DEVELOPING GEORGIA'S MIGRATION POLICY: LESSONS FROM POLAND

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Ghia Nodia

Applying Polish experience to the development of migration policy in Georgia

In the 21st century, the development of an appropriate migration policy is an increasingly important issue for every country. In the last twenty years, due to political turmoil and economic shortages, a large chunk of Georgia's population has left for other countries, temporarily or for good. On the other hand, as Georgia's situation improves, it is gradually becoming an attractive destination for migrants from countries to the east and south.

In Georgia's case, the imperative to develop a comprehensive migration policy is strengthened by its closer relations with the European Union. Relations with the EU have intensified since Georgia joined the European Neighborhood Policy in 2004, and became a member of the EU Eastern Partnership (EaP) in 2009. In this context, in summer 2010, negotiations on an Association Agreement between Georgia and EU were launched. Liberalization of the visa regime for Georgians who want to travel to countries of the EU is one of the most important benefits Georgia seeks from its closer ties with Europe. However, this requires harmonization of Georgia's migration policies with European regulations and practices. Hence, when we talk about the development of migration policy in Georgia, this is usually in the context of relations with the European Union.

In 2010, Georgia established a Governmental Commission on Migration; in recent years, it has introduced a number of legislative changes and effective reforms in relevant government agencies for improving migration management and control. This illustrates that the Georgian government takes these issues seriously. In response, Schengen countries have already eased visa regulations for some categories of Georgian citizens. However, these are only first steps: Georgia's ambition is to achieve much more. This also requires further progress in developing Georgia's institutions and practices.

Georgia's rapprochement with Europe is greatly helped by a group of countries that are supportive of Georgia's ambitions, largely due to a sense of solidarity stemming from commonalities in their historical experience. Poland with its growing economic and political weight within the European Union is an especially important friend and ally. While greatly appreciating its political support, Georgia also hopes to benefit from studying Poland's experience. Unlike Poland ten years ago, today's Georgia has no clear prospect of membership in the European Union – though this is what it ultimately aspires to. At the same time, Poland is an appropriate role model for Georgia, being a formerly Communist country that has successfully harmonized its state institutions and practices with the EU in the quite recent past. This has not been an easy process but the country has done its job well as it is now a successful member of the Union.

Reforms necessary for drawing closer to the EU are somewhat controversial in Georgia as well. Having prioritized fast economic growth, Georgia has introduced rather liberal economic policies, and this includes fairly open attitudes to migration. Harmonization with European practices, however, requires greater regulation, which tends to be contrary to the instincts of some Georgian policymakers. Still, the imperative of Europeanization is much stronger than those reservations – hence the considerable progress that has been achieved in relations between Georgia and Europe so far.

Not long ago, similar political dilemmas existed in the case of Poland. Some Poles were concerned that stricter controls on the eastern border of the country would harm the economy in neighboring areas. These concerns were fully rational, but Poland managed to overcome the difficulties.

Apart from political problems, there are also lots of technicalities that may seem boring, but if they are not taken care of, may be an obstacle to the success of reforms. Strengthening administrative capacity is an important component of Europeanization as well. Direct relations with Polish agencies that have gone through drastic reforms relatively recently but have now become a successful part of the European system are extremely useful for their Georgian counterparts.

This is what the joint project between the Caucasus Institute for Peace, Democracy and Development (CIPDD), and its Polish partner – the Institute of Public Affairs (IPA) has been about. These two independent think tanks took the initiative to facilitate cooperation between state agencies of the two countries aimed at speeding up progress in harmonization of Georgian migration policies and practices with those of European countries. While the project had a practical component of en-

couraging actual learning experience through direct contacts between Georgian and Polish civil servants, this publication also includes policy studies, written from Georgian and Polish perspectives. These studies sum up the current state of affairs in the development of Georgia's migration policies and practices, discuss Polish experience in this area and its relevance for Georgia, and make specific policy recommendations addressed to appropriate actors.

In taking this initiative, CIPDD and IPA wanted to serve as partners of government agencies, but also to directly serve their societies to make people better informed on the important issues of Georgian reforms in a vitally important area, and on Georgian-Polish cooperation in this area. We hope that through our efforts we have made a valuable if modest contribution – but this is for others to judge. In any case, we want to extend our appreciation to the Polish Foreign Ministry, whose generous support made this project possible.

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Piotr Kaźmierkiewicz

Introduction

This publication is a collection of findings and recommendations, drawn up under the "Improving mechanisms of migration control and coordination of migration policy in Georgia by reference to the Polish experience" project, financed by the Polish Ministry of Foreign Affairs, as part of the 2011 PolishAid program. The project targeted officials of key Georgian institutions working to implement the country's international commitments (in particular, the readmission and visa facilitation agreement) and to develop national policy in the field of migration. Between March and December 2011, the project helped identify areas where legal and institutional reforms are needed as well as those aspects of migration control that could benefit from Polish experience.

The assessment of the Georgian institutions' needs was carried out through a combination of an analysis done by a team comprising a Georgian and Polish expert and a series of consultations with officials and representatives of non-governmental and international organizations. Attention was paid at all stages of the project to ensuring that the Georgian officials had an opportunity to raise questions of key relevance to the execution of national reforms. Preliminary answers were provided through presentations made by institutions at project seminars, comments to expert assessments and also active participation in a study visit to Poland in September 2011. The study visit helped provide the officials with relevant experience of Polish institutions in developing capacity for effective migration control and playing an active role in elaborating directions of national migration policy.

All these activities appear to be particularly timely, addressing Georgia's current needs to raise its ability to meet current challenges in migration management. Georgia is implementing readmission and visa facilitation agreements with the EU and is engaged in a dialogue aimed at launching a process ultimately leading to visa liberalization. Since December 2009,

Georgian institutions have been implementing the Action Plan on Integrated Border Management, which helps coordinate the activities of various institutions in the field of legal reforms, facilitate inter-agency cooperation and provide conditions for cross-border cooperation. Finally, questions of managing Georgian migration into the EU are being accorded an ever higher priority in national policy as demonstrated by the fact that Georgia has been pursuing cooperation with the EU within the framework of the Mobility Partnership.

This report is made up of three parts: presentation of relevant experience from Poland, a country that has trodden a path since 1989 that Georgia is currently following; an overview of the progress made by Georgian institutions so far and of outstanding needs in terms of legal and organizational reforms; and lastly a set of recommendations for the Georgian Parliament, government and the EU. Although the national chapters were developed independently, they serve a single purpose: identify key success factors as well as some of the difficulties involved in the reform process, and present the building blocks of a comprehensive national migration management system, covering such aspects as visa policy, border and residence control, access to the labor market and sanctions for violation of residence and employment regimes.

The publication is a testimony to the commitment of Poland to share its experience of moving from a country that was once perceived as a source of migratory risk to a vital link in the pan-European system of migration control. It also demonstrates the value of participation of non-governmental organizations, in particular of think tanks, in the analysis and evaluation of state activities in the field of migration policy. The report has been developed through interaction with state officials, taking into account their interests, concerns and plans, while also offering a overview of individual institutions' efforts. It is hoped that this brief, synthetic publication will usher in a broader and deeper discussion on the achievements and shortcomings of Georgian migration policy, taking into account the value of transferring international experience to help advance the reform process.

Piotr Kaźmierkiewicz

The Relevance of Polish Experience in Migration Policy Development for Eastern Partners

Introduction

The conclusion of Poland's Presidency of the EU Council, during which Warsaw loudly proclaimed its support for the process of visa liberalization with countries of the Eastern Partnership provides a good opportunity for taking stock of the progress made and difficulties encountered in the country's own migration policy. This chapter considers Poland's record on three crucial aspects of migration management that are also part and parcel of the task facing those Eastern Partnership states, including Georgia, that are keen to pursue the comprehensive reforms required to achieve a waiver of short-term visa requirements by the EU. These are as follows: making legislation an effective instrument of migration control, institutional reorganization ensuring coordination of efforts and development of a strategic approach to the planning and implementation of state activities in the area of migration.

Poland has both the capacity and the will to share its experience of developing a national migration policy in the context of European integration. It has demonstrated that, starting from the position of a country that lacked concepts, procedures and instruments for responding to emerging transit movement and immigration, it has turned into a vital element of the European system of migration control. When members of the Schengen area signed the first modern-type readmission agreement with Poland,[1] the country was still seen as a source of migratory risk, and it was during the 1990s that the foundations of a system of migration management were laid. This involved restructuring of the Ministry of Interior, which became a civilian structure, responsible politically for the oversight of operational

[1] Readmission agreement between the Republic of Poland and states of the Schengen Group of 29 March 1991.

services and converting the Border Guard from a military-type structure concentrated on the frontier into a modern police-like service, operating throughout the country and possessing investigative powers with regard to all aspects of foreigners' stay in Poland. A series of legislative amendments, most notably successive revisions of the Aliens Act,[2] enabled operational agencies to track, detect, identify and investigate irregular migrants, which was vital for the effective meeting of the country's international obligations, such as the readmission agreement. Continued legal and institutional reforms made it possible for Poland to clear successive hurdles: the closing of negotiations in the Justice and Home Affairs field – paving the way for EU accession in 2004 – and the successful verification of the country's ability to guard the EU's external frontier, culminating in Poland's full integration into the Schengen area in December 2007.

In this chapter, however, attention is also paid to Poland's continued interest in maintaining liberal access to its territory to citizens of states of the Eastern Partnership. This foreign policy priority influenced Poland's decision to delay for as long as possible the introduction of visas for citizens of neighbouring states. It was also reflected in the generally liberal practice of issuing short-term visas in the least cumbersome manner in several priority states, in particular, in Belarus, Georgia, Moldova, Russia and Ukraine.[3] When room for maneuver in national visa policy became limited following entry into Schengen, nationals of several of the Eastern Partnership states gained facilitated access to the Polish labor market. Furthermore, Polish diplomacy has striven to ensure that the road towards visa-free movement remains open to all Eastern Partnership states that fulfil the technical conditions. This was reiterated, for instance, by Foreign Minister Radosław Sikorski, who stated that "if a Partner State meets clearly set technical criteria, the visa requirement will be dropped so it is going to be a question of rate of reform, and not of politics".[4]

This chapter tracks Poland's record on developing national migration policy, while trying to balance between the requirements of EU and Schengen accession and pursuing an adequate response to the changing migratory situation – in particular, the emerging need to attract immigrants to remedy its labor market shortages and to regulate the status of its

[2] Aliens Act of 13 June 2003 with later revisions.

[3] An overview of Polish visa policy in the period leading up to EU accession is provided in: P. Kazmierkiewicz (ed.), *The Visegrad States Between Schengen and Neighbourhood: Feasibility Study for Consular Cooperation Among Visegrad States,* Institute of Public Affairs: Warsaw 2005.

[4] Statement made at a conference in Warsaw on 28 September 2011.

foreign residents. It describes the twin impact of "Europeanization" on the development of domestic policy in this field.[5] On the one hand, the clear prospect of accession was an incentive for intensifying efforts and mobilizing necessary resources into this policy area, which otherwise would have had much lower priority, given the small numbers of immigrants. On the other hand, the focus on border and migration security created a temporary imbalance in policy development, leaving such fundamental questions as the need for active recruitment of a foreign labor force and comprehensive integration activities marginalized in the period leading up to Poland's entry into the Schengen area. The drawing up of a draft of the national migration strategy, the growing significance of questions of effective integration and attempts at regularization of the status of groups of migrants in need of such solutions are signs of a new stage in Poland's regulation of migration questions. It remains to be seen whether these various initiatives are going to produce lasting solutions to an issue that is becoming more and more current in Poland.

1. Making legislation an instrument of migration control

1.1. Amending aliens legislation

An impetus for legislative changes in the area of Justice and Home Affairs was given by the European Commission, which, in its annual progress reports, noted the priority to amend laws regulating the status of foreigners so as to ensure compliance with the EU legal framework. The reports highlighted the importance of introducing EU-compliant clauses that would prevent irregular immigration, in particular, unauthorized employment of foreigners, as well as regulating the admission of foreign students and reunification of families.

The institution coordinating Poland's efforts toward EU accession in the field of border and migration control, the Ministry of Interior,[6] initiated legislative reforms aimed at harmonization with the *acquis*

[5] The impact of EU integration on the process of formation of Poland's migration policy has been covered extensively in: A. Kicinger, *Between Polish Interests and the EU Influence—Polish Migration Policy Development 1989-2004,* CEFMR 9/2005 Working Paper, Central European Forum for Migration Research: Warsaw 2005; A. Weinar, *Europeizacja polskiej polityki wobec cudzoziemców 1990-2003 (Europeanisation of Polish policy towards foreigners 1990-2003)*, Wydawnictwo Naukowe Scholar: Warsaw 2006.

[6] Ministerstwo Spraw Wewnętrznych (until 2011 Ministerstwo Spraw Wewnętrznych i Administracji), http://www.msw.gov.pl

communautaire. A fundamental step in this direction was the adoption of a new Aliens Act on 26 June 1997, which met the EU requirement of developing a comprehensive legal framework, regulating all issues related to foreigners' entry into, stay in and departure from Poland. The new act laid the foundations for a national migration policy in three ways: defining key terms in compliance with definitions used in the EU, introducing new instruments for combating irregular migration and clearly defining the competences of relevant agencies.

The Aliens Act identified the group of people that is subject to controls of entry, stay and departure, establishing basic norms, guarantees and procedures for the conduct of state officials and uniformed services officers toward this group. In line with EU standards, a single parliamentary act defined legal standards and sanctions, establishing a basis for detailed specification of relevant enforcement procedures and providing opportunities for appeal against administrative decisions.

1.2. Defining procedures for various target groups

A foreigner was defined as a person not holding Polish citizenship (thus excluding persons with dual Polish and foreign nationality).[7] Later amendments to the Aliens Act introduced differences in terms of rights and obligations between two groups of foreigners: (1) nationals of EU Member States and the European Economic Area and (2) third-country nationals. The latter group remained subject to requirements of applying for residence and work permits as well as to procedures of detention and expulsion in specified cases. Successive amendments developed and elaborated procedures for treatment of groups with special needs and characteristics as well as ones eligible for targeted support, such as refugees, persons covered by other forms of protection, repatriates and holders of the Polish Card.[8]

Apart from establishing the terms of stay for regular migrants, amendments to the Aliens Act also provided opportunities for regularization of the status of foreigners who no longer fulfilled conditions for legal residence. This was necessary to address the needs of persons who had immigrated legally but then overstayed their visa or failed to obtain the neces-

[7] Article 2 of the Aliens Act.

[8] *Karta Polaka* is a document confirming the Polish nationality of a foreigner who does not hold a long-term residence permit, who is a national of one of the post-Soviet states. The Card authorizes employment, business activity, and studies provided its holder acquires rights to legal residence in Poland (visa, permit).

sary residence permit. The first two rounds of migration amnesties, implemented in 2003 and 2007, had a limited impact as only about 4,500 irregular migrants made use of them, the majority of whom were citizens of Armenia and Vietnam. The low popularity of the program was attributed to the strict conditions, which most irregular migrants could not meet—apart from demonstrating residence for six years, migrants required proof of a source of stable income and of (legal) accommodation. The program failed to attract the largest groups of migrants—nationals of Belarus, Russia or Ukraine (who chose to continue to rely on short-term visas for entering Poland for seasonal employment).

EU-induced legislative changes had a positive impact in the field of asylum, granting an additional form of protection. The Act on Granting Protection to Aliens on the Territory of Poland[9] introduced tolerated status, accorded to those persons who were not eligible for refugee status but whose deportation was not possible. In particular, in line with the European Convention of Human Rights, it was granted to persons whose "life, freedom or personal safety would be jeopardized, and where he/she would be subjected to torture or inhumane and degrading treatment or punishment or would be deprived of the right to a fair trial in court". The introduction of this form of protection was essential to address the needs of those Chechen exiles who could not be granted refugee status and deal with those undocumented migrants whose identity could not be established.

1.3. Introducing instruments of migration control

Starting with the major revision of the Aliens Act in 1997, consecutive amendments to this fundamental act furnished state agencies such as the Border Guard with increasingly effective tools for running checks on the legality of foreigners' status. Restrictions were introduced at all stages of the procedure, starting with more stringent conditions for obtaining a visa and crossing the border. The legislation comprehensively listed the criteria for refusing a visa application, including: inconsistency between declared and actual purpose of stay, insufficient financial resources for the period of residence and lack of accommodation. Under the new rules, consuls and border guards are authorized to verify the information provided by the foreigner through direct contact with the inviting party or with other Polish state institutions (e.g. local governments, the police).

[9] Act on Granting Protection to Aliens on the Territory of Poland of 13 June 2003.

The legislation set up additional controls in the country's interior. The Aliens Act lists grounds for refusing a residence permit.[10] An application will be turned down if it is established that the applicant is not able to meet any of the three major categories of conditions. Firstly, the application will be denied if it is not possible to demonstrate that the applicant has a sufficient and stable source of income and meets tax and other obligations to the Treasury and that he or she possesses proof of (legal) accommodation (e.g. rental contract). Secondly, the applicant's name must not be included in either the national database of undesirable persons ("WYKAZ") or in the European database of persons barred from entry into EU territory (Schengen Information System). Finally, the application will be turned down if it contains false information or is accompanied by fraudulent documents or if the applicant fails to disclose required information during the interview.

In addition, the legislation introduced sanctions against foreigners violating entry and residence regulations. In particular, unauthorized crossing of the border is considered a crime, which results in placement in a guarded facility and expulsion (followed by a ban on re-entry, valid throughout the Schengen area for a minimum of three years). Amendments to the Aliens Act broadened the list of grounds for expulsion to include lack of required financial resources or unauthorized employment.[11] However, it is worth noting that forced expulsion (in a convoy) is only a secondary measure, applied in cases where there is a risk of escape. A primary form of removal is voluntary departure on the basis of an "obligation to leave",[12] which is beneficial to both the foreigner (who is not charged the cost of forced expulsion) and to the Border Guard (which does not have to deploy additional resources). Following an obligation to leave, the foreigner is subject only to a year-long ban on re-entry into Poland alone, being free to apply for a visa to other EU Member States.

1.4. Assigning clearly defined powers to relevant institutions

Reforms carried out in 1990 put two key agencies in place, responsible for planning and implementing activities in the area of control of foreigners' entry to and stay in Poland. The main line of division separated strategic oversight and political responsibility, allocated to the Ministry of Internal Affairs and Administration, from enforcement of controls, carried out by the Border Guard. A central coordinating role was assigned to the Ministry, which handles

[10] Article 57 of the Aliens Act.
[11] Article 88, items 2, 3 of the Aliens Act.
[12] Article 97 of the Aliens Act.

all matters of internal security, supervising operations of the Police and the Border Guard. On the other hand, the Border Guard have sole powers of execution of controls concerning foreigners, investigating and enforcing procedures such as readmission, detention and expulsion of irregular migrants. The Aliens Act clarified the competence of control agencies, describing their role in various procedures, the principles and forms of exchange of information and grounds for cooperation. The following sections describe the responsibilities of the agencies involved in selected procedures which are enumerated in the Aliens Act and other pertinent legal acts.

Issuing a residence permit. An application is submitted to a regional governor, who verifies whether the applicant meets requirements listed in the Aliens Act. The operational services (Border Guard, Police, Internal Security Agency) issue their opinions as to whether or not the applicant poses a threat to national security and public order. The results of these consultations are not binding on the decision, but are taken into account. Appeals against negative decisions can be brought before the Office for Foreigners, which reviews the case, considering any change in circumstances or additional documentation. If the second instance authority turns down the appeal, then the case can go before a Provincial Administrative Court, which may only admit the application if it finds a breach of procedure in the conduct in the first two instances.

Detention of irregular migrants. Foreigners may be detained only in certain cases, specified by law.[13] Detention is authorized in particular when it is necessary to effectively carry out an expulsion or revocation of a permanent residence permit (for instance, whenever there is a justified risk that the foreigner might try to hamper the execution of these procedures by seeking to escape). It may also be applied to persons attempting to cross the border without authorization or with regard to undocumented migrants for the period necessary to establish their identity. The Border Guard is currently the only state service authorized to run detention facilities: a total of two short-term detention facilities, two long-term guarded centers and four combined centers which can hold nearly a thousand detainees. Each facility is regulated by a set of internal rules in addition to an Order of the Minister of Interior, defining minimum guarantees of procedural rights, living conditions and organization of the centre. The court authorizes detention for up to three months and its decision is necessary for the Border Guard to re-

[13] Grounds for and conditions of detention of migrants are described extensively in the Aliens Act —in Articles 101-123.

ceive permission for renewal. According to a ruling by the Supreme Court, the total period of detention – authorized on any grounds – of a foreigner must not exceed twelve months, after which he or she must be either duly expelled or granted tolerated status.

Maintaining databases on foreigners. The ability of Polish institutions to detect and identify irregular migrants is conditional upon access of all the involved units to centrally managed databases. The types of collected data and access to a given set of data are regulated by the Aliens Act as well as by regulations on protection of personal data.[14] In general, data records relating to a given foreigner may only be collected, stored and analyzed for purposes of carrying out specific procedures in relation to the person in question following necessary authorization. The Act explicitly grants state services the right to collect, process and request access to information on a foreigner's personal identity, place of residence, citizenship, physical description, and educational and professional background. In addition, records of criminal convictions, court decisions and current legal proceedings may be verified by investigators. These statutory norms are the basis for the operation and integration of national databases kept by the Headquarters of the Border Guard (register of border crossings), the Ministry of Internal Affairs and Administration (central residence register: POBYT) and the Police (the AFIS fingerprint database, the CEPiK register of vehicles).

2. Laying necessary institutional foundations

2.1. Transforming the Border Guard into a migration service

The origins of the Polish Border Guard as a modern migration control service date back to 1990, when it took over the responsibilities of the Border Protection Troops.[15] The launch of the new service reflected a shift in the concept of border control in the new conditions of freedom of movement – which was recognized as an essential civil right – and in light of the new types of threats accompanying the rapid growth in cross-border movement. A new concept of border security was needed that would adequately react to new opportunities and new challenges.

[14] The scope of information on foreigners that may be collected and processed in central-level databases as well as the competence of state institutions with regard to the data is regulated by Articles 124-134a of the Aliens Act.

[15] Act on the Border Guard of 12 October 1990.

The new concept redefined the area to be controlled: the previous focus had been on a narrow frontier perimeter patrolled by armed units countering possible incursions by both foreigners and Polish nationals. The military organization of border surveillance had been based on a combination of draftees (with relatively short training), continuous barriers such as barbed wire or other forms of physical obstacles and limitation of movement in the area adjacent to the border. This model could not be sustained after 1989, when frontiers became gateways for commerce, labor migration and people-to-people contacts, and new threats such as smuggling of goods, trafficking of human beings and irregular migration called for a new response.

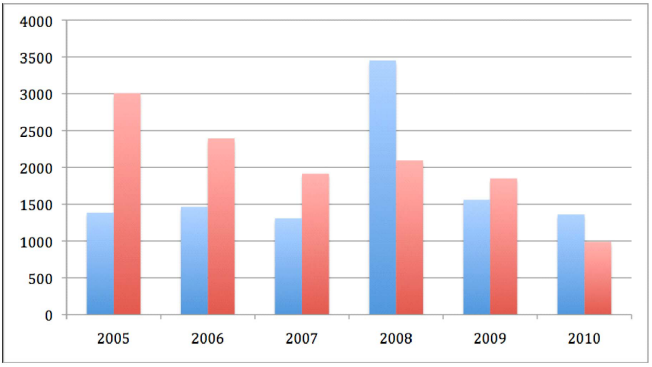
The process of turning the Border Guard into a modern service able to meet modern challenges consisted of three major components: professionalization of staff, improvement of controls on the external border and undertaking of new obligations in the field of control of legality of residence throughout the country's territory. The reforms gained momentum in the years leading up to EU and Schengen accession, when the Border Guard played a central role in fulfilling Poland's obligations. Their success was a function of the political will of consecutive cabinets to continue the reforms, to clearly allocate tasks as part of a national strategy (see section 3 for details) and to provide adequate funding for carrying them out.

Staff recruitment. The combination of these factors was evident in the first component—professionalization of staff. In the course of a review of the Polish border management system, the European Commission mandated that by 2006 all the personnel of the Border Guard should be professional and conscription into the service should be discontinued. Successive strategic documents (two national strategies for integrated border management of 2000 and 2002 and the Schengen Action Plan of 2005) set ambitious goals for reducing the number of drafted service staff and adding professional personnel. The changes were aimed at increasing the total number of staff members, while eliminating the draft, but augmenting the ranks of civilian personnel. In the first phase of the reform, change was still slow—in 2000, draftees accounted for nearly 23 per cent of the non-civilian corps, and two years later, the share still stood at nearly 17 per cent. The second stage of the reform, carried out between 2003 and 2006, envisioned a much faster rate of change, hiring 2200 full-time officers over four years, while reducing the number of draftees by 1100 a year over a three-year period. In addition, the employment of civilian staff was scheduled to increase, with over 250 new

employees hired each year, to reach 4300, accounting for roughly one quarter of the entire staff.[16]

Shifting controls to the external frontier. Since 21 December 2007, Poland has been implementing the Schengen Agreement in full, lifting regular controls on 1908 kilometers of the land border, including frontiers with the Czech Republic, Germany, Lithuania and Slovakia. Border checks have been retained and intensified on the remaining perimeter (stretching for 1163 kilometers) of the border with Belarus, Russia and Ukraine. To ensure that the liberalization of conditions of crossing of internal borders would not result in a rise in irregular migration, efforts were made to reinforce control on the external frontier. In line with the "Plan of Incorporating the Border Guard Patrol Posts into the System of State Border Protection", adopted in 1997, 22 new watchtowers were to be built in 1998-2002 and another 10 in 2003-2006, bringing the total number of patrol stations on the future external section of the frontier up to 95 in 2006. The objective was to achieve the EU standard of a distance of 20-22 kilometers per watchtower, which meant halving the length of the border protected by a single patrol post from an average distance of 43 kilometers in 1998.[17]

Fig. 1. Persons stopped by the Border Guard for illegal crossing of the external (blue) and internal (red) section of the state border



Source: Border Guard statistics.

[16] See Table 1, "Schedule of Border Guard Professionalization, 2003-2006. Additions to Service (New Hires) and Reductions of (Draft Service) Staff", in: P. Kaźmierkiewicz, *The Polish Experience in Controlling Illegal Migration: Lessons for EU Candidates and Neighbours*, Institute of Public Affairs: Warsaw, p. 21.

[17] P. Kaźmierkiewicz, *The Polish Experience in Controlling Illegal Migration: Lessons for EU Candidates and Neighbours*, p. 25. Institute of Public Affairs: Warsaw 2007.

Along with the buildup of infrastructure, the hiring policy concentrated staff on the external frontier. The effectiveness of these measures could be demonstrated by observing the shift in the number of interceptions for attempting to cross the border illegally from the internal to the external section of the frontier. Figure 1 indicates the major change that took place in 2008, the first year of full implementation of the Schengen regime and the trend in the following years. While in 2005, twice as many irregular migrants were apprehended on the internal section as on the external one, in 2008 the balance of interceptions shifted toward those on the external frontier, and the majority of irregular migrants were already stopped while attempting to enter the EU.

Internal reorganization. In 2001, ahead of EU and Schengen accession, the Border Guard was reorganized so that it could carry out its new task of verification of the legality of foreigners' residence and employment throughout the territory of Poland. An operational-investigative department was set up at Border Guard Headquarters, coordinating the work of regional units countering irregular migration, trafficking in persons, contraband and unauthorized employment. Operations in the interior became the responsibility of the Nadwislanski Division of the Border Guard.

Following EU accession, specialized units dealing with foreigners were set up within the organizational structure of the Border Guard. On 1 May 2006, a Division for Foreigners was established at Border Guard Headquarters, whose tasks included: organization of voluntary returns, readmission and expulsion, appealing against decisions of territorial commanders of the Border Guard and cooperation with the EU and other Member States. In February 2007, just prior to the full implementation of Schengen, departments for foreigners' affairs were set up in all territorial units of the Border Guard.[18]

In the period since full implementation of Schengen, the powers of the Border Guard in the area of detection, investigation and apprehension of irregular migrants have been defined in detail in a series of executive acts of the Minister of Interior. In December 2008, Border Guard staff gained powers to carry out background checks and house searches.[19] In 2009 the precise conditions in which functionaries could conduct checks on the legality of residence and employment were set forth in executive

[18] Information provided by the Border Guard.

[19] Ordinance of the Minister of Internal Affairs and Administration of 23 December 2008 on background interview carried out by the Border Guard in proceedings against foreigners; Ordinance of the Minister of Internal Affairs and Administration of 24 December 2008 on the manner of conducting a search by functionaries of the Border Guard.

regulations.[20] The new duties have been carried out vigorously—whereas in 2009, the Border Guard ran only 649 employment checks, in 2010 that number rose to 1537 and a rate of over 100 controls a month is expected to be sustained in 2011.[21]

2.2. Setting up mechanisms for inter-agency cooperation

Exchange of information and access to databases. A major component of the process of building the capacity of Polish control services to track and identify irregular migrants was the establishment of a central register of foreigners: POBYT. Under Article 132 of the Aliens Act, the database includes several components, covering the entire range of procedures involving foreigners. The register records issued visas, residence permits and identity documents as well as accompanying documents, such as invitations issued to applicants for short-term stay in Poland. In addition, records are kept of proceedings and decisions on denials of entry, obligations to leave and expulsions. The POBYT database is maintained by the Office for Foreigners, a first-instance authority issuing decisions in refugee cases, and thus includes a component on all procedures for issuing refugee status.

The Aliens Act grants direct access to the POBYT register to all state agencies authorized to monitor the activities of foreign nationals. Local units of the Border Guard and the Police may check apprehended foreigners' data in order to establish their identity or confirm facts necessary for completing their investigation. The information system also integrates data collected by these services in their internal registers – such as the border-crossing information of the Border Guard and the AFIS Police fingerprint base – with the POBYT register. By providing access to operational units of these services and integrating their databases, the system has significantly reduced the time needed to identify foreigners in the course of asylum or expulsion procedures.[22]

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[20] Ordinance of the Minister of Internal Affairs and Administration of 20 February 2009 on the conducting of controls of the legality of foreigners' employment and business activity by functionaries of the Border Guard; Ordinance of the Minister of Internal Affairs and Administration of 19 November 2009 on the manner of conducting controls of the legality of residence on the territory of the Republic of Poland.

[21] Source: Border Guard statistics.

[22] For details, see the discussion of the database system in: P. Kaźmierkiewicz, O. Lvova, V. Chumak, *Coordinating Migration Policy in Ukraine: Lesson from Poland,* IPA/ICPS Kyiv 2009, p. 38.

Operational cooperation between the Border Guard and the Police. The scope of collaboration and communication between the Border Guard and the Police were detailed in the Agreement of 17 June 2004 between the commanders-in-chief of the two services. The Agreement makes operational collaboration obligatory at all levels of the services' structures: functionaries may only turn down a request for assistance from the other service in cases where carrying it out would prevent them from performing their own duties. Assistance may be sought at any level, starting from that of patrol stations upwards. Furthermore, joint working teams may be set up to carry out investigations. The Agreement allows for sharing of information from the services' internal databases: border-crossing registers and criminal databases. Moreover, it stipulates instances in which the parties notify one another with regard to foreigner-related offenses. Under the Agreement, the Police inform the Border Guard whenever a migrant is detained on suspicion of committing a criminal offense, while the Border Guard in turn notify the Police of all instances of trafficking in persons, fraudulent passports, visas or smuggling of goods across the state border.

Joint controls with the Labour Inspectorate. Tasks related to verification of the legality of foreigners' employment are currently within the competence of both the Border Guard and the National Labour Inspectorate.[23] The two services conduct separate control activities within the scope of their statutory responsibilities. However, they are engaged in various forms of cooperation, ranging from joint training through sharing information facilitating investigation and forwarding control documentation, all the way to controls carried out together.[24]

Cooperation with the Border Guard is regulated by an inter-agency agreement,[25] taking place on the central level between the headquarters of the two agencies and locally involving district labor inspectorates and Border Guard units. In addition, internal regulations of the National Labour Inspectorate require that all inspections involving a significant number of foreigners should be done jointly with the Border Guard. In the years 2008-2010, the two agencies conducted a total of 467 joint controls, while in 329 cases the National Labour Inspectorate requested that the

[23] http://www.pip.gov.pl/

[24] Information provided by the National Labour Inspectorate.

[25] Agreement of the Commander-in-chief of the Border Guard and the Chief Labour Inspector on the manner of cooperation between the Border Guard and National Labour Inspectorate of 18 April 2008.

Border Guard carry out a check on the legality of foreigners' employment. In turn, the Inspectorate ran a total of 169 controls at the request of the Border Guard.[26]

3. Adopting a systemic approach: challenges and achievements

3.1. Stages of development of Polish migration policy

The development of Poland's national migration policy demonstrates both the difficulties and possibilities that a new country of destination faces when trying to define the objectives, parameters and instruments of its policy on the conditions of foreigners' entry, stay, employment and integration. The history of the development of the national migration policy may be divided into three stages, approximately demarcated by two momentous events: EU and Schengen accession.

The **first period** started in 1997 with the passage of the first version of a modern aliens act. This act was later amended several times, resulting in more and more control mechanisms through harmonization with EU *acquis.* This period, spanning negotiations on conditions of EU accession, was characterized by the coexistence of increasingly repressive measures due to the continuing process of "Europeanization" of border and migration control, continuing restrictive labor access conditions and a relatively liberal visa policy, especially targeting citizens of neighboring non-EU states. In this period, leading up to 2004, the policy on foreigners was quite fragmented, with some elements of continuity (visa and labor market policy), an emerging new normative framework (adoption of the *acquis*) and some areas absent altogether (lack of social integration for the overwhelming majority of migrants). However, in the context of the overall tightening of controls, a mitigating mechanism was worth noting— an amnesty was offered for the first time in 2003 to a narrowly-defined group of irregular migrants.[27]

The **second period** (2004-2007) may be retrospectively viewed as transitional, during which certain assumptions as to the need for immigration were questioned. As the scale and duration of outflow of Polish workers became apparent, the argument against greater openness of the labor mar-

[26] Information provided by the National Labour Inspectorate.

[27] The applicants had to demonstrate proof of residence in Poland for at least six years and meet the requirements of a stable income and a legal right to a place of residence (the same as the terms for obtaining a temporary residence permit).

ket to foreigners that was dominant in the 1990s under conditions of high unemployment was no longer as powerful. Following calls from Polish entrepreneurs (especially in agriculture and construction) and having acknowledged emerging gaps in several sectors, the Minister of Labour issued a decree on 30 August 2006, allowing citizens of Poland's neighboring states (Belarus, Russia, Ukraine) to take up seasonal employment in agriculture without the need to apply for a work permit. In that period, access to Polish territory became more difficult as fees were introduced for short-term visas as part of the adoption of the Schengen rules, which brought about a drop in movement across Poland's eastern frontier. Increasing restrictions on conditions of entry and legality and stay coupled with growing effectiveness of controls both on the border and in the interior made it clear that without regularization efforts, a significant group of foreigners would continue living with irregular status, thus being vulnerable to abuse of their rights. As part of the process of amending aliens legislation in the course of harmonization with EU law, another migration amnesty was announced in 2007.

At the same time, EU membership raised the priority of introducing integration measures for various categories of foreigners—starting with persons in need of protection. While the measures funded from the European Fund for Integration of Third Country Nationals[28] still had a limited scale as no comprehensive integration policy had been put in place, they did enable experts and practitioners to assess the needs of various target groups and suggest policy steps in the next stage of policy development. EU accession had another positive impact: membership and continuing harmonization of the legal framework helped expose shortcomings in official practice and highlighted the vital role of civil society organizations as both implementing agents of activities targeting migrants and as partners who need to be consulted on strategic directions of state policy.

The **current stage** of policy development started at the end of 2007 when Poland became a fully-fledged member of the Schengen zone, fully implementing the EU *acquis* in the area of Justice and Home Affairs. In this period, the process of the transfer of European norms and standards in legislation has been completed, and the long debate on the directions of national migration policy carried out among officials, experts and

[28] The allocation for Poland is set to rise from 1.2 million EUR in 2007 to nearly 2.5 million EUR in 2011 and 3.3 million EUR in 2013. For details on the activities funded by the EFI, see *Final Reports on Implementation of the Annual Programme (EFI),* published by the Implementing Authority for European Programmes in Warsaw.

practitioners has borne fruit in the form of a comprehensive draft strategy document, submitted by the Ministry of Interior for consultations with civil society in early 2011. The document reflects an emerging consensus that in the context of a significant outflow of the labor force, immigrants might play a role in addressing gaps in some sectors and that active integration efforts should be undertaken with regard to immigrants already residing in Poland. Lessons from pioneer initiatives have been taken into account in designing another round of a migrant amnesty, planned to take effect in the first half of 2012 and in liberalizing conditions of facilitated access to the labor market for nationals of Ukraine. Following an initial decline of cross-border traffic after entry into Schengen, Poland has managed to reestablish itself as a leader in the number of visas of various types issued to citizens of Eastern Partnership states as well as to nationals of Belarus and Russia. At the same time, the Polish Border Guard has become increasingly effective in countering irregular migration, managing to shift controls away from internal to external frontiers and – together with other services (e.g. Labour Inspectorate) – stepping up checks on the legality of the status of foreigners inside the country.

3.2. European integration as a stimulus to adopt a coordinated approach

Parallel to their efforts to enhance technical capacity, provide training for staff and improve norms, countries of the Eastern Partnership are faced with the task of organizing and allocating their resources through adoption of a national strategy involving all relevant agencies. The process entails clearly defining the competencies of central-level institutions and their operational services in the execution of control functions, matching tasks with necessary budgetary funds. Furthermore, the reform process needs to be divided up into separate tasks assigned to specific departments and units. Georgia is currently engaged in the process of implementation of a national plan organizing the work of all involved agencies to enable more effective controls of borders and migratory flows into and through the territory of the country.

Poland, which is actually a pioneer in this area, may offer valuable experience that can be applied to the process of planning and carrying out of activities as part of integrated border management that is underway in Georgia. Following the political decision on initiation of accession negotiations and fundamental legal changes (adoption of the revised Aliens Act

in 1997), the essential step was planning the activities of all responsible departments and agencies to achieve the ultimate objectives. Coordination of efforts took place at two levels: strategic, involving coordination of the efforts of various ministries, and operational, ensuring optimal allocation of resources and appropriate timing of activities of services directly responsible for border and migration control.

On the level of the Cabinet of Ministers, a process was launched for coordinating the activities of all ministries whose competencies covered issues related to border and migration management. A regulation of the Prime Minister of 30 October 1998 created the Interdepartmental Group for State Border Development. This interministerial body drew up a series of strategic documents, which established the framework for state activities in the area of border management: the Plan of State Border Development in 2000, the State Border Development Programme in the years 2000-2002 and the Assumptions for State Border Development Strategy by 2010.

On the operational level, the Ministry of Internal Affairs and Administration played a central role, overseeing the work of field agencies directly responsible for border management. The Ministry was tasked with developing the first planning document of its kind among accession countries, which later became a standard instrument for planning efforts in this area. The document, named *Poland – The Strategy of Integrated Border Management*, was released in 1998 and updated in June 2000, outlining all the tasks that needed to be undertaken by the Polish state by the planned date when the Polish border would become an external frontier of the Union (31 December 2002).

The document played an important role in ensuring that despite a slight delay, Poland managed to conclude talks on the Justice and Home Affairs chapter successfully, and that the sensitive subfield of border security did not become an obstacle to the country's EU integration. The success was due to three factors. Firstly, the document divided up responsibilities, leaving no doubt as to which department was in charge of which task, as well as setting binding deadlines. Secondly, the document specified allocations of funding dedicated to the development of border infrastructure, divided up according to the given task and the institution responsible. This helped the government mobilize national resources and spot any gaps for which external funding was needed. Finally, the document had a clear "owner" and mechanisms for monitoring compliance were put in place.

3.3. Development of a comprehensive national migration concept

Until the completion of the integration process, Poland had not developed a strategic concept of the national migration policy. This could be attributed to a combination of factors: the unfavorable policy environment, the shortcomings of the institutional framework and the treatment of migration in state policy.

Firstly, while EU accession was an incentive for stepping up efforts in selected areas of border and migration control, the reform process in that period tended to stress the security aspect. The urgency of meeting accession obligations through legal approximation left little space for developing a comprehensive strategy of migration policy, covering social and economic aspects.

Secondly, responsibilities for migration affairs are dispersed among several central-level institutions. The Ministry of Internal Affairs (until 2011, the Ministry of Internal Affairs and Administration) is a planning and coordinating organ for all the security-related aspects of migration management. The Ministry supervises the activities of the operational services which carry out controls of the legality of foreigners' entry and residence — the Border Guard and the Police. The Minister of Interior oversees the work of institutions making decisions on residence status — the Office for Foreigners and regional governors. At the same time, the Ministry of Labour and Social Policy plays an increasing role in the Polish system of migration management, being responsible for running integration programs and facilitating migrants' inclusion into the labor market.

Finally, elaboration of a comprehensive concept covering all aspects of migratory phenomena was delayed by the low priority of the issue in state policy. Until 2004, little attention had been paid to the place of migrants in Polish society and the Polish economy in national strategic documents. Restrictions on access to the labor market were maintained with regard to foreigners who were considered only complementary in sectors with an acute need for labor. Such an approach was based on an assessment of conditions of continued high unemployment. Polish visa policy concentrated on easing terms of short-term entry for large numbers of migrants from the neighboring CIS states. State integration programs covering a selected category of migrants were only set up following EU accession.

In turn, work on the national migration strategy has accelerated in the period since Poland's entry into the EU and Schengen. This is related to the growing awareness of the demand for foreign labor in the context of

a significant outflow of Polish workers to Western Europe. Another incentive has been the emergence of migrant diasporas (Armenian, Vietnamese) and the establishment of stable routes and patterns of circular migration between western regions of Belarus and Ukraine, on the one hand, and Poland on the other. Thirdly, EU integration has expanded the agenda of Polish state institutions, introducing such issues as the desired model of integration, civic participation of migrants, family reunification, additional protection for selected groups of foreigners and stateless persons, etc.

A necessary step towards elaborating a single strategic document in the field of migration policy was the establishment on 14 February 2007 of the Committee for Migration, an advisory body to the Prime Minister that is responsible for coordination of activities related to the development of the strategy. Chaired by the Minister of Interior and Administration, the Committee includes representatives of ministries and state agencies involved in implementation of national migration policy.[29] The Committee is responsible, among other tasks, for analyzing the directions of legal and institutional reforms of state migration policy and submitting proposals to the Cabinet of Ministers on the desired changes of policy and of competencies of various institutions. One of the Committee's working groups was given the task of drawing up the national migration strategy. The working group adopted proposals following regular meetings and cooperation with experts and a draft of the document was submitted to a series of public consultations. As of December 2011, the final version is awaiting the decision of the Prime Minister.

The document "Polish Migration Policy—the State of Play and Proposed Actions"[30] provides an overview of all the subfields of state migration policy and indicates the priorities of government activities. The general report is accompanied by an Action Plan, which aims to ensure that all the involved institutions pursue consistent activities and that migration matters are dealt with in an efficient manner. The document offers diagnosis and recommendations concerning a whole range of migration policy areas: legal and illegal migration, citizenship and repatriation, protection

[29] Members include (under)secretaries of state from the Chancellery of the Prime Minister, Ministry of Internal Affairs and Administration, Ministry of Labour and Social Affairs, Ministry of Foreign Affairs, Ministry of Economy, Ministry of Finance, Ministry of Health, Ministry of National Education and Ministry of Science and Higher Education. In addition, heads of the following agencies are represented: Commanders-in-Chief of the Border Guard and of the Police, Chief of the Internal Security Agency, Presidents of the Central Statistical Office and of the Office for Foreigners.

[30] *Polityka migracyjna Polski—stan obecny i postulowane działania,* available at: http://emn.gov.pl/download.php?s=75&id=12409

and integration of foreigners. The strategy identifies priorities in the admission of foreigners, simplifies procedures for residence and work permits (see "Opening the labor market" subsection below) and proposes an amnesty for irregular migrants (see below). It is worth noting that the document highlights the need for effective integration programs and for raising society's awareness of migrants' place in Polish society and their specific needs.

3.4. Recent solutions

Since EU accession, Poland has sought to respond to the new migratory situation—maintaining liberal conditions of entry for its eastern neighbors, filling the gaps in its labor market emerging as a result of large-scale economic emigration and regulating the status of foreign residents through a broader scheme of migration amnesty. While these solutions represent a continuation of earlier efforts (highlighted in section 3.1), they are pursued within a new policy environment. Thus, the new solutions are part of national policy building on the foundation of EU *acquis*—which is clear, for instance, in the area of visas, where Poland implements provisions of Schengen agreements or in the field of regularization, where Poland must also comply with relevant European norms, making legalization subject to constraints such as public order and security.

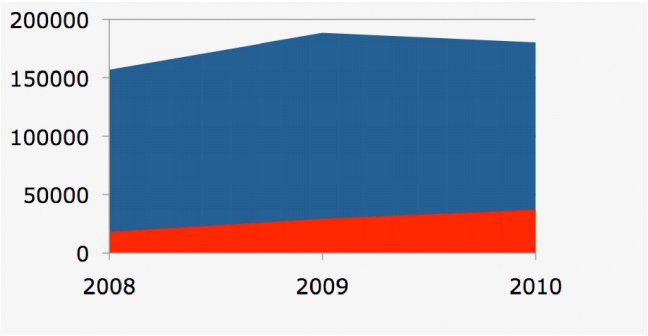
Active visa policy. Poland has maintained its course of facilitating entry for citizens of Eastern Partnership states and Russia through its visa policy, which is marked by a large number of issued visas and also by a relatively dense network of consular offices in this region. The number of visas issued by Polish consuls continues to rise—up from 789,017 visas of all types in 2009 to 895,545 visas issued in 2010 (an increase of nearly 14 per cent). According to the Polish MFA, the share of visa refusals in the top country of application, Ukraine, was among the lowest in the EU, standing at a mere 2.9 per cent. The geographical distribution of issued visas shows a clear concentration in the three CIS states neighboring Poland—over 90 percent of visas were issued in Ukraine (452,532), Belarus (202,157) and Russia (158,345).[31] The three top consulates are located less than 100 kilometers from the Polish border—Lviv, Lutsk and Kaliningrad, but Poland is seeking to make visas accessible to applicants from more distant regions as well. The Polish network of consulates was

[31] *Raport polskiej służby konsularnej za 2010 rok* [2010 Report of the Polish Consular Service], Ministry of Foreign Affairs, Consular Department: Warsaw, pp. 19, 38.

among the most extensive in Ukraine at the time of EU accession (5 consulates) and it continues to expand (reaching a total of 8 in 2011). Moreover, in light of the expected growth in cross-border traffic with Ukraine, Poland is setting up a network of 14 visa application centers (including six locations where there is no Polish consulate).

Opening the labor market. Since 2006, citizens of selected non-EU states have gained facilitated access to the labor market. Three consecutive decrees of the Minister of Labour and Social Policy have lifted the requirement to apply for work permits, replacing it with a system of employers' declarations. The new solution was introduced on 30 August 2006, applying in a limited manner only to citizens of Belarus, Russia and Ukraine who were interested in taking up seasonal employment in agriculture for up to 3 months within a period of six consecutive months. This scheme was extended on 2 February 2009 to cover citizens of two Mobility Partnership states, Georgia and Moldova, allowing them to take up employment for 6 months in a year. Finally, the most recent amendment (of 20 July 2011) provides for the possibility of changing employer during a given period of seasonal employment. As Fig. 2 shows, these measures have been used extensively by foreign workers, and the facilitated scheme is far more popular than work permits. In 2010, over 37 thousand work permits were issued to foreigners compared to around 180 thousand declarations (of which, it is estimated, 70 per cent are actually being used).

Fig. 2. Foreigners' employment on the basis of employers' declarations (blue) and work permits (red), 2008-2010



The government also recognized the need to facilitate access to the labor market for other categories of foreigners. Based on feedback from employers and applicants, several proposals were made to simplify proce-

dures for obtaining the right to work and thus create a more transparent framework for application for legal employment. The Cabinet of Ministers approved the guidelines to the draft of the new Act on Foreigners on 16 August 2011, which introduces the following solutions: (1) the possibility of applying for a work and residence permit in one procedure, (2) the opportunity for the foreigner herself or himself (rather than the employer) to obtain a temporary residence permit with the right to work, (3) the right to change employer within the terms of a work permit, (4) the possibility of staying in Poland for a month following loss of employment. Moreover, the draft law implements the EU "Blue Card" regulation, introducing a temporary residence permit, tailored to the needs of highly-skilled workers.

Migration amnesty. On 28 July 2011, Parliament approved an act, granting an opportunity for irregular migrants to legalize their stay in Poland.[32] As earlier regularization actions did not bring about desired results (with fewer than 10 per cent of irregular migrants residing in Poland who took advantage of these schemes)[33], eligibility criteria were relaxed this time. Unlike the previous schemes, this one does not require proof of (legal) accommodation or a stable source of income. The amnesty applies to all foreigners who have resided for four years or who are applying for refugee status or subject to expulsion after two years of residence. The scheme will run for six months (January-June 2012) and will enable eligible migrants to obtain a residence permit valid for two years.

Key conclusions and lessons for Eastern Partnership states

Poland is committed to supporting Eastern Partners in developing sustainable instruments for dealing with new challenges of immigration and transit migration. It can serve with its own experience of transformation from being predominantly a country of emigration into an important link in the European system of migration control, following its EU and Schengen accession. The process of achieving this has involved, on the one hand, the adoption of technical standards and the improvement of border and migra-

[32] Act of 28 July 2011 on legalization of stay of some foreigners within the territory of the Republic of Poland and amending the Act on granting protection to aliens on the territory of the Republic of Poland and the Act on Aliens.

[33] According to the Polish Office for Foreigners, the total number of irregular migrants residing in Poland ranges between 50,000 and 70,000 persons.

tion controls and, on the other hand, strategic planning, inter-institutional coordination and the development of a legal framework.

A major incentive for speeding up the process was the Polish government's commitment to joining the EU and becoming part of Schengen. The integration process required that the Polish state divide the reforms into stages, setting measurable objectives and allocating responsibilities and resources to involved institutions. Thus in 1998, the Strategy of Integrated Border Management was drawn up, followed by further strategic documents for coordinating work on improvement of border and migration controls (Schengen Action Plan). Another element of the process of building the capacity of the involved institutions was a series of amendments to the central law, regulating the conditions of foreigners' entry, residence and departure — the Aliens Act. These revisions of the law furnished the Border Guard and other state agencies (such as consular offices and labour inspectorate) with new instruments of control. These included methods for verification of documents and information supplied by the visa applicant, exhaustive lists of grounds for refusal of visa applications and for denying entry into the country as well as for expulsion.

While progress was made on raising technical standards and the operational capacity of Polish state institutions to deal with immigration, work on drawing up a comprehensive migration policy proceeded slowly. The policy agenda was dominated by the security aspect, concentrating on the establishment of barriers to entry and controls of residence and employment. However, following EU accession, Poland's migratory balance shifted, with large numbers of Polish workers leaving for Western Europe and creating a need for a foreign workforce. Also, the successive revisions of the migration legislation raised the requirements for establishment of migrants' legal status, potentially leaving some foreigners in danger of falling into irregular status.

Since the Schengen accession, Poland has been looking for ways to reconcile the requirements of effective control with its own needs with regard to facilitating foreigners' entry into Polish territory and the labor market and enabling their social integration. A major step towards achieving this was the elaboration of a national migration strategy, covering all aspects of foreigners' presence in Poland and proposing new legal and institutional solutions. A revised Aliens Act is planned to facilitate procedures for residence and work permits and another scheme for regularization of status of migrants is being drawn up to cover a larger number of foreigners in the first half of 2012. Since 2006, opportunities for taking up seasonal employment in Poland have been gradually extended to citi-

zens of Eastern Partnership states. A growing network of consular offices in CIS states serves to make visas accessible to large numbers of applicants—in 2010, over 800 thousand visas were issued by Polish consuls in Belarus, Russia and Ukraine alone.

Overall, Poland serves as a model of a state searching for optimal solutions in national migration policy, balancing security requirements and the interests of the labor market and society. Its experience demonstrates the importance of developing solid legal and institutional foundations for a long-term state migration policy. EU and Schengen accession provided such foundations, clarifying the competence of involved institutions, setting up mechanisms of inter-agency cooperation and introducing required instruments of migration control. Raising the capacity of state institutions to implement procedures for dealing with foreigners helped them define their priorities for a comprehensive state migration policy. As of the end of 2011, the draft migration strategy is awaiting the decision of the Prime Minister, and once approved, it is likely to lay the foundations for more far-reaching policies in such fields as foreigners' access to the labor market, education, social policy and their participation in other areas of public life.

Tamara Pataraia

The Development of Migration Policy in Georgia

Introduction

Managing migration has an important effect on a country's social, economic and demographic development, as well as affecting its foreign policy priorities. Since the EU, the US and other Western developed countries and international organizations (UNDP, IOM) introduced migration-related topics onto the agenda of their cooperation framework programs with Georgia, a whole new emphasis has been placed on migration policy development. For example, in 2006 the EU-Georgia Action Plan under the European Neighbourhood Policy was launched, which paid significant attention to the development of efficient mechanisms and the application of European principles to migration management in Georgia. In particular, specific migration priorities were established in the Action Plan: supporting the development of a national strategy on migration, protection of the rights and obligations of aliens, stateless persons and temporary migrants, integration of selected categories of foreigners, compliance with refugee protection standards, etc. The activities defined in the Action Plan were also aimed at strengthening the state's capacity to combat human trafficking and the smuggling of migrants.

Currently, Georgia does not have a national strategy on migration which would address the diverse needs and concerns of the state relating to migration. The EU cooperation framework could be applied as a flexible tool for the development of comprehensive practices in the migration field and could create a good opportunity for Georgia to start elaborating a migration strategy complying with international standards. International experience shows that a migration policy should be aimed at decreasing emigration from a given country through improving state policies and social assistance, eliminating poverty and increasing migrants' contribution to sustainable development efforts. Besides, it should address problems linked

to irregular migration, particularly human trafficking and the smuggling of migrants.

The report represents an attempt to give an overview of the migration situation in Georgia and evaluate the current state of affairs concerning legal and institutional developments. The report consists of five sections. The first section outlines the geopolitical position of Georgia and its implications for migration trends in the country and its neighborhood. The section also describes how the relatively unstable political environment in the region and the level of its economic development influence the magnitude of inward and outward migration flows. An increased level of cooperation between Georgia and international organizations could create favorable conditions enabling the Georgian government to improve the efficiency of state institutions and introduce adequate procedural mechanisms to control migration flows better.

The second section focuses on the efforts of the EU within the framework of the European Neighbourhood Policy, which, along with other priorities, aims to intensify cooperation with Georgia and its neighbors on migration issues – in particular, to encourage partner countries to prevent irregular migration flows, establish a migration policy framework, efficiently manage their borders and cooperate on the return and readmission of irregular migrants. Furthermore, the section describes how successful cooperation enables the EU to offer new initiatives, such as facilitation of visa policy and mobility for country nationals, which might become a good incentive for Georgia to further develop its reforms on migration related issues.

The third section identifies gaps in Georgian migration legislation in relation to international norms and standards. It points out that in the absence of a comprehensive policy approach, as is the case in Georgia, it is important to have good laws for efficient management of migration flows and for compliance with EU requirements. However, the assessments made in the section also show that the numerous migration challenges facing Georgia today call for a more complex approach. In particular, adoption of a national migration strategy would serve as a good basis for further improvement of the country's legislation on migration.

The fourth section of the report describes the main shortfalls of Georgian practice in migration management, such as absence of a comprehensive migration policy document. It reviews current attempts by Georgia to elaborate its national migration strategy in order to meet its international requirements on migration related issues, set out in the EU-Georgia Action Plan. The establishment of an interagency coordination unit, the State Commission on Migration, is considered as a step towards develop-

ment of a national strategy on migration. It is expected to improve Georgia's capacity for effective migration management and also promote closer coordination and cooperation among institutions working in economic, social, labour, trade, health, cultural and security areas.

The section also gives an overview of the responsibilities of different government institutions dealing with migration related issues. These institutions have significantly changed their practice since the EU-Georgia Action Plan under the ENP was introduced, especially after Visa Facilitation and Readmission Agreements signed between the EU and Georgia took effect on March 1, 2011. However, reforms have not been finalized yet, and it seems too early to discuss established principles of migration management in Georgia. Currently, the main challenge facing the Georgian government is to develop a national migration policy.

1. Migration Trends in Georgia

Georgia's geopolitical location allows it to serve as a transit country between Europe and Asia, connecting energy and transport systems of the two continents. At the same time, this capacity poses risks related to global migration processes that are further exacerbated by the unstable environment prevailing in the South Caucasus.

Since the 1990s, the region has suffered from three unresolved conflicts that make it difficult for countries there to develop closer cooperation and communication infrastructure among each other. All three countries of the South Caucasus region, Armenia, Azerbaijan and Georgia, have hostile relationships with their neighbors – there are no diplomatic ties between Armenia and Azerbaijan, Armenia and Turkey, and since the August 2008 conflict, between Georgia and Russia, resulting in complications in travelling and transportation between the neighbors. In addition, borders of the region's countries have not been fully demarcated since the collapse of the Soviet Union.

The approaches of the key international actors involved in the peace building process in the South Caucasus differ on issues of conflict management, regional security and stability. These diverse attitudes have affected conflict resolution in the region and presumably will continue to do so. Therefore, the South Caucasus still remains at risk of military destabilization and of an increase in the number of refugees and internally displaced persons. This context compromises the potential for economic development of the region as well.

The geopolitical context puts an onus on the Georgian Government to take viable measures and adopt a migration policy in compliance with international standards and to introduce effective migration management practice. In recent years, deepened relations between Georgia and international organizations, the EU and its member states, the US and other developed countries have created favorable conditions for the development of efficiently functioning state institutions. This cooperation also facilitates improvement of migration policy and management.

The challenging geopolitical environment, threats to territorial integrity, instabilities and limited economic capacity to create jobs make Georgia a country of origin of emigrants, as well as a target for various categories of migrants, including irregular and transit migrants.

Georgia as a country of origin. Different surveys conducted by various international organizations show that top destination countries for Georgian emigrants are: the Russian Federation, Armenia, Azerbaijan, Ukraine, Turkey, Germany, Greece, Israel, the United States, Spain and Cyprus.[1] According to the World Bank Migration Factbook, by the year 2010, the number of Georgian migrants in Russia had grown to 644,000; 72,410 in Ukraine, 41,817 in Greece, 18,164 in Germany, 10,700 in Spain, 7,399 in Turkey and 465 in Poland.[2]

However, estimating the total number of Georgian migrants abroad is quite difficult, if not impossible, as those who make a decision to leave the country on the basis of their socio-economic conditions are ready to use all kinds of legal and illegal means to achieve their goals. Consequently, there is no reliable information on the number of Georgians who have migrated to foreign countries.

At the same time, surveys conducted by international organizations allow for several assumptions to be made about general trends of emigration from Georgia. Surveys recently published by the World Bank and other international organizations show an increase in emigration flows from Georgia.[3] Official figures also confirm this trend. In particular, according

[1] Migration in Georgia: A Country Profile 2008, IOM, p.13 The Migration and Remittances Factbook 2011, World Bank, http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/Georgia.pdf

[2] The Migration and Remittances Factbook 2011, World Bank; http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/Georgia.pdf

[3] The Migration and Remittances Factbook 2011, World Bank, http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/Georgia.pdf. Bilateral Migration and Remittances 2010, Bilateral migration matrix, http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTDECPROSPECTS/0,,contentMDK:22803131~pagePK:64165401~piPK:64165026~theSitePK:476883,00.html

to the national census of 2002, about 113,000 Georgians left the country, while the 2008 survey results of the National Statistics Office of Georgia show that 173,000 Georgians emigrated from Georgia.[4]

Georgia has so far failed to conclude bilateral labor agreements with the main destination countries of its migrants.[5] In the absence of legal opportunities facilitating labor migration, most emigrants from Georgia are unable to obtain official work permits in foreign countries and mainly work on the "black" labor market. Taking into account the high unemployment rate in the country, it could be assumed that labor migration may have become an essential component of Georgia's economic strategy, which could contribute to an increase in the country's budgetary revenues. At the same time Georgian labor migrants' rights are insufficiently protected and they are often unable to get back to Georgia to visit their families for years because of their illegal status and fear of deportation.[6]

Consequently, there is no system in place to monitor legal labor migration flow from the country. However, it is evident that remittances contribute to many Georgian families' incomes. The average annual remittance over the past few years has amounted to around 1 bln USD according to data from the Georgian National Bank, accounting for about 8% of the country's GDP.[7] This figure does not particularly stand out in comparison to other post Soviet countries (Moldova – 30%, Tajikistan – 50%); nevertheless, its share in the country's GDP is significant.

Table. Value of remittances sent by Georgian migrants

Year	Transfers	GDP	% GDP
2008	$1,002,122,000	$ 12 800 000 000	7.83%
2009	$841,775,000	$ 10 767 000 000	7.82%
2010	$939,669,000	$ 11 663 400 000	8.06%

Besides the economic migrants, Georgia has to respond to the needs of special groups of people residing in Georgia and accommodate their diversified interests. The history of two unresolved internal conflicts and

[4] National Statistics Office of Georgia official web page accessed on December 27, 2011.

[5] Labour Migration from Georgia and Bilateral Migration Agreements: Needs and Prospects, Policy Review, CIPDD, 2009.

[6] Labour Migration from Georgia and Bilateral Migration Agreements: Needs and Prospects, Policy Review, CIPDD, 2009.

[7] http://geostat.ge/?action=page&p_id=118&lang=geo

Georgia's close proximity to Russia in the North Caucasus region have made it a home for refugees (mainly from Chechnya, accounting for 0.7% as a percentage of immigrants), and hundreds of thousands of Internally Displaced Persons (IDP). These people belong to the vulnerable groups residing in Georgia that could also influence the dynamics of migration flows across Georgia's international borders if their rights are not adequately protected.

In total, about 345,530 persons residing in Georgia are a target group for the country's migration and asylum policy. About 247,000 of these people are internally displaced persons, approximately 900 are refugees (mostly from Chechnya) and 30 are asylum seekers. The number of those who are residing in the country without proof of citizenship totals 1800.[8]

Table. Categories of subjects of Georgian migration policy[9]

Category	Origin	Total Number
Total		**345 530**
Refugees	Miscellaneous	900
Asylum seekers	Miscellaneous	30
Asylum seekers	Georgia	247 000
Persons with status similar to internally displaced persons	Georgia	96 000
Stateless persons	Stateless	1 800

Source: UNDP Georgia

Following the August 2008 war, international donors provided substantial political, financial and practical post-conflict support to Georgia to improve the living conditions of people affected by the conflict, and meet the basic needs of IDPs, both from 1992 and 2008 military conflicts. In May 2009, an Action Plan was adopted for implementing the State Strategy on Internally Displaced Persons for 2009-2012. These measures were mainly applied in order to ease the most pressing problems facing the IDPs after the war, provide them with basic living conditions and discourage them from leaving the country.

[8] 2011 UNHCR country operations profile – Georgia: http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48d2e6

[9] Georgia Ombudsman Report figures from 2010 January-June slightly differ from those provided by the UNDP. According to the Ombudsman Report, the government of Georgia has 15,912 IDPs registered from the 2008 war and the country accommodates 249,365 IDPs from Abkhazia and South Ossetia, which does not change the overall picture at all.

Georgia as a transit route for human trafficking. According to reports of various international organizations working on migration issues, Georgian territory is generally not considered as a transit location for migration flows. This is mainly because South Caucasian countries do not have a well developed regional transport network and direct routes to EU countries – except for sea and air connections. In particular, Georgia has no land borders with any EU countries. Neither is it located on the shortest route connecting migration source and destination countries.[10] According to the 2008 report of the International Organization for Migration, Georgia is mostly used as a transit country by migrants from Iran, Armenia, the Russian Federation and other post-Soviet countries. Illegal migrants often use the route via Turkey to enter Greece, Bulgaria or other European countries.

Georgia could also be used a transit country for human trafficking. It is a country of origin for human trafficking into Turkey, Western Europe and the United Arab Emirates and serves as a transit country for Ukrainian, Moldovan and Russian victims.[11] According to a US Department of State report, sometimes male job seekers are also subjected to forced labor in Georgia.[12]

Since 2006, in order to meet the challenges in the field of combating human trafficking in Georgia, a number of legislative changes have been adopted and information campaigns, training and other measures have been carried out. Effective mechanisms have been established for exchanging information between involved state agencies and for punishing offenders, as well as identifying and protecting victims. In 2009, authorities prosecuted 40 individuals for trafficking – including three individuals for forced labor – compared to 10 individuals prosecuted for sex trafficking in 2008. According to the 10th annual report of the US Department of State 2010, Georgia has maintained its position among first tier countries, which means that the government fully complies with the minimum standards for the elimination of trafficking.

Georgia as a destination country. Georgia rarely serves as a destination country for migration flows as, according to the results of a survey on net migration by the World Bank, emigration considerably outnumbers

[10] Migration in Georgia: A Country Profile 2008, IOM, p.13

[11] US Department of State, Trafficking in Persons Report, June 2010 http://www.state.gov/documents/organization/82902.pdf

[12] US Department of State, Trafficking in Persons Report, 2007, case of Georgia http://www.state.gov/g/tip/rls/tiprpt/2010/142760.htm

immigration.[13] But this observation is not fully shared by the Georgian government. According to the National Statistics Office of Georgia, net migration was negative (-12,100) in 2006 and positive (18,100) in 2010, which indicates a significant rise in the number of immigrants in the last few years.

Thus, it can be argued that there are challenges and risks to be addressed and new relevant tools have to be developed in order to deal with the possible inflow of irregular migrants into the country. This might become an issue of concern in the future, because currently Georgian legislation is liberal towards immigrants and provides simplified procedures for obtaining a residence permit. The laws on the status of foreigners and their entry conditions do not divide economic migrants up into "employed" and "self employed/investor" categories.[14] Georgian political leaders have explained the rationale behind the current law by emphasising Georgia's need to attract foreign workers and investors, who are viewed as an important "push factor" for Georgian economic, agricultural and tourist development in particular.[15] Even though a liberal visa policy is based on the country's social and economic needs, management and more effective regulation of migration processes are essential for establishing a friendly environment for developing the economy and attracting investments. Accordingly, it is desirable to maintain a liberal visa policy, while at the same time guaranteeing effective management of migration.

Besides, it is also important to take into account that in 2012 Georgia will assume an obligation to repatriate thousands of Meskhetians (back to Georgia), who were deported during the Soviet times in the mid-1940s, which also puts a burden on the government to ensure a proper environment for their repatriation and integration and provide them with housing and relevant social guarantees. The repatriation and integration of Meskhetians seems to be a challenging task for the country today. In 1999,

[13] Data are five year estimate, To derive estimated of net migration, the United Nations Population Division takes into account the past migration history of a country or are migration policy of a country and the influx of refugees in recent periods. The data to calculate this official estimates come from a variety of sources, including border statistics, administrative records, surveys and censuses. When no official estimates can be made because of insufficient data, net migration is derived through the balance equation, which is the difference between overall population growth and the natural increase during the intercensal period. http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/Georgia.pdf

[14] Review Migration Management in Georgia, Assessment mission report , January 2008

[15] Statement of President Saakashvili an award ceremony for businesspeople and companies organized by the Georgian Ministry for Economy and Sustainable Economy on May 11, 2011. Civil Georgia, Tbilisi / 12 May http://www.civil.ge/eng/article.php?id=23432

the Georgian Government took on the responsibility of repatriating and reintegrating Meskhetians for 12 years as a condition of Council of Europe membership. Currently, 300,000 to 450,000 deported Meskhetians are reported to be residing in various countries – mainly former Soviet Union states. The Law of Georgia on Repatriation, which took effect in 2007, was an attempt to restore historical justice through regulating legal mechanisms so that deported Meskhetians are granted Georgian citizenship.[16] By 2010, the Georgian government had processed 5,841 applications (for 8,900 persons) for repatriate status, to be followed by Georgian citizenship. This issue is an additional challenge facing the national migration policy of Georgia.

2. The Role of the EU in the Facilitation of Better Migration Management in Georgia

EU members have extensive experience of being exposed to the arrival of irregular migrants and persons in need of international protection, which is addressed at the EU level. The EU has a responsibility to maintain and consolidate its tradition of granting asylum and protection, to ensure quick assistance to all persons in need and provide shelter for those in need of international protection.[17] At the same time, the EU has developed appropriate tools in order to prevent large numbers of migrants crossing the borders irregularly. In recent years, deepening dialogue and cooperation with neighboring countries – especially those which have recently faced uncertainty due to political unrest or military conflict and which might therefore become places of origin and transit of irregular migrants – have become an essential part of EU migration policy.[18]

Current migration trends in Georgia are also addressed in EU migration policy dealing with irregular and economic migrants. The EU builds cooperation with its neighbor states, in particular with Georgia and other

[16] Deported Meskhetians: To Fergana and Back, May 10, 2011, Journal Tabula, http://www.tabula.ge/en/article-4087.html

[17] Communication From The Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Communication on Migration, Brussels, 4.5.2011 ,COM(2011) 248 final, http://ec.europa.eu/home-affairs/news/intro/docs/1_EN_ACT_part1_v11.pdf

[18] Communication From The Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Communication on Migration, Brussels, 4.5.2011 ,COM(2011) 248 final, http://ec.europa.eu/home-affairs/news/intro/docs/1_EN_ACT_part1_v11.pdf

South Caucasus states, on the principle of conditionality applied to migration issues, in order to encourage partner countries to prevent irregular migration flows, establish a viable migration policy, manage their borders efficiently and cooperate on the return and readmission of irregular migrants.[19] Successful cooperation enables the EU to offer further incentives, such as visa facilitation and mobility policies for country nationals.

Hence, the requirements to develop a migration policy and establish an effective migration management framework in Georgia has been placed high on the political agenda in parallel with deepening Georgia-EU relations within the framework of the European Neighbourhood Policy (ENP). The EU initiated a number of programs on migration with Georgia in the EU-Georgian Action Plan that was inaugurated in 2006 and took effect in 2007. In its communication of 16 May 2007 to the European Parliament, the Commission proposed to facilitate issuing visas and consider readmission agreements with Georgia and other South Caucasus countries and provide further support to these countries as regards the management of their borders, the fight against organized crime and document fraud.[20] Since then, better management of migration has been retained among priorities and become part of the EU-Georgia cooperation framework, supported through EU financial and technical assistance programs.

The EU-Georgia Action Plan of 2006 defines the development of a nationwide migration strategy and relevant action plan as one of the main priorities of Georgia, encourages monitoring of migration processes, effective coordination between state agencies and strengthened dialogue with the EU on visa facilitation and readmission. Also, under the Action Plan, Georgia has taken on the responsibility of revisiting a policy for refugees and internally displaced persons to ensure their security and proper integration into host communities. In general, more effective enforcement of the rule of law and an improved level of human rights protection, democracy and good governance are necessary factors for ensuring efficient migration management in Georgia as a foundation for intensifying Georgia-EU cooperation. The Eastern Partnership initiated by the EU in 2009 opened up new

[19] Communication From The Commission to the European Parliament, Communication on Migration, Brussels, 4.5.2011 ,COM(2011) 248 final, http://ec.europa.eu/home-affairs/news/intro/docs/1_EN_ACT_part1_v11.pdf

[20] Communication from the Commission of May 16, 2007 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union [COM(2007) 247 final – Not published in the Official Journal] http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l14565_en.htm

opportunities for Georgia and five other partner countries from Eastern Neighbourhood states to seek closer cooperation with the EU. The initiative laid down the conditions for visa liberalization in the long term.

The scope and intensity of institutional reforms implemented recently in Georgia with EU support in the field of Freedom, Justice and Security helped the country to partially meet requirements set out in EU-Georgia cooperation documents, in particular in the European Neighbourhood Policy Action Plan. It addressed the area of border management, documents security and fighting corruption, crime and human trafficking. Some reforms in the above mentioned areas contributed to the successful completion of negotiations on visa liberalization and readmission agreements in 2010.

Despite the wide-scale reforms undertaken, Georgia still faces challenges in the area of Freedom, Justice and Security which must be overcome in order to meet EU criteria. Accordingly, Georgia intends to address problems of corruption, further continue its efforts to establish the rule of law, ensure judicial independence and take strict measures concerning border security, as well as focusing on the establishment of a functional personal data management system.

In particular, recent studies have confirmed that corruption has been largely eradicated from the daily life of most citizens in Georgia[21]. However, many representatives of international organizations (the EU among them[22]) believe that Georgia still faces problems in combating corruption and that it must address institutional corruption if the country wants to move closer to the EU. Besides, the EU, within the framework of the ENP Action Plan, considers Georgia's ability to reform its judicial system as highly important and acknowledges that anti-corruption and anti-crime measures could be taken, such as improving and increasing judicial independence and impartiality.[23]

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[21] Georgia ranks 64th out of 183 countries in Transparency International's Corruption Perceptions Index (CPI) 2011, that measures the perceived level of public sector corruption in 183 countries and territories around the world . The 2011 CPI shows that perceived corruption in Georgia is lower than in several European Union member states, including Slovakia, Italy, Greece, Romania and Bulgaria and the other countries in the Western Balkans. Turkey ranks 61st and thus slightly higher than Georgia. Perceived corruption in Georgia's other neighbors is much higher: Armenia ranks 129th, Russia and Azerbaijan share place 143. http://www.transparency.ge/en/post/corruption-perception-index-cpi/corruption-perceptions-index-2011

[22] Implementation of the European Neighbourhood Policy, Country Report: Georgia, 2010

[23] Surveys indicate that most Georgians believe that current practices in courts fuel feelings of injustice among citizens as the rate of acquittals in criminal cases is less than 0.1%. Also, the U.S. State Department Human Rights Report has identified Georgia's judicial system as one of the country's greatest weaknesses, which in turn hampers the state's democratic transition as a whole.

Nevertheless, reforms carried out by Georgia in the agencies/institutions working on migration-related issues helped EU and Georgia to upgrade their cooperation in 2010, and agreements were signed on Visa Facilitation and Readmission. Enforcement of these two agreements has opened up opportunities for Georgia to continue and deepen cooperation with the EU with the aim of fully utilizing prospects of visa liberalization with the EU. The Eastern Partnership still remains the main framework initiative of the EU that aims to support Georgia in "greater facilitation of mobility in a well-managed and secure environment".[24]

On September 29-30, 2011, leaders of EU member states, representatives of the EU and Heads of State of Eastern Partnership countries reaffirmed in a declaration made at the Warsaw Summit that once agreements on visa facilitation and readmission have been effectively implemented, the EU and partner countries will take gradual steps towards introduction of visa-free regimes.[25] The document also acknowledged that visa liberalization prospects will become possible only after EU requirements are fully met and well-managed and secure mobility in two-phase action plans for visa liberalization is in place.

The declaration made at the Eastern Partnership Summit might serve as an encouragement for Georgia to continue its reforms and ensure proper implementation of Visa Facilitation and Readmission agreements in order to negotiate an action plan for achieving a visa-free regime with the EU. The progress made in implementation of the agreements will be a good criterion to be considered by the EU when making a decision as to when to offer a visa liberalization action plan to Georgia. Until then, as was acknowledged by the EU, the Ukrainian and Moldovan visa liberalization action plan could serve as a model for Georgia on which to base its continued development of migration related policies and reforms.

3. Legislative Framework of Migration

Since 2006, the Government has implemented a number of changes in the legislation relating to migration as recommended by the EU and other international organizations. However, according to international donors and

[24] Joint Declaration of the Warsaw Eastern Partnership Summit, Warsaw, September 29-30, 2011; http://www.easternpartnership.org/sites/default/files/joint_declaration_eap_summit_0.pdf

[25] Joint Declaration of the Warsaw Eastern Partnership Summit, Warsaw, September 29-30, 2011; http://www.easternpartnership.org/sites/default/files/joint_declaration_eap_summit_0.pdf

experts, the existing legislation in Georgia needs further revision and development. This need is also acknowledged in sectoral strategic documents issued by different governmental agencies dealing with migration issues.[26] Adoption of a comprehensive national migration strategy will serve as a good foundation for further improvement of the country's legislative environment on migration.

As at 2011, Georgian migration-related legislation consists of both international conventions and national laws. Georgia is a signatory of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, providing social protection to refugees and asylum seekers. In 2011, Georgia acceded to the UN Convention on Statelessness, though till now it has not become a party state to the 1961 European Convention on Nationality. It is expected that Georgia will accede to the latter convention soon.

The following laws regulate migration processes in Georgia

- The Law on Citizenship of Georgia was adopted in 1993. The Law has been amended more than ten times since 2006.
- The Law on Procedures of Registration and Identification of Georgian Citizens and Foreigners Living in Georgia (adopted in 1996, more than 13 amendments since 2006);
- The Law of Georgia on the Rules of Temporary Exit and Entry into Georgia of Georgian Citizens (adopted in 1993, 7 amendments, last amended in June 2011;
- The Law on the Legal Status of Aliens (adopted in 2005, last amended in June 2011)
- The Law on Refugees (1998, last amended in 2010)
- The Law on Personal Data Protection (approved on December 28, 2011)
- A draft Law on refugees and persons with Humanitarian Status (yet to be submitted to parliament)

Georgian legislation on migration has been evaluated by a number of experts commissioned by international organizations working on migration. The present review of the Georgian legislation is extensively based on these evaluations as well as on feedback received from the Georgian government. Hopefully, this allows for a more or less full

[26] Civil Registry Agency, 2007-2011 Strategic Development Plan, 2007/2008

picture of the achievements of and challenges facing the legislative framework for migration.[27]

Legal Status of Foreigners. The Law on the Legal Status of Aliens establishes the legal status of foreigners or stateless persons and regulates their entry, stay, transit and exit rights, scope of freedom and responsibilities in the country.

According to international experts, the existing visa regime in the country is too liberal when compared with international standards. This criticism relates to the limited number of visa categories as well as to simplified procedures of obtaining a visa at the borders. The law distinguishes only four categories of visas – diplomatic, student, business and ordinary visas. This arrangement is not consistent with the legal practice in EU member states.

Besides, nationals of many countries can enter Georgia without a visa. No visa is needed for a 360 day stay by citizens of over 80 countries.[28] An alien who wants to stay in the country for a longer period may stay on the basis of a temporary residence permit. Some experts conclude that these factors might have an adverse effect on Georgia's labor market, leading to high unemployment in the future.

At the same time, Georgian law does not place full responsibility on Georgia to define the status of those third country nationals who might be returned to Georgia under readmission rules from EU countries.[29] According to EU norms, certain procedures must be introduced for the purpose of their identification (for example, detention of foreigners at special temporary detention centers).

Economic migrants. The legal provisions on aliens do not place any restrictions on employment or economic activities of persons entering the country with an ordinary visa[30]. The labor code does not define rules of employment of foreigners, neither does it limit their business activities. In

[27] On October 2-5, 2007, at the request of the Georgian government, IOM performed an evaluation of the migration management system in Georgia. The project was jointly funded by the EU together with the Czech and German governments. The evaulation aimed at assessing the conformity of Georgian migration legislation to international standards, EU legislation and aims and objectives laid down by the ENP.

[28] Law on Legal Status of Aliens; Official website of the Georgian Ministry of Foreign Affairs, http://www.mfa.gov.ge/index.php?lang_id=GEO&sec_id=386

[29] EU Georgia readmission agreement took effect on March 1, 2011

[30] Law on Legal Status of Aliens; Review of Migration management of Georgia, IOM Assessment Mission Report, January 2008

particular, there are no limitations on employers relating to the hiring of non-Georgian citizens, as there is no work permit system for foreigners – a contract alone suffices to issue a residence permit.

There are reasons for the approach taken by the Georgian government towards the development of a legal framework and its attitude towards legal migration. The Georgian authorities claim that they are seeking to develop a liberal economic model in the country. Politicians in Georgia often state that the country should follow Singapore's economic model.[31] Therefore, Georgian leaders acknowledge that the national migration policy should be focused on attracting a foreign labor force and investors, as they can contribute to the country's economic development.[32] At the same time, Georgian authorities claim that due to a lack of regulations limiting the stay of aliens in Georgia, the country needs no special detention facility for migrants and therefore no resources for their living conditions.[33]

EU experts suggest that the migration legislation should be stricter.[34] However, the Georgian government has been reluctant to implement radical reforms of the legislation concerning migration, though there have been attempts to decentralize and improve visa policy, expulsion procedures and other migration-related issues.

Detention. The EU regulations require administrative detention of those foreigners who overstay or illegally cross the border. There is a mismatch between regulations in Georgia and the EU norms. Different sets of laws regulate different types of violations in Georgia. In particular, according to the Georgian Law on the Legal Status of Aliens, all foreigners violating immigration laws are subject to administrative detention. In turn, the Administrative Code of Georgia limits the duration of administrative detention for administrative infringements to only three hours, which makes it almost impossible to determine the personal details of foreigners during administrative detention.[35]

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[31] http://www.independent.co.uk/news/world/europe/boer-farmers-head-for-new-home-in-georgia-2128794.html

[32] "Our economic model should be as liberal as it is in Singapore and we should use our geographical location like Singapore uses its. . ." Saakashvili stated at an award ceremony for businesspeople and companies organized by the Georgian Ministry for Economy and Sustainable Economy on 11 May 2011. Civil Georgia, Tbilisi / 12 May http://www.civil.ge/eng/article.php?id=23432

[33] Information provided by Civil Registry Agency, December 28, 2011

[34] Review of Migration management of Georgia, IOM Assessment Mission Report, January 2008

[35] *Ibidem.*

At the same time, Georgian law considers immigration infringement, such as irregular border crossing, as grounds for a criminal conviction. Unlike in the EU, no "specialized facilities" for detention of irregular migrants have been set up in Georgia other than a prison; neither does Georgian law require that irregular migrants be held separately from other detainees in prison facilities. It is acknowledged that Georgia observes very strict detention rules for irregular border crossing, while all other immigration infringements are only subject to a fine.[36]

The present Law on the Legal Status of Aliens adopted in 2005 has been amended several times since then. However, the Law still suffers from several flaws which need to be addressed in order to make it in compliance with EU norms and standards on migration. For example, the current law needs to consider specific provisions to address the interests of the most vulnerable asylum-seekers, such as women and children. According to the 2011 UNHCR country operational profile report, the UNDP is helping the Georgian government to amend the legislation on the legal status of foreigners, as well as providing technical assistance and capacity building to ensure that the legislation is fully implemented.

Economic migration out of Georgia. In spite of the fact that entry procedures are extremely simple for foreign citizens, allowing them to easily obtain a work permit, change their status etc, there is no international agreement that regulates the outflow of Georgians seeking employment outside the country and their returning processes.

In fact, remittances contribute significantly to the country's economy, amounting to 8% of its GDP. However, there have been no attempts by the authorities to protect the rights of those working abroad and improve their working conditions. A viable measure to regulate issues related to migrants is to sign a bilateral agreement between states. The only agreement of this kind has been signed between the governments of Georgia and Azerbaijan, mostly regulating social status,[37] while there is no such agreement signed with Greece, the Russian Federation, Austria, the US, the UK, Italy, France and other countries which are major destinations for Georgian migrants.

Migration policy should consider and respond to the current context, whereby labor export can become one of the key components of the country's economic development strategy. Regulation of migration flows is potentially a means to increase the country's revenue. However, most

[36] *Ibidem.*

[37] Labor migration from Georgia and bilateral migration agreements: Needs and prospects, Policy Brief, CIPDD, http://cipdd.org/files/40_400_898862_migr-geo.pdf

Georgian emigrants cannot work legally in foreign countries and do not participate in official labor markets, thus receiving much lower salaries with unprotected rights.[38]

According to the latest official statements, Georgia is planning to gradually facilitate legal labor movement, including agreements on labor and circular migration with EU member states.[39] Negotiations concerning agreement on circular migration have already started with France and procedures for signing the agreement have been finalized. Concrete steps have been taken to regulate labor migration and other migration-related issues with Germany as the state migration commission has signed a memorandum of understanding with two German development agencies – the German Foundation for International Development (GIZ) and the Development Centre (CIM)). Prospects for cooperation with other countries, including EU member states and, in particular, the UK and Greece, have also been identified.[40]

EU-Georgia cooperation within the framework of the *Mobility Partnership* that was launched on February 16, 2010 might become a good tool to increase Georgia's capacity to manage labor migration. According to the *Joint Declaration of Mobility Partnership,* the initiative proposes the following:

1) strengthen Georgia's capacity to manage labor and return migration through experience exchange, setting up of a unified database on migration and conducting analysis;

2) facilitate labor migration, support returnees – in particular, the voluntary return of highly-skilled migrants in order to counteract the brain drain from the country and support circular migration

3) develop an asylum policy and a refugee protection system

4) fight illegal migration and human trafficking

5) support Georgia in its effort to implement a readmission agreement with the EU.

Statistics on migration monitoring. Another problem area relates to the need to establish a unified migration data bank, as foreseen by Article 66 of the Georgian Law on the Legal Status of Aliens. No such database

[38] Labor migration from Georgia and bilateral migration agreements: Needs and prospects, Policy Brief, CIPDD, http://cipdd.org/files/40_400_898862_migr-geo.pdf

[39] Information confirmed by state official from the Civil Registry Agency, Ministry of Justice, December 28, 2011

[40] Information confirmed by state official from the Civil Registry Agency, Ministry of Justice, December 28, 2011

has been established to date. In June 2010, the Civil Registry Agency of the Ministry of Justice of Georgia with the support of the Italian government and the International Organization for Migration (IOM) launched a project on the introduction of an internal and external migration statistics data management system. According to officials, the database system will be very helpful for solving various migration-related issues.[41] However, at the same time, it is still not clear how the Civil Registry Agency management is planning to integrate all necessary data dispersed throughout different agencies, such as the Ministry of Interior, Ministry of Justice, Ministry of Internally Displaced Persons from Occupied Territories, Refugees and Accommodation etc. All of these bodies hold information separately and no effective information exchange mechanism or means to link the databases has been put in place. Thus full information on specific foreigners cannot be accessed simultaneously. It is important that an agency should be identified that will manage the database and coordinate the entire process.[42] The current situation is that all relevant agencies have identified contact persons who will be involved in the establishment of such a system and the process of allocating necessary resources is also being initiated.

It is worth noting that a unified migration database is the subject of interest of EU member states, as a database is a valid instrument for combating irregular migration. Such a database is expected to contain biometric data on registered refugees and foreign citizens with various statuses, allowing for prompt identification of those persons who violate a visa regime.

Document and Data Security. Issues related to **document safety** remain a key factor for the improvement of migration management in Georgia. Since 2005, important measures have been taken in this field. The safety of documents issued by Georgian state agencies has been significantly improved; moreover, biometric passports have been issued since 2010. The Civil Registry Agency of the Ministry of Justice is the body responsible for the safety of documents issued to Georgian and foreign citizens. However, numerous changes have been made to specific laws over the years. For instance, the key Law – "On Procedures of Registration of

[41] http://www.justice.gov.ge/index.php?lang_id=ENG&sec_id=143&info_id=2432

[42] An agency that would coordinate the new system has not been formally identified yet, and it is possible that the Civil Registry Agency will not take charge of it; other institutions should participate in this process as well (e.g. Ministry of Internal Affairs and the Ministry of Foreign Affairs).

Georgian citizens and Foreigners Living in Georgia" – was first adopted in 1996. Since then, various amendments and additional regulatory acts have been added to the law. Especially numerous amendments have been made to the law since 2008, aimed at a smooth transition of the system and at addressing new technological challenges. However, the changes have made provisions of the law very vague and, furthermore, they contain shortcomings and are deficient from the legal point of view.[43] Attempts at further improvement of the legislation are underway.

Georgia's existing legislation does not regulate personal data security issues thoroughly. Since the personal data security issue is quite extensive and is not limited solely to information at the Civil Registry Agency, a draft Law on Personal Data Protection has been developed by a working group set up under the Ministry of Justice in 2010. The draft of the law was submitted to parliament in 2010. The elaboration of the new law was aimed at creating a legal framework that would guarantee information safety and confidentiality, as well as implementing the Council of Europe 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.[44] Representatives from the non-governmental, as well as the private sector were involved in the process of elaboration of the draft law.

The 2007-2011 Strategic Action Plan elaborated by the Ministry of Justice of Georgia pays special attention to the establishment of legal mechanisms for a personal data protection system in Georgia. According to the document, the government of Georgia is planning to place all personal data under the supervision of one agency (Data Exchange Agency), which underlines the importance of the creation of a reliable mechanism for information security and safety.

The final version of the draft Law on Data Protection and relevant amendments to current Georgian laws/normative acts (General Administrative Code of Georgia) were submitted to parliament in November 2010 and parliament adopted the draft law in the first reading. The draft law was finally approved on December 28, 2011. Experts have expressed their concern about the vagueness of the legal provisions, which authorize the designated state agency to access special categories of personal data, such as ones relating to racial and ethnic origin, religious and political beliefs, state of health etc. These data are considered very sensitive and should not be as easily accessible as they will become after implementation of the

[43] Civil Registry Agency Strategic Plan, 2007-2011. www.cra.gov.ge

[44] Signed by Georgia on November 21, 2001; ratified on December 14, 2005 and entered into force on April 1, 2006.

new law.[45] Besides, the law identifies the prime-minister as responsible for appointing the head of the Data Exchange Agency. Accordingly, experts have expressed concern that the level of accountability of the Agency to the public will remain low.

Laws on Refugees and Stateless Persons. The Law of Georgia on Refugees took effect in 1998. The UNHCR office in Georgia has been closely cooperating with the Georgian government, assisting them with improving refugee status identification procedures. According to the amendments to the Law on Refugees of 2010, the commission formed in accordance with the Georgian legislation under the Ministry of Refugees is responsible for registering persons who enter the country under the Prima Facie principle and identifying their statuses. The commission has the right to apply to authorized state agencies and services, as well as non-governmental and international organizations if it fails to solve the issues under its competence because of missing information or documents. The commission is authorized to invite representatives of state and non state agencies to participate in the activities of the commission. By 2010, about 900 persons had been registered as refugees, as suggested by UNDP data.[46] However, according to information placed on the official website of the Ministry, the number of refugees totaled 573. Most of the refugees registered in the country were displaced from Chechnya after the 1999 war and reside in Georgia's eastern Akhmeta district.

Besides, the Government has acknowledged 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 (Georgia has already acceded to the 1954 Convention on Statelessness).[47] UNHCR and other donors support the Government in drafting laws. The Government also foresees the voluntary return of some Meskhetian Turks in 2011 to Georgia; UNHCR expresses its readiness to advise the authorities on the implementation of a return program, paying particular attention to the prevention of statelessness. A Working Group on Stateless Persons under the aegis of the State Commission on Migration also drafted amendments to the legislation regulating procedures of defining the status of stateless persons.

[45] December 29, 2010, 24 Saati (24 Hours) newspaper, interview with Vakhushti Menabde, lawyer from Georgian Young Lawyers Association

[46] http://mra.gov.ge/main/GEO#section/67

[47] 2011 UNHCR Planning Figures for Georgia http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48d2e6

Human Trafficking. In 2006, Georgia adopted the Law on Combating Human Trafficking. The Law rests upon three principles: victim protection, prevention of human trafficking and prosecution of offenders. The Law stipulates the following: establish a national fund for victim protection and assistance, operate a shelter, establish a coordination council to combat trafficking in persons, set up a database of violators and develop appropriate state mechanisms.[48] In addition, the Law on the Legal Status of Aliens allows foreign victims of trafficking to stay in the country even if responsible agencies fail to duly submit proof to confirm the status of the victim.[49] In 2006-2010, Georgia joined the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons (2006) and the Council of Europe Convention of 2005 on Action against Trafficking in Human Beings (March 14, 2007).

It can be concluded that the Georgian legislation concerning migration is undergoing reforms. New laws are planned to be adopted and amendments made to existing laws. However, these changes need to be systematized. It is expected that development of a migration strategy will help Georgia to perfect the legal reforms and develop an effective migration management system conforming to European standards.

4. Development of Migration Policy and Practice in Georgia

In 2010, the government of Georgia announced its readiness to start the development of its national migration strategy, which would be relevant to international requirements: a coordinating body – a state interagency commission – was created to comprehensively deal with the issue. The commission is authorized to promote close coordination and cooperation among institutions working in economic, social, labour, trade, health, cultural and security areas, as all of these have their own implications for migration policy.

Currently, there is no common model accepted or agreed on by EU member states for creation of coordinating mechanisms among state executive bodies. Some states employ a more decentralized institutional arrangement for migration management, without identifying any coordinating body, while in others an established coordinating body is responsible to a

[48] Minnesota Advocates for Human Rights (2006) Measures and Actions Taken by Georgia against Trafficking in Persons – 2006, http://www.stopvaw.org

[49] US Department of State, Trafficking in Persons Report, 2010, case of Georgia http://www.state.gov/g/tip/rls/tiprpt/2010/142760.htm

single ministry. Georgia still has to make a decision on how to arrange its migration management.

4.1 Interdepartmental Governmental Commission for Migration

In 2010, the Georgian government took concrete measures to improve the management of migration policy. Under Decrees No 314 (2010), and No 94 (2011), the Governmental Commission on Migration Issues was established as an advisory body to the government of Georgia. The main objective of the Commission is to develop a national migration policy and improve the management of migration processes in Georgia. The Commission has to: propose initiatives to the government that are in line with the obligations undertaken by Georgia within the framework of the ENP Action Plan,[50] receive all necessary information from any state agency upon request, prepare legal initiatives and recommendations on migration, coordinate activities of government agencies with international organizations, prepare proposals for creating favorable social and economic conditions for Georgian returnees, etc.

In total, eleven ministries are represented on the commission:

1. Ministry of Foreign Affairs
2. Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia
3. State Minister on Diaspora Issues
4. Ministry of Justice (Civil Registry Agency)
5. Ministry of Labor, Health and Social Affairs
6. Ministry of Internal Affairs
7. Ministry of Finance
8. National Statistics Office
9. Ministry of Economy and Sustainable Development
10. Office of the State Minister on European and Euro-Atlantic Integration
11. Ministry of Education and Science

The Deputy Minister of Justice, the head of the Civil Registry, is a chair of the Commission.

According to the regulations, the Commission convenes twice a year. The last meeting was held on November 3, 2011 to discuss, inter alia, progress on a migration strategic document and creation of an integrated migration database, as well as proposed reaction models for challenges facing Georgian migration policy.

[50] Governmental Decree #314, October 13, 2010. Governmental Decree #94, February 23, 2011

Besides, one of the responsibilities of the Commission is to create working groups for the accomplishment of special tasks. Thus, three working groups have been established: 1) consolidation of reintegration activities, 2) statelessness and 3) migration strategy. Moreover, a special group for developing national migration strategy was created on May 19, 2011. The following four main strategic directions have been selected by the (special) working group to focus on: 1) promotion of legal migration, 2) fighting irregular migration; 3) asylum policy, 4) reintegration. It is extremely important that all these directions are reflected in the strategic document.[51]

The establishment of the governmental commission and the working group gives hope that the authorities are planning to accelerate the development of a migration policy, as it is currently a challenge for them to respond to migration-related issues on a daily basis.[52] This became especially evident as soon as the EU-Georgia readmission agreement came into force and Georgia faced the challenge of readmitting hundreds of Georgian nationals back into Georgia. This also means that alongside deepening relations with the EU, the government has to revisit the regulatory legislation in order to support the visa liberalization process and further improve administrative management of migration.

Apart from preparing strategic documents, another of the Commission's functions is promotion of the development of a single integrated migration database, which should bring together all available data on various categories of migrants collected during the reforms and now scattered among different governmental agencies. While residence permits are issued by the Civil Registry, information on illegal migration is stored in the Ministry of Internal Affairs, which is responsible for readmission of citizens from the EU. The Ministry of IDPs and Accommodation keeps the files of all IDPs, refugees, repatriates, stateless persons and asylum seekers. Up till now the lack of constant liaison and information exchange between them, with each maintaining its own database, has made it hard to analyze the existing information efficiently, regularly update migration profiles and monitor migration processes both inside and outside Georgia. An example is the difficulty in tracking down foreign nationals overstaying their Georgian visas. In this case, appropriate procedures and regulations should be

[51] Official from the Civil Registry of Georgia, November 8, 2011

[52] Georgian international obligations, such as implementation of a readmission agreement with the EU on nationals and third country nationals, repatriation of several thousand Meskhetians, integration of hundreds of thousands of IDPs and several hundred refugees from Chechnya, could be good examples showing that Georgia is facing challenges on migration related issues.

in place to enable Georgian consulates and involved departments of the interior ministry (i.e. the Patrol Police Department) to regularly exchange data on terms and expiry dates of visas or residence permits issued to foreign citizens either by the Ministry of Foreign Affairs or the Civil Registry Agency.[53]

It would be reasonable and helpful to integrate all this information into a single database, which would give the government a clear and comprehensive picture of ongoing migration processes and address problematic issues in a timely manner. It is the Commission's responsibility to support the creation of such a database, but it is the role of the strategic document to define whether the database will be managed by a separate newly established body or coordinated by one of the institutions that has experience of working with well-secured databases.

It would be useful to create a single interagency body to coordinate the activities of all governmental agencies responsible for migration management in Georgia. Such a structure would be in a better position to collect, process and statistically analyze all migration-related information. The analysis would provide a basis for regular revisions and timely updates, whenever necessary, of national strategic documents on migration. But the issue has not been discussed openly among Georgian officials yet.

The State Commission supports and actively participates in EU financed projects. Currently different international organizations (IOM, International Centre for Migration and Development, Danish Refugee Council) are implementing projects aimed at building the capacity of state agencies involved in managing migration, implementing the readmission agreement and supporting the reintegration process funded by the EU. Also, within the framework of the *Mobility Partnership,* a target initiative for Georgia is being implemented. The initiative has many components and mainly focuses on reintegration of returnees. The Civil Registry Agency, as a secretariat to the Commission, supports effective implementation of all these projects.[54]

Thus, the establishment of the Commission constitutes one of the final stages of work on the national migration strategy, which has also encompassed research aimed at identifying challenges facing Georgia's migration policy. The Commission is working to define competences of different agencies in order to fully utilize their potential. It also plans to assess needed resources for the achievement of the objectives to be set out by

[53] Review of Migration Management in Georgia, IOM, Assessment Report, 2008

[54] Information provided by the Civil Registry Agency, December 28, 2011.

the national strategy on migration, but until the document and its subsequent action plan have been drawn up, no figures can be certain on planned expenditures of the state on establishment of viable migration management practice in Georgia.

4.2 The Civil Registry Agency at the Ministry of Justice of Georgia

The Civil Registry Agency at the Ministry of Justice of Georgia is one of the governmental agencies dealing with problems related to migration of Georgian and foreign citizens. The Civil Registry Agency is authorized to issue, extend and terminate residence permits for foreign citizens and to issue decisions on refugee status in Georgia. Under the relevant legal framework, the Agency is also responsible for expelling foreign nationals from Georgia and emigration of Georgian nationals to foreign countries.[55] It also collects and stores data on legal migration using citizenship documents, temporary or permanent residence permits, emigration permits and decisions to expel.

At the local level, citizenship and migration issues are managed by regional offices of the Civil Registry Agency, which operate in every region of Georgia. Local offices of the Civil Registry Agency collect and forward citizenship applications to the President's Office for review, but retain exclusive competence to make decisions on residence permits.

According to the interviewed Civil Registry Agency officials, the number of temporary and permanent residence permits issued by the Agency substantially increased between 2009 and 2010, which might indicate on increased interest of potential migrants to stay and work in Georgia. In 2009, the Agency issued 2,735 and in 2010 – 4,859 temporary residence permits, while the numbers for permanent residence permits were 1,350 in 2009 and 2,528 in 2010.

Under Georgian law, the main requirement to obtain a permit for temporary residence is a certificate of employment issued by an employer or proof that an applicant is studying in Georgia. Citizens of the following countries mainly request residence permits in Georgia: Russia, Ukraine, China, India, US and Iran[56]. In order to receive a permanent residence permit, the applicant has to prove s/he has relatives in Georgia or has already extended a temporary residence permit twice. The law says that any alien residing in Georgia for the last six years may acquire a permit

[55] This responsibility was conferred onto the Civil Registry in February 2009

[56] Data provided by an official from the Civil Registry, November 17, 2011

for permanent residence. According to the Law on Legal Status of Aliens, a person can receive the first temporary permit for not more than one year, and the further extension period may last up to five years. The regulations allow an alien to apply for a permanent residence permit after six years of residence in Georgia, in contrast with EU regulations which allow issuance of long-term (permanent) residence permits after five years of residence.[57]

The Georgian President has the power to grant citizenship, at his discretion, to eminent public figures, deprive a person of citizenship and declare a foreign national *persona non grata* in Georgia. In 2009, the Georgian President granted citizenship to 7,497 persons, in 2010 – 8,424 persons. Mainly citizens of Georgian origin from Russia, Armenia, US, Belarus, and Kazakhstan applied for Georgia citizenship during this period.[58]

The Civil Registry Agency has been significantly reformed in recent times. The objectives and outcomes of the reforms are described and assessed in its 2007-2011 Development Strategy. According to this document, the Civil Registry has begun to compile an integrated database of biometric passports and electronic IDs. The database contains full biometric data, compliant with international standards, on every Georgian citizen. According to the official documents, the database is regularly updated and monitored and appropriate safeguards are upgraded. In the future, the Civil Registry will be able to exchange information about Georgian and foreign citizens with other governmental agencies. But the Civil Registry's ability to carry out these functions efficiently depends largely on the willingness and readiness of partner governmental institutions to cooperate and share information. However, as mentioned above, Georgian state structures have little experience of information exchange on migration related issues, since they have only recently assumed these competences.

Since 2010, the Civil Registry Agency has acted as a secretariat to the State Commission on Migration and has provided organizational-technical and intellectual assistance to the work of the Commission.

4.3 Ministry of Foreign Affairs

The Ministry of Foreign Affairs (MFA) plays a leading role in regulating the status of foreign citizens in Georgia. Various departments of the

[57] Review of Migration Management in Georgia, IOM, Assessment Report, 2008

[58] Data provided by an official from the Civil Registry, November 17, 2011

MFA (consular services and those responsible for Euro-Atlantic integration, foreign relations, international economic, cultural and humanitarian cooperation and security) are involved in dealing with migration problems to varying degrees.

The biggest responsibility in this respect rests with the MFA Department of Consular Services. According to the Law on Consular Offices, the main duty of Georgian consulates is to register Georgian citizens in foreign countries and protect their legal rights using all means at their disposal.

Consular services include issuing, changing or terminating, if necessary, diplomatic, work-related and travel passports for Georgian citizens and issuing, extending, changing or terminating Georgian visas for foreign citizens. The consulates are also responsible for authenticating official documents of Georgian citizens. According to the Civil Registry Agency under the Ministry of Justice of Georgia (MoJ), around 30 Georgian consulates represented in EU member states have been equipped technically and programmatically to adapt to provisions of the Visa and Readmission Agreements.[59]

According to MFA regulations, the Department of Consular Services is authorized to establish and maintain diplomatic and consular contacts with foreign countries and international organizations. It also studies emigration tendencies in Georgia and has a certain role, within its competence, in migration management policy.

The Law on the Legal Status of Aliens in Georgia, which came into force on June 1, 2006, was the first step in the Georgian government's plan to liberalize its visa policy. In the following years, Parliament passed a number of significant amendments to the law, substantially easing the visa regime for citizens of EU and other countries and enabling them to freely travel throughout Georgia. Today citizens of more than 80 countries can enter Georgia and stay in the country for up to 360 days without any visa. The lifting of regulations on entry into Georgia has enabled an increase in the number of tourists and visitors from the EU and other countries in recent times (see below).

Apart from the Georgian consulates in foreign countries, foreign nationals are given the opportunity to obtain a three-month visitor's visa at any Georgian border crossing from responsible bodies of the interior ministry. It is noteworthy, however, that such visas are available only in

[59] Interview with Giorgi Gabrielashvili, the Deputy Head of the Civil Registry, Ministry of Justice of Georgia, conducted by the European Initiative Liberal Academy, Tbilisi, on October 6, 2011 (Report on 2011 ENP AP Implementation, work in progress, OSGF)

situations defined in the Georgian President's Decree in the matter. In 2010, the Civil Registry was also given the authority to issue ordinary visas to foreign citizens.

At the same time, the Georgian government has imposed certain visa restrictions. For instance, a visa can be denied if the government has serious reasons to believe that an applicant is involved in international crime – terrorism and drugs/human trafficking. Persons known to have an infectious disease can also be banned from entering Georgia (this restriction was enforced on October 1, 2010; a list of infections is to be drawn up by the Ministry of Labour, Social and Health Protection).

4.4 Ministry of Internal Affairs

Reforms in the Ministry of Internal Affairs (MIA) commenced in 2004, when the State Border Defense Department was incorporated into the MIA. In 2006, it was renamed the Border Police Department. The national legislation was amended accordingly to reflect the changes. The Law on the Border Police of Georgia defined it as a semi-independent body within the MIA led by a deputy interior minister.

A large-scale reorganization was carried out in the BPD in 2008. Under amendments to the Law on the Border Police of Georgia, passed on December 31, 2008, several governmental agencies were reorganized into MIA departments, while the Patrol Police were put in charge of all Georgian border crossings. According to official sources, the reform was necessitated by the need to avoid an overlap of functions and additional expenses.[60]

The Office of the European Union Special Representative (EUSR) for the South Caucasus was involved in supporting reforms of the Georgian border service in 2005-2011. The EUSR Border Support Team was the entity responsible for assisting the development and implementation of the Integrated Border Management Strategy of Georgia. The Team worked with the Georgian Border Police, Patrol Police and Customs Service with the aim of increasing the operational capacity of the Georgian Border Agencies. The Team acted under the mandate of the European Union Special Representative for the South Caucasus. The mandate of Representative expired on February 28, 2011.[61] The European Union, the UNDP and other

[60] Among other changes, the rapid reaction force was placed under the command of the Department of Emergency Situations, while an aviation unit was incorporated into the Air Force, Ministry of Defense.

[61] EU Special representatives: http://www.consilium.europa.eu/showpage.aspx?id=263&lang=EN

international donors have stated that support for developing the border security of Georgia will continue.

According to Georgian officials, there are several donors currently supporting the agencies involved in border control activities of Georgia, such as the Border Police, the Patrol Police and the Customs Service with different missions and separate projects. Beside material and financial support, the advisory role of the foreign experts is essential in the process of modernizing Georgian land borders, sea borders and border crossings, so that they comply with international standards.[62] Special attention has been paid to supporting the Georgian Border Police by US state agencies as well. The assistance is mainly addressed at training and equipping border check-points.[63] Within the framework of a modernization and upgrade project, all border crossings of Georgia have, in recent years, been equipped with sensors, Personal Identification and Registration Systems (PIRS) and detectors to track and stop illegal transportation of radioactive and other sensitive materials.[64] At the same time, a modern fiber-optical communication system has been installed.[65] This enables the Patrol Police to efficiently detect fraudulent documents and maintain a database on exits and entries into the country, thus allowing data analysis and exchange of information on migration trends. Software allowing linking of the border crossing database with other MIA databases as well as verification of persons entering or leaving Georgian territory as part of a "live" (online) system has been introduced at all border crossing points.[66]

According to the MIA, as of November 2011, the second line "labs" at all border crossing points are fully equipped and operational.[67] Software is provided together with new passport readers, which have substantially increased the speed of travel document processing. In parallel, digital photos of travelers are taken, enhancing identification and control of crime. Video-control (CCTV) cameras at the BCPs are connected to a central database, allowing for 24/7 control.[68]

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[62] From a presentation given at an international conference, representative of the Ministry of Finance, 2010 , www.mof.gov.ge, US Government assistance of Georgia, Annual reports 2008, 2009, 2010

[63] US Government assistance of Georgia, Annual report 2010, http://www.state.gov/p/eur/rls/rpt/eurasiafy10/156874.htm

[64] Office of the Minister of European and Euro-Atlantic Integration, Georgia Progress Report on Implementation of the ENP AP 2010

[65] http://www.policeacademy.ge/index.php?page=home&lan=en

[66] Office of the Minister of European and Euro-Atlantic Integration, Georgia Progress Report on Implementation of the ENP AP 2010

[67] Implementation of EU-Georgia Action Plan, Progress Report on Georgia 2011, Annual report prepared by OSGF Non-Paper, MIA, November, 2011

[68] Implementation of EU-Georgia Action Plan, Progress Report on Georgia 2011, Annual report prepared by OSGF Non-Paper, MIA, November, 2011

Reforms in the Georgian Border Police Department are being carried out in accordance with a five year reform strategy developed in 2008 – "the Georgian Border Management Strategy". It was developed by an Inter-agency 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. Georgia continues implementation of reforms in the border management sector in line with the Integrated Border Management Strategy Action Plan (IBM AP) adopted in December 2009.

In January 2009, a joint Order was issued by the Ministry of Finance and the Ministry of Internal Affairs elaborating the rules for registering border crossings, which clearly divides up functions between two authorities: the Revenue Service and the Patrol Police.[69] The first assessment of bilateral cooperation between the above mentioned two agencies was conducted at the Sadakhlo pilot border crossing in October 2010. However, the **integrated electronic database** shared between the border units of the MIA and the Civil Registry Agency of the Ministry of Justice is not yet in place. One of the objectives of the interagency working group is to promote cooperation and information sharing between the Civil Registry and the MIA.

Implementation of Readmission Agreement. As a result of the restructuring, the Patrol Police Department of the MIA has been given the power to implement routine checks of foreign citizens seeking to enter Georgia via border check points. After the check, a police officer decides whether to permit or deny entry to the country, using provisions of the law as a basis for the decision. In the case of a denial, the foreigner has the right to request a written explanation for the negative decision.

According to the latest statistical data, published in November 2011, about 2,317,957 persons crossed Georgian borders in the first ten months of 2011, including 252,319 foreign nationals, 34.6% more than in the same period in 2010.[70] The number of visitors from EU countries increased by 10% and reached 12,375. The biggest number of arrivals was from Israel, followed by Greece, USA and Poland.

The EU-Georgia readmission agreement has led to new amendments to the Georgian regulations on migration issues. Presidential Decree 225,

[69] Office of the Minister of European and Euro-Atlantic Integration, Georgia Progress Report on Implementation of the ENP AP 2010

[70] Official data published by the Ministry of Interior in November 2011, http://www.police.ge/uploads/images/2011st/pol.ge01.10.11-september.pdf

dated April 26, 2011, authorized the MIA to control and monitor the implementation of the readmission agreement, including organizational and procedural aspects of the readmission of Georgian nationals who no longer fulfill the conditions in force for entry into, presence in, or residence on the territory of the requesting EU member state. The Patrol Police were given the power to combat illegal cross-border migration and carry out readmission/deportation of foreign citizens. The President's Decree ordered other governmental agencies, namely the MFA, Ministry of Justice, and MIDPA to cooperate with the MIA in the implementation of the readmission agreement.

Statistics on returnees since the Readmission Agreement went into force (from March 1, 2011 till November 11, 2011)[71] indicate the high effectiveness of the cooperation. A total of 335 out of 387 applications (87%) were approved, and admission was refused in only 36 cases (or 9 % of the total), with 16 applications still being processed. Overall 431 persons (applications can be multi-person) were readmitted.

One of the main problems facing the Patrol Department today seems to be the difference between numbers of applications and persons that are subject to readmission. The reason for this is the requirement that a family with more than one member should submit just one application. Usually, the increased number of illegal migrants prolongs the readmission procedures and requires intensive paperwork.[72]

Another document regulating cooperation of the Georgian Border Guard with the EU is a working agreement between Georgia and FRONTEX. The agreement, which was signed on April 22, 2008,[73] provided the basis for the creation of a new mechanism of cooperation, information exchange and joint operations between the EU and Georgia. The working arrangement covers such elements as information exchange, risk analysis, training, research and development, and coordination of joint operational measures. It will also enable the Georgian Border Police to benefit from FRONTEX training tools, such as the Common Core Curriculum for basic border guard and forgery detection training. FRONTEX will finance Georgia's participation in these activities, as well as its involvement in joint operations coordinated by the agency.[74]

In 2010 FRONTEX provided funds and organizational support for the deportation of illegal Georgian migrants from Poland, France, Austria and

[71] MIA official, data as of November 8, 2011

[72] MIA official, June, 2011

[73] www.frontex.europa.eu/newsroom/news_releases/art50.html

[74] www. frontex.europa.eu/external_relations

Germany. The migrants were flown to Tbilisi on board charter flights: 71 from Spain, 32 from Austria, and 86 from Germany and Poland.[75] During the same year, in October 2010 the Ministry of Internal Affairs signed a two-year Operational Agreement with FRONTEX on cooperation to counter irregular migration and cross-border crime and to strengthen working relations with EU member states.[76]

Border Security. Georgia has a shared border – 2,145 km in total (including 315 km of maritime border) – with four countries. There are 18 legal border crossings, including three international airports and two sea ports. Only the Georgian-Turkish border has been fully demarcated so far. Demarcation talks are currently under way with Armenia and Azerbaijan. But the Russian-Georgian border remains the biggest problem and concern. As a result of the 2008 Russian-Georgian war and subsequent occupation of Georgian regions, Abkhazia and South Ossetia, by Russian forces, the Georgian government is no longer able to control the respective sections of the Russian-Georgian border.

The movement of people and goods across the Administrative Boundary Lines (ABL) dividing the occupied territories of Abkhazia and South Ossetia is now regulated by the Law on Occupied Territories (2008-2010). Residents of the occupied territories and foreign citizens – asylum seekers or victims of human trafficking – are all subject to the Law. The Law restricts Georgian IDPs – those who used to live in the occupied territories before the conflict – from crossing the dividing line (ABL). The EU Monitoring Mission (EUMM), which employs up to 250 unarmed monitors, is the only international mechanism today mandated to monitor and report the situation along the dividing line and prevent the renewal of hostilities.[77] However, as the monitors have so far been denied access to the territories of Abkhazia and South Ossetia, the EUMM has very limited capability to perform its functions efficiently, although it still remains as the only international mission currently operational in Georgia.

[75] General Report 2010, Frontex, http://www.frontex.europa.eu/gfx/frontex/files/frontex_general_report_2010.pdf

[76] Joint Staff Working Paper, Implementation Of The European Neighbourhood Policy In 2010, Country Report: Georgia Brussels, 25/05/2011, http://ec.europa.eu/world/enp/pdf/progress2011/sec_11_649_en.pdf

[77] The EUMM was deployed in Georgia on 1 October 2008 within the framework of the European Security and Defense Policy (ESDP).

4.5 Ministry of Internally Displaced Persons, Refugees and Accommodation

Defining the legal status of Refugees. The central function of the Department of Migration, Repatriation and Refugee Issues of the Ministry of Internally Displaced Persons, Refugees and Accommodation is to register and monitor refugees, asylum seekers and decide their legal status in Georgia. Another important responsibility of the department is to develop and maintain an appropriate database, issue IDs to refugees and asylum seekers, provide them with social aid and protect their rights in accordance with the 1951 Convention on Refuges and 1967 Protocol on the Legal Status of Refugees. Repatriation-related issues are also within the competence of the department. With regard to repatriation, the department is responsible for identifying deported people based on the legal regulations in force, granting the status of repatriates, developing and updating the information bank and coordinating the process of repatriation, adaptation and integration.

Recent amendments to the Georgian legislation on refugees have made the department responsible for rehabilitation, adaptation and integration of refugees. Under the current law, the Ministry of Internally Displaced Persons, Refugees and Accommodation has to accommodate refugees and asylum seekers in special temporary centers. The first such center opened in June 2010 in the village of Martkopi, Gardabani Municipality, within the framework of a joint initiative of the Ministry of Internally Displaced Persons, Refugees and Accommodation and the UN High Commissioner for Refugees (UNHCR).[78] The official title of this facility is the Temporary Accommodation Centre for Refugees and Asylum Seekers. It meets all relevant international standards and has the capacity to provide housing for 60 persons. Responsibility to cover all needed expenses for proper functioning of the Centre has been undertaken by the UNHCR with the support of the US State Department and the EU.[79] It is agreed that in three years' time, the state will shoulder its share of the financing of temporary accommodation for refugees and asylum seekers.

The Law on Refugees stipulates that every asylum-seeker entering Georgian territory for different reasons should apply to the Ministry for refugee status. The Ministry of Internally Displaced Persons, Refugees and Accommodation has three days to register the application and five more

[78] Official web-site of the Ministry of Internally Displaced Persons, Refugees and Accommodation http://mra.gov.ge/main/GEO#section/93

[79] Ibid.

days to make a decision on whether the applicant is eligible for the status. Until the application is reviewed and a decision is made, an applicant can stay in a temporary accommodation centre for six months. Within this period, the applicants' rights are protected by law. Also in this period, the Ministry of Internally Displaced Persons, Refugees and Accommodation can offer applicants the choice of a place of residence from the available housing options or allow them to reside with their relatives.

The legal status of refugees is decided by an ad hoc commission of the Ministry of Internally Displaced Persons, Refugees and Accommodation, which should review an application and make a decision not later than 4 months after it has been registered. After obtaining legal status, an IDP/ refugee has to re-register with the Ministry every year. During this procedure, the Ministry has to examine and decide whether there are sufficient grounds to extend the refugee status for another year.

Repatriation of citizens forcefully deported from Georgia in the Soviet Era. Another important function of the Ministry of Internally Displaced Persons, Refugees and Accommodation is to regulate migration-related issues. The power to collect and review/register repatriation applications and supplementary documents rests with the Department of Migration Repatriation and Refugees of the Ministry. For its part, the Ministry of Internally Displaced Persons, Refugees and Accommodation is responsible for providing social and economic assistance to Georgian migrants from other countries. On July 11, 2007, Georgia adopted the Law on the Repatriation of Citizens Forcefully Deported from the Georgian Soviet Republic in the 1940s (the law was amended several times in 2008-2009). The initial version of the Law required submission of repatriation applications to the MIDPA not later than January 1, 2009. But the Georgian Parliament amended the Law on December 26, 2007, extending the deadline till July 1, 2009. Some time later it was extended again, till January 1, 2010. So far, the Department of Migration, Repatriation and Refugees of the MIDPA has received 5,841 repatriation applications: most of them, 5,348, are from Azerbaijan, 118 from Turkey, 62 from Russia, and the rest from other countries.[80] In 2011, the MIDPA granted repatriate status to the first 75 persons.[81]

For two years after receiving legal status in Georgia, an applicant is eligible for a fast-track naturalization procedure. A formal request should

[80] Tabula Newspaper, November 14, 2011. http://www.tabula.ge/?p=16898

[81] As of November 2011, Tabula Newspaper, November 14, 2011. http://www.tabula.ge/?p=16898

be submitted to the Georgian President, who grants citizenship on a case-by-case basis. But the President's decision will become effective only after an applicant provides documentary proof that s/he has left the former host country. The applicant will also be given two more years to renounce former citizenship and obtain a Georgian passport. If an applicant fails to get Georgian citizenship in these four years, he/she becomes ineligible for the simplified naturalization procedure, though his/her legal status in Georgia will remain intact[82]. The Ministry of Finance of Georgia is working on developing financial declaration forms to be submitted by persons seeking the status of repatriate (specifying family members' income and property as well as the applicant's financial details), while the Ministry of Labour, Health and Social Affairs of Georgia has to define and continuously update the list of illnesses and infections which have to be included in health applications by applicants for repatriate status. Finally, the Ministry of Internally Displaced Persons, Refugees and Accommodation has to send all necessary documents to the relevant ministries.[83]

Those who fail to meet the deadline for filing repatriation applications will have two options for obtaining Georgian citizenship. First, they can apply for the normal naturalization procedure as foreign citizens on the basis of the Law on the Legal Status of Aliens in Georgia. In this case, applicants should meet certain naturalization requirements – several years of permanent residence in Georgia, fluency in Georgian, etc – and pass special exams. Second, they can apply for dual citizenship, which can be awarded by the Georgian President only in special cases (for outstanding services) or if it is deemed beneficial to the country's national interests.

In 1999, when Georgia became a member of the Council of Europe, it undertook an international obligation to repatriate Muslim Meskhetians. All repatriation-related problems should be settled by the end of 2011, while the repatriation process itself – divided into several stages – is expected to start in January 2012.[84]

[82] Laws and regulatory acts regulating Georgia's decisions on Repatriation of Persons forcefully sent into exile from the Soviet Socialist Republic of Georgia by the former USSR in the 1940's, http://mra.gov.ge/main/ENG#section/44

[83] Decree No 299 of the Government of Georgia regarding approval of the financial declaration form for persons seeking the status of repatriate (specifying family members' income and property as well as the respondent's financial details); Decree of the Government of Georgia on approving the health form.

[84] http://mra.gov.ge/main/GEO#section/44

Internally Displaced People. Hundreds of thousands of Georgian citizens were displaced by violent conflicts in Abkhazia and South Ossetia in the 1990s and sought shelter in other regions of Georgia. The brief Russian-Georgian war in August 2008 resulted in a new influx of IDPs. Today, the total number of IDPs in Georgia is estimated to be 247,000 according to the UNDP (but 258,599 according to the Ministry of the Interior). Protection of their rights and their integration in political, social and economic life have become a top priority in EU-Georgia cooperation.

The Georgian government also pledged to improve housing conditions for IDPs and develop and implement a national strategy for protection of IDPs and an appropriate action plan 2009-2012. The European Commission assured the Georgian government of its full support for this initiative. After the war in 2008, with the World Bank's low-interest loans and EU grants, the Georgian government managed to build 3,963 small houses in 13 different locations across the country for those displaced by the August 2008 war.[85]

In the post-war period, international donors made a significant contribution to the development of the national 2009-2012 strategy on IDPs and the related action plan. The government's efforts to develop and implement the 2009-2012 IDP strategy and the action plan received full backing from UNHCR and the Danish Refugee Council. At the EU's request the government made substantial changes in the strategy and the action plan in May 2010, which made the 2009-2012 document much more adequately responsive to IDP social and integration needs. Nevertheless, according to the reports of various international organizations, implementation of the newly developed action plan needs to be improved.

4.6 Contribution of Georgian Governmental Agencies to the Fight against Human Trafficking

Georgian governmental agencies play an important role in the fight against human trafficking. On September 1, 2006, in accordance with Article 10 of the Law on Combatting Human Trafficking, the President established an Interagency Coordination Council for prevention of Human Trafficking. The Interagency Coordination Council is chaired by the Minister of Justice. State institution representatives of Parliament, the Public Defender's Office, the Council of Europe, the EU Commission, the US

[85] Transparency International – Georgia, Report, 2010 http://www.transparency.ge/post/report/kotedjuri-tipis-dasakhlebebi-akhali-devnilebistvis-sakartveloshi-angarishvaldebuleba-dak

Embassy, the United States Agency for International Development (USAID) and several NGOs such as the Georgian Young Lawyers' Association and NGO "Tanadgoma" have been asked to participate in the activities of the Council.

The Interagency Coordination Council has elaborated unified standards and rules for the identification of victims, which have been approved by the President of Georgia. The Council has determined the composition and function of the Permanent Group established in the Coordination Council. It has also verified significant standards, requirements and a sample statute for shelters for victims of human trafficking, as well as preparing recommended procedures for protection of victims (national referral mechanism) and establishing rules for appropriate compensation due to them.

The newly established national victim referral and assistance mechanism is intended to guide and facilitate cooperation among state agencies and NGOs from the identification phase to repatriation or rehabilitation. The mechanism offers protection and assistance to trafficking victims regardless of whether they assist law enforcement authorities.

Another mechanism in this field is the 'State Fund for Protection and Assistance of Victims of Human Trafficking' established in June 2006 **(**supported by the state budget as well as other sources permitted by Georgian legislation).[86] The Fund aims to support victims of human trafficking in the following ways: 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 compensation; ensure hot line accessibility, rehabilitation and reintegration of victims.

On July 19, 2007, the Interagency Coordination Council on Fighting against Trafficking approved the rehabilitation and integration strategy concerning 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, a service network has been created and individual plans for 5 victims have been developed.

The mandate of the Fund was expanded in 2009 and today it encompasses protection and assistance of victims of domestic violence as well.

On May 14, 2010, a victim support center opened in Tbilisi. The center is located at a Prosecutor's Office in Tbilisi. Other centers are to be opened in Kutaisi and Batumi.[87] Victim support centers mainly focus their activities on support of victims of crime – clarification of their

[86] http://www.atipfund.gov.ge

[87] http://www.justice.gov.ge/index.php?lang_id=ENG&sec_id=5129

rights and obligations, in which cases to request free legal assistance, forwarding them to legal assistance services, providing them with information on victims of trafficking and domestic violence, etc.

According to the US Department of State 2010 Annual Report on Trafficking in Persons, in 2009 the government of Georgia investigated 33 trafficking cases (compared with 14 investigations in 2008). The authorities prosecuted 40 individuals for trafficking – including three individuals for forced labor (compared with 10 individuals prosecuted for sex trafficking in 2008). Furthermore, thirty-seven trafficking offenders were convicted in 2009 (10 convicted offenders in 2008).

Within the framework of the victim assistance program, the government identified 48 victims in 2009 and referred 15 victims for assistance (an increase from 21 trafficking victims identified in 2008). The government provided shelter and comprehensive assistance to 15 victims (compared with 10 victims in 2008). The government also made available one-time compensation payments of $650 to trafficking victims in 2009.[88]

5. Conclusions

The analysis of the report suggests that EU-Georgia cooperation within the framework of the European Neighbourhood Policy and Eastern Partnership has contributed very much to Georgia's intensification of efforts to improve migration control and management in the country. It has also revealed the challenges facing the country if it is to act according to international needs and requirements.

Currently, Georgia does not have a national strategy on migration which could address the diverse needs and concerns of the state concerning migration. This makes Georgia's efforts less efficient and responsive to international needs. The complicated geopolitical environment, political and economic constraints, poverty level and problems in sustainable development – all have their own implications for migration policy and make it difficult for Georgia to control regular migration flows and tackle irregular ones, as well as to adequately address legal migration issues. Elaboration of a national migration strategy would also contribute to the improvement of the country's legislative environment on migration. Currently, Georgian legislation concerning migration is subject to ongoing reforms.

[88] US Department of State, Trafficking in Persons Report, 2010; case of Georgia http://www.state.gov/g/tip/rls/tiprpt/2010/142760.htm

New laws and amendments to existing ones are planned. However, these changes need to be systematized.

The Georgian Government's recent decision on the establishment of an interagency coordinated unit, the State Commission on Migration, could be considered as a step towards improvement of Georgia's capacity for effective migration management and also towards promoting closer coordination and cooperation among institutions. Moreover, the Commission must support the creation of a single integrated migration database, which should bring together all available data on various categories of migrants now scattered among different governmental agencies. However, the integrated electronic database is not yet operational and due to limited resources, it is not clear when it will be ready to be launched.

Up until now the lack of constant information sharing between agencies dealing with migration and the lack of an adequate legislative framework have made data analysis difficult and, furthermore, made it complicated to regularly update the migration profile and monitor migration processes both inside and outside Georgia.

Tamara Pataraia and Piotr Kaźmierkiewicz

Recommendations: How to Improve Migration Management in Georgia

It is expected that Georgia, like Ukraine and Moldova, could start a visa dialogue with the EU in 2012 and receive an Action Plan on visa liberalization to be implemented in the nearest future. Even though the Georgian public very much values the opportunity to achieve EU-Georgia visa liberalization, several problem areas need to be addressed urgently. In particular, it remains important to improve migration management practice in order to better meet the aims and requirements of the EU visa liberalization policy. At the same time, the Georgian government has to promote interagency cooperation and introduce new instruments for combating irregular migration and assigning clear powers to relevant agencies.

A number of recommendations can be proposed to address challenges and develop an effective migration policy at the strategic level:

Recommendations for the Georgian Parliament

1. Adopt a law on the "Concept of a national migration policy", which will be elaborated on the basis of national migration strategy. The law will establish institutional and financial instruments for implementation of a national migration strategy.
2. Develop a legal framework that grants direct access to the integrated register to all state agencies authorized to monitor foreigners. Local units of the Ministry of Interior's Border Guard and Patrol Police, as well as the Civil Registry Agency and the Ministry of Foreign Affairs, should be given such access to enable them to check apprehended foreigners' data in order to establish their identity or confirm facts necessary for completing their investigation. By providing access to operational units of these services and

integrating their databases, the system could significantly reduce the time needed to identify foreigners in the course of asylum or expulsion procedures.

3. Amend legislation that defines grounds for expulsion for irregular border crossing and provide foreigners with an opportunity for departing voluntarily, with forced expulsion administered only in cases where voluntary removal is not possible. It is acknowledged that Georgia applies very strict punishment and detention rules for irregular border crossing. In EU member states unauthorized crossing of the border is considered a crime, but results in placement at a guarded facility and voluntary departure or forced expulsion (which is then followed by a temporary ban on re-entry).
4. Review the legal framework relating to legal migration in order to ensure a better balance between two possible responses to immigration challenges: on the one hand, fulfilling emerging needs for attracting immigrants, a foreign labor force and investors, who contribute to the country's economic development; on the other hand, more closely regulating the status of foreign residents in Georgia. The EU suggests that the migration legislation should be stricter, including a review of policies on visas, expulsion and other migration-related procedures. The development of a national migration strategy should elaborate a clear vision of the above mentioned issue.
5. Ensure establishment of efficient mechanisms for personal data protection that are in line with EU requirements and policies. Guarantees of security and confidentiality of information should be included in the Law on Personal Data Protection. The following would be implemented:
   - The Council of Europe 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (signed in 21/11/2001; ratified in 14/12/2005; entry into force 1/4/2006).
   - The Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and representatives of international information flows, 2001
   - The Data Protection Directive (officially Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data), 1981
6. Review and develop a new legal framework regulating the legal status of foreigners and stateless persons; in particular, define the status of

stateless persons and the procedure for granting such a status and regulate the status of persons whose "life, freedom or personal safety would be jeopardized, and where he/she would be subjected to torture or inhumane and degrading treatment or punishment or would be deprived of the right to a fair trial in court". Address the shortcomings in citizenship legislation through inviting international organizations, the EU and some other donors to support the government in drafting laws.

Recommendations for the Government

1. Finalize the work on a national migration strategy (to be signed by the president). The strategy is to define goals, means and instruments for efficient migration management, as the absence of a migration strategy weakens the possibility of regulating the flow of migrants into and out of Georgia, as well as of controlling irregular migrants.
2. Set up a permanent interagency body in the government to coordinate activities of all governmental agencies responsible for migration management in Georgia. Such a structure will be in a better position to collect, process and statistically analyze all migration-related information. The analysis will provide a basis for regular revisions and timely updates, whenever necessary, of national strategic documents on migration.
3. Establish functional mechanisms for ensuring document security and the integrity and security of the personalisation and distribution process; provide anti-corruption training and ethical codes for officials issuing passports, ID cards and visas.
4. Launch an information campaign on the provisions of the Visa Facilitation and Readmission Agreements, aiming to raise the awareness of Georgian citizens about prospects of visa free travel to Europe. The Civil Registry Agency is well-positioned among state executive branch institutions to lead an information campaign and to identify the key gaps in public knowledge.
5. Pay particular attention to the prevention of statelessness among refugees and repatriates. Invite international donors to advise the authorities on the implementation of a return program.
6. Continue implementation of reforms in the border management sector in line with the Integrated Border Management Strategy Action Plan (IBM AP). Ensure the development of an integrated electronic data-

base accessible to border units of the Ministry of Interior and other state agencies; promote cooperation and information sharing among different state agencies. Develop direct contacts between Georgian state agencies and their counterparts in EU Member States.

7. Launch negotiations with individual EU member states on legal migration issues, including circular migration, which would also entail issues such as labor migration, social security, work contract requirement, wage non-discrimination etc.
8. Launch a public debate on migration policy issues and make it as inclusive as possible. The Governmental Commission on Migration could play a leading role in consultations on the national migration strategy and, furthermore, in opening them to national NGOs, experts and international partners.
9. Promote the participation of local NGOs and experts in research related to migration policy issues in Georgia, deepening knowledge on best global practices.
10. Promote dialog among the local expert community, the Government and international stakeholders in order to provide analytical and methodological support for formulating policy and legislation related to migration.

Recommendations for the EU

1. Maintain support for Georgian governmental institutions in providing accommodation, transport and medical care for readmitted migrants in order to better address the problem of readmission of third country nationals. Continue cooperation with other international donors and partners (like IOM, DRC, UNDP) providing technical support for Georgia.
2. Support Georgian authorities in implementation of the Readmission Agreement with the European Union. Continue assistance with the voluntary return and reintegration of Georgian nationals from EU member states, including medical assistance, post-arrival counseling, referral and reintegration support as has been carried out by the IOM office in Georgia.
3. Support Georgia in addressing the shortcomings in citizenship legislation and in prevention of statelessness among refugees and repatriates. Support the work of international donors advising the authorities on the implementation of a return program for repatriates.

4. Assist Georgia in the development of a national migration strategy and the elaboration of an action plan for its implementation.
5. Monitor and support the progress of reforms in the field of Freedom, Security and Justice, in order to promptly address shortcomings in relevant areas that would facilitate the opening up of a dialogue on visa liberalization between the EU and Georgia.
6. Step up efforts to increase Georgian governmental agencies' capacity for improving the efficiency of migration management in Georgia.

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