



სტრატეგიული, საგარეოაღმოსავლურ და საერთაშორისო ურთიერთობათა კვლევითი ფონდი  
GEORGIAN FOUNDATION FOR STRATEGIC AND INTERNATIONAL STUDIES

**53**

**THE GEORGIAN PERSPECTIVE ON  
VISA LIBERALIZATION**

*TARIEL VATCHADZE*

**EXPERT OPINION**



**2016**



საქართველოს სტრატეგიისა და საერთაშორისო ურთიერთობათა კვლევის ფონდი  
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## **EXPERT OPINION**

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The Association Agreement (AA) concluded between the European Union (EU) and Georgia on June 27, 2014 includes, among its goals, to fight against illegal immigration. It aims to establish international cooperation in order to control migratory flows. In so doing, primordial human rights have to be respected. Material sources of European law protect from mass and collective expulsion of aliens and guarantee the right to request asylum. The Georgia-EU readmission agreement shall not prejudice this right.

The fight against illegal immigration at the borders of the EU has not been very effective. Thus, plans have been elaborated in order for international cooperation to address this issue early on and in a preventive way. On the one hand, this should make it possible to manage security risks, to avoid mass immigration that is a burden on the EU budget and that poses a major challenge to the Union's integration policy. On the other hand, the visa liberalisation process is intended to facilitate mutual understanding and rapprochement between cultures, enhance *people to people contacts* and promote individual relations.

The migration crisis is becoming the top priority issue on the EU's agenda. The Georgian Visa Liberalization Action Plan (VLAP) seems to reflect this double challenge through the article 16.2 of the AA: "The Parties shall continue to endeavor to **enhance mobility of citizens (1)** and shall take gradual steps towards the shared objective of a visa-free regime in **due course (2)**, provided that the conditions for **well-managed and secure mobility (3)** set out in the two-phase Action Plan on Visa Liberalization are in place." We can clearly see the presence of an objective (1) in conjunction with the unilateral temporal appreciation criteria (2) on the one hand, and the obligation of the well-managed migratory policy (3) on the other.

The EU requires that certain conditions be met before Georgian citizens can benefit from visa-free travel. This rationale of conditionality as presented in the AA does not appear to take Georgia's socio-economic situation into account, however. Is achieving the conditions expressed in the Agreement sufficient to justify removal of the visa requirement for Georgian citizens?

Experience shows that meeting these conditions may not be sufficient. As an example, the requirement of short stay visas was removed for most of the Balkan countries at the end of the 2000s once the required conditions had been met, but abuse by asylum seekers forced the EU to change its approach.

## I. Conditionality in the EU-Georgia Association Agreement

The temporal criteria set out in the article 16 of the AA witnesses Dr. Rainer LINDNER saying on the 13<sup>th</sup> International Batumi Conference entitled “Georgia’s European Way”: “EU does not close its doors. It gives extra preparation time to those who want to join it”.

The condition of conducting a well-managed migratory policy is of crucial importance, as the EU is facing major challenges on its borders. On May 13, 2015, the European Commission commenced application of its new policy for legal and illegal migration, seeking to reduce the causes of illegal immigration by providing assistance to member states in their return practices, allocating more resources to the FRONTEX agency and starting a close dialogue with the EU’s neighbour countries.

This turned out to be extremely difficult with the countries of the southern neighbourhood for obvious reasons, with security and conflict resolution aspects, which are linked to other issues, complicating the task.

In the east, the cooperation has involved the concluding of Association Agreements with some countries of the Eastern Partnership (Georgia, Moldova, and Ukraine) and also the Deep and Comprehensive Free Trade Agreement (DCFTA) which is part of the AA. Within the framework of these agreements, the establishment of political dialogue regarding Georgia’s aspirations for rapprochement with the EU in parallel to the country adopting a reliable policy for the management of migratory movements, led, in 2012, to the elaboration of a visa liberalization plan of action and four subsequent progress evaluations by the European Commission. These *progress reports*, largely based on the data provided by Georgian authorities, underline the necessity of setting out an institutional and legislative framework in order to proceed with the technical provisions stipulated in the VLAP.

The Commission noted substantial progress in the transposition of the technical requirements, particularly focusing on the implementation of new generation biometric passports meeting international norms and standards and the establishment of surveillance at borders referred to as “*Integrated Border Management*” financed by the “*Eastern Partnership Integration and Cooperation Programme*” (EPICP).

Moreover, in a context in which the pro-Russian orientation is becoming more and more visible while Georgia is in a process of association with the EU, it is of capital importance to ensure the support of the population for the successful realisation of this process. The fourth and final progress report on the application of the VLAP of the European Commission published on 18 November 2015<sup>1</sup> positively evaluates Georgia's meeting of its obligations.

It considers that the conditionalities have been met. However, some points of assessment judged to be satisfactory and the evaluation itself, carried out in flagrant precipitation, arouse curiosity<sup>2</sup>. The report mentions the progress achieved for four sets of requirements, including the fight against corruption and fundamental rights. It is quite surprising to see that the Commission draws positive conclusions in all directions even as several scandals involving the corruption of senior civil servants in matters of pardons, influence trafficking, the independence of judges and the violation of freedom of expression in the highly mediatised Rustavi 2 affair are raging.

The Commission considers that Georgia is ready to benefit from visa exemption even though the application of the laws, the functioning of the new systems and the new procedures have not yet been evaluated. But the rule of law is one of Georgia's major weaknesses.

What neither the AA nor VLAP take explicitly into consideration are the critical perspectives on the opening of the Georgian market to the world economy. Let us imagine a very different scenario, in which numerous national corporations might be forced to close as a result of their inability to face intense competition on a free market. Thus, accomplishing VLAP requirements depends on the capability of Georgian authorities to take on integration and associated economic challenges.

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1 COM (2015) 684 final. Fourth progress report on Georgia's implementation of the action plan on visa liberalization.

2 As an example of the EU's degree of attachment to the conditionality logic, and to show how long the visa regime liberalization process can be, it might be interesting to introduce a parallel with Turkey. For years, Turkey blocked negotiations on the readmission agreement with the EU in order to gain concessions regarding the free movement of Turkish citizens, before finally signing it on 16<sup>th</sup> of December 2013. The first report of the European Commission on Turkey's progress in meeting their obligations under the Roadmap on the liberalization of the visa regime observes that the country still has much to do before benefiting from the visa free regime.

Official documents related to the visa regime liberalization issue as well as the progress reports of the Commission are generally lacking in recommendations concerning Georgia's socio-economic situation. The country's recovery could take years, and depends on the existence of political will to undertake necessary reforms, the aid allocated by the EU for this purpose, and the capacity of the Georgian authorities to inform the population of the opportunities offered by the DCFTA.

This being said, from a legal standpoint there is no longer any obstacle to the Commission presenting a draft reform of regulation EC No 539/2001 to the Council and to the European Parliament. The European executive plans to formulate a proposal to this end in early 2016.

## **II. Absence of an Explicit Consideration of the Socio-Economic Situation of the Country by the Commission in its Conditionality Logic**

The Georgian Plan of Action for visa liberalisation has four sets of requirements which do not appear to include the improvement of the socio-economic situation of Georgia within its conditions. It seems logical, however, that determining the "*right time*" for visa liberalisation should include, inter alia, an evaluation of the economic health of the country and the standard of living of the population.

Independently of the consequences that could arise from the imminent liberalisation of the visa regime with Georgia for the EU, such a decision would very likely have undesirable effects on the country's demographic situation and on its economy. The wave of migrants from Georgia heading to the countries of the EU would be fewer compared with the migration flows from the countries of the Mediterranean, the Middle East and Africa. The impact on the economies of the EU countries would be real, but not disproportionate. We shall get back to it later on.

However, the risks seem to be greater for this small developing Republic in the Caucasus.

The objective of the visa liberalisation process is to promote the rapprochement and mutual understanding of the peoples through short-term visits. However, some population categories' intentions fall far short of the rules announced on the site of the Georgian Ministry of Foreign Affairs, which limit the duration of stays to 90 days in the last 180 days.

The Georgian job market suffers from an absence of diversity. Moreover, the absence of an overall centralized structure makes job finding hard<sup>3</sup>. Once found, the remuneration is not always adequate. Young Georgians' love of their country is unfortunately not enough to keep them home. They are attracted by the high level of recognition of European diplomas and by the quality of life in Europe and do their best to obtain scholarships that will allow them to realise their dreams of studying and having careers in Western Europe.

The fear of the "*Georgian plumber*" is not yet present in the minds of Europeans despite the fact that there was some basis for this a dozen years ago with respect to Poland and other countries of Central Europe. This is much less the case for the countries of Eastern Europe nowadays, due to the fact that the rights involved in visa liberalisation are unlike those stemming from EU membership. However, this issue should be taken seriously in the pre-accession negotiations among members of the Georgian political elite who express the wish of joining the EU.

Given the deplorable socio-economic situation of the country, the immediate removal of visa requirements would inevitably lead to the flight of the category of the population most affected by unemployment (about 12% and affecting young people in particular). A lack of qualified young executives resulting directly from the brain drain would constitute, for foreign investors, an additional reason to think twice before investing.

It is unfortunate that the requirements in terms of bringing Georgian laws closer to the European and international standards stemming from the VLAP have not been accompanied by socio-economic recommendations and/or requirements aiming to improve the situation in the country. This would have certainly required more time before the introduction of a visa-free system with the EU. However, the incorporation of the socio-economic element in the VLAP conditionality would have led to a deeper respect for the rules of travelling and stay periods under the visa-free system and would have reduced the risks of abuses. The risks of a massive exodus would have been lower and the chances of avoiding all of the detrimental consequences of the ageing of the population would have been higher.

Moreover, it is often claimed that border controls would not become non-existent and that attempted abuses would be quickly unmasked. It

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3 Georgia has no National Employment Agency. The Civil Service Bureau centralizes job offers only in the public sector.



is important to remember in this regard that border control agents are under no obligation to systematically check on the purposes of the travel. They *can* - and the stress is put on the absence of the mandatory aspect - ask travellers to present documents that explain the purpose of the journey (round-trip ticket and hotel reservation for tourism, summons or invitation letter for a scientific gathering or other documents justifying a short stay), **but in no event do the border control agents take the place of the consular services.**

Thus, conducting campaigns aiming at raising public awareness, as recommended by the Commission, turns out to be an important point.

In any case, the EU seems to be weighing the drawbacks and the advantages of rapid visa liberalisation. The advantages, including those which would result from the reinforcement of the attraction of the EU in the eyes of Georgians, seem to be winning out compared with the possible drawbacks.

The socio-economic component is all the more important given that the French Revenue Court has asserted that significant part of the foreigners requesting asylum in France are fleeing the economic situation in their countries of origin.

Georgia was in 16th place in the French classification of the main nationalities seeking asylum in 2014, with 1611 asylum seekers. This was true even though the French State Council approved Georgia's entry to the list of the so-called "safe" countries.

The consequences of the inclusion of Georgia on this list are difficult to assess. Procedural complications are to be expected, along with a change in the manner in which administrative judges at the National Court of Asylum approach cases. One might certainly find it more difficult to prove that the Georgian state is the source of his political problems. This is likely to influence a judge to consider that the asylum application is primarily based on considerations different from those relating to the status of refugees as set out in Article 1.a.2 of the 1951 Geneva Convention. In other words, a judge will likely be unwilling to allow the manipulation of the Convention by allowing its application in situations which fall purely under socio-economic and / or financial difficulties. As a result, only 13% of Georgian applicants were granted asylum in 2014, taking both conventional and subsidiary protections together. For the other asylum seekers, it was considered that they had not adequately demonstrated a

threat to their lives in the event of their return. More often this is simply due to the fact that people are fleeing their countries in the hope of finding a better life conditions and therefore make erroneous declarations.

The French position with regard to the EU's immigration policy carries substantial weight because it is the number five destination for asylum seekers and thus should not be underestimated. France's asylum policy cost 2 billion Euros in 2014. Official data for 2015 is not available, but the demonstrated tendency makes it clear that costs will not be decreasing.

Moreover, after terrorist attacks aimed at Paris on November 13<sup>th</sup> 2015, it has been generally admitted that the mass immigration flows towards the EU carried dangerous elements that threaten peace. France has reacted by suspending the Schengen Agreement and introducing temporary border controls until December 13<sup>th</sup>. The updated rules offer a possibility to extend the term of suspension to 2 years<sup>4</sup> in cases of exceptional circumstances. Visa liberalization perspectives vis à vis Eastern Partnership countries are still engraved in the European agenda, but the probability that the EU will take the terrorist threat into account when assessing these aims is rather high.

For the EU, the statistical data is in correlation with the observed trends in France. The number of asylum seekers in the EU has doubled since 2012, reaching 625,000 in 2014 and increasing by 85% in the second quarter of 2015 compared to 2014..

## Conclusion

During negotiations, the parties have found ways to make proper formulations that are general and inclusive in their tone. If the socio-economic dimension is not explicitly taken into account by the Commission, the phrase «when the time comes» appears to be just such a formulation, giving the EU the right to take a decision on the liberalization of visa regime unilaterally. «*The external incentive mechanism*», leading to the principle «*more for more,*» reflects the determination of the EU to proceed by adopting a meritocratic approach which positively recognizes demonstrated efforts and encourages others. It suggests that the development of relations is possible if the country associates itself with

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4 [www.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1051&from=FR](http://www.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1051&from=FR)

European values by conducting the necessary reforms. The process of «*Europeanisation*» has two dimensions which are not mutually exclusive but rather are complementary and interact with one another. In the first dimension, redistribution of resources with the aim to exert influence significantly increases the role of civil society. The second dimension results in a constant socialization of actors through a learning process that allows an «upgrade» of public awareness, thus promoting knowledge of the rights and obligations related to visa-free regime. Conducting «public awareness» campaigns, as recommended by the Commission, is a long process that is still in its infancy. It seems to be of singular importance in the eyes of Brussels.

While the EU was not planning on any enlargement during the current term of the Commission, there is still consideration of the geopolitical factors that aim to increase the activity of the pro-European current in Georgia.

On the eve of the publication of the Commission's evaluation, Vladimir Putin, on the occasion of his major annual press conference, didn't miss the opportunity to put forward the idea of restoring visa-free travel with Georgia. Far from being a coincidence, this reflects the Russian concern regarding the European Commission's decision. The capacity to trigger concessions on either side demonstrates the lively interest in Georgia and leads us to reconsider its importance as a geostrategic actor caught between two spheres of influence.