



**OBSTACLES TO BORDER CROSSINGS  
AND PROBLEMS IDENTIFIED WHILE  
LIVING IN GEORGIA**



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Tbilisi

2023

The publication has been produced by Nona Kurdovanidze within the framework of the Freedom Now Small Grant Program. The content of this document is the sole responsibility of the Author and can in no circumstances be regarded as reflecting the position of either the donor or Freedom Now.

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## INTRODUCTION

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The obligation of the State to protect and ensure the rights of aliens in the country has a solid constitutional basis. The Constitution of Georgia is not limited to recognizing the rights of only its citizens; the object of protection of the Constitution is every person.<sup>1</sup> The Constitution of Georgia establishes that citizens of other states residing in Georgia and stateless persons living in Georgia shall have equal rights and obligations of a citizen of Georgia, except for the cases provided for by the Constitution and law.<sup>2</sup> Thus, the legal status of aliens in the context of human rights and freedoms established by the Constitution of Georgia, taking into account the peculiarities of the specific legal relationship, is equal to the status of Georgian citizens.<sup>3</sup>

Aliens living in Georgia are closely connected with the state; they are members of Georgian society and, like Georgian citizens, play an important role in the life of the country, its progress, and its development. The presence of a democratic society requires respect for the right of each of its members.<sup>4</sup> Thus, the state

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<sup>1</sup> Judgement No 1/466 of 28 June 2010 of the Constitutional Court of Georgia on the case "The Public Defender of Georgia v. the Parliament of Georgia", II-5.

<sup>2</sup> Article 33, paragraph 1, Constitution of Georgia. 24 August 1996. The Departments of the Parliament of Georgia, 31-33, 24/08/1995.

<sup>3</sup> Judgement No. 2/9/810,927 of the Constitutional Court of Georgia of December 7, 2018, in the case "Citizens of the Republic of Armenia - Garnik Varderesian, Artavazd Khachatryan, and Ani Minasian against the Parliament of Georgia and the Government of Georgia", II-12.

<sup>4</sup> Judgement No. 3/1/512 of the Constitutional Court of Georgia dated June 26, 2012, in the case "Citizen of Denmark Heike Kronqvist against the Parliament of Georgia", II-94,95.

must guarantee individuals' freedom for the community as a whole, for each person, because freedom is devalued if it is not saturated with justice.<sup>5</sup>

At the same time, it should be noted that Georgian citizenship is a special legal connection between a person with Georgia.<sup>6</sup> Foreign nationals do not have such a connection to Georgia, which sometimes justifies their differentiated treatment. In separate legal relations, the legal status of a Georgian citizen differs from the state of an alien due to the nature of this relationship and the citizenship itself.<sup>7</sup> Consequently, putting aliens in a different position from the citizens of Georgia in some cases is constitutionally justified, although the possibility of full self-realization of the personal freedom of each person requires the state's caution and moderation in determining the scope of interference and regulation of the right.<sup>8</sup>

This report analyzed the difficulties aliens face, specifically persons from the Republic of Belarus, the Islamic Republic of Iran, and the Russian Federation, when crossing the border of Georgia or living here. At the same time, the document focuses on the problems of active civil society activists - journalists, and non-governmental organization representatives, and the obstacles identified by these persons will be addressed within the framework of the interviews conducted with them. As a result of the study of the identified problems, specific recommendations were developed for the relevant authorities in the report to ensure their solution.

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<sup>5</sup> Ketevan Eremadze, *Balancing interests in a democratic society*, German Society for International Cooperation (GIZ), 2013, 8.

<sup>6</sup> Article 3, paragraph 1, Organic Law of Georgia "On Georgian Citizenship". April 30, 2014. Website, 13/05/2014.

<sup>7</sup> Judgement No. 2/9/810,927 of the Constitutional Court of Georgia of December 7, 2018, in the case "Citizens of the Republic of Armenia - Garnik Varderesian, Artavazd Khachatryan, and Ani Minasian against the Parliament of Georgia and the Government of Georgia", II-10.

<sup>8</sup> Judgement No. 1/3/407 of the Constitutional Court of Georgia of December 26, 2007, in the case "Young Lawyers Association of Georgia and Citizen of Georgia - Ekaterine Lomtadidze vs. Parliament of Georgia", II-3.



## METHODOLOGY

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For the purposes of the report, three countries of different contexts were selected - the Russian Federation, Belarus, and the Islamic Republic of Iran, whose citizens have frequent practices of crossing the Georgian border. For the purposes of the report, it was interesting to see the approach of the state to the citizens of these countries in terms of crossing the Border of Georgia and staying in the country in general (which is possible to analyze based on official statistical data) and what difficulties those wishing to enter Georgia from these countries face, who are active in their political, activistic or journalistic activities. To find such practices, 15 in-depth interviews were conducted with citizens of the target countries who were in Georgia at the time of the interview or could not enter Georgia due to being refused at the border crossing. The practices identified as a result of the interviews were analyzed from the perspective of human rights by studying the country's domestic and international standards.



# 1

## POLITICAL CONTEXT AND PROBLEMS IDENTIFIED THROUGH INTERVIEWS

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The persons interviewed within the framework of the report - citizens of the Republic of Belarus, the Islamic Republic of Iran, and the Russian Federation - were appealing for various problems. Some problems are common for all of them, and some are related to each ethnic group. The issues described by the interviewed persons may be classified into two groups: 1. Difficulties they face directly when crossing the border; 2. Obstacles that they encounter during their life in Georgia.

Respondents mainly indicated the following difficulties in the process of crossing the border: the practice of delay at the border, taking a photo at the border crossing, refusing to clarify rights, making an unsubstantiated decision on the refusal to enter Georgia, and the problem of appealing this decision, as well as a case of violation of the rights of minors while crossing the border was also identified. As for the obstacles identified directly during their life in Georgia, the inquired persons are appealing on the facts of interference in freedom of assembly, cases of infringement of private life, difficulties in using banking services, and the problem of obtaining a residence permit, as well as the problem of using international protection.

Below will be presented excerpts from the interviews conducted with the citizens of each target country and the reasons why they decided to come to Georgia.

## 1.1. Russian Federation

On February 24, 2022, Russia's invasion of Ukraine, fear of sanctions against Russia, new regulations restricting freedom of speech, and the launching of military mobilization prompted some residents of Russia to leave the country and caused waves of migration processes. Georgia also became one of the places of their movement, which was caused, on the one hand, by the common land border and, on the other hand, by the simplicity of entry into Georgia for Russian citizens.

In 2022, the migration process of Russian citizens had three peak stages. Three waves of the arrival of Russian citizens can be distinguished in Georgia too. The first surge began shortly after Russia invaded Ukraine. Among other persons, the first flow included people critical of the Russian government, which left the country due to old and new regulations imposed to restrict freedom of assembly and expression. Among them, the new regulations restricted the use of the word "war" instead of a "special military operation," and a maximum punishment of 15 years for violating this article was determined.

In the second, smaller wave, the Russian Federation was left mainly by groups that took more time to plan their migration, including families waiting for their children to finish the school year.

A particularly large migration wave was triggered by the partial military mobilization announced on September 21, 2022. As part of the mobilization, a total of 300,000 reservists were planned to be drafted.

In parallel with the ease of entry into Georgia for citizens of the Russian Federation, public attention was drawn to high-profile cases related to restrictions on the entry of journalists, activists, and representatives of political parties who were in confrontation with the Kremlin.<sup>9</sup>

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<sup>9</sup> E.g., see "Radio Liberty" article, Russian journalist and philanthropist Dmitry Aleshkovsky Not allowed to enter Georgia" Available at: <https://www.radiotavisupleba.ge/a/32023146.html> [Checked: 29.01.2023].

### 1.1.1. Problems identified as a result of interviews with citizens of the Russian Federation

For the purposes of the report, an interview was conducted with seven citizens of the Russian Federation. Respondents have different experiences regarding entry into Georgia. Some of them were not allowed to enter Georgia, and some were initially allowed to enter Georgia; however, after temporarily leaving Georgia, they could not re-enter the country. We also spoke to those who had no problems entering Georgia. Some of them noted that although they did not personally have a problem crossing the border, they had heard of other politically active persons who were not allowed to enter Georgia (for example, they named persons connected to the Russian politician Andrei Navalny).<sup>10</sup>

*"I was met by my friends when I arrived. I knew that high-profile figures were not allowed in, namely Lubov Sobol and other persons from the libertarian party. These were more famous individuals; I'm not like that, so I didn't have high expectations that they wouldn't let me in."<sup>11</sup>*

Problems identified as a result of interviews:

#### → The delay practice at a border crossing

Several persons have pointed to the practice of delays at a border crossing. A Russian activist and journalist who has been in Georgia for 11 months note that "[...] when I was living in Tbilisi for 11 months, I often went on business trips to Kazakhstan, Armenia, and Turkey. In all other cases except the first arrival, when returning to Georgia, I was delayed at the border for half an hour, one hour or two. Even when I was traveling from Georgia to Armenia, they stopped me, called some people, and checked some things. There were no problems coming in for the first time."<sup>12</sup>

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<sup>10</sup> Interview with an activist V.K

<sup>11</sup> Interview with photographer and editor Ruslan Tilikhov.

<sup>12</sup> Interview with Vasil Kasyanov.

*At the Armenian border, I was delayed for about half an hour, and soon I was let go [...]. Afterward, my friends were delayed for longer. [...] This is a standard story when your passport photo is sent in a WhatsApp chat. So you see how they get a picture of your passport in WhatsApp, and already everything becomes clear, they tell you to wait on the side."<sup>13</sup>*

**During interviews, the respondents almost uniformly described the procedure during the delay. [...] You go to passport control, and they ask you to wait and stand on the side. They do not explain why or for what reason. It can be seen that the border guard sitting in the booth takes a passport photo and sends it to "WhatsApp " and writes something. They seem to send it either to their management or the security service. This is what the procedure consists of. You stand and wait for half an hour, forty minutes, an hour. No one explains or tells you anything. There was only one case when I was told that the computer program that checks passports was broken. They said that the computer was working poorly. The police officer and I looked at each other with a smile; how come the computer broke if it was operational with everyone else? The whole flight went through control and took their luggage; only I stayed at the airport and waited for an answer."<sup>14</sup>**

*"I was stopped at the border, and from that moment on, it became clear to me that I was included in some kind of list. It was very noticeable. I was asked a few questions, and then I was just told to wait."<sup>15</sup>*

### → Failure to explain rights when denied

*"I have not been explained anything in Georgia. I was just put on the plane and let go. I was not even given a sheet of paper about why I wasn't allowed into the country. I was not given a document. [...] The*

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<sup>13</sup> Interview With photographer and editor Ruslan Tilikhov.

<sup>14</sup> Interview with Vasil Kasyanov

<sup>15</sup> Interview with the "Dozhd" Journalist Mikheil Fishman.

*police declined to explain why I was not allowed into the country. I tried to ask politely and diplomatically; I asked specifically, sorry, why didn't you let me in? I didn't break any laws, I didn't need any documents to enter Georgia [...], but nobody listened to anything and didn't explain anything."<sup>16</sup>*

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*'I understand that all this happened because of what I do and who I am. This happened because I am a well-known independent journalist in Russia, I work on the "Dozhd" TV, and my show is top-rated, and that's why I was refused; for me, it is absolutely understandable. [...] Refusal to me was discussed in the Parliament of Georgia and the media. They asked the responsible persons why I was denied entry, for which, as I realized, the answer was that I had been in Abkhazia or South Ossetia, which is not true. I've never been there. It's important that you know that I've never been there. I was there only when I was five years old, and it was in the Soviet Union."<sup>17</sup>*

## 1.2. Republic of Belarus

For the purpose of the report, interviews were conducted with four citizens of the Republic of Belarus living in Georgia at the time of the interviews. Their entry into Georgia is mainly related to restrictions imposed on activists and politically active persons after the protests in Belarus in 2021.

*"In 2021, I was already planning to move to live elsewhere because the Belarusian government began the destruction of independent journalists and independent civil society in general. It was announced that civil society would be destroyed in response to the sanctions imposed by the West. It began to bring this into reality. I was planning departure a little later when the employees of "KGB" came to me, searched the house for 7*

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<sup>16</sup> Interview with Vasil Kasyanov.

<sup>17</sup> Interview with the "Dozhd" Journalist Mikheil Fishman.

*hours, and interrogated me. This happened on July 19, 2021. I knew that they had been following me before, surveilling me. I have already been to prison twice, in May and August 2020, but I was there for a short time. So, I understood that I would be arrested. Given my health condition, I knew I wouldn't be well in jail, so I decided to leave. I had one week to prepare. My work was already paralyzed; everything was taken away from me, my computer, phone tablet, HDDs, "memory cards," everything. I bought a new phone, and because I didn't have a computer, I couldn't work. It was Monday when the search took place, and I had already departed at the end of the week. At that moment, all other countries were almost closed. I didn't have many options. Either Russia or Turkey, or Georgia. When I spoke to colleagues on their advice, I bought tickets where it was available. This city was Batumi."<sup>18</sup>*

### **1.2.1. Problems identified as a result of interviews with citizens of the Republic of Belarus**

As a result of the interviews with the citizens of the Republic of Belarus, the same barriers were identified at the border, which was also observed in the interviews with the citizens of the Russian Federation. In addition, we additionally asked the citizens of the Republic of Belarus about the agreement signed between the State Security Service of Georgia and the State Security Committee of Belarus in 2016 regarding mutual cooperation. The Agreement entered into force on August 1, 2021. The purpose of the Agreement is the cooperation between the signatory states, taking into account the interests of ensuring security.<sup>19</sup> Cooperation between the parties covers wide areas, such as the following:

- Regular exchange of information in the field of state security.
- Providing operational, technical, and other assistance in the fight against the following crimes: a) crimes against the constitutional order, sovereignty, and territorial integrity of the states of the parties; b) a transnational organized crime and an international crime threatening the

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<sup>18</sup> Interview with Roman Kislaki.

<sup>19</sup> Agreement between the "State Security Service of Georgia and the State of the Republic of Belarus on cooperation between the Security Committee", Article 1.

state security of the parties; c) terrorism and all its manifestations, as well as financing terrorism; d) cyber terrorism; e) crimes related to the illegal circulation of weapons, ammunition, explosives, chemical, biological, radioactive and nuclear materials, and other hazardous substances; f) making/producing, acquiring or selling weapons of mass destruction; g) crimes against state secrets, including disclosure of classified information; h) crimes related to corruption; i) other crimes, including transnational and international crimes, which, in accordance with the internal legislation of the states of the parties, fall into the field of competence of the parties.<sup>20</sup>

The Agreement also emphasizes that within the framework of cooperation and upon request, the parties will assist each other in transferring personal data.<sup>21</sup> Due to the wide list of issues covered by the Agreement, Belarusian citizens living in Georgia have a growing fear that it might be possible for the Belarusian government to request the Georgian side to transfer them or to provide information about them. Belarusians living in Georgia protested the entry into force of the Agreement with demonstrations.<sup>22</sup> Thus, for the purposes of the report, it was interesting to see how the entry into force of the Agreement affected our respondents.

### → Delay at the border

*"Generally, when I enter Georgia, I have at least a 5-minute delay at the passport control point as they are checking and waiting for something. They take a photo of my passport, send it to I don't know where, and then I get an answer, and they let me enter the border. In September 2022, I had a situation where during a similar procedure, one of the people who did not wear the appropriate uniform asked me to go with him to a*

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<sup>20</sup> Ibid., Article 3.

<sup>21</sup> Ibid.

<sup>22</sup> OC MEDIA, "Georgian-Belarusian security cooperation deal worries political emigres in Georgia", Available - <https://oc-media.org/features/georgian-belarusian-security-cooperation-deal-worries-political-emigres-in-georgia/> Verified: 30.01.2023.

*special room to answer questions. Basically, he was asking me about personal issues: why are you here? How long are you going to stay here? Where do you live? Where do you work? What does your organization do? I was also asked for a mobile number and Whatsapp account; I don't know what this data was needed for, it's weird, but I've answered all their questions. They didn't explain for what purpose I was taken to the interrogation room; they didn't explain my rights. I asked about it, and they replied that they just had questions and were interested in answers."*<sup>23</sup>

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*"[...] I often have to leave the country because of my job [...] Every time I enter or depart the country, I am delayed for a very long time because my passport is checked for a very long time, and I am asked to wait on the side. At this time, they receive other people and serve. It happens only with me; when I am with other Belarusians, they let them go, and I'm waiting. There's no explanation for this; I am nervous every time and don't know what it's about and what to expect. But I was not delayed at the border; they did not ask me to go through any additional procedures. But they try to specify why I am going to Georgia, whether I have the residence permit. I am nervous all the time. - No, they ask me to wait on the side, and at this time, they take other people, then they check my passport for a long time. This problem is only in Georgia, I travel a lot in other countries, and I do not have such a case. It happens both when I leave and enter the country."*<sup>24</sup>

### → Inter-State Agreement and Threats

The respondents describe the potential threats coming from the interstate agreement, and the potential threats arising from it are described as follows:

„[...] We are aware of this agreement; we had an advocacy campaign and prepared a statement opposing its adoption. As the Georgian authorities have officially stated, this agreement will not apply to Belarusian activists in Georgia,

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<sup>23</sup> Interview with an anonymous respondent.


<sup>24</sup> Interview with Stanislava Terencheva.



but we are still afraid. We have not noticed that we are under surveillance, but despite this, we still have some fears." <sup>25</sup> "[...] We even organized two rallies on this issue in Batumi. Also, the opposition joined us, which made the government tense. As we know, this and the fact that we are cooperating with the opposition made the government tense. The police and security services attended our rallies. We went and asked who they were, and they didn't hide it and told us that it was the security service. We know about this agreement; it is an agreement on the exchange of information between the KGB of Belarus and Georgia. Of course, this is not about issues of extradition, although it is about the transfer of information. Unfortunately, we don't know if it applies to us or not. Given I was subjected to a body search for a terrorism case that I had nothing to do with, this story shows that citizens can be attributed to terrorism this way and be subjected to search. In this way, Belarusians can get information about independent journalists and civil society from Georgia. There is a very large and strong Belarusian civil society in Georgia because when the pressure started in Belarus, many countries were closed, and Georgia was one of the places where you could go. Many Belarusians were here either having vacations and staying or arriving. We met each other only this year; the fear is so high that people live and work without telling anyone that they are members of civil society. Only this year, we got to know each other at some meetings, and it turned out that we were representatives of 40 organizations, which is a fairly large number. There is fear; we do not know what information is collected. Georgian legislation does not allow for the protection of personal information. After registration, we found that our personal data, everything is openly available and published, including passport and all documentation. If you know the organization's number or name on the Public Service Hall website, you can see it all. As far as they requested addresses from us, otherwise, they would not register, and the protocol required our addresses; I gave an address, and it became public. In terms of threats, I see two threats. Georgia does not protect personal information well. This is a threat, especially for those who are persecuted. I won't reveal where I live; close friends only know it. I don't expose it so that there is no assault on me or kidnapping. Such practices are in Belarus and Russia, even in Tajikistan. There is such a threat. After registration, I changed the address. I refer to the address in other places as

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<sup>25</sup> Interview with an anonymous respondent.



well, in the banks, in the police, and how this information is stored, I don't know. In addition to the fact that our rallies were watched by security guards who didn't hide it, there were still people whom we assumed it was either the embassy representatives or the services of Belarus. Some people of age watched us.

The second threat is that the law does not explain the principles; it is unclear when we leave the border and come back what their guiding principles are, whether we may be allowed in or not. It is unclear on what basis those who request the residence permit are satisfied or not, and there are no specific criteria. This creates a threat. It is unclear whether it is worth staying here and arranging life or not. It's very uncertain. In addition, when we were holding rallies, they told us that it causes tension in the government when we cooperate with the opposition, and we may not be allowed back during the "Visa Run" process. This moment creates uncertainty, and we don't go anywhere other than "Visa Run". I needed to build an organization here, and I've already built it this summer, and we'll be here. I will add that for these reasons, I do not perceive Georgia as a safe country. Although I do not feel threatened by the police, the uncertainty and difficulty in maintaining privacy/confidentiality do not create a safe environment for my colleagues and me. Also, political climate change can lead to something. We do not fully understand how this is done in Georgian politics, but we, Belarusians, do not interfere with political affairs; this is the business of Georgian citizens, but we want our rights to be respected. Another thing is that we have registered a non-governmental organization, but we cannot open a bank account. It gives the impression that they are trying to squeeze the NGO sector out of Georgia. I learned that the NGO sector is referred to as the enemy of the government in Georgia. And we, the Belarusian NGOs, think that we too may be perceived as a threat, and they might be doing something against us. If they say so on Georgian NGOs, it is even more of a threat to Belarusian organizations. We can be kicked out of the country at any time. Problems with creating bank accounts are a big problem, and this is also a big problem for the right of freedom of assembly and activities."<sup>26</sup>

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<sup>26</sup> Interview with Roman Kislaki.

*"[...] No one specifically came to me, but when we organized our rallies in support of prisoners in Belarus and so on, these rallies were not public, but still, some people were coming with cameras, taking pictures of us; they knew what was happening there, they knew the meeting place. These were people without a uniform, they didn't identify themselves, but it was clear that they were someone's employees. When we organized public rallies in front of the Parliament in support of Ukraine, those people who were taking pictures before came too. In Belarus, it is usually employees of bodies disguised in civil uniforms. I don't know who they were here in Georgia."<sup>27</sup>*

### 1.3. Islamic Republic of Iran

***"Many Iranians who come to Georgia as asylum seekers expect European standards [...] they expect that this process will be much faster, that they will have a proper housing, a job; however, the expectations of the majority of them are not met, because there are many problems in practice."<sup>28</sup>***

During the preparation of the report, interviews were conducted with 4 Iranian citizens who have been living in Georgia for several years. As a result of the interviews, several noteworthy trends were identified. They are related to both the practices at the border crossing and the difficulties of living in Georgia.

#### → Delay at the border

Iranian citizens said in an interview that they usually did not encounter obstacles when crossing the Georgian border for the first time. However, the practice of delaying at the border was recorded when they crossed the border repeatedly. *"I came to Georgia in 2018 [...] I did not encounter any problems when I entered Georgia. However, forty-five days after entering Georgia, I had to cross the border twice, during which time I went to Armenia. The first time I returned from*

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<sup>27</sup> Interview with Stanislava Terencecheva.

<sup>28</sup> Interview with Ben Wallia.

Armenia, the border guards met me in a friendly manner and allowed me to enter the country with a smile. The second time, the police officers asked me to go to a special room (other Iranians and I were asked to do the same). My interview lasted for an hour.<sup>29</sup>

*"The first time I arrived in Georgia by plane and the process of entering the country was much simpler. After that, I crossed the border from Armenia, where it seemed that these people (border guards) were working differently - everyone behaved the way they wanted, which is why it was difficult for me to enter Georgia a second time. I came to Georgia with my minor son, and when we re-entered Georgia after moving to Armenia, one of the police officers asked my son to go to the interview room. At first, the border guards did not allow me to enter the room with my son, which was very difficult for me because I had to leave my son with people I did not know, and I did not know what they would do. After that, I told the border guards that I was a mother and had the right to attend the interview; at first, they became angry; however, after some time, they allowed me to enter the interview room. Because of this incident, I decided I would never cross the Georgian border again."<sup>30</sup>*

As the respondents recall, the questions are directed to why and for how long they returned to Georgia and what activities they were engaged in.

Another respondent recalls the episode of re-crossing the border in Georgia after the 45-day stay expires: [...] My 45-day stay in the country expired, so I crossed the border and returned. For this purpose, I temporarily moved to Armenia. When I was coming from Armenia with my wife, my spouse was allowed in, but I was not allowed in, and I had to stay in Armenia for a few days. The border guards gave me a document that refused to let me into the country, but inside there was nothing written about the reasons why I was denied. I can recall my time in Armenia as "terrible." The next day, I tried to enter Georgia again, and I told the border guards that Armenia was not a safe country for me. In this case, the

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<sup>29</sup> Interview with Iman Sham Bijar.

<sup>30</sup> Interview with Leila Zavari.

border guard was a woman who asked me if I had a wife, and whether my wife had the right to stay in Georgia, for what purpose I was returning to Georgia, to which I answered the way it actually was, and they allowed me to enter the country."<sup>31</sup>

→ **Long procedure for obtaining the status**

*"Filing an application is easy, but the process is lengthy."*<sup>32</sup>

Respondents point to the lengthy procedures they have to go through to get refugee status in Georgia. As a rule, this procedure lasts at least 3-4 years because the administrative body usually refuses in case of application, and subsequently, they have to use the appeal mechanisms. The hearing in court continues for several years. Sometimes, it is even necessary to apply to the court several times, which ultimately prolongs the process of obtaining the status even more:

*"I came to Georgia in May 2017. The next day after arrival, I went to the Department of Migration [...] I went to this institution to obtain the status of an asylum seeker; however, they did not work that day, and already a few days later, I re-visited the Department. I submitted my application in June 2017 but was rejected in December. To tell you the truth, this is the practice because 9 out of 10 people who come to seek asylum status, if they are Iranian, are rejected. I appealed my refusal to the court in January of the following year. In the court of the first instance, if I am not mistaken, we had 12 or 14 proceedings, after which I finally received a positive response - the court canceled the refusal issued against me. After that, my case was returned to the Migration Department again, but I was rejected a second time. I went to court for the second time, and the court of the first instance satisfied our appeal for the second time. After that, the Department of Migration appealed the decision of the court of the first instance, although the court of*

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<sup>31</sup> Interview with Mehdad Shukhar Nasadi.

<sup>32</sup> Interview with Iman Sham Bijari.

*appeals ruled in my favor and granted me the status of an asylum seeker. I was granted the status in December 2021. This process took four years of my life from 2017 to 2021 just because the Department of Migration did not want to grant me the status."*<sup>33</sup>

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*"In February 2018, I applied to the relevant authorities, after which I had the first interview in March and the second interview a year later. My second interview consisted of four parts, after which I finally got refused. Two years have passed since then, and the case still is in court, although there have been no trials."*<sup>34</sup>

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*"I applied in April 2019, and I received their refusal in 2021. When I received a negative response, I asked my lawyer to write an appeal, and since then, we have been waiting for a court decision regarding the refugee status."*<sup>35</sup>

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*"In December 2018, I filed an application for refugee status at the Ministry, and they told me that I had to go to an interview after a month and a half. I had a second interview after 3-4 months. During the interviews, I provided information to the Ministry about my situation, the reasons why I fled Iran, and why I wanted to stay in Georgia. During the interviews, I had several interpreters, one of whom knew Persian quite well, although, on other occasions, there were misunderstandings. I got the impression that the translators were not translating but interpreting my story. After the interviews in 2021, I received a negative response. I was very surprised by the negative response, which is why I got a lawyer and appealed their negative decision. At this point, I am an asylum seeker, and I am awaiting a court decision. We had one court hearing,*

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<sup>33</sup> Interview with Ben Wallia.

<sup>34</sup> Interview with Iman Sham Bijari.

<sup>35</sup> Interview with Leila Zavari.

*but as my lawyer told me, the judge hearing my case has too many cases to consider, and that's why our court proceedings are taking so long.*<sup>36</sup>

### → Access to banking services

While living in Georgia, interviewees noted that citizens of the Islamic Republic of Iran face a significant obstacle when receiving banking services. *"The sanctions imposed on Iran after 2018 have also changed the situation of Iranians living in Georgia. We faced special problems with the banking sector, which complicates our life in Georgia."*<sup>37</sup> *"The most painful problem is the use of banking services. Only TBC Bank provides services to us, but we cannot pay by card in taxis, supermarkets, or online shopping, which makes life very difficult for us."*<sup>38</sup>

### → Threat to personal data processing

One of the interviewees emphasized the wide range of control possible with collecting personal data using modern technologies. *"I feel that I am somewhat under surveillance. There are a lot of cameras on the street, which is both good and bad. For example, if I want to travel by public transport, I have to pay with a card that creates information about me (Data), this makes the state able to find out when and how I am traveling, and this gives a negative feeling for traumatized people like me. During my life in Georgia, there were cases of stalking me; I had incidents because of which I did not feel safe."*<sup>39</sup>

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<sup>36</sup> Interview with Mehdad Shukhar Nasadi.

<sup>37</sup> Interview with Leila Zavari

<sup>38</sup> Interview with Leila Zavaris

<sup>39</sup> Interview with Ben Wallia.

# 2

## LEGAL ANALYSIS OF IDENTIFIED PROBLEMS

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### 2.1. Constitutional Grounds for the Rights of Aliens and Stateless Persons

The Constitution of Georgia is not limited to defining the rights of only Georgian citizens. The Constitution of Georgia, as well as the general model of the modern constitution, separates the rights, the subject of which is only the citizen of Georgia, from the rights, which are of a universal nature and apply to "everyone." Universal human rights are characterized by the equal distribution of these rights to all and their indivisible nature. The indivisible nature of rights implies that these rights are inherent rights that are inherent to a person.<sup>40</sup> Consequently, any interference by the State concerning inherent rights is subject to strict legal scrutiny, whereas the scope of free action of the State in determining the rights/status of aliens in other segments of relations is extensive.<sup>41</sup>

The right of aliens and stateless persons to enter Georgia is not absolute. The Constitution of Georgia affirms only the right of Georgian citizens to enter

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<sup>40</sup> Judgement No. 3/1/512 of the Constitutional Court of Georgia dated June 26, 2012, in the case "Citizen of Denmark Heike Kronqvist against the Parliament of Georgia", II-42, 43.

<sup>41</sup> Judgement No 3/1/512 of 26 June 2012 of the Constitutional Court of Georgia on the case "Citizen of Denmark" Hayek Chronicle v. the Parliament of Georgia", II-42,43.



Georgia freely and does not define aliens as subjects of this right.<sup>42</sup> At the same time, the Supreme Law of the country attaches particular importance to the issue of the entry of aliens or stateless persons into Georgia and establishes that only the special governance of the highest state bodies of Georgia belongs to the legislation on human rights, Georgian citizenship, migration, entry into and exit from the country, the temporary or permanent stay of citizens of another state and stateless persons in Georgia.<sup>43</sup> According to the Constitutional Court of Georgia, "The state is authorized to develop an appropriate immigration policy in accordance with the socio-economic challenges of the country and to determine the conditions and rules for the entry, temporary or permanent stay of aliens and stateless persons in Georgia. When regulating immigration issues due to their political nature, the legislative authority enjoys a wide margin of discretion. Citizens of Georgia are obviously not subject to immigration regulations. Consequently, for the purposes of legislation determining immigration policy, in the context of the right to equality, depending on the specificity of the relationship, citizens of Georgia and aliens should not be assessed as essentially equal entities/subjects. However, any regulation established for citizens of foreign countries cannot be considered as a determinant of immigration policy and a prerequisite for their entry or stay in Georgia." <sup>44</sup> The fact that the state has the right to control the entry of aliens into its territory has been interpreted in a number of judgments by the European Court of Human Rights.<sup>45</sup>

Accordingly, when determining the procedure for aliens and stateless persons entering Georgia, the State may have its own immigration policy, giving it more freedom in actions/decisions. However, there is less such freedom when regulating the legal status of aliens legally staying in Georgia. In this case, any restrictions imposed by the State should be assessed in the context of the

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<sup>42</sup> Article 14, paragraph 3, "a", Constitution of Georgia. August 24, 1996. Departments of the Parliament of Georgia, 31-33, 24/08/1995.

<sup>43</sup> Article 14, Paragraph 3, "A", English Constitution. 24 August, 1996. The Agencies of the Parliament of Georgia, 31-33, 24/08/1995.

<sup>44</sup> Judgement No 2/9/810,910,927 of 7 December 2018 of the Constitutional Court of Georgia on the case "Citizens of the Republic of Armenia - GARNISH Vardesian, Artavazd Khachatryan and Ani Minassian v. the Parliament of Georgia and the Government of Georgia", II-13.

<sup>45</sup> Judgment of the European Court of Human Rights No. 50963/99 "Al-Nashif v. Bulgaria", 20 June 2002, par. 114; Judgment of the European Court of Human Rights No. 22414/93 "Chahal v. the United Kingdom", 15 November 1996, par. 73.

legitimacy of restricting the rights of aliens, which is also confirmed by the practice of the Constitutional Court of Georgia. The Constitutional Court of Georgia stated directly regarding the differentiated treatment on the basis of citizenship that putting an alien and a citizen of Georgia in different legal statuses by law is comparable to the right to equality before the law, which is confirmed by Article 11 of the Constitution of Georgia.<sup>46</sup>

Therefore, in the case under consideration, the real essence of the problems identified by the aliens surveyed as a result of the interview should be analyzed in light of the abovementioned principles.

## 2.2. Active civil society as a foundation for the development of democracy

Before looking for ways to solve the problems indicated by the interviewed respondents, it is important to pay attention to the fact that the target group of this report is active civil society members - journalists, representatives of the non-governmental sector, and activists. When talking about this or that problem, the respondents often pointed to the fact that the obstacles that arose when crossing the border or living in Georgia were related to their activities and being active.

It is worth noting that, both at the universal and regional level, special instruments have been adopted in recent decades which establish valid standards for human rights defenders.<sup>47</sup> The UN Declaration on the "Right and Duty of Individuals, Groups and Public Bodies to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms" affirms that everyone has the right, individually and with others, to promote and fight for the protection and realization of human rights and fundamental freedoms at national and at the international level and stipulates that states must take measures to

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<sup>46</sup> Judgement No/1/512 of 26 June 2012 of the Constitutional Court of Georgia on the case "Citizen of Denmark" Hayek Chronicle v. the Parliament of Georgia", II-97, 99.

<sup>47</sup> European Commission for Democracy through Law (Venice Commission), Opinion on Federal Law N. 121-fz on Non-commercial Organisations ("law on Foreign Agents"), on Federal Laws N. 18-fz and N. 147-fz and on Federal Law N. 190-fz on Making Amendments to the Criminal Code ("law on Treason") of the Russian Federation, CDL-AD(2014)025, 27 June 2014, par. 20.

ensure this right.<sup>48</sup> The Recommendation of the Committee of Ministers on the Legal Status of NGOs in Europe CM/Rec (2007)14 underscores the essential contribution of NGOs to the development and realization of democracy and human rights, especially in the context of promoting public awareness, participation in public life, and ensuring transparency and accountability of public authorities.<sup>49</sup> February 6, 2008, Declaration on the Protection of Human Rights Defenders and Promoting their Activities, calls on member states to create an enabling environment for the work of human rights defenders, which will allow human rights activists to promote human rights and fundamental freedoms without any restrictions, except for the restrictions provided for by the European Convention on Human Rights.<sup>50</sup>

At the same time, the European Court of Human Rights has pointed out the essential role of the press and active civil society in the development of democracy in a number of Judgements.<sup>51</sup> The Court explained that when a non-governmental organization focuses on issues of public interest, it performs a public watchdog role of similar importance to the press and can be characterized as a social watchdog deserving the same protection under the Convention as the press. According to the Court, the way the press and non-governmental organizations conduct their activities can have a significant impact on the proper functioning of a democratic society. That is why it is in the interest of a democratic society to promote their activities.<sup>52</sup>

Therefore, the promotion of active civil society members - journalists, representatives of the non-governmental sector, and activists, a free

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<sup>48</sup> UN Declaration on Human Rights Defenders, adopted by the General Assembly resolution 53/144 (A/RES/53/144) on 8 March 1999.

<sup>49</sup> Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, Adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers' Deputies.

<sup>50</sup> Declaration of the Committee of Ministers on Council of Europe action to Improvement the Protection of human rights defenders and promote their Activities (Adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies), § 2.i.

<sup>51</sup> Judgment of the European Court of Human Rights No. 57829/0 "Vides Aizsardzības Klubs v. Latvia", 27 May 2004, par. 42; Judgment of the European Court of Human Rights No. 48876/08 "Animal Defenders International v. The United Kingdom", 22 April 2013, par.103.

<sup>52</sup> Judgment of the European Court of Human Rights No. 57829/0 "Vides Aizsardzības Klubs v. Latvia", 27 May 2004, par. 42; Judgment of the European Court of Human Rights No. 48876/08 "Animal Defenders International v. The United Kingdom", 22 April 2013, par.103.

implementation of their activities is one of the indicators determining the quality of the country's democracy. Consequently, the fact that the respondents interviewed belong to this group does not lower the standard of protection of their rights, but on the contrary - adds special importance to it. Thus, the differentiated treatment of the interviewed persons by the state cannot be justified by the fact that these subjects belong to the group mentioned above.

## **2.3. Obstacles to the border crossing**

### **2.3.1. The practice of delaying at the border**

During the interview, the interviewees focused on the practice of delay at the border. According to their instructions, they often have to wait at the passport control point, where the border guard takes photos of their passport, sends it via the Internet, and waits for a response. Activists attribute the practice of delaying at the border to their activism rather than to any individual misgivings about them. On the instructions of one of them, the border guard took him to a special room, where he asked questions about the purpose of his trip to Georgia and the activities of the non-governmental organization he was the founder of. Respondents also noted that when they are delayed at the border, their rights are not clarified, and nothing is explained; therefore, they are in an uncertain situation in a specific period, which causes them fear and tension.

The legal basis and mechanisms for the entry, stay, transit, and exit of aliens in Georgia are regulated by the Law of Georgia "On the Legal Status of Aliens and Stateless Persons," according to which, unless otherwise provided by the legislation of Georgia, an alien enters into and departs from Georgia through a transit route open to international traffic during the hours set for departure from the border crossing point, if they hold a valid travel document and receives a permit to enter Georgia.<sup>53</sup> An alien undergoes inspection at a border checkpoint for entry into Georgia.<sup>54</sup> The inspection is carried out by an authorized body of the Ministry of Internal Affairs of Georgia, as a result of which it grants the alien

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<sup>53</sup> Article 4, paragraph 1, Law of Georgia "On the Legal Status of Aliens and Stateless Persons". March 5, 2014. Website, 17/03/2014.

<sup>54</sup> *ibid*, article 12, paragraph 1.

consent to enter Georgia or denies entry into Georgia and returns him/her back.<sup>55</sup>

Following the legislation, at the border crossing point, the employees of the authorized body within the system of the Ministry of Internal Affairs of Georgia obtain information about a person; at the same time, measures necessary for the identification of a person are carried out (if required).<sup>56</sup> In addition, the body of the executive power of Georgia, whose activities are related to the protection of the state border regime, among them is the State Security Service of Georgia.<sup>57</sup> According to the legislation, when entering Georgia, a person is checked according to the lists provided by law enforcement agencies.<sup>58</sup>

Therefore, the delay of persons at the border and verification of their data by an authorized employee of the Internal Affairs Service of Georgia does not contradict the legislation. However, it is important that the delay of individuals, their transfer to a special room, and their questioning are based on individual suspicion and not on discriminatory motives. As mentioned, Respondents associate a different approach towards them precisely with their active activities. This comes at odds with the constitutional principle of prohibition of discrimination. As mentioned, the active civil activity of individuals does not diminish the obligation to protect their rights but also imposes more responsibility on the states.

Based on the above, delaying and questioning foreign nationals at the border is permissible; however, it is important that the questioning be conducted with respect for human rights and dignity, based on individual suspicion arising from them, and not with discriminatory motives. In this regard, it is also important that border authorities are trained in the use of non-coercive interview

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<sup>55</sup> Article 4, paragraph 1, the Law of Georgia on the Legal Status of Aliens and Stateless Persons. March 5, 2014. Website, 17/03/2014.

<sup>56</sup> Article 5, a joint order No 258/No73 of the Minister of Finance of Georgia and the Minister of Internal Affairs of Georgia of 29 August 2019 on the Approval of the Procedure for Making Relevant Indications in Travel Documents at the Intersection of The State Border of Georgia and the Approval of the Procedure for Reflecting Information in an Automated Database of the Ministry of Internal Affairs of Georgia. 29 August 2019. Website, 30/08/2019.

<sup>57</sup> Article 33, paragraph 2, subsection "e", Law of Georgia "On the State Border of Georgia". July 17, 1998. Republic of Georgia, 08/05/1998.

<sup>58</sup> Article 33, paragraph 2, sub-paragraph "e", Law of Georgia on the State Border of Georgia. July 17, 1998. Republic of Georgia, 05/08/1998.

techniques and the preparation of appropriate questions.<sup>59</sup> At the same time, it is essential to explain to persons who are delayed at the border the possible duration of their delay, the reason for the suspension, their rights and obligations within the framework of the inspection procedure, and the possible consequences of non-compliance and remedies.<sup>60</sup>

### 2.3.2. Taking a photo at the border

Interviewees point to cases of taking a photo at the border and express fears about the subsequent use of their photo.

The issue of taking photographs of passengers when crossing the border is regulated by the joint order No 258/No73 of the Minister of Finance of Georgia and the Minister of Internal Affairs of Georgia dated August 29, 2019, "on implementation of relevant markings in travel documents when crossing the state border of Georgia and the approval of the rules for displaying information in the automated database of the Ministry of Internal Affairs of Georgia." In accordance with the named act, when an individual crosses the border, the employees of the customs checkpoint authorized to carry out passport control or the authorized body included in the system of the Ministry of Internal Affairs of Georgia may take a photograph of the person along with the passport control in the following exceptional cases: a) There is information that a person has committed or will commit a crime or other offense; b) there are reasonable grounds to believe that a person has committed or will commit a crime or another offense; c) the person has identical external signs of the wanted or missing person; d) a person is a citizen of the country with which Georgia has visa travel; e) Georgia has visa travel to the destination of a person (when transiting the territory of Georgia); f) Georgia has visa travel to the country of departure of a person (including transit).<sup>61</sup> At the same time, the technical means used in

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<sup>59</sup> Office of the United Nations High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights at International Borders, pg. 28.

<[https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR\\_Recommended\\_Principles\\_Guidelines.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf)> [22.01.2023].

<sup>60</sup> Ibid, 32.

<sup>61</sup> Article 4, paragraph 1, Joint Order No. 258/No. 73 of the Minister of Finance of Georgia and the Minister of Internal Affairs of Georgia dated August 29, 2019, "On approving the procedure for making appropriate markings in travel documents when crossing the state border of Georgia and

photographing a person and the methods of their use should not undermine human dignity, shall not violate the fundamental human rights and freedoms recognized by the Constitution of Georgia, should not pose a threat to human life and health, and should not harm the environment.<sup>62</sup> This act also prohibits further processing of the photograph taken for other incompatible purposes with its original purpose.<sup>63</sup>

Therefore, when photographing at the border, it is necessary to exist on at least one of the above legislative grounds. It should be noted that capturing a person's photograph and storing it in the relevant database constitutes the processing of personal data.<sup>64</sup> At the same time, the rules/procedures for processing personal data are detailed in the legislation. The legislation prohibits the processing of personal data in the absence of grounds for data processing and the processing of personal data in violation of the principles of data processing.<sup>65</sup> Therefore, it is essential to explain to the person on what grounds his photo is taken and what rights he enjoys in this process so that he can then effectively appeal this action of the representative of the authorized body and prevent the illegal processing of personal data.

### **2.3.3. Infringement of the rights of minors**

According to one of the respondents, he entered Georgia with his minor son when one of the police officers took his son to the interview room. According to the respondent, at first, he was not present during his son's interview, but only after some time, at his insistence, was he allowed into the interview room.

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displaying information in the automated database of the Ministry of Internal Affairs of Georgia". 29 August 2019. Website, 30/08/2019.

<sup>62</sup> *ibid*, article 4, paragraph 3.

<sup>63</sup> Article 4, paragraph 1, a joint order No 258/No73 of 29 August 2019 of the Minister of Finance of Georgia and the Minister of Internal Affairs of Georgia on the approval of the procedure for carrying out relevant indications in travel documents when crossing the State Border of Georgia and the approval of the procedure for reflecting information in an automated database of the Ministry of Internal Affairs of Georgia. 29 August 2019. Website, 30/08/2019.

<sup>64</sup> *ibid*, articles 4 and 5.

<sup>65</sup> *ibid*, articles 4 and 5.

Entrusting any organ with the obligation to respect children's rights and protect their rights is an obligation imposed at the international level<sup>66</sup> as well as reinforced by national legislation.<sup>67</sup> Giving preference to the child's best interests (their predominant consideration) shall be mandatory when making any decisions and/or actions made by the legislative, executive, and judicial authorities of Georgia, public institutions, and natural and legal persons related to the child.<sup>68</sup> At the same time, the parent is the child's legal representative and acts without special powers of attorney to protect his rights and interests in relations with third parties.<sup>69</sup>

The presence of a parent will provide emotional support to the child and ensure that they do not confront a situation alone that will most likely be very stressful for them if they are alone. Again, one of the reasons for a parent to be present is to ensure that the child understands what is being said, both in terms of content and language, and that they are allowed to express their views clearly. Although children can present credible evidence, they, depending on their age, are more exposed to pressure from officials and thus may provide information that may be unreliable, misinformative, or self-incriminatory.<sup>70</sup>

Thus, the separation of the parent and child during the border crossing, the entry of the child into a special room without a parent, and their interview represent a significant interference in the right to the personal life of the parent and the child, such a situation adversely affects the psycho-emotional state of both the parent and the child, and this action has no pillar in either legislation. Interviewing a child separated from their parents is allowed only in narrowly defined cases and only when such an action would serve the child's best interests. Therefore, authorized persons must protect and respect the rights/interests of minors when crossing the border.

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<sup>66</sup> Convention on the Rights of the Child. November 20, 1989. Website, 05/25/2000.

<sup>67</sup> The Code on the Rights of the Child. September 20, 2019. Website, 27/09/2019.

<sup>68</sup> Article 5, paragraph 3, The Code on the Rights of the Child. 20 September 2019. Website, 27/09/2019.

<sup>69</sup> The Convention on the Rights of the Child. November 20, 1989. Website, 25/05/2000.

<sup>70</sup> Caroline Hamilton, Juveniles Justice Legislative Reform Manual, UNICEF, 2013, 56.



#### 2.3.4. Ambiguous/inconsistent practice of decision-making on refusal to enter Georgia

The interviewed persons explained that the grounds for a refusal to enter Georgia are unclear to them. Accordingly, they indicate fears that if they leave the country, they do not know whether they will be able to return.

According to the established practice of the European Court of Human Rights, the freedom of movement of a person may be restricted in accordance with the law. At the same time, the expression "in accordance with the law" not only requires that the disputed measure have some basis in domestic legislation but also indicates the quality of the law in question, which requires that it be available to the persons concerned and its effects foreseeable.<sup>71</sup> Therefore, it is important that legislation regulating the entry of persons at the border meets the requirements of the quality of the law, be available, and is clearly foreseeable.

The grounds for refusing to enter Georgia are laid out in the Law of Georgia on the Legal Status of Aliens and Stateless Persons. In particular, an alien may be denied entry into Georgia: a) if he/she does not have the necessary documents for entering Georgia, provided for by the legislation of Georgia; b) if he/she is prohibited from entering Georgia or has not paid a fine imposed for staying in Georgia without legal grounds; c) if he/she has submitted incomplete or false data or documents to obtain a Georgian visa or extend his/her validity period; d) if he/she does not have health and accident insurance or sufficient funds to live in Georgia and return to his/her point of origin; e) if his/her stay in Georgia poses a threat to the state security and/or public order of Georgia, the protection of the health, rights and legitimate interests of citizens of Georgia and other persons residing in Georgia; f) if, based on foreign and political policy expediency, his/her stay in Georgia is unacceptable; g) if there is a reasonable suspicion that he/she will remain in Georgia without legal grounds after the visa expires; h) if he/she does not provide information or gives false information about his/her

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<sup>71</sup> Judgment of the European Court of Human Rights No. 43395/09 "De Tommaso v. Italy", 23 February 2017, par. 106; Judgment of the European Court of Human Rights No. 28975/05 "Khlyustov v. Russia", 11 July 2013, par. 68; Judgment of the European Court of Human Rights No. 66650/13 "Mursaliyev and Others v. Azerbaijan", 13 December 2018, par. 31; Judgment of the European Court of Human Rights No. 33129/96 "Olivieira v. the Netherlands", 4 June 2002, par. 47.

identity and purpose of travel; i) in other cases provided for by the legislation of Georgia.<sup>72</sup>

Some of the grounds mentioned above for refusal to enter Georgia (if their stay in Georgia poses a threat to the state security and/or public order of Georgia, protecting the health, rights, and legitimate interests of citizens of Georgia and other persons residing in Georgia; if based on foreign-political policy expediency, their presence in Georgia is unacceptable) contain general wording; however, following international standards, such general entries are justified based on the specificity of crossing the border as the essential elements of the state's immigration policy. In particular, in one of the cases, the European Court of Human Rights, although it indicated the need for access to legal grounds and foresight, also noted that foreseeability of the normative grounds does not include the obligation of the State to meticulously determine the types of actions that can lead to the deportation of a person in terms of protecting national interests. Actions that pose a threat to national security may be essentially different from each other in their nature and characteristics, and their preliminary identification may not be possible.<sup>73</sup> Thus, depending on the specifics of the issue, the general formulations of the grounds for a refusal to enter Georgia are admissible.

The admissibility of the general nature of the grounds for a refusal to enter Georgia does not justify the cases of their arbitrary use. From the interview given by one of the respondents, the inconsistent practice of making decisions on the refusal by authorized persons to cross the border is revealed. In particular, according to the interviewee's explanation, he and his wife were entering Georgia from the Republic of Armenia. According to the respondent, his wife was admitted to Georgia, but he was not. The next day he tried to enter Georgia again. On his instructions, the border guard asked whether his wife had the right to live in Georgia, after which he was allowed to cross the border.

At the same time, it is problematic in practice to use the grounds for refusing to enter Georgia in "other cases provided for by the legislation of Georgia." On the

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<sup>72</sup> Article 11, paragraph 1, the Law of Georgia on the Legal Status of Aliens and Stateless Persons. March 5, 2014. Website, 17/03/2014.

<sup>73</sup> Judgment of the European Court of Human Rights No. 50963/99 " Al-Nashif V. Bulgaria", 20 June 2002, par. 119, 121.

above grounds, a person is refused entry into the country even when there are no grounds provided for by the legislation. The Public Defender of Georgia also points to the mentioned problem and notes explicitly that the named norm is indicative and does not produce legal consequences separately; therefore, for its application, there must be a specific case defined by law when an alien will be subject to restrictions on crossing the border.<sup>74</sup>

### **2.3.5. Familiarization with/explanation of the decision on refusal to enter Georgia**

According to one of the interviewed respondents, he was refused to enter Georgia without handing over any documents. Accordingly, it is not known to him on the basis that he was not allowed to cross the border. At the same time, he was not even verbally explain the legal grounds for the refusal to enter Georgia.

The form of making a decision on the refusal of an alien to enter Georgia and its transfer to a stakeholder shall be regulated by Order No 3 of January 3, 2017, of the Minister of Internal Affairs of Georgia "On the approval of the decision and complaint form on the issuance of a Georgian visa at the state border of Georgia, the refusal to enter Georgia and the termination of the validity of the visa issued at the state border of Georgia." The form of making a decision on the refusal of a foreigner to enter Georgia and its transfer to an interested person is regulated by "On the approval of the decision and complaint form on the issuance of a Georgian visa at the state border of Georgia, the refusal to enter Georgia and the termination of the validity of the visa issued at the state border of Georgia" of the Minister of Internal Affairs of Georgia dated 06.2017 By order No. 3 of January. The mentioned order also approved a special form, which is filled out by an authorized official of the Patrol Police Department of the Ministry of Internal Affairs of Georgia when making a decision on refusal to cross the border. The mentioned document indicates the grounds for which a person's refusal to enter Georgia becomes a motive for refusing to enter Georgia, and at the same time, the document contains an explanation of the procedure for appealing the

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<sup>74</sup> Report of the Public Defender of Georgia on the state of protection of human rights and freedoms in Georgia, 2019, 422, 423.

decision made. Thus, it is necessary for authorized persons to fill out this document and transfer it to a stakeholder. It is important to immediately provide persons with information about the refusal to enter the country and clarify the procedure for appealing.<sup>75</sup>

As for the refusal to enter the country itself, it is worth noting that the operational information available at the State Security Service of Georgia is often the basis for refusing to enter Georgia. According to the law of Georgia on counterintelligence activity, counterintelligence activity is a particular type of activity in the field of ensuring state security, the purpose of which is to detect and prevent threats arising from the intelligence and/or terrorist activities of foreign special services, organizations, groups of persons and individuals directed against the state interests of Georgia.<sup>76</sup> Counterintelligence activities are classified.<sup>77</sup> Consequently, restricting the acquaintance of classified documents directly to a person, which is based on their refusal to enter Georgia, does not come into conflict with the legislation. Based on these articles, the Supreme Court of Georgia explained in one of the cases: "The Chamber of Cassation notes that the right of an interested party to get acquainted with materials in administrative proceedings, together with the right to express its opinion, is the procedural rights that serve to realize the material and legal right of an interested person, although the General Administrative Code also establishes the possibility of restricting the right to get acquainted with the materials of administrative proceedings in two cases: when materials are documents of an internal departmental nature related to administrative proceedings or when the documents have the status of a classified document."<sup>78</sup> Thus, on the grounds of protecting state secrets, a person may be restricted from access to classified documentation.

Therefore, the fact that an alien does not have detailed access to a document that becomes the basis for the refusal to enter the country does not conflict with

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<sup>75</sup> Office of the United Nations High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights at International Borders, pg. 32.

<[https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR\\_Recommended\\_Principles\\_Guidelines.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf)> [22.01.2023].

<sup>76</sup> Article 1, Law of Georgia "On counter-intelligence activities". November 11, 2005. SSM, 49, 30/11/2005.

<sup>77</sup> *ibid*, Article 6, paragraphs 1 and 2.

<sup>78</sup> Ruling of the Supreme Court of Georgia of July 29, 2022, in case No. BS-959(K-21).

the issue's legislative regulation and complies with international standards. According to the practice of the European Court of Human Rights, the inability to personally get acquainted with all the information requested by the applicant does not in itself argue that interference is not justified in the interests of national security.<sup>79</sup>

However, it is crucial that in accordance with both the legislation and the practice of the Common Court, if the interest in familiarizing the document exceeds the interest in the protection of secrecy, the materials of the case, which contain state secrets, will be presented to the interested party for familiarization.<sup>80</sup> Thus, when familiarizing with the secret documentation that is the basis for a person's refusal to enter the country, an individual study of the case and the balancing of conflicting interests should be done. Each specific case should be resolved individually as a result of a comprehensive examination of the circumstances of the case.

### **2.3.6. The issue of appealing the decision on refusal to enter Georgia**

One of the problematic circumstances regarding the refusal to enter Georgia is the deadline for appealing the decision made.

The European Court of Human Rights explained that even if there is a threat to national security, even if there is a threat to national security, in case of restriction of freedom of movement for a person, the right to be restricted shall be subject to proper control through an independent, competent body, which, if necessary, will have access to classified information.<sup>81</sup> The interested person should be able to submit a proper complaint; the authorized body should have the opportunity to respond to such cases when the actions taken against the person are arbitrary and unjustified.<sup>82</sup> Thus, the European Court does not deny

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<sup>79</sup> Judgment of the European Court of Human Rights No. 964/07 "Dalea v. France", 2 February 2010.

<sup>80</sup> Article 99, Part 2, "General Administrative Code of Georgia" Law of Georgia. June 25, 1999. SSM, 32(39), 15/07/1999; see also the Ruling of the Supreme Court of Georgia of July 29, 2022, in case No. BS-959 (K-21).

<sup>81</sup> Judgment of the European Court of Human Rights No. 50963/99 "Al-Nashif V. Bulgaria", 20 June 2002, par. 123.

<sup>82</sup> *ibid*, par. 124.

the state the possibility of restricting the right of an alien to enter its territory, however, provided that the interested person can appeal the action and effective control over the decisions of state bodies within the scope of the complaint will be carried out.<sup>83</sup>

"On issuing a Georgian visa at the State Border of Georgia, refusing to enter Georgia, and appealing the decision to terminate a visa issued at the State Border of Georgia and the approval of the form of a complaint" is determined by Order No 3 of 06 January 2017 of the Minister of Internal Affairs of Georgia, the time limit for issuing a Georgian visa at the State Border of Georgia and appealing the decision to refuse to enter Georgia - 10 working days. The said period is unreasonably small so that an alien can clarify the matter, find an interpreter or a lawyer, and submit a substantiated complaint to the relevant body. The shortage of the appeal period has repeatedly become the basis for foreigners to appeal the deadline for refusing to enter the country on the grounds of missing the deadline for appealing the decision, leaving their complaints without consideration.<sup>84</sup> Therefore, it is important to increase the timeframe for appealing the decision to refuse to enter Georgia.

## 2.4. Obstacles created during life in Georgia

### 2.4.1. Enjoying the freedom of assembly

During the interview, the inquired persons indicated certain obstacles created when using the right to assembly. In particular, as they indicated, when they were at one of the rallies, they noticed individuals (in their position, associated with state agencies) who tracked, monitored, and took photos/videos using various technical means. This arouses fear in them and has a negative effect on their freedom of expression.

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<sup>83</sup> Judgment of the European Court of Human Rights No. 26764/12 "Rotaru v. the Republic of Moldova", 8 December 2020, par. 25; Judgment of the European Court of Human Rights No. 28975/05 "Khlyustov v. Russia", 11 July 2013, par. 74.

<sup>84</sup> See, for example, the decision of the Administrative Affairs Board of Tbilisi City Court of July 26, 2018, on case No. 3/1664-18.

It should be noted that the Constitution of Georgia enshrines the right of everyone to assemble in public and unarmed without prior permission.<sup>85</sup> Freedom of assembly is one of the special forms of freedom of expression.<sup>86</sup> Protection of this right serves to respect the individual interests and aspirations of each member of the society and, thus, determines the degree of accountability and democracy of the state.<sup>87</sup> Thus, the demand of foreigners and stateless persons to enjoy unhindered freedom of assembly is not their mere whim or baseless claim but is their constitutional right.

Therefore, freedom of assembly is considered an effective mechanism for advocating significant changes for different groups, which is why the possibility of equal and full-fledged use of this right determines the degree of openness and democracy of society.<sup>88</sup> It is important for foreigners to exercise this right without hindrance and take a position, including towards an event in which Georgian citizens may not have an interest (a desire to show solidarity or protest).<sup>89</sup> Thus, it is the obligation of authorized persons of the State to prevent any unlawful actions hindering the use of this right.

#### **2.4.2. Standards for Protection of Privacy**

Interviewees point to the problem of protecting their privacy. According to them, Georgian legislation does not allow for the effective protection of personal data. Consequently, they have a feeling that their conversation and geolocation are constantly controlled.

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<sup>85</sup> Article 21, paragraph 1, Constitution of Georgia. August 24, 1996. Departments of the Parliament of Georgia, 31-33, 24/08/1995.

<sup>86</sup> Judgement No 2/482,482,483,487,502 of the Constitutional Court of Georgia of 18 April 2011 the Constitutional Court of Georgia on the case "Political Union of Citizens for United Georgia", Political Union of Citizens of Georgia "Georgian Conservative Party", Citizens of Georgia – Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers Association, Citizens Dach'i Tsaguria and Jabba Jishkariani, Public Defender of Georgia v. the Parliament of Georgia, II-4.

<sup>87</sup> Judgement No 1/3/538 of 24 June 2014 of the Constitutional Court of Georgia on The Case „Free Georgia Political Union v. the Parliament of Georgia, II-1.

<sup>88</sup> Judgement No. 2/482,483,487,502 of the Constitutional Court of Georgia dated April 18, 2011, in the case "Citizens' political union "Movement for United Georgia", citizens' political union "Conservative Party of Georgia", citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, Association of Young Lawyers of Georgia, citizens Dach'i Tsaguria and Jaba Jishkariani, Public Defender of Georgia against the Parliament of Georgia", II-25.

<sup>89</sup> *ibid*, II-51.

The right to free development of a person implies the right of a person, independently, without the intervention of a third person (including the State) and without control from them, to determine their own self, identity, lifestyle, to choose the content, forms, intensity of public relations with specific people or public relations, independently determine ways, and means of satisfying their intellectual, cultural, social, spiritual or other interests and needs. "The right to free development of one's own personality primarily implies the general freedom of action of a person. For the autonomy of a person, their free and complete development, particular importance is attached to both the freedom to independently define relations with the outside world, as well as the physical and social identity of an individual, the inviolability of intimate life, personal connections with a particular circle of people with the intensity necessary for their personal development".<sup>90</sup>

Therefore, freedom of communication and privacy protection are fundamental values of a liberal society. In addition, respect for these values in the digital age indicates how the Constitution works in practice.<sup>91</sup>

It is worth noting that the most severe practice of mass control and, from this point of view, violation of human rights exists in Georgia. Civil organizations also point to this and demand appropriate reform: "In light of fragmented reforms, fictional judicial and weak parliamentary accountability, the State Security Service of Georgia, with its excess powers and powerful leverage, has become a mechanism for mass control in the country. Despite numerous efforts and large-scale campaigns, the state has so far failed to take responsibility for fundamental reform of the Service and the control tools within its scope to revise wiretapping and surveillance mechanisms for turning this process into a democratic mode. By failing this reform, the state legitimized the agency at the expense of undermining fundamental human rights, the function of mass wiretapping and controls. ... Against the background of fragile democracy and severe political crises, the State Security Service has been established as a strictly politicized

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<sup>90</sup> Constitutional Court of Georgia on February 4, 2014 №2/1/536 Decision on the case "Citizens of Georgia – Levan Asatiani, Irakli Vacharadze, Levan Beryanidze, Beka Buchashvili and Gocha Gabadze v. the Minister of Labor, Health and Social Affairs of Georgia", II-55.

<sup>91</sup> European Commission for Democracy through Law (Venice Commission), Urgent Opinion on the Draft Law on the Amendments to the Criminal Procedure Code Adopted by the Parliament of Georgia on 7 June 2022, CDL-PI(2022)028, 26 August 2022, par. 30.



agency in the country, guarding the interests of influential political figures, which tries to maintain the political power of a particular group through surveillance, intimidation, and blackmail. Mechanisms for responding to the illegal activity of the service are weak in the country. Along with the failure to investigate alleged illegal control and surveillance cases of citizens, there are no tools for effective supervision of the activities of the Service in the country. Judicial control mechanisms are fictional, and the instruments of parliamentary oversight, in rare cases, lead to political or legal responsibilities, which provides even more opportunities for the agency to control any area of life without impunity, without any accountability." <sup>92</sup> Therefore, it is important to improve the legal act regulating covert wiretappings and effective control over the activities of a body with this function (LEPL Operational-Technical Agency of Georgia).

The standards for protecting privacy are especially fragile for activists coming from the Republic of Belarus, the basis of which is the 2016 Agreement adopted between the State Security Service of Georgia and the State Security Committee of the Republic of Belarus. <sup>93</sup>

The areas in which states cooperate are very wide. The entry into force of this Agreement was negatively assessed by representatives of a number of international communities. <sup>94</sup> The problem was the fact that the Agreement was enacted precisely at the time when the deliberate persecution of the press, NGOs, and activists was carried out in the Republic of Belarus. <sup>95</sup>

Based on the preceding, the Georgian side mustn't allow the use of the Agreement between the Security Services in such a way that it would endanger Belarusians in Georgia, especially human rights defenders and activists.

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<sup>92</sup> Civil Society Organizations: Government Uses Total SSG Control Mechanism, August 2, 2021. <<https://transparency.ge/ge/post/samokalako-organizaciebi-xelisupleba-sus-s-totaluri-kontrolis-mekanizmad-iqenebs>> [22.01.2023].

<sup>93</sup> Article 4, paragraphs 1 and 2, Agreement on cooperation between the State Security Service of Georgia and the State Security Committee of the Republic of Belarus. August 25, 2016. Website, 21/08/2021.

<sup>94</sup> Former US Ambassador to Georgia Ian Crawford Kelly; Member of the European Parliament Viola von Kramon-Taubadel; Linas Linkevichus, the former Minister of Foreign Affairs of Lithuania, also responded to the news about the agreement.

<sup>95</sup> Human Rights Watch, Belarus Events of 2021, <<https://www.hrw.org/world-report/2022/country-chapters/belarus>> [21.01.2023]; Amnesty International, BELARUS 2021, <<https://www.amnesty.org/en/location/europe-and-central-asia/belarus/report-belarus/>>[21.01.2023].

### 2.4.3. The problem of using banking services

Interviewees focus on the problematic nature of using banking services. In their indication, they cannot open bank accounts. According to one of the respondents, only TBC Bank provides the service but does not allow using the bank card payment service in taxis, supermarkets, and other facilities.

Concerning similar cases, the banking sector usually cites the legitimate aim of restricting the use of banking services, as a rule, to facilitate the prevention of the legalization of illegal income. In addition, commercial banks also indicate the provision of the Law of Georgia on the Activities of Commercial Banks, according to which commercial banks operating in Georgia have the right to refuse to open an account without any justification.<sup>96</sup>

In relation to the named issue, it should be noted that on April 4, 2018, the Public Defender of Georgia applied to the National Bank of Georgia with a general proposal to develop simple foreseeable regulations that ensure that foreign citizens receive banking services in commercial banks regardless of any signs of discrimination. The Public Defender believes that the circumstances indicated in the statements may represent cases of encouraging discrimination in the field of using banking services against a specific group of people with citizenship of certain states. The Public Defender pointed out that commercial banks should determine the risks expected from a specific person based on an individual assessment directly as a result of checking the said person, and their approach should not be blanket banned and conditioned by the citizenship of any state.<sup>97</sup> In the general proposal, the Public Defender of Georgia also noted that financial services and related prevention of money laundering and financing of terrorism are very specific areas, the evaluation of which, in some cases, exceeds the competence of the Public Defender. Consequently, the supervisory and financial institutions of the State must develop such flexible regulations that will be in line with the spirit of the recommendations of a special group of financial actions

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<sup>96</sup> Article 21<sup>1</sup>, Paragraph 4, Law of Georgia on the Activities of Commercial Banks. February 23, 1996. Parliamentary Gazette, 003, 23/03/1996.

<sup>97</sup> Internationally recognized rules for the identification of financial service users and monitoring of business relationships based on a risk-based approach are established by 40 recommendations developed by the Financial Action Task Force (FATF) (hereinafter - the Special Group).

and, at the same time, contribute to the maximum financial inclusion of the population.<sup>98</sup>

Thus, based on the relevant legislation, commercial banks, based on a risk-based approach, must identify a customer (client) of their services whose activities may threaten the legalization of illegal income and financing of terrorism. In addition, the procedure for identifying a customer (client) of financial services and verifying their identity must be carried out, including taking into account the type and nature of the client.

#### **2.4.4. Problematic aspects of obtaining a residence permit**

The interviewed persons pointed to the ambiguous practice of the authorized body refusing to issue a residence permit to an alien in Georgia. According to them, it is not clear on what basis the submitted applications are satisfied or not satisfied. At the same time, decisions made on the refusal to issue a residence permit do not contain the appropriate justification, which is why it becomes difficult for the addressee of the act to find out what factual and legal grounds were laid on the decision made.

A residence card is a document with legal force that allows an alien or a stateless person to engage in various legal relations, to use medical, insurance or banking, and other similar services. Accordingly, within the scope of its discretionary powers, the State decides whether to undertake obligations towards a specific alien. By issuing a residence card, the State undertakes to ensure the protection of the rights and freedoms of aliens and stateless persons for the entire period of their legal stay in Georgia on the territory of the State.<sup>99</sup>

Before discussing the difficulties of obtaining a residence permit, statistics on getting a residence permit are important. Out of the 20716 applications submitted for residence permits during 2021, 16853 were satisfied, and 1126

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<sup>98</sup> Based on a risk-based approach, the internationally recognized rules for identifying a customer of financial services and monitoring business relationships are established by a special financial action group (Financial Action Task Force –FATF) (hereinafter - special group) developed by 40 recommendations.

<sup>99</sup> Ruling of the Supreme Court of Georgia on December 7, 2022, on the case Nobs-1240 (K-22).

cases were denied.<sup>100</sup> Out of 1126 cases that received a negative answer, 1070 cases were rejected due to the existence of the circumstances stipulated by subparagraphs "a" and "c" of the first paragraph of Article 18 of the Law of Georgia "On the Legal Status of an Aliens and Stateless Persons."<sup>101</sup> In particular, according to the named legislative norms, a person may be refused the issuance of a residence permit if: a) there is a conclusion of the authorized body about the inadvisability of his living in Georgia to ensure the protection of the interests of the state and/or public security; c) they carry out activities that pose a threat to the state security and/or public order of Georgia. In turn, the legislation establishes that the interests of protecting the state security and/or public safety (order) of Georgia include cases where: a) a person's stay in Georgia threatens relations with other States and/or international organizations; b) there is information that indicates the connection of a person with a high degree of probability: b.a) with the armed forces of a country/organization hostile to the defense and security of Georgia; b.b) with the intelligence services of another state; b.c) terrorist and/or extremist organizations; b.d) illegal circulation of drugs, armaments, weapons of mass destruction or their components, human trafficking and/or other criminal organizations (including transnational criminal organizations).<sup>102</sup>

Thus, the grounds for refusing to issue a residence permit do not carry the degree of concreteness that is characteristic of another relationship; however, as noted, this is derived from the specifics of the issue, and such general formulations justify the immigration policy of the state.<sup>103</sup>

However, the issue of granting a Georgian residence permit to an alien must be resolved by considering the alien and the state's interests. The Supreme Court of Georgia also points to this issue in a number of decisions. In particular, the body authorized to issue a residence permit to an alien with a legal basis in Georgia - the State Services Development Agency of the Republic of Georgia, must thoroughly study and investigate each fact related to the granting of a residence permit in full compliance with the requirements established by law, and only

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<sup>100</sup> Letter No. 01/31652 dated 11.02.2022 of the State Services Development Agency of Georgia.

<sup>101</sup> *ibid.*

<sup>102</sup> Letter No 01/31652 of 11.2.2022 of the Public Service Development Agency of Georgia.

<sup>103</sup> Judgment of the European Court of Human Rights No. 50963/99 "Al-Nashif V. Bulgaria", 20 June 2002, par. 119, 121.

after that, based on appropriate evidence, make a reasoned decision to resolve the issue positively or negatively.<sup>104</sup> In the event that the risk of creating a threat to state security and public order is not clearly established by the claimant, the administrative body is not limited to taking into account the specific characteristics of the person seeking residence.<sup>105</sup>

The Supreme Court of Georgia has also explained in several cases that the decision to grant a residence permit to an alien in Georgia belongs to the discretionary authority of the State Services Development Agency of the State of Georgia. Mere reference to the Counter Intelligence Department's letter alone does not constitute sufficient justification for the impugned act. The decision of the State Services Development Agency must be based on a comprehensive, complete, and objective investigation of the circumstances of the case, and the administrative body must make a reasoned decision.<sup>106</sup>

#### **2.4.5. Difficulties related to obtaining the status of an asylum seeker and an internationally protected person**

##### **a) The timeframe for obtaining the status**

Respondents point to the long-term procedures they have to go through to obtain refugee status in Georgia. As a rule, this procedure lasts at least 3-4 years because, in the case of an application, the administrative body, in most cases, decides to refuse to grant refugee status. Subsequently, they have to use appealing mechanisms. The hearing in court continues for several years. Sometimes, an appeal to the court is required even several times, which eventually prolongs the process of obtaining the status.

The Public Defender of Georgia also appeals to the overloading problem in the status determination procedure. According to the government's migration strategy, "the national asylum system is effectively functioning as it is, receiving up to 1,000 applications per year. When receiving more than 1,000 applications, the system loads and fails to effectively enforce the relevant procedures, which is

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<sup>104</sup> Ruling of the Supreme Court of Georgia of December 7, 2022, in case No. BS-1240(K-22).

<sup>105</sup> Ruling of the Supreme Court of Georgia on December 7, 2022, on the case Nobs-1240 (K-22).

<sup>106</sup> *ibid.*

reflected in the accumulation of the applications under consideration, the inability to conduct an expedited procedure or priority review, etc.<sup>107</sup> It should be noted that the number of applications received in 2019 was 1237; as of December 2020, there were 864.<sup>108</sup> This circumstance once again indicates that accepting more than 1,000 applications a year for the following year leads to an increase in the number of cases to be considered, and it is possible to conclude that the national asylum system is overloaded. This raises the risks of disrupting the proper operation of the asylum system and deterioration in the degree of substantiation of the decisions made. Based on the current situation, the Public Defender of Georgia indicated that it is necessary to make an effort to create a staff reserve of professionals trained on asylum issues, to introduce regular internships, to regularly implement activities aimed at raising the qualifications of employees, etc.<sup>109</sup>

#### b) Anticipated criminal liability in case of refusal to grant international protection status

According to the Law of Georgia on International Protection, if an alien or a stateless person is immediately declared in a government body upon illegal entry into the territory of Georgia, submits an appropriate explanation regarding the reason for the unlawful entry into the country and requires international protection, they shall be granted the status and certificate of an asylum seeker who is given the status and certification of which confirms the fact of a person's application for international protection and their legal stay in Georgia.<sup>110</sup> However, after reviewing the application and making a final decision, if a person is not granted the status,<sup>111</sup> they shall be held criminally liable for illegally

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<sup>107</sup> Chapter 6, "On Approval of the Migration Strategy of Georgia for 2021 - 2030" Resolution No. 810 of the Government of Georgia. December 30, 2020. Website, 12/31/2020.

<sup>108</sup> Letter No. MIA 8 21 00544133 of the Ministry of Internal Affairs of Georgia, dated March 5, 2020.

<sup>109</sup> Chapter 6, "On Approval of Georgia's Migration Strategy for 2021 – 2030" Ordinance No 810 of the Government of Georgia. December 30, 2020. Website, 31/12/2020.

<sup>110</sup> Article 3, paragraph "g," Law of Georgia "On International Protection." 1 December 2016. Website, 15/12/2016.

<sup>111</sup> Refugee, humanitarian, or temporary protected status.

entering the territory of Georgia.<sup>112</sup> In case of inability to obtain the status, the Public Defender of Georgia considers the possibility of criminal punishment of a person unconstitutional and appeals relevant norms to the Constitutional Court of Georgia.<sup>113</sup>

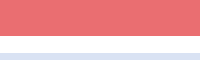
It is important to review the international standards regarding the imposition of criminal liability on a person seeking asylum due to illegally crossing the border. Although the granting of international protection status by different countries depends on policies that change along with the situation in the region, the general principles are set by the UN Convention on the Status of Refugees and the Protocol of 1967.<sup>114</sup> Paragraph 1 of Article 31 of the Named Convention stipulates that "contracting states will not punish refugees for illegal entry or stay in their territory, which entered directly from areas where their life or freedom was threatened by Article 1. They are unauthorized on the territory of this state – provided that such refugees are immediately declared to the authorities themselves and submit appropriate explanations about their illegal entry or presence." At the same time, a person may comply with the conditions of good faith established by the Convention for obtaining refugee status, although they may not be granted refugee status for another reason (for example, on the grounds provided for by Article 32 of the Same Convention: based on the opinions of state security or public order) and be expelled from the country. In this case, it would be reasonable and appropriate for the purpose of the Convention that even in the case of a negative response to granting refugee status, at least a guarantee of decriminalization should be extended to asylum seekers on the condition that asylum seekers be able to show that refusal to refugee status was incorrect, and the review procedure – unfair. In this regard, it is interesting the decision of the British legislator, according to which, if the

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<sup>112</sup> Article 7, paragraph 4, Law of Georgia "On International Protection." 1 December 2016. Website, 15/12/2016.

<sup>113</sup> Article 3, paragraph "g," Law of Georgia on International Protection. December 1, 2016. Website, 15/12/2016.

<sup>114</sup> By 1951, states had speculated that the problems of refugees were temporary and only due to World War II, although expectations proved inaccurate. As a result, later, the protocol of 1967 repealed the restrictions envisaged by the Convention of 1951 concerning the geographical and timely aspects of the notion of a refugee, thus making the scope of the convention universal. See. Convention and Protocol Relating to the Status of Refugees, 51, <UNHCR - Convention and Protocol Relating to the Status of Refugees> [21.01.2023].



asylum seeker's application is not satisfied, the burden of proof is transferred to the asylum seeker to show in court that he is indeed a refugee, in which case he will be freed from renewed criminal prosecution.<sup>115</sup>

Therefore, if a person fails to obtain the status of a refugee, humanitarian or under temporary protection, imposing criminal liability on them for illegal entry into the territory of Georgia will have a significant stinging impact concerning the requirement for international protection in Georgia, which will ultimately adversely affect the rights of persons who actually need protection and believe that they fully meet the legal prerequisites for obtaining the status mentioned above.

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<sup>115</sup> See. Dr. Cathryn Costello, Article 31 of the 1951 Convention Relating to the Status of Refugees, United Nations High Commissioner for Refugees, (2017), 16, <59ad55c24.pdf (refworld.org)> [21.01.2023].





## SUMMARY / RECOMMENDATIONS

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This report discusses the problems that active citizens from the Republic of Belarus, the Islamic Republic of Iran, and the Russian Federation face. At the same time, as mentioned previously, this document is based on the information provided by the persons interviewed within the framework of the study. Accordingly, the document does not claim to be universal and does not include all the difficulties that, in general, foreigners face when crossing the border of Georgia or living in Georgia.

As a result of analyzing the identified problems, specific recommendations were outlined, the implementation of which will positively impact the legal status of aliens. In particular, these recommendations are:

**To the Ministry of Internal Affairs of Georgia (authorized bodies/employees):**

- Delays at the border of aliens and stateless persons and their interview shall be conducted if there are grounds provided for by the legislation, taking into account the individual risks arising from them, not on allegedly discriminatory grounds.
- When delaying at the border, persons shall be clarified on the possible duration of their delay, the basis for suspension, their rights and obligations within the framework of the inspection procedure, the potential consequences of non-compliance, and means of protection.

- A person at the border shall only be photographed in cases provided by legislation. At the same time, to explain to the person on what basis his photograph is taken and what rights they enjoy in this process so that they can subsequently effectively appeal this action of the representative of the authorized body and prevent the illegal processing of personal data.
- When crossing the border, the minor shall not be separated from their parents, and the child should not be taken to a special room for questioning outside of the exceptions provided by the law.
- The practice of independent and arbitrary use of the grounds for refusing to enter Georgia “in other cases provided for by the legislation of Georgia” shall be eliminated.
- In case of denial to enter the country, persons should immediately be given a decision on the refusal to enter the country and clarified the appeal procedure.
- The 10-day period for appealing the denial decision to enter Georgia shall be extended.
- Ensure the retraining of public servants working at border crossing points and raising qualifications on the issues of prohibition of discrimination, respect for the rights of minors, and, in general, human rights issues.
- In order to respond to the problem of overloading the national asylum system, develop and implement specific measures.

**To the State Security Service of Georgia:**

- Do not allow the use of the Agreement on cooperation between the State Security Service of Georgia and the State Security Committee of the Republic of Belarus in such a way as to compromise the protection of the personal data of human rights activists and activists of the Republic of Belarus in Georgia.



**To the National Bank of Georgia:**

- Introduce easily foreseeable regulations that ensure foreign nationals receive banking services in commercial banks without discrimination, regardless of any sign.

**To the Parliament of Georgia:**

- Amendments to the Law of Georgia on International Protection shall be made, and in the presence of appropriate conditions, a person shall be exempted from criminal liability for illegal entry into the territory of Georgia, even if they are not eventually granted the status of a refugee, humanitarian or person under temporary protection.
- Make amendments to the law regulating the conduct of undercover investigative activities, and discussions about eliminating mass wiretapping shall be started on fundamental security sector reform.

**To the LEPL Public Service Development Agency:**

- The decision to grant a Georgian residence permit to an alien shall not rely solely on the letter of the Counterintelligence Department, and the LEPL Public Service Development Agency shall carry out a comprehensive, complete, and objective examination of the circumstances of the case itself. At the same time, the applicant's individual condition shall be considered.
- The decision to refuse to grant a Georgian residence permit to an alien shall be substantiated and not refer only to the letter of the Counterintelligence Department.