EU member states that have not had consulates before in Georgia, or negotiate the possibility of opening Common Visa Application Centre for Schengen member states in the capital of Georgia.

## **b) Readmission agreements with the third countries**

EU-Georgia readmission agreement facilitates measures against illegal migration across Georgian borders. It puts obligations on Georgian government to readmit “all persons who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of the requesting Member State”. Among persons to readmit could be Georgian nationals and their family members, third country nationals and stateless persons (who has valid visa or residence permit issued by Georgia, illegally and directly entered the territory of the Member States after having stayed on, or transited through, the territory of Georgia).

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<sup>7</sup> Timothy Chase, The issue of visa facilitation for citizens of Georgia to enter the Schengen Area of the European Union, EU-Georgia business Council, 2009

<sup>8</sup> Georgia's Progress Report on Implementation of the ENP Action Plan January-June, 2010, Office of the State Minister of Georgia on European and Euro-Atlantic Integration

Thus, based on the obligations undertaken by this agreements, Georgia has to strengthen its cooperation with the countries of origin of third country nationals and conclude readmission agreements with them, first of all with neighbouring countries. The treaty itself also obliges Georgia to conclude the readmission agreements in the same terms with the Denmark, Iceland, Norway and Switzerland.

In order to execute future deportations Georgia also has to provide accommodation, transport and medical care for migrants. During the last years the EU and foreign donors supported the Georgian government's preparations for accomplishing this task and dealing with readmission issues adequately.

For example, the detention centre for irregular migrants was opened on 21 June 2010. Ministry of IDP, Accomodation and Refugees with the support of UNHCR opened a temporary accommodation center for asylum seekers in Martkophi village. The Center was established with the support of the US State Department and the European Union. After the memorandum between the the Ministry and the IOM, which entered into force at the end of 2009, Migration Advisory Centers were established at the Ministry and its regional branches in Gory and Zugdidi<sup>9</sup>. The main objective of the project is to facilitate reintegration and re-socialization of Georgian returnees.

### **c) Mobility Partnership Agreement**

#### **Promoting mobility, fighting irregular migration**

EU-Georgia cooperation in the framework of the *Mobility Partnership* was officially launched on 16 February 2010. Both sides adopted the agenda of the Agreement on *Mobility Partnership*, which should be flexible and must be updated regularly. Besides, it was agreed that every signatory country is developing a list of concrete projects that are to be implemented in the framework of *Mobility Partnership*.

The EU and Georgia also adopted the so called Architecture of the implementation process of the *Mobility Partnership*. The document includes the "Cooperation Platform"; "Focal points", "contact points" and other details for the implementation of the Joint Declaration on *Mobility Partnership*<sup>10</sup>. The EU agencies, in particular FRONTEX and ETF are to be involved in the implementation of Mobility Partnership. The agreement is designed to:

- 1) strengthen Georgia's capacity to manage labour and return migration through experience exchange, creation of unified database on migration and conducting analysis;

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<sup>9</sup> GEO progress Report On Implementation of the ENP AP, January-June 2010

<sup>10</sup> Georgia progress report on Implementation of the ENP AP, Office of the State Minister of Georgia on Euro-Atlantic Integration, 2010

- 2) facilitate labour migration, support returnees, in particular voluntary return of highly-skilled migrants, in order to counteract the brain drain from the country; support for circular migration
- 3) develop of asylum policy and protection of refugees
- 4) fight illegal migration and human trafficking
- 5) support Georgia in its effort to implement readmission agreement with the EU.

According to the official statements, Georgia's main priority is to facilitate legal labour movement including concluding agreement on labour and circular migration with the EU member states. Besides, Georgian government is interested in projects related to exchange of information concerning the labour market and related legislation.

The Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia is the entity which coordinates the development of Georgia's migration profile and mapping of migration flows within the frameworks on the Prague Declaration on Establishing Partnership for Migration Development. Within the framework of Georgia-EU Mobility Partnership the Ministry also is responsible to coordinate interagency cooperation for the development of the "State Strategy on Migration and Asylum", as well as creation of an electronic-database of migrants who returned under the Readmission Agreement<sup>11</sup>.

Georgian government has not elaborated and adopted migration strategy and consequent action plan yet. But the urgency of the approval of this document is clear as the government has to address migration issues every day. Though, it is obvious that the government has to tentatively review legal framework of its migration management practice, improve the quality of administrative management which will be very difficult without addressing the issue on policy level.

Accordingly, at the present stage Georgia has to elaborate and adopt migration policy aiming at controlling and managing migration flows in and out of country according to national interests but at the same time staying along with the EU goals that are specified in the ENP AP. The analysis of current developments shows that Georgian government is facing several challenges in the area of migration which are to be addressed in the framework of the new policy:

- 1) economic and demographic effects of the large-scale immigration of Georgians of productive working age, as well as the possibly positive effects of remittances.
- 2) the status of legal migrants and their entry conditions, as in experts' opinions laws are very liberal and do not distinguish between "employed" and "self employed/investor" categories of migrants<sup>12</sup>.
- 3) irregular and "unwanted" migration flows, as the existing control mechanisms are still too weak.

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<sup>11</sup> [http://mra.gov.ge/index.php?lang\\_id=GEO#index/268/GEO](http://mra.gov.ge/index.php?lang_id=GEO#index/268/GEO)

<sup>12</sup> Review Migration Management in Georgia, Assessment mission report, January 2008

Thus, Georgia needs to tackle not only illegal but legal migration issues as well, which raises the level of concern related to the balance between “control and facilitation” mechanisms<sup>13</sup>. For example, several high-level officials, including Georgian president, have been continuously emphasising recently that Georgia’s future migration policy will have to be established with a main focus on the attraction of foreign workers and investors who are viewed as an important “push factor” for the Georgian economic development. The first steps towards this direction have already been taken during the last years. On October 9, 2010 Georgian TV news program aired a detailed report about plans for the resettlement of Boers farmers from South Africa to Georgia. In particular, the Georgian government has invited South Africa's farmers to buy land in the country in exchange for bringing their expertise and knowledge of modern farming methods. According to Georgia's State Minister for Diaspora, the government is looking "for investors in agricultural sphere.<sup>14</sup>".

Besides, according to the 2011 UNHCR country operational profile report, it is important for Georgia to amend the legislation on legal status of Aliens as well as provision of technical assistance and capacity building to ensure the legislation is fully implemented. The same report presents the 2011 Figures and defines categories of some 345,000 people in Georgia, the country citizens and foreign asylum seekers, who should be subject of official migration and asylum policy. The vast majority of this people are internally displaced persons (247,000 IDPs). Georgia also hosts some 900 refugees, mainly from the Chechen Republic of the Russian Federation, and a small number of asylum-seekers. In addition, there are about 1,800 people identified as stateless. However, the real number of people who are, or may become soon, stateless may be quite higher<sup>15</sup>.

The above mentioned statistics shows how important is to strengthen national asylum system in Georgia. Refugees - mostly Chechens living in the Pankisi Valley, who have been given the opportunity to be naturalized - will continue to need support so they can integrate in their host communities. UNDP local development and other donor agencies are engaged in cooperation with the government to support vulnerable refugees<sup>16</sup>.

Besides, Georgia is not a State Party to either the 1954 or the 1961 Statelessness Conventions. However, the Government has acknowledged weaknesses and shortcomings in its citizenship legislation, and it is anticipated that Georgia will accede to the UN Conventions on Statelessness and the European Convention on Nationality in 2011<sup>17</sup>. UNHCR and other donors will support the Government in drafting by-laws. The

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<sup>13</sup> Review Migration Management in Georgia, Assessment mission report , January 2008, p 21

<sup>14</sup> <http://www.independent.co.uk/news/world/europe/boer-farmers-head-for-new-home-in-georgia-2128794.html>

<sup>15</sup> 2011 UNHCR Planning Figures for Georgia <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48d2e6>

<sup>16</sup> 2011 UNHCR Planning Figures for Georgia <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48d2e6>

<sup>17</sup> 2011 UNHCR Planning Figures for Georgia <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48d2e6>

Government also foresees the voluntary return of some Muslim Meshkhetians in 2011 to Georgia. UNHCR express its readiness to advise the authorities on the implementation of a return programme, paying particular attention to the prevention of statelessness.

### **3. State of Affairs in the visa liberalization priority areas – a snapshot**

#### **a) Document Security and Biometric passport**

Civil Registry Agency of the Ministry of Justice of Georgia started issuing **biometric passports** from April 14, 2010. Biometric data input registration is provided by the Civil Registry Agency's united database system through electronic case management software. The Civil Registry Agency has already established electronic registration system for civil acts archive.

According to officials, all information written on micro chips is safe and the passports quality satisfies ICAO standards. Implementation of this project costed seven million Euro and mostly was financed by the EU.

There are three Biometric passport printing centers in Georgia today (Tbilisi, Kutaisi and Batumi). Procedures for receiving a passport are simplified in Civil Registry Agency of the Ministry of Justice of Georgia. Civil registry Agency is currently preparing tender materials to establish infrastructure for personalization of multifunctional electronic identification card (ID).

#### **Personal Data Protection**

During 2010 the working group under the Ministry of Justice continued its work on drafting the law on personal data protection. The elaboration of the new law aimed to implement Council of Europe 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The representatives of non-governmental, as well as private sector are involved in the process of elaboration of the draft law.

2009-2011 Strategic Action Plan elaborated by the Ministry of Justice of Georgia pays special attention to the establishment of legal mechanisms for personal data protection system in Georgia (task 3.3). According to the document, the government of Georgia is planning to accumulate all personal data under the supervision of a one agency (Data Exchange Agency) that underlines the importance of creation of reliable mechanism for information security and safety.

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The Ministry is planning to create legal framework to guarantee information safety and confidentiality. It is envisaged that in 2010 relevant legal acts and laws will be developed that will regulate accessibility of personal data as well as their authorized application by other state agencies and interested parties. The Ministry of justice also plans to amend the laws in 2010 in order to strengthen fight against cyber-crimes, which also address the issue of ID data protection.

According to the Ministry of justice's official sources,<sup>18</sup> in 2010 the Ministry organized a round table meeting in order to present and discuss the first draft law with all relevant stakeholders (Ministry of Justice, Ministry of Internal Affairs, Ministry of Labour, Health and Social affairs, Ministry of Finance, Supreme Court, National Agency of Communication, Data Exchange Agency and Non-governmental sector). German expert - the commissar for personal data protection of Germany (Mr. Hans Tishler) has been invited to participate in the discussion over the draft.

The final version of the law on data protection has been drafted and relevant amendments to current Georgian laws/normative acts are in process of elaboration (E.g. General Administrative Code of Georgia). The Ministry plans to submit the draft law to the Parliament of Georgia during the 2010.

## **b) Illegal Immigration**

Wide scale reforms have taken place in the law enforcement agencies of Georgia since 2004. On February 11, 2004 State Border Defence Department was incorporated into the Ministry of Internal Affairs. In 2006 State Border Defence Department was transformed into the Border Police Department of Georgia. Consequently, the new legal acts were drafted and adopted. The new law on "Border Police of Georgia" was adopted in December 2006 which defined agency's status as partly independent law-enforcement service within the Ministry of Interior. The Head of Border Police Department became the Deputy Minister of Internal Affairs.

The Office of the European Union Special Representative (EUSR) for the South Caucasus was involved in supporting reforms of the Georgian border service since 2005. The EUSR Border Support Team is the entity responsible for assisting the development and implementation of the Integrated Border Management Strategy of Georgia. The Team works with Georgian Border Police, Patrol Police and Customs Service and aims at increasing the operational capacity of the Georgian Border Agencies. Till now the Team was acting under the mandate of Ambassador Peter Semneby, the European Union Special Representative for the South Caucasus. The mandate of Ambassador Semneby expired on 28 February 2011<sup>19</sup>. The European Union, the UNDP and other international donors admitted that the support to develop the border security of Georgia will continue. It is still to be confirmed under which mandate the Boarder Support Team will continue activities in Georgia.

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<sup>18</sup> [www.justice.gov.ge](http://www.justice.gov.ge)

<sup>19</sup> EU Special representatives: <http://www.consilium.europa.eu/showpage.aspx?id=263&lang=EN>

The reforms in the department of Georgian border police are carried out in accordance with the reform strategy developed in 2008. “Georgian Border Management Strategy” is to be implemented during the next five years. It was developed by an Interagency Commission supported by the Office of the EUSR for the South Caucasus and Georgian National Security Council. The Strategy was signed by the President of Georgia in 2008.

Georgian border management strategy is based on common border management model, which incorporates all four steps of border management: coherent and coordinated activities among relevant government agencies; efficient border control; cooperation with neighbor countries; preventive measures in a third country.

In December 2009 President Saakashvili has signed an Action Plan on Integrated Border Management that urged the line Ministries and their agencies to continue the reforms related to the border management of Georgia (In accordance to the ENP AP requirements). In particular, the order obligates the certain Ministries to develop the legislation and other regulations, intensify the cooperation among the agencies, start robust cross-border cooperation with neighboring countries and upgrade the training of personnel operating Georgia’s borders. The investment of equipment and infrastructure are an integral part of the development plan.

Principles of the integrated border management are defined by primary legislations, such as: Customs Code of Georgia, Law on Veterinary and other laws. Procedures are described by secondary legislations, such as joint decrees of: the Minister of Finance and Minister of Agriculture, and Minister of Finance and Minister of Internal Affairs.

Interagency Cooperation on food safety standards and sanitary/phytosanitary issues (SPS) is exercised by the Ministry of Finance of Georgia and the Ministry of Agriculture. The later defines SPS procedures through subordinated authority "The National Service of Food Safety, Veterinary and Plant Protection (NC);

Integrated management between the Ministry of Finance of Georgia and the Ministry of Internal Affairs of Georgia is exercised through cooperated border control activities. In these efforts policy decision maker is the Ministry of Internal Affairs of Georgia. In some cases Revenue Service carries out border controls, in particular, conducts passport control of vehicles drivers at the main land border check-points. (Sarpi, Sadakhlo, Red Bridge, Lagodekhi), while the Ministry of Internal Affairs carries out control on the other border check-points.

Ministry of Internal Affairs and Ministry of Finance Revenue Service of Georgia jointly work on the development of the “Border Crossing Rules” (Joint Standard Operational Procedures) with the active support of the EUSR BST. In 2010 a specially established Interagency Working Group comprised of the representatives from MIA Patrol Police, Revenue Service and experts of the EUSR BST conducted needs assessment visits to the border crossing points in order to assess the specific needs. The working group has completed a survey of all international and interstate crossing points including seaports and airports. The draft of the General SOPs needs assessment was expected to be

finalized by August 2010 which was to be followed by the elaboration of the JSOP and development of the rules and regulations for the border crossing points in 2011.

### **c. Public Order and Security**

#### **Illegal Trafficking**

Georgia is among the countries representing a transit route for human trafficking. At the same time many Georgian citizens also are victims of trafficking mainly to Turkey and United Arab Emirates. Foreign victims from Ukraine, Moldova, Russia and other post Soviet states are trafficked through Georgia to Turkey, Greece, UAE, and Western Europe<sup>20</sup>.

Over the past years, the government made serious efforts in tackling the human trafficking practice in Georgia. According to US State Department 10th Annual Report on Trafficking in Persons Georgia has been maintaining its position in the first tier as the government fully complies with the minimum standards for the elimination of trafficking. The report also provides recommendations for Georgia as of to “continue strong funding for victim assistance programs; continue to increase the number of victims identified and referred for assistance; continue to ensure victims are not fined or otherwise penalized for unlawful acts committed as a direct result of being trafficked; and continue strong efforts to investigate, prosecute, and convict both labor and sex trafficking offenders”.

In 2006-2007 Georgia ratified the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons (2006) and Council of Europe Convention on Action Against Trafficking in Human Beings 2005, (14 March 2007). The Law on Combating Trafficking in Persons was also adopted and entered into force in 2006. The Law is based on the principle of 3 “Ps”: protection of victims, prevention of trafficking, and prosecution of traffickers. It envisages the introduction of the State Fund for Protection of and Assistance to Victims, setting up of a shelter, creating the Coordination Council for Combating Trafficking in persons, forming a database of traffickers, and elaborating a National Referral Mechanism<sup>21</sup>.

On April 28, 2006 the Georgian Parliament adopted a special law 'On the Fight against Human Trafficking', which went into force on June 16, 2006. The law prescribes penalties ranging from 7 to 20 years' imprisonment. The scope of application of these articles covers internal (within territory of Georgia) as well as external forms of trafficking (trans-border). It should be mentioned that trafficking committed by taking a victim abroad is regarded as one of the aggravating circumstances according to the criminal legislation of Georgia<sup>22</sup>. Georgian authorities provided foreign victims legal alternatives to their removal to countries where they would face hardship or retribution.

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<sup>20</sup> US Department of State, Trafficking in Persons Report, June 2010  
<http://www.state.gov/documents/organization/82902.pdf>

<sup>21</sup> Minnesota Advocates for Human Rights (2006) Measures and Actions Taken by Georgia against Trafficking in Persons – 2006, <http://www.stopvaw.org>

<sup>22</sup> [http://www.justice.gov.ge/index.php?lang\\_id=ENG&sec\\_id=143&info\\_id=2495](http://www.justice.gov.ge/index.php?lang_id=ENG&sec_id=143&info_id=2495)

Georgian Law on Legal Status of Foreigners provided a foreign person suspected of being a victim of trafficking the right to a residence permit even if authorities could not prove beyond a reasonable doubt that the person was a victim<sup>23</sup>.

On 1 September, 2006, in accordance to an article 10 of the Law, the President established an Interagency Coordination Council for prevention of Human Trafficking. Interagency Coordination Council is chaired by the Minister of Justice. Along with the state institutions representatives of Parliament, Public Defender's Office, Council of Europe, EU Commission, US Embassy, United States Agency for International Development (USAID), Georgian Young Lawyers' Association and NGO "Tanadgoma" were asked to participate in the activities of the Council.

Interagency Coordination Council has elaborated unified standards and rules for the identification of victims, which was approved by the President of Georgia. Council has determined composition and function of the Permanent Group established at the Coordination Council. Council has also verified significant standards, requirements and a sample of statute of the shelters for victims of trafficking in persons, as well as prepared action instruction for protection of victims (national referral mechanism) and established rule of relevant compensation for them<sup>24</sup>.

Another mechanism addressing protection and assistance of victims of human trafficking was the establishment of the 'State Fund for Protection and Assistance of Victims of Human Trafficking' in June 2006 (supported by the state budget as well as other incomes permitted by Georgian legislation)<sup>25</sup>. The following objectives are defined in order to support the victims of human trafficking: provide legal, psychological and medical assistance to the victims; provide shelters (the Fund has at its disposal shelters in Tbilisi and Adjara region) and provide decent compensations; ensure hot line accessibility, rehabilitation and reintegration of victims.

On 19 July 2007 interagency Coordination Council on Fighting against Trafficking approved the rehabilitation and integration strategy of the trafficking victims. The State Fund for Protection and Assistance of the Victims of Human Trafficking is one of the main implementation units of this strategy. For the implementation of the strategy the service network was created and the individual plan for 5 victims was developed. The mandate of the Fund was expanded in 2009 and today it encompasses protection and assistance of the victims of domestic violence as well.

On May 14, 2010, a victim support center opened in Tbilisi. The center is located at the Prosecutor's Office of Didube-Chugureti district. The other centers are to be opened in Kutaisi and Batumi<sup>26</sup>.

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<sup>23</sup> US Department of State, Trafficking in Persons Report, 2010, case of Georgia  
<http://www.state.gov/g/tip/rls/tiprpt/2010/142760.htm>

<sup>24</sup> [http://www.justice.gov.ge/index.php?lang\\_id=ENG&sec\\_id=143&info\\_id=2495](http://www.justice.gov.ge/index.php?lang_id=ENG&sec_id=143&info_id=2495)

<sup>25</sup> <http://www.atipfund.gov.ge>

<sup>26</sup> [http://www.justice.gov.ge/index.php?lang\\_id=ENG&sec\\_id=5129](http://www.justice.gov.ge/index.php?lang_id=ENG&sec_id=5129)

## **Combat Money laundering and Financing Terrorism**

### **Money Laundering**

In 2009-2010 Georgia strengthened its efforts to enhance interagency cooperation against money laundering. The Financial Monitoring Service (FMS) signed MOU with the ministry of Justice (prosecutor's office), minister of Finance (tax and customs office),

Georgian Financial Intelligence unit (FIU) has signed MOU with 28 states for further strengthening international cooperation and exchange of information.

Georgia also is interested in strengthening cooperation with MoneyVal, FATF type institutions and participated in all events organized by them. Staff members of Chief Prosecutor, Financial Monitoring Service and Ministry of Internal Affairs took part in trainings on strengthening the AML/CFT system of Georgia.

Changes and amendments to the Law of Georgia "*On Facilitating the Prevention of Illicit Income Legalization*" (the AML Law) were adopted on March 23, 2010 and they are in force since May 1, 2010.

Second Progress Report of Georgia was adopted by the MONEYVAL Committee on March 18, 2010 on its 32nd Plenary Meeting. The Report reflects the measures taken in 2008-2009 by Georgia for implementation of FATF's Recommendations. The Second Progress Report is published on the web-site of MONEYVAL Committee<sup>27</sup>. It assesses the new developments and state of affairs of strengthening anti-money laundering activities in Georgia since the third round evaluation of Georgia by MONEYVAL and the main developments since the adoption of the First Progress Report in the area.

According to the Second Progress Report, the most important step Georgia made during the reporting period is related to the adoption of the new organic law in September 2009 on the National Bank of Georgia. The new regulations transferred all the powers of the Financial Supervisory Agency of Georgia to the NBG, as well as determined the goal and objective of the National Bank in terms of supervision over the financial sector. Namely, from now on the National Bank's objective shall be to support financial sustainability and transparency of financial sector and to protect of customer and investor's rights.

Besides, the new law increased the power of the NBG over the supervision of the insurance sector as well, it authorizes the NBG, in emergencies, where the stable functioning of the financial system is threatened, to immediately take appropriate measures concerning the banking system. The normative act defines also clearly the power of the NBG as a regulator for the imposition of sanctions over the institutions it regulates.

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<sup>27</sup> [http://www.coe.int/t/dghl/monitoring/moneyval/Countries/Georgia\\_en.asp](http://www.coe.int/t/dghl/monitoring/moneyval/Countries/Georgia_en.asp)

Due to the requirements of the new organic law and the FATF Recommendation 17, the NBG issued certain decrees concerning the imposition of pecuniary penalties for violation of the requirements of the anti money laundering law (Law of Georgia on Facilitating the Prevention of Illicit Income Legalization was amended in 2008).

### **UN and Council of Europe's Conventions on fight against terrorism and judicial cooperation in criminal matters.**

Georgia is a party to a major UN and Council of Europe Treaties providing the framework of extradition and mutual legal assistance in criminal matters. According to the 2009 government, report on implementation of ENP AP, the Public International Law department of the Ministry of Justice has prepared draft agreement of mutual legal assistance in civil and criminal matters as a standard bilateral agreement with other states.

The following states signed agreement with Georgia on legal assistance in criminal matters: Armenia, Azerbaijan, Bulgaria, Czech Republic, Egypt, Estonia, France, Greece, Italy, Japan, Kazakhstan, Latvia, Lithuania, Poland, Romania, Russia, Turkey, Turkmenistan, Ukraine, UK, US Uzbekistan.

Other Treaties and Conventions that Georgia became part of and signed or ratified are listed in the table below.

<b>Council of Europe conventions<sup>28</sup></b>	<b>Georgia Signed</b>	<b>Ratified</b>
European Convention on the Suppression of Terrorism (ETS 90)	11/05/2000	14/12/2000
Amending Protocol (ETS 190)	15/05/2003	08/12/2004
European Convention on Extradition (ETS 24)	22/03/2000	15/06/2001
First Additional Protocol (ETS 86)	15/10/1975	15/06/2001
Second Additional Protocol (ETS 98)	22/03/2000	15/06/2001
European Convention on Mutual Assistance in Criminal Matters (ETS 30)	27/04/1999	13/10/1999
First Additional Protocol (ETS 99)	07/11/2001	22/05/2003
Second Additional Protocol (ETS 182)	--	--
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73)		

<sup>28</sup> Complete list of the Council of Europe's treaties  
<http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>

European Convention on the Compensation of Victims of Violent Crimes (ETS 116)		
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	30/04/2002	13/05/2004
Convention on Cybercrime (ETS 185)	1/4/2008	
Additional Protocol concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems (ETS 189)		
Council of Europe Convention on the Prevention of Terrorism (ETS 196)	14/12/2005	
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198)	30/4/2002	13/5/2004

### **State of implementation of the GRECO recommendations**

In its Compliance Report on Georgia (Second Round Evaluation Report), adopted in May 2009, GRECO concludes that about half of recommendations Georgia implemented satisfactorily, while another half recommendations have been partly implemented,

Among successful measures undertaken by Georgian government GRECO distinguishes several legislative projects. For example, constitutional draft changes aimed at strengthening the independence of judiciary, amendments to the Criminal Code with regard to criminal liability of legal persons and with regards to corruption as a predicate offence for money laundering; the adoption of the new law on Chamber of Control, and amendments to the law on Conflicts of Interest and Corruption in Public Service, /including measures for protecting public officials who report in good faith suspicious of corruption (“whistleblowers”).

According to the GRECO experts now Georgian government faces serious challenge of vigorous and efficient implementation of a new legislation in practice. European Council is one of the main international institutions, which is ready to assist the country through introducing of guidelines and training activities.

GRECO also recommended the government of Georgia to improve the implementation of the provisions of the Georgian General Administrative Code on access to information to ensure that the public’s right to access information is not unduly limited, and to provide training to those public servants designated to respond to requests for information.

Moreover, GRECO recommendations played specific attention on training of Georgian prosecutors and judges aimed at improving coordination and collaboration between competent state bodies in the field of corruption and money laundering, which also dealt with “anticorruption activities” and “investigative techniques”, as well as encouraged officials of the Ministry of Internal Affairs and of the Financial Monitoring Service increase competencies in the area of money laundering.

GRECO recommended also to improve possibilities for information gathering by the Financial Monitoring Service (FMS), develop and implement a common methodology and standards for carrying out audits in respect of the public sector, bearing in mind the particularities of its various components; . However, GRECO noted in the report that the authorities have not reported on the implementation in practice of these instruments, including the development and application of a common auditing methodology and auditing standards. GRECO invited the head of the Georgian delegation to supply additional information on the implementation of certain recommendations by 30 November 2010.

### **Cooperation with the EU member states in criminal matters of judges and prosecutors.**

Promotion of a strong and independent judiciary, rule of law, protection of human rights and fundamental freedoms are among the priorities of EU-Georgia cooperation framework documents, ENP Action Plan. Along with the EU the Council of Europe attaches great importance to the status of judges and the quality of justice system in order to strengthen judiciary and increase confidence of citizens in the justice system.

In general, the issue of independence of judiciary has been one of the main concerns of Georgian public during the last several years. Recent political developments did not contributed to the increase of public confidence in judicial sector even this institute remained one of the least corrupted institutions in the country. It is still considered as politically guided and influenced, New constitutional provisions did not take into account recommendations provided by the Venice Commission regarding judiciary independence and consequently the constitutional law remained major deficiencies and did not address the problem adequately.

The Consultative Council of European Judges (CCJE) is the body in an international organization composed exclusively of judges and Georgia became a member state of the CCJE . So, CCJE opinions are to be considered during drafting national regulations and legislation, implementation of general standards in ensuring independence of judges, trainings of judges, ethics, quality of decisions etc.

The other body, Consultative Council of European Prosecutors (CCPE), a consultative body to the Committee of Ministers of the Council of Europe, was created in 2005, and institutionalised the yearly Conference of Prosecutors General of Europe (CPGE).

Georgia is a member state of CCPE, as well as the European Commission for the Efficiency of Justice (CEPEJ) established in 2002.

Georgia has not concluded cooperation agreements with the EUROPOL.

#### **4. Recommendations on possible priority areas for a follow-up detailed research and analysis**

- Study and monitor Personal Data Protection legislature development in Georgia and its approximation with the EU laws
- Develop an action plan for promoting awareness building campaign among Georgian public on visa facilitation and readmission agreements
- Investigate and monitor how the principles of good governance, transparency and accountability in the state institutions promote visa liberalization process in the country.