

საქართველოს მოქალაქეობის მოპოვება ქორწინებით

არჩილ ლორია

სამართლის დოქტორი, საქართველოს ტექნიკური უნივერსიტეტის სამართლისა და საერთაშორისო ურთიერთობების ფაკულტეტის პროფესორი, აღმოსავლეთ ევროპის უნივერსიტეტის იურიდიული ფაკულტეტის პროფესორი, თბილისის ჰუმანიტარული სასწავლო უნივერსიტეტის სამართლის, ჰუმანიტარულ და სოციალურ მეცნიერებათა ფაკულტეტის პროფესორი, სამართლის მეცნიერთა კავშირის გამგეობის წევრი

ელ. ფოსტა: archilioria@gmail.com

აბსტრაქტი

მოქალაქეობა სახელმწიფოს ერთ-ერთი დამახასიათებელი ნიშანი და უმნიშვნელოვანესი კონსტიტუციური ინსტიტუტია. სწორედ მოქალაქე წარმოადგენს ქვეყნის სამოქალაქო საზოგადოების უმთავრეს სუბიექტს, რადგან იგი აღჭურვილია კანონმდებლობით გათვალისწინებული უფლებათა სრული პაკეტით. სახელმწიფო კი, თავის მხრივ ვალდებულია შექმნას ისეთი კანონმდებლობა, რომელიც უზრუნველყოფს როგორც ეროვნული ინტერესების, ისე ადამიანის უფლებების დაცვას. საქართველოს მოქალაქეობის შესახებ კანონმდებლობაში განხორციელებული ცვლილებების მიუხედავად, კვლავ რჩება ზოგიერთი პრობლემა, რომლებიც სასურველია, დროულად აღმოიფხვრას. ნაშრომში გამოთქმულია წინადადებები ქორწინებით მოქალაქეობის მოპოვების ცალკეული რეგულაციების დახვეწის და გაუმჯობესების მიზნით.

საკვანძო სიტყვები: ნატურალიზაცია, მეუღლეები, ბინადრობა

OBTAINING GEORGIAN CITIZENSHIP THROUGH MARRIAGE

Archil Loria

Doctor of Law, Professor at Faculty of Law and International Relations of Georgian Technical University, Professor at Law Faculty of East European University, Professor at Faculty of Law, Humanitarian and Social Sciences of Tbilisi Humanitarian Teaching University, Member of the Board of the Union of Law Scientists

Email: archiloria@gmail.com

აჩილ ლორია

ABSTRACT

Citizenship is one of the characteristics of the state and the most important constitutional institution. The citizen is the most important subject of the country's civil society, as he/she is granted a full package of rights provided by the legislation. The state, on the other hand, is obliged to create such legislation that ensures the protection of both, national interests and human rights. Despite the changes made to the legislation on Georgian citizenship, there still remain some problems, which, preferably, should be eliminated in time. Recommendations are made in the paper for the purpose of refining and improving the specific regulations on obtaining citizenship through marriage.

KEYWORDS: Naturalization, Spouses, Residence

INTRODUCTION

Citizenship dates back to ancient times and, therefore, is the oldest legal institution. At the same time, it is a characteristic of the state, without it the state cannot exist, as it is the citizens who create the political government. The current Georgian legislation regulating issues of Georgian citizenship stems from March 27, 1993. At that time the organic law On Citizenship came into force, and later, articles 12 and 13 of the Constitution of Georgia of August 24, 1995 defined the basic principles related to citizenship. Various changes made to the constitution of the country created the need to comply the legislation on citizenship with it. As a result, a new organic law On Citizenship was adopted on April 30, 2014, to which several amendments has been made up to date.

In general, the legal status of a citizen is relatively more privileged than that of foreign citizens and stateless persons. "This circumstance is a result of the form and content of the connection between the person and the state. In case of citizenship, it is a person's legal and political connection with the state"¹.

In addition, Georgian citizens are guaranteed the rights and freedoms recognized by national legislation and international law under the Constitution.

Georgia protects the rights, freedoms and legal interests of its citizens, both, on the territory of Georgia and abroad. Unified citizenship is established in Georgia and its deprivation is not allowed. Although the organic law on citizenship provides for the possibility of terminating Georgian citizenship, however, this is not a deprivation of citizenship and

differs from it, as it does not have a punitive nature and is related to the existence of such circumstances in which it is impossible to maintain the citizenship of the country.

CONDITIONS FOR OBTAINING GEORGIAN CITIZENSHIP

I have expressed my position various times before regarding the gaps in the legislation regulating the citizenship and regarding the ways eliminating them. Several of the proposals were shared by the legislator. For example, proposals on the definition of citizenship, citizenship of minors, improper restriction of the rights of Georgian citizens and other issues. Despite the above, the current normative acts still include a number of problematic issues, some of which shall be discussed at given moment.*

The organic law dated as of April 30, 2014, indicated above, along with the general conditions of naturalization, also includes the simplified procedure for obtaining Georgian citizenship. The practice of simplifying citizenship procedures in specific cases is characteristic to democratic countries and is the result of the implementation of liberal policies of national legislation.

One of the most common forms of obtaining citizenship with simplified procedure is obtaining citizenship through marriage, as in such case the applicant is required to comply with much lighter requirements.

According to article 5 of the organic law on the Citizenship of Georgia, Georgian citizen marrying to a foreigner or a stateless person with status in Georgia or a divorce does not in itself lead to a change of citizenship of

1 Burroughs, G. and others, 2011. "Democracy and Citizenship." Representation of the International Fund for Electoral Systems in Georgia. p. 53.

* Loria, A., 2009. Filiation and naturalization in Georgia (citizenship issues). Tbilisi: Merdiani, collective of authors, 2013. Commentary on the Constitution of Georgia, Chapter Two, Citizenship of Georgia. Basic human rights and freedoms, Tbilisi: "Petit" publishing, pp. 31-49.

the spouses. Changing the citizenship of one of the spouses does not automatically lead to changing the citizenship of the other spouse.

Moreover, the change of citizenship by one or both parents does not lead to the change of citizenship of his/her children. The adoption of a minor with Georgian citizenship by a citizen/citizens of another country does not in per se lead to a change of the minor's citizenship.

According to initial wording of the article 14 of the same law, a person married to a citizen of Georgia would receive citizenship with a simplified procedure, if:

1. Had continuously lawfully resided in Georgia for the last 2 years up to the day of applying for Georgian citizenship;
2. Had command of the official language of Georgia within the established limits;
3. Had command of the history of Georgia and basic principles of law within the established limits.

The same problems as the ones that are defined in the general rules of naturalization, are found here too, namely, the knowledge of the official language of Georgia, the basic foundations of Georgian history and law within the established limits. Unfortunately, the "limits" itself is not established under law.

During naturalization through marriage, it is common to have a residence. For example, in Norway, the period of marriage is added to the period of residence in the country and should in total equal 8 years, moreover, the period of residence in Norway should not be less than 2 years.² And in the USA, an adult person will obtain citizenship by naturalization if he/she is married to a US citizen and has lived with him/her for the last 3 years

continuously, and moreover, can leave the country for only 6 months.³

In Finland, an applicant who is married to a Finnish citizen must have lived continuously in the country for 4 years before applying. Moreover, it is necessary that the applicant has lived with his/her spouse for the last three years. In the case of the death of a spouse, who is Finnish citizen, the foreign spouse can apply for Finnish citizenship if the spouses lived together for at least three years.⁴

Unfortunately, the case of the death of the spouse is not provided for by the legislation of Georgia on citizenship, which is somewhat defect of law and needs to be fixed, as such case is rare, but it can still take place in practice. I think, in this case, the mandatory period of residence in Georgia and cohabitation with the spouse may be shortened.

Initial wording of the article 14 of the organic law on Georgian Citizenship defined the period of residence in the territory of Georgia – 2 years.⁵ In my opinion, this term is quite liberal and not enough for a person wishing to obtain citizenship to be able to learn the Georgian language, history and the basic foundations of law. At the same period he/she should be familiarized with Georgian traditions and customs, which will contribute to its integration into the society.

The fact is that the Georgian language and script do not belong to any language group that is widespread in the world, which determines its specific features and complexity. Our history also originates from the ancient era and is quite voluminous. Considering above, it would be more logical to define the residence for at least 3 years, which we indicated before as well and which, as stated

2 Information on Norwegian Citizenship. 1992. Oslo: p. 9.

3 US Citizenship And Immigration Services, A Guide To Naturalization, 2016. p. 18.

4 [Online] Available at: <https://hmn.wiki/ka/Finnish_citizen> [Accessed 18 November 2022].

5 Organic Law of Georgia on Georgian Citizenship, 30/04/2014. [Online] available at: <<https://www.matsne.gov.ge/document/view/2342552?publication=6>> [Accessed 18 November 2022].

above, is not unknown to international practice.

During naturalization by marriage, the most problematic issue is determining the validity of the marriage.

A natural person who has a financial or other kind of interest, is able to get Georgian citizenship through marriage most easily.

A fictitious marriage will result in the loss of citizenship, which is defined by article 21, paragraph one, sub-paragraph "b" of the organic law of Georgia on Citizenship. However, it is difficult to establish fictitiousness and prove it with proper evidence.

If a foreign spouse of a Georgian citizen desires to obtain Georgian citizenship, he/she must firstly renounce his/her original citizenship. Obviously, many people do not wish to renounce their native citizenship, which at the time made us think that the number of people wishing to naturalize through marriage in Georgia would not be high.⁶ However, later the situation somehow changed. After 2005, the lack of control over migration processes and the granting of the right to enter our country without visa from many countries without reasoning led to a much larger number of migrants from individual states than expected. As a result, the number persons desiring naturalization in Georgia has also increased.

Since obtaining the citizenship through marriage included a much shorter residence than is normally prescribed for naturalization, many foreigners have tried to use fictitious marriages as well. In some cases, Georgian citizens were even offered a certain remuneration for the formal registration of marriage. In addition, the number of states supported their citizens in the naturaliza-

tion process in Georgia as much as possible. Along with the material support, they often turned a blind eye to the requirements of the legislation and simply provided them with documents confirming renouncement from their original citizenship, which was sometimes also of a formal nature and did not reflect the reality.

Increasing the residence for obtaining citizenship through marriage would be useful in this regard as well, as it would discourage attempts at fictitious marriages.

It is of interest, that in recent years, the trend of obtaining citizenship through marriage continued to decrease, which was caused by the changes made to the organic law on Georgian Citizenship in 2018.⁷ The fact is that legislator, late, but still took into account the opinions expressed regarding the issue and increased the term needed for obtaining the citizenship up to 5 years. In addition, the oversimplification of the conditions for obtaining dual citizenship in the country has made the mechanism of naturalization through marriage less popular.

For information, the citizenship of Georgia will be granted in a simplified manner to a person with the status of repatriate, which is defined in accordance with the provisions approved by the decree of the President of Georgia. However, this does not fall within the scope of our current research and we will not discuss it in detail.

CONCLUSION

Based on the review and analysis of specific legal norms, we draw the following conclusions:

6 Loria, A. 2009. *Filiation and naturalization in Georgia (citizenship issues)*. Tbilisi: Meridiani, p. 119.

7 Organic Law of Georgia on Georgian Citizenship, 30/04/2014. [Online] Available at: <https://www.matsne.gov.ge/document/view/2342552?publication=6> [Accessed 18 November 2022].

It is desirable that the organic law defines the minimum scope of mandatory knowledge of the official language, history and legislation for obtaining citizenship.

The residence for obtaining citizenship by marriage should always be in compliance with the other conditions set for the applicant in order to meet the requirements. This will contribute to the better adaptation of a foreigner wishing to become a citizen of Georgia in the country and will less encourage the desire for a fictitious marriage.

National legislation should take into account and allow the possibility of obtaining Georgian citizenship for the foreign spouse of a deceased Georgian citizen. And in such case, the required residence should be reduced to 2 years.

In my opinion, the suggestions and proposals indicated in the work will contribute to the elimination of the presented problems and the further refinement and perfection of the Georgian legislation regulating the area of citizenship.

Bibliography:

Used Literature:

1. Burroughs, G. and others, 2011. "Democracy and Citizenship". Representation of the International Fund for Electoral Systems in Georgia. (in Georgian)
2. Geperidze, D., International Legal Issues Related to Citizenship, electronic journal: Interpressnews, e-version. [Online] Available at: <<https://www.interpressnews.ge/ka/article/445681-mokalakeobastan-dakavshirebuli-saertashoriso-samartlebrivi-sakitxebi/>> [Accessed 18 November 2022]. (in Georgian)
3. Loria, A., 2009. Filiation and naturalization in Georgia (citizenship issues). Tbilisi: Meridiani, (in Georgian)
4. collective of authors, 2013. Commentary on the Constitution of Georgia. Chapter Two, Citizenship of Georgia. Basic human rights and freedoms, Tbilisi: Petit publishing, (in Georgian)
5. Information on Norwegian Citizenship. Oslo: 1992. p. 9. (in English)
6. US Citizenship And Immigration Services, A Guide To Naturalization. 2016. p. 18. (in English)
7. Sara Wallace Goodman, 2010. Naturalisation Policies in europe: exploring patterns of inclu-

sion and exclusion (EUDO Citizenship Observatory). (in English)

Normative materials:

1. Constitution of Georgia dated as of August 24, 1995. [Online] Available at: <<https://matsne.gov.ge/ka/document/view/30346?publication=36>> [Accessed 18 November 2022]. (in Georgian)
2. European Convention on Citizenship (1997). (in Georgian)
3. Convention on the Status of Stateless Persons (1954). [Online] Available at: <<https://www.matsne.gov.ge/ka/document/view/4109269?publication=0>> [Accessed 18 November 2022]. (in Georgian)
4. Convention On the Reduction of Stateless Persons (1961). [Online] Available at: <<https://matsne.gov.ge/ka/document/view/4109303?publication=0>> [Accessed 18 November 2022]. (in Georgian)
5. European Convention for the Protection of Human Rights and Fundamental Freedoms (1950). [Online] Available at: <<https://matsne.gov.ge/ka/document/view/1208370?publication=0>> [Accessed 18 November 2022]. (in Georgian)
6. Organic Law of Georgia On Georgian Citizenship, 04/30/2014. 30/04/2014; [Online] Available at: <<https://www.matsne.gov.ge/ka/>

- [document/view/2342552?publication=7>](#) [Accessed 18 November 2022]. (in Georgian)
7. Law of Georgia On the Legal Status of Foreigners and Stateless Persons, 05/03/2014. [Online] Available at: <https://matsne.gov.ge/ka/document/view/2278806?publication=14> [Accessed 18 November 2022]. (in Georgian)
 8. Law of Georgia On Refugee and Humanitarian Status, 06/12/2011. [Online] Available at: <https://matsne.gov.ge/ka/document/view/1531916?publication=8> [Accessed 18 November 2022]. (in Georgian)
 9. Decree N237 of the President of Georgia, 10/06/2014 On the Approval of the Regulation on the Consideration and Deciding of Georgian Citizenship Issues. [Online] Available at: <https://www.matsne.gov.ge/ka/document/view/2369203?publication=0> [Accessed 18 November 2022]. (in Georgian)
 10. Decree of the President of Georgia N 198, 08/06/2015 on amendments to Decree N237 of the President of Georgia of June 10, 2014 On the Approval of the Regulation on the Consideration and Deciding of Georgian Citizenship Issues. [Online] Available at: <https://www.matsne.gov.ge/ka/document/view/2868325?publication=0> [Accessed 18 November 2022]. (in Georgian)
 11. Decree of the President of Georgia N 261, 05/08/2015 on amendments to Decree N237 of the President of Georgia dated June 10, 2014 On the Approval of the Regulation on the Consideration and Deciding of Georgian Citizenship Issues. [Online] Available at: <https://www.matsne.gov.ge/ka/document/view/2938522?publication=0> [Accessed 18 November 2022]. (in Georgian)
 12. Decree of the President of Georgia N 209, 23/08/2016 on amendments to Decree N237 of the President of Georgia of June 10, 2014 On the Approval of the Regulation on the Consideration and Deciding of Georgian Citizenship Issues. [Online] Available at: <https://www.matsne.gov.ge/ka/document/view/3380633?publication=0> [Accessed 18 November 2022]. (in Georgian)
 13. Decree of the President of Georgia N 429, 17/10/2014 on amendments to Decree N237 of the President of Georgia of June 10, 2014 On the Approval of the Regulation on the Consideration and Deciding of Georgian Citizenship Issues. [Online] Available at: <https://www.matsne.gov.ge/ka/document/view/2544738?publication=0> [Accessed 18 November 2022]. (in Georgian)
 14. Resolution #523 of the Government of Georgia dated September 1, 2014, On Approval of the Rule for Determining the Status of a Stateless Person. [Online] Available at: <https://www.matsne.gov.ge/ka/document/view/2483498?publication=1> [Accessed 18 November 2022]. (in Georgian)
 15. Collection of legal acts of the Democratic Republic of Georgia (1918-1921). 1990. Tbilisi. (in Georgian)

Online materials:

1. [Online] Available at: <http://www.opendata.ge/ka/request/36991> [Accessed 18 November 2022]. (in Georgian)
2. [Online] Available at: https://hmn.wiki/ka/Finnish_citizen [Accessed 18 November 2022]. (in Georgian)