

REPRESSION BEYOND BORDERS

Exiled Azerbaijanis in Georgia



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Table of contents

Executive Summary	4
Introduction and Methodology	6
1. Azerbaijan’s crackdown on dissident voices and activists	7
2. Georgia – a place of exile	9
2.1. Relations between Georgia and Azerbaijan	9
2.2. Azerbaijanis living in Georgia	11
2.3. Georgian government’s immigration policy	11
3. Case profiles - Azerbaijani activists and journalists living in Georgia	12
3.1. Abduction: journalist Afgan Mukhtarli	13
3.2. Cross border harassment and threats: political and human rights activist Vidadi Isgenderli	17
3.3. Surveillance and ineffective investigation: journalist Gulnur Kazimova	18
3.4. Unjustified denial of asylum claim: political opposition activist Dashgin Aghalarli	20
3.5. Denial of residence permit: journalist Leyla Mustafayev	22
3.6. Denial of visa-free entry to Georgia: musician and reporter Jamal Al	23
4. Legal analysis - the plight of Azerbaijani exiles in Georgia	25
4.1. Shortcomings and concerns about police action and investigations	25
4.2. Denial of asylum, residence, and visits on state security and public order grounds	33
5. Conclusion and recommendations	40

Executive Summary

The government of Azerbaijan has become known for its relentless crackdown on civil society and political dissent. 2014 marked a notable escalation in the systematic dismantling of civil society institutions and dozens of human rights defenders, activists, and journalists were detained. Although many of those rounded up in 2014 have since been released, Azerbaijan continues to use its legal and criminal justice system to keep tight control over public space and silence critical voices. Today, local activists record more than 100 political prisoners, and as authorities tighten their grip, the government has eradicated the country's once vibrant and active civil society, having a devastating chilling effect on civic engagement.

Since the 2014 crackdown started, many Azerbaijani activists and journalists have left the country for fear of persecution. Among other countries in Europe, neighbouring Georgia became a popular destination due to its proximity, historically liberal immigration policy, and NGO-friendly environment. However, the close relationship between the governments of Azerbaijan and Georgia has put Azerbaijani exiles at a high risk, especially after 2016.

The two neighbouring countries engage in substantial trade and closely cooperate on security issues. Both are highly interested in limiting Russia's influence and economic domination. The Azerbaijani government has invested more than USD 2.1 billion in the Georgian economy since 1997 and supplies 90 percent of the country's natural gas. In 2016, Azerbaijan's investments accounted for 35 percent of the total volume of foreign direct investment to Georgia. The completion of the Baku-Tbilisi-Ceyhan and the Baku-Tbilisi-Erzurum pipelines in 2006 as well as the anticipated construction of the Southern Gas Corridor – a USD 45 billion project scheduled for completion in 2020 that will deliver natural gas from Azerbaijan, through Georgia, directly to Europe – is especially important for the symbiotic relationship.

The authorities' alleged collusion in the recent abduction of the Azerbaijani journalist Afgan Mukhtarli from Georgia to Azerbaijan had a chilling effect on the exile community in Georgia. Afgan was abducted in Tbilisi in May 2017 and resurfaced two days later in Baku facing a slew of specious charges. He alleges that Georgian speaking men in police uniform kidnapped, beat him, and drove him to the border, where they handed him over to Azerbaijani officials. These claims raise significant questions for the Georgian authorities and it is crucial that the Chief Prosecutor Office, which is tasked with investigating Afgan's case, conducts the investigation effectively and makes the results public.

The NGOs jointly issuing this report are also concerned about allegations that journalists Gulnur Kazimova and Afgan's wife Leyla Mustafayeva, as well as political activists Vidadi Isgenderli and Dashgin Aghalarli, whose cases are included in this report, and other Azerbaijani exiles have been followed, harassed, threatened, and at least in one case, attacked by unknown individuals in Georgia who they presumed were agents of the Azerbaijani government.¹ The Georgian authorities have failed to investigate such allegations effectively. Indeed, the authors of this report did not find a single case where incidents reported by Azerbaijani exiles resulted in the identification, let alone the arrest of the perpetrator. One Azerbaijani exile also alleged to have been subjected to surveillance by the Georgian authorities.

Under international law, governments have a duty to protect the exercise of fundamental rights of people living in their territory, including citizens and noncitizens, and in certain circumstances this duty includes the responsibility to investigate claims of injury committed against them, even by third parties. This investigatory obligation requires independent and thorough investigations which are accessible to victims and their families. The state's responsibility to protect individuals' fundamental rights may also extend to an obligation to take certain positive actions to protect people on its territory from harassment or criminal acts of third parties.

There are also reports that a number of applications for residence permits and asylum lodged by Azerbaijani exiles have been rejected by the authorities in Georgia on dubious grounds, including vaguely worded risks to state security and public order. Particularly shocking is the case of Dashgin Aghalarli, who along with his son was refused asylum in Georgia on state security and public order grounds without any justification even though the decision noted that Dashgin would likely face persecution at home. Given that Interpol had already issued a red notice for him on the request of the Azerbaijani authorities and was threatened with arrest and death on numerous occasions, he has a well-founded fear of persecution if he is returned to Azerbaijan. Such

¹ In preparation for this report, the authors interviewed approximately a dozen people to learn about the issues and concerns Azerbaijani exiles are facing in Georgia. The testimonies reflected a high degree of similarity, and thus the authors took the decision to profile one individual that was representative of a class of cases, while noting and analyzing the patterns that emerged.

arbitrary denial of asylum, (as well as residential permits or entry by) Georgia to Azerbaijani dissidents also proves problematic under international law.

Azerbaijani activists are also being denied entry into Georgia, in what appears to be a selective approach targeting those known for their public criticism of the Azerbaijani authorities. For example, Azerbaijani activist/rapper Jamal Ali, who obtained refugee status and has lived in Germany since 2012, was denied entry to Georgia at Tbilisi airport in April 2017 when he wanted to visit the country for work reasons. According to statistics provided by the Georgian government, more than half of those individuals who were denied entry into Georgia on state security grounds in 2016 and 2017 were from Azerbaijan.

The NGOs issuing this report urge the authorities of Georgia to implement the following recommendations as a matter of urgency:

- Carry out a thorough, impartial and independent investigation into Afgan Mukhtarli's allegation that Georgian police was involved in his abduction, make the results public, and bring to justice anybody reasonably suspected of being responsible.
- Ensure that victim status be granted to Afgan Mukhtarli and his spouse.
- Conduct effective and independent investigations into allegations of threats, harassment and attacks directed against Azerbaijani exiles in Georgia; and bring anybody reasonably suspected of being responsible to justice.
- Ensure that Azerbaijani dissidents are not denied asylum, residence permits or entry into Georgia based on their country of origin and political views.
- Subject the cases of all asylum seekers, whose asylum applications have been denied based on classified information, to a meaningful review.
- Amend legislation to ensure that the law on residence permits is clear and precise and ensure in practice that security grounds are not used arbitrarily.
- Clarify the reasons for denial of entry into Georgia.



Introduction and Methodology

Azerbaijani journalist Afgan Mukhtarli disappeared in Tbilisi on 29 May 2017, only to resurface two days later in police custody in Baku. Although Azerbaijani exiles living in nearby Georgia, were not surprised at the events, they were alarmed and scared.

As the Azerbaijani authorities have become increasingly hostile towards civil society and those who criticize the government, Georgia has become a new home to many exiled human rights defenders, journalists and activists. Georgia's geographical proximity, the NGO-friendly environment and its democratic aspirations made the country a natural choice for Azerbaijani dissidents, many of whom were facing persecution at home. Recently, however, an increasing number of Azerbaijani exiles report problems of pressure, harassment, surveillance, discrimination, and misconduct by the Georgian authorities. These reports raise serious concerns about Georgia's ability and political will to protect individuals residing on its territory and to effectively investigate crimes committed against them. In the case of Afgan, more significant allegations against the Georgian State Security Service have been made, which, by all appearances, have gone uninvestigated.

With a rise in antagonism and hardship faced by Azerbaijanis in Georgia, International Partnership for Human Rights (IPHR), Freedom Now, and the Human Rights Education and Monitoring Center (EMC) decided to conduct research into the situation of Azerbaijani exiles in Georgia and analyse individual cases. From 17-20 July 2017, a group of human rights lawyers from IPHR and Freedom Now conducted a fact-finding mission to the Georgian capital of Tbilisi, to meet affected Azerbaijanis, their families and colleagues, lawyers, journalists, and local NGOs. During and after the mission, the delegates conducted a series of interviews, analysed case materials, reviewed media and NGO reports, and assessed public statements made by Georgian and Azerbaijani authorities. Previously, EMC had conducted a similar investigation and contributed analysis of the law in Georgia for this report.

This report first provides a summary of Azerbaijan's current human rights situation and an overview of Georgia's geopolitical and economic relationship with Azerbaijan. It then presents six selected case profiles of Azerbaijani exiles, each demonstrating an issue of concern. These issues are then discussed in a legal section, which provides analysis of relevant Georgian and international law. Finally, recommendations are made by the authors as to how Georgia can realign itself with international human rights law and standards and ensure that individuals who assert their fundamental human rights are protected.

About the authors

Freedom Now is a human rights organization that works to free prisoners of conscience and address arbitrary detention and deficiencies in rule of law. With offices in London and Washington, D.C., Freedom Now serves individuals who have been wrongly imprisoned all over the world, seeking their freedom from detention and justice for the violation of their most fundamental human rights. To further complement its work on individual freedom, the organization seeks also to address root causes of arbitrary attention, such as through the use of focused research and documentation of human rights issues and legal analysis of repressive legislation. For many years, Freedom Now has engaged on issues of human rights and arbitrary detention in Azerbaijan, including by providing legal assistance to prisoners of conscience, engaging in targeted political advocacy, and reporting and analyzing human rights abuses.

EMC is a membership based organization in Georgia, which unites human rights and civil activists with different professional backgrounds. It also represents an open platform of civic and human rights activists. Since its establishment on 28 November 2012, EMC has worked on wide range of human rights issues such as the protection of rights of socially vulnerable, marginalized and discriminated groups, systemic reform of the law enforcement bodies, institutionalized violence, and social oppression. The key beneficiaries of the organization are socially vulnerable homeless persons, employees working in poor conditions, persons with disabilities, religious and ethnic minority groups, and LGBT people. In its activities, EMC uses research, monitoring, advocacy, and awareness raising. EMC's work encompasses four main directions implemented by the Equality policy program, the Social policy program, the Democracy and judiciary program, and the Critical politics program.

IPHR is an independent, non-governmental organization founded in 2008 and based in Brussels. IPHR is committed to promoting human rights worldwide. It acts to empower local civil society groups who are working to advance the protection of human rights in their respective countries and assists them with raising human rights concerns at the international level. In cooperation with partner organizations, IPHR advocates on behalf of individuals and communities who are among those most vulnerable to discrimination, injustice and human rights violations.



1. Azerbaijan's crackdown on dissident voices and activists

In recent years, the government of Azerbaijan has become known for its relentless crackdown on civil society and political dissent. 2014 marked an escalation of persecution of human rights defenders, NGO leaders and journalists, which effectively eradicated civic space in Azerbaijan. With the authorities continuously tightening their grip on civil society, no systematic human rights work is carried out in the country today.

During 2014, leading human rights NGOs were forced to suspend their activities – effectively being shut down by the government, and many leaders of civil society were imprisoned. Cases were opened against NGOs by the Prosecutor General on claims of alleged irregularities in the registration and operations of local civil society organizations as well as branches of international organizations. Many individuals were arrested and prosecuted ostensibly for working for these organizations, but in fact were targeted for their outspoken criticism of the government. Among those prosecuted and imprisoned were prominent civil society leaders Intigam Aliyev, Rasul Jafarov, Leyla Yunus, Anar Mammadli, and Khadija Ismayil whose cases have been analysed in detail in the IPHR report *Justice behind bars: the persecution of civil society in Azerbaijan* and in the Freedom Now report entitled *Breaking Point in Azerbaijan: Promotion and Glamour Abroad, Repression and Imprisonment at Home*.² Other human rights defenders have faced travel bans, had their bank accounts frozen, and have been subjected to administrative proceedings based on specious claims of tax evasion. Human rights lawyers who dared to defend those persecuted faced threats and harassment themselves and some were disbarred, including Khalid Baghirov and Alayif Hasanov. Others faced excessive unjustified searches or were called as witnesses in their clients' cases.

The 2014 crackdown compelled many activists and journalists to leave Azerbaijan, fearing persecution. Neighbouring Georgia became a popular destination due to its proximity, historically liberal immigration policy, and NGO friendly environment. Since 2014, dozens of journalists, human rights defenders, and activists have established themselves in Georgia to continue their work on Azerbaijan from exile.

² Justice behind bars: the persecution of civil society in Azerbaijan, International Partnership for Human Rights (Dec. 2015), available at <http://iphronline.org/justice-behind-bars-in-azerbaijan-20151201.html>; Breaking Point in Azerbaijan: Promotion and Glamour Abroad, Repression and Imprisonment at Home, Freedom Now and Human Rights House Foundation (May 2015), available at <http://www.freedom-now.org/news/report-unprecedented-crackdown-on-civil-society-in-azerbaijan-ahead-of-european-olympic-games/>.

Although the release of many prominent human rights defenders at the end of 2015 and early 2016 gave reason to hope that the situation in Azerbaijan was improving, repression and arbitrary imprisonment continued. Local human rights groups report more than 100 political prisoners in the country as of September 2017. Well-known dissidents, including political opposition leader Ilgar Mammadov, youth activist Ilkin Rustamzadeh, and journalist Seymur Hezi, remain behind bars and new arrests have followed.³ For example, on 9 May 2016 youth activists Bayram Mammadov and Giyas Ibrahimov were arrested on charges of drug possession after painting a slogan on a statue of Heydar Aliyev, the former President of Azerbaijan. Both activists reported being ill-treated and coerced into admitting their guilt, which they refused, and were sentenced to 10 years in prison.⁴ On 9 January 2017, well-known photo-journalist Mehman Huseynov was kidnapped by officers in plainclothes and later reappeared in a police station, reportedly having been ill-treated. After going public with claims of police abuse, Mehman was charged with and found guilty of defaming the police chief and was sentenced to two years in prison on 3 March 2017.⁵ On 24 July 2017, the financial director of the independent newspaper Azadliq, Faig Amirli, was sentenced to three years and three months on charges of tax evasion and inciting religious hatred.⁶

Authorities in Azerbaijan continue targeting journalists and independent and opposition media. Nine journalists and bloggers remain behind bars at the time of writing, and others face travel bans pending the outcome of criminal investigations. In May 2017, access to five popular independent or opposition news websites – Meydan TV, Azadliq, Azerbaijan Saati, Radio Free Europe/Radio Liberty (RFE/RL) Azerbaijani Service, and Turan TV - was blocked by a domestic court, upon the request of the government, for alleged dissemination of prohibited material, calling for “the destruction of public order.”⁷ The ban followed a series of speedily adopted amendments to laws on internet regulations, similar to those implemented in Turkey and Russia that permitted the government to block websites.

Azerbaijan continues to use its legal and criminal justice system to keep tight control over public space and silence critical voices. The government’s crackdown has not only eradicated a once vibrant and active civil society, targeting everyone who speaks out, its actions have had a devastating chilling effect on civic engagement, a necessary component of democracy.

3 Azerbaijan: Sustained crackdown. Government Critics, Independent Groups Targeted, Human Rights Watch (12 Jan. 2017), available at <https://www.hrw.org/news/2017/01/12/azerbaijan-sustained-crackdown>.

4 Azerbaijan: Ten years in jail for youth activist who sprayed graffiti is a travesty of justice, Amnesty International (26 Oct. 2016), available at <https://www.amnesty.org/en/latest/news/2016/10/azerbaijan-ten-years-in-jail-for-youth-activist-who-sprayed-graffiti-is-a-travesty-of-justice/>.

5 OSCE Freedom of Media Representative, Human Rights chief call for release of blogger and human rights activist in Azerbaijan, OSCE (6 March 2017), available at <http://www.osce.org/fom/303016>.

6 Financial director of Azerbaijani newspaper sentenced to three years in prison, OC Media (25 July 2017), available at <http://oc-media.org/financial-director-of-azerbaijani-newspaper-sentenced-to-three-years-in-prison/>.

7 Popular critical news sites challenge block by Azerbaijani Government, European Human Rights Advocacy Centre (28 June 2017), available at <http://ehrac.org.uk/news/critical-websites-challenge-block-azerbaijan/>.



2. Georgia – a place of exile

Georgia is a semi-presidential republic, with a government that is elected through a representative democracy. It declared its independence from the Soviet Union in 1991, and following years of post-Soviet authoritarian rule, the country ushered in a new period of democratic reform following the peaceful Rose Revolution in 2003. The current government, led by the opposition coalition Georgian Dream, came to power in the 2012 parliamentary elections⁸ and secured the presidency in 2013. In the most recent parliamentary elections, Georgian Dream captured 115 seats out of 150.⁹ Constitutional reforms enacted in 2013 placed much of the executive power with Prime Minister Giorgi Kvirikashvili, who acts as head of government, while the country's president, Giorgi Margvelashvili, technically holds the country's highest office. Georgia, in sharp contrast to the neighbouring countries of Russia, Turkey, Azerbaijan, and Armenia, has built an international reputation as a stable secure democratic nation that reputedly enjoys good relations with Europe and the United States.

2.1. Relations between Georgia and Azerbaijan

Straddling the Caucasus Mountains, Georgia and Azerbaijan share a border of approximately 480 kilometres, one-third of which is not demarcated. Although there are some disputes between the two about the exact location

⁸ Georgia's President Concedes Defeat in Parliamentary Election, New York Times (2 Oct. 2012), available at <http://www.nytimes.com/2012/10/03/world/europe/georgia-election-results.html>.

⁹ Ruling party in Georgia decisively wins parliament vote, Reuters (7 Oct. 2016), available at <http://www.reuters.com/article/us-georgia-election-idUSKCN1272AT>.

of the border, it is considered the safest in the Caucasus region and the two nations have a history of strong, cordial relations dating back to the early 20th century. The current political relationship between the two nations took shape after the cessation of armed conflicts and power struggles that engulfed both countries shortly after independence from the Soviet Union in 1991. Friendly relations between the two countries have been attributed to a number of commonalities, including cultural practices, historical experience, and geography. It is the economic interdependence of the two, however, that is believed to contribute most to favourable relations. Since diplomatic ties were formally established in November 1992, Georgia and Azerbaijan have signed more than 100 bilateral agreements, and each promotes their cooperation and participation in high level delegations and cultural exchanges.¹⁰ Georgia's National Security Concept, which was first issued in 2004 and re-issued in 2011, defines its relationship with Azerbaijan as a "strategic partnership." The document highlights the two countries' close collaboration, especially in the areas of energy, economic development, and regional security.¹¹

Oil rich Azerbaijan has made substantial investments in Georgia's infrastructure, including renovation of Georgia's railway system, funding a new railway section linking Georgia and Turkey, and the construction of a facility that would allow Georgian trains to travel on the European standard gauge rails, which are used in Turkey.¹² Recently, Azerbaijan expanded its interests in other sectors of the Georgian economy, including agribusiness, real estate, and tourism. The government of Azerbaijan invested USD 578 million in the Georgian economy in 2016, accounting for 35 percent of the total volume of foreign direct investment to Georgia in that year.¹³ The State Oil Company of Azerbaijan (SOCAR) owns more than 100 gas stations, operates the natural gas distribution network inside Georgia, and owns and operates the Black Sea port of Kulevi, which is the largest foreign direct investment made by Azerbaijan to Georgia.¹⁴ Overall, the Azerbaijani government has invested more than USD 2.1 billion in the Georgian economy since 1997 and supplies 90 percent of the country's natural gas.¹⁵

Georgia and Azerbaijan's most important relationship is undoubtedly in the energy sphere. This relationship began in March 1996 with Azerbaijan's historic decision to partially export its oil to Europe via Georgia's newly developed Black Sea port of Supsa. The Baku-Supsa pipeline was of monumental importance in the region. It would develop an alternative route to the Baku-Novorossiysk pipeline, which routed oil through Russia, and established the Georgian Black Sea coast as one of the important outlets for Azerbaijan's oil exports.¹⁶ The completion of the Baku-Tbilisi-Ceyhan and the Baku-Tbilisi-Erzurum pipelines in 2006 as well as the anticipated construction of the Southern Gas Corridor – a USD 45 billion project scheduled for completion in 2020 that will deliver natural gas directly to Europe – further cemented this symbiotic relationship.

The most significant security cooperation between Georgia and Azerbaijan is their membership in the GUAM Organization for Democracy and Economic Development (GUAM stands for the initials of the organization's founding members: Georgia, Ukraine, Azerbaijan, and Moldova). The organization was founded in 1997 as a means to resist Russian domination in the region and to ensure the security of energy grids outside of Russian control.¹⁷ Members participate in regular summits on issues ranging from cybersecurity and combating organized crimes to rooting out corruption.¹⁸ In 1999, Azerbaijan, Georgia, and Ukraine staged a military exercise aimed at protecting Georgian pipelines.¹⁹

10 Relations between Georgia and the Republic of Azerbaijan, Embassy of Georgia to the Republic of Azerbaijan, available at http://azerbaijan.mfa.gov.ge/index.php?lang_id=ENG&sec_id=212; Azerbaijan-Georgia relations, Ministry of Foreign Affairs of the Republic of Azerbaijan, available at <http://mfa.gov.az/files/file/Azerbaijan%20-%20Georgia%20relations%20%283%29.pdf>.

11 National Security Concept of Georgia, Ministry of Foreign Affairs of Georgia, available at <http://www.mfa.gov.ge/MainNav/ForeignPolicy/NationalSecurityConcept.aspx?lang=en-US>.

12 Azerbaijan and Georgia: Strategic Partnership for Stability in a Volatile Region, Johns Hopkins University, Central Asia-Caucasus Institute Silk Road Studies Program (Sep. 2013), available at https://www.silkroadstudies.org/resources/pdf/SilkRoadPartners/2013_09_SRP_Tsereteli_Azerbaijan-Georgia.pdf (hereinafter Azerbaijan and Georgia: Strategic Partnership).

13 National Statistics Office of Georgia, available at http://www.geostat.ge/index.php?action=page&p_id=2231&lang=eng.

14 Azerbaijan and Georgia: Strategic Partnership.

15 Georgia, Azerbaijan to Deepen Economic Relations, Georgia Today (31 Oct. 2016), available at <http://georgiatoday.ge/news/5021/Georgia-Azerbaijan-to-Deepen-Economic-Relations>; Is Georgia Still Safe for Azerbaijani Dissidents?, openDemocracy (24 May 2017), available at <https://www.opendemocracy.net/od-russia/lamiya-adilgizi/is-georgia-still-safe-for-azerbaijani-dissidents>.

16 Azerbaijan and Georgia: Strategic Partnership.

17 Armenia, Azerbaijan, Georgia: Security Issues and Implications for U.S. Interests, Congressional Research Service (11 March 2010), available at https://digital.library.unt.edu/ark:/67531/metadc503577/m1/1/high_res_d/RL30679_2010Mar11.pdf.

18 See GUAM Organization for Democracy and Economic Development, News, available at <http://guam-organization.org/en>.

19 Armenia, Azerbaijan, Georgia: Security Issues and Implications for U.S. Interests, Congressional Research Service (11 March 2010).

2.2. Azerbaijanis living in Georgia

Ethnic Azerbaijanis make up Georgia's largest minority population. According to the most recent census taken in 2014, the ethnic Azerbaijani population is approximately 233,000 or 6 percent of the population.²⁰ Azerbaijanis have been settling in Georgia since at least the 19th century. The movement of people between the nations has been so prevalent that during a bilateral meeting in 2000, former Presidents Aliyev and Shevardnadze issued a joint communiqué, in which they emphasized that they give "great importance to the protection of rights and interests of Azerbaijanis living in Georgia, as well as Georgians living in Azerbaijan and confirm that they consider this is an important area of state policy."²¹ Since the government of Azerbaijan commenced a crackdown against dissent in 2014, many Azerbaijani human rights defenders, journalists, and political activists have been compelled to flee to Georgia for safety, where they live as exiles and mostly without any official resident status.

Generally speaking, citizens of Georgia do not have a strong opinion of foreigners living in the country. In a survey from 2015, 61 percent of Georgians describe their attitude toward foreigners as neutral, 24 percent describe it as good or very good, and only 5 percent described it as bad or very bad. When asked to list the important issues facing their country, Georgians did not identify immigration among the top ten.²² However, Georgia is not immune to the wave of anti-immigration sentiment that has swept across European countries, as evidenced by a July 2017 demonstration in Tbilisi that called for an end to Muslim immigration.²³

2.3. Georgian government's immigration policy

Prior to September 2014, Georgia had one of the most liberal immigration policies in the region. Until 2014, nationals of more than 100 countries were able to enter the country without a visa and stay for up to 360 days.²⁴ This immigration policy was significantly tightened in order to comply with the European Union's Visa Liberalization Action Plan, a set of detailed requirements a country must meet in exchange for access to a short-term visa-free regime within European Union countries.²⁵ In March 2017, the European Union granted Georgia this distinction.²⁶

Despite the restrictions imposed under the law, Azerbaijanis are allowed to travel to Georgia and stay without a visa for up to 360 days. More than 1.5 million Azerbaijanis visited Georgia in 2016, the highest percentage of foreign travellers to the country.²⁷ Data gathered by the government indicates between January 2016 and June 2017 127 Azerbaijanis were refused entrance to the country by border guards on the basis of state security concerns. This represents approximately 60 percent of all foreigners refused access to the country during that time period.²⁸ The basis for the rejections was not documented. Azerbaijanis wishing to remain in Georgia and work for local employers have to obtain residency permits. Unfortunately, the residency permit process is overly bureaucratic and a high percentage of Azerbaijani applicants are denied. The law prescribes grounds for rejection of residency permits, but some of these grounds are vague and the decision process is shrouded in secrecy, particularly in regards to rejections on the basis of "state security."²⁹ State security grounds have been

20 2014 General Population Census Main Results, National Statistics Office of Georgia (28 April 2016), available at http://census.ge/files/results/Census_release_ENG.pdf.

21 Azerbaijan-Georgian Relations: The Foundations and Challenges of the Strategic Alliance, Center for Strategic Studies SAM Review, Vol. 7-8 (July 2013), available at https://www.academia.edu/4344816/Azerbaijan-Georgian_relations_The_Foundations_and_Challenges_of_the_Strategic_Alliance.

22 Caucasus Barometer 2015, Caucasus Research Resource Centers, available at <http://caucasusbarometer.org/en/>.

23 Georgians March against Muslim Immigrants, EurasiaNet.Org (15 July 2017), available at <http://www.eurasianet.org/node/84376>.

24 Georgia Ends Immigration Free-for-All, Institute for War and Peace Reporting (29 Sep. 2014), available at <https://iwpr.net/global-voices/georgia-ends-immigration-free-all>; Georgia: New Visa and Migration Rules, Global Legal Monitor (9 Jan. 2014), available at <http://www.loc.gov/law/foreign-news/article/georgia-new-visa-and-migration-rules/>.

25 Georgia and migration: a policy trap, openDemocracy (23 Dec. 2013), available at <https://www.opendemocracy.net/gavin-slade/georgia-and-migration-policy-trap>.

26 European Parliament grants Georgia visa-free travel, Al Jazeera (3 Feb. 2017), available at <http://www.aljazeera.com/news/2017/02/european-parliament-grants-georgia-visa-free-travel-170202133759696.html>.

27 6,350,825 International visitors arrived in Georgia 2016, Georgian National Tourism Administration, available at <http://gnta.ge/international-visitors-arrived-in-georgia-2016/>.

28 From January 2016 to June 20, 2017, 127 Citizens of Azerbaijan Refused to Enter Georgia, Georgian Young Lawyers' Association (5 July 2017), available at <https://gyla.ge/ge/post/2016-tslis-ianvridan-2017-tslis-30-ivnisis-chatvlit-azerbaijanis-127-moqa-laqes-etqva-uari-saqartveloshi-shemosvlaze#sthash.18fvxdsh.VMoG6SKG.dpbs>.

29 Georgia and migration: a policy trap, openDemocracy (23 Dec. 2013).

increasingly used to deny Azerbaijanis – especially those who are known political dissidents – their legitimate claims for residency.

The difficulty in obtaining residency permits in Georgia for Azerbaijanis fleeing their home country is believed to be one example of how Azerbaijani officials have leveraged Azerbaijan's close economic ties with Georgia to wage its crackdown on civil society across borders. Georgia's perceived acquiescence to its more authoritarian neighbour was first noted with alarm in 2013 when former President Saakashvili banned Azerbaijani opposition parties from holding a summit in Tbilisi. While many hoped the Georgian Dream coalition would be more sympathetic to the plight of Azerbaijani dissidents, there is much evidence to the contrary.



3. Case profiles - Azerbaijani activists and journalists living in Georgia

Since the Rose Revolution, Georgia has made substantial progress in democratic reform and is known for its vocal independent civil society. Freedom House's Freedom in the World Report 2017 assigned Georgia a score of 64 on the freedom index, the highest in the Caucasus region. This notable respect for human rights is why many Azerbaijanis have moved to nearby Georgia, seeking respite from a brutal crackdown at home. However, in the past year, there have been a number of incidents and events that have called into question the Georgian government's reputation as a secure, independent nation – and for Azerbaijani exiles it is no longer viewed as a safe haven for the many human rights defenders, journalists, and dissidents fleeing persecution.

This report presents some cases of Azerbaijani individuals who have suffered cross-border persecution while living in Georgia, report being victimized or monitored by Georgian authorities, or have found Georgia neither welcoming nor willing to assist with alleged violations of their rights. Each of the six case profiles presented below

represents an issue of concern, the analysis of which is provided in the chapter “Legal analysis - the plight of Azerbaijani exiles in Georgia”, along with a discussion of Georgia’s obligations and alleged failures under the law, both domestic and international. Unless otherwise noted, information contained in these profiles was provided in interviews to the authors.

- [Afgan Mukhtarli](#), an Azerbaijani journalist who was abducted on the streets of Tbilisi at the end of May 2017 and taken illegally across the border into Azerbaijani custody, where he now awaits trial on fabricated charges of illegal border crossing, smuggling, and resisting arrest. Afgan’s case is unique and owing to the number of issues it raises, it is explained in detail here.
- [Vidadi Isgenderli](#), an Azerbaijani opposition activist who has been repeatedly attacked, threatened, and harassed by people he believes to be agents of the Azerbaijani government while living with his family in Tbilisi. The harassment Vidadi has suffered is similar in nature to the threats and harassment which other Azerbaijanis living in Tbilisi have reported. This case also exemplifies the failure of Georgian authorities to carry out effective investigations. Others who have faced similar circumstances include Zamira Abasova, Tural Gurbanli and Zarifa Gulieva, and Gunel Movlud.
- [Gulnur Kazimova](#), an Azerbaijani journalist who has been harassed by Azerbaijani officials and agents in Tbilisi, just as Vidadi and others report, and has reportedly been subjected to harassment and surveillance by Georgian State Security Service.
- [Dashgin Aghalarli](#), an Azerbaijani opposition activist who was detained at the request of Azerbaijani authorities in Georgia and later refused asylum on grounds that his stay in Georgia was “against the state interests, national security and public order.”
- [Leyla Mustafayeva](#), an Azerbaijani journalist who was denied a residence permit on grounds that it was “against state interest.” Other Azerbaijanis in Georgia have also been denied residence permits on similar grounds, including Haji Hajiyev.
- [Jamal Ali](#), a well-known Azerbaijani musician based in Germany who was denied visa-free visitor’s entry to Georgia. As discussed above, many Azerbaijanis are barred from entering Georgia. More than half of the individuals who were barred from entering Georgia in 2016-2017 originated from Azerbaijan.

3.1. Abduction: journalist Afgan Mukhtarli

- Abduction by foreign agents with the assistance of Georgian police
- Ineffective investigation by Georgian authorities
- Interference with journalistic activities

Among the cases profiled and discussed in this report, the case of Afgan Mukhtarli is unique and especially egregious.³⁰ While living in Tbilisi and working as a freelance journalist, Afgan was abducted by Georgian police and handed over to Azerbaijani authorities near the border. Two days later, a Baku court ordered his three month pre-trial detention and he has been held in custody since. After his disappearance, Afgan’s wife Leyla Mustafayeva reported him missing to the Georgian police. Observers and local organizations have noted a lack of progress in Afgan’s case, and allegations have been made publicly that Georgian authorities are not carrying out an effective investigation. Moreover, local journalists have reported government interference with their attempts to investigate the case.

BIOGRAPHY

Afgan Mukhtarli is an Azerbaijani journalist and political dissident who covered social and political issues for media outlets, such as Yeni Musavat opposition newspaper, Radio Free Europe/Radio Liberty, Institute for War and Peace Reporting (IWPR), and Meydan TV. Following years of harassment against him and his family, Afgan and his wife Leyla Mustafayeva, also a journalist, left Azerbaijan and fled to Georgia in January 2015.

In 2011, Afgan began working on investigative pieces about government corruption and human rights abuses in Azerbaijan. He has written on a broad range of topics affecting people from all walks of life in Azerbaijan, including limited voting rights for internally displaced persons and the growing personal loan crisis. Afgan’s reporting on the Azerbaijani government often touched on corruption, notably a series on the Ministry of Defense, as well as the behind the scenes accounting of a shake-up in the Ministry of National Security. He closely monitored

³⁰ Unless otherwise noted, all information contained in this profile was provided by Afgan’s wife and lawyers.

Azerbaijan's crackdown on civil society and documented the government's harassment of family members of exiled Azerbaijani dissidents. An article he authored in January 2017 for Meydan TV addressed the government's increasing use of kidnapping. Afgan's most well-known stories were those on corruption within the ruling Aliyev family.³¹ He published a multi-part story carefully cataloguing the financial dealings of President Ilham Aliyev and his family within Georgia.³² Before his abduction, Afgan was working on an article that described how President Aliyev's children were profiting from their financial holdings while other Azerbaijani financial institutions were suffering.

RESIDENCY IN GEORGIA

Afgan came to Georgia on 5 January 2015 and was followed two weeks later by Leyla, who had been awarded a scholarship by the US Embassy in Baku for a journalism program in Tbilisi with the Georgian Institute of Public Affairs (GIPA).

Once in Tbilisi, Afgan worked as a freelance journalist and stringer, investigating and writing pieces for Meydan TV and IWPR. From the start of his time in Tbilisi, Afgan reported to friends and on Facebook that he believed he was being followed and monitored. He noted having seen the same person multiple days and in multiple locations. He also noted groups of men in cafes nearby, speaking Azerbaijani.

Shortly after arriving in Georgia, Afgan applied for a residency permit, which was granted and later extended. By October 2016, his residency permit was expiring, and he opted not to apply for another extension. Instead, Afgan and Leyla travelled to Ukraine, and then re-entered Georgia. Being citizens of Azerbaijan, they were admitted without visa and under the law were entitled to remain for up to 360 days.

AFGAN'S ABDUCTION

On 29 May 2017, at approximately 5pm, Afgan left his house to meet friends at a café, telling his wife Leyla that he was tired and would not be out late. Around 7pm, Afgan called Leyla to see if she needed anything from the store and said he would be home in about 15 to 20 minutes. He told her that his phone battery was low, and was calling from a friend's telephone. Afgan never returned home. Leyla tried to call Afgan on his phone about 30 minutes after she had spoken to him, but the call went straight to voicemail. After trying his phone a few more times that evening, she went to sleep. Leyla woke up at around 9am and was surprised that Afgan was not there. She called the friends he had been out with the night before, all of whom told her that they had not seen him since he left them around 7pm. It was at this point that Leyla started to "fear the worst." At 10am, Leyla went to the local police station in Tbilisi near No. 2 Brosse Street to file a missing person report. She then went to police division No. 1 located in the Old City, as she was instructed to do. Leyla recalls that the police "did not seem very interested or motivated in the case." At about 5pm on the day after Afgan went missing, a journalist friend in Baku called Leyla and told her that she had seen on social media that Afgan was in custody in Baku.

According to Afgan, on the evening of 29 May around 7pm, he left his friends and took public mini-bus No. 4, which dropped him off near his home. As he was walking on the street where his home was located, a minivan pulled up and he was pushed into the vehicle. There were four men in the car including the driver. Afgan identified the car as being a Georgian criminal police vehicle, and the men were dressed in Georgian criminal police uniform. The men drove down a nearby street, stopped the car, and proceeded to handcuff and beat Afgan. Afgan reported to his attorney in Baku that he sustained bruising and a broken nose during the beating.

Afgan recalls the route the car took out of the city as being along Freedom Square, Baratashvili Street, Avlabari Metro Station, 300 Aragveli Metro Station, and in the direction of Tbilisi airport on Kakheti highway. Once they arrived in the outskirts of Tbilisi, a sack was placed over Afgan's head so he could no longer see. While in the car, the men spoke only in Georgian to each other. They never identified themselves to Afgan nor addressed him in any way except when they spoke to him briefly in Russian after he told them that he could not breathe. The sack was removed and instead a more loosely fitting garment was placed over his head.

The car stopped in what Afgan believed was the Sagarejo region, based on the amount of time that had passed. Afgan could see through the loose head covering that they were in an empty field and he was still with the same four Georgian men. Here, they changed cars and then drove to the border town of Lagodekhi, which Afgan

31 Politically Motivated Kidnappings in Azerbaijan: a Trend in the Making, Meydan TV (7 June 2017), available at <https://www.meydan.tv/en/site/society/23404/>.

32 Aliyevs' businesses in Georgia, Meydan TV (23 Oct. 2015), available at <https://www.meydan.tv/en/site/politics/8759/>; Aliyevs' businesses in Georgia (Part II), Meydan TV (17 Nov. 2015), available at <https://www.meydan.tv/en/site/society/9330/>.

recognized. After a short wait, another car arrived and Afgan was handed over to men in a different car. These men were speaking Azerbaijani. They drove slowly through what Afgan assumes was the Georgian border. At the Azerbaijani checkpoint, the car stopped briefly and Afgan could hear someone say: “who is this?” The men in the car replied “we are bringing the Mullah back with us.”

Shortly after crossing the border in Balakan, the car made a left turn and then stopped. Afgan was escorted into a building that he was told is a border checkpoint building. Based on what he could see, however, Afgan believed that it was a military building of some kind. One of the men who was in the car announced in front of Afgan that Afgan has been caught illegally crossing the border into Azerbaijan. He also stated that Afgan resisted being taken into custody, and that the amount of EUR 10,000 was found on him. Twenty EUR 500 notes were then produced from Afgan’s pocket, which Afgan said were planted.

Afgan was kept in this building near the border until around 12pm when he was driven to Baku and delivered to the main building of the State Border Service in downtown Baku. After spending eight hours there, he was taken to the police station in the Khatai neighbourhood of Baku. Afgan was not permitted to have his lawyer present during these interrogations. He was subsequently charged with three violations of the Azerbaijani Criminal Code: Article 318.1 – illegal crossing of the border; Article 315.2 – use of force against border guards; and Article 206.1 – smuggling of EUR 10,000.

THE CASE AGAINST AFGAN IN AZERBAIJAN

On 31 May, a Baku court ordered Afgan to be held in pre-trial detention for three months, which was later extended for an additional two months. Afgan’s lawyers were present at this initial hearing, which was the first time Afgan was allowed access to his lawyers. It was not until 7 June, however, that Afgan was permitted to meet with his lawyers without supervision. Since this time, and in accordance with Article 15 of the Azerbaijani Law on the Rights and Freedoms of Individuals in Detention Facilities, Afgan is permitted to meet with his lawyer and receive phone calls from his wife Leyla twice a week.

In July, the Prosecutor General informed Afgan’s lawyers that his case is being combined with a case that has been opened against Meydan TV, which is under investigation for alleged illegal entrepreneurship, large-scale tax evasion, and abuse of power resulting in falsification of election results. The prosecutor has indicated that documents retrieved from Afgan’s seized phone are the basis for the decision to join his case with that against Meydan TV.

GEORGIA’S INVESTIGATION INTO AFGAN’S ABDUCTION

The case opened by Georgian authorities based on the complaint lodged by Leyla regarding Afgan’s disappearance has proceeded slowly. Officials in the Ministry of Internal Affairs were at first reluctant to grant “victim status” to Leyla, which would give her the right to access information and materials related to the investigation. Initially, almost all Georgian senior government officials denied that there had been any collusion with Azerbaijani officials or any wrongdoing by the Georgian State Security Service. However, the Georgian President Giorgi Kvirikashvili publicly stated upon learning about Afgan’s case that “the disappearance of a person from the territory of Georgia by any means is a serious challenge to our sovereignty and statehood. In such cases the government is obliged to simultaneously protect both its prestige and safety of citizens. We should all realize that Georgia is a leader in the region concerning protection of the media and human rights. Keeping this standards [sic] is a direct matter for our statehood.”³³ Notwithstanding, the Prime Minister, the Minister of Internal Affairs, the State Security Service, the State Border Guard Service, and the Minister of Justice consistently denied that the Georgian authorities had played any part in Afgan’s detention. For example, the Minister of Internal Affairs dismissed accusations of Georgian-Azerbaijani cooperation as premature, ungrounded, and emotional, stating that the government “has never expressed any interest in the attitude of ethnic Azerbaijani’s living in Georgia towards the Azerbaijani government,” and that the Azerbaijani side “has never applied to the Georgian Ministry of Internal Affairs with an official or unofficial request with respect to restricting Azerbaijani citizens’ rights on political grounds or their forced return to their homeland.”³⁴ On 4 June, President Kvirikashvili announced that “an investigation has been launched into this incident, and it serves our state’s interests to ensure maximum transparency.”³⁵

33 President Margvelashvili: Mukhtarli’s Disappearance a Challenge to Our Statehood, Tabula (31 May 2017), available at <http://www.tabula.ge/en/story/120647-president-margvelashvili-mukhtarlis-disappearance-a-challenge-to-our-statehood>.

34 Georgian Officials on Azerbaijani Journalist’s Alleged Abduction, Civil.ge (1 June 2017), available at <http://www.civil.ge/eng/article.php?id=30149>.

35 Statement by President Giorgi Kvirikashvili, 3 June 2017, available at <https://www.facebook.com/KvirikashviliOfficial/posts/464683747209988>

The Ministry of Internal Affairs initially chose to investigate the case as a “deprivation of liberty” under Article 143.1 of the Criminal Code as opposed to a “kidnapping”, and in accordance with the law refused to grant Leyla “victim status”, thereby denying her access to information about the investigation into her husband’s abduction. Nevertheless, the authorities did share some information with Leyla and her Georgian lawyer; specifically, that some 200 people, who lived along the route where it is believed Afgan was taken, had been interviewed. Moreover, the police claimed to have obtained about 20 recordings of independent CCTV footage from private individuals and businesses. Leyla’s lawyer has seen only two pieces of camera footage, one showing Afgan boarding bus No. 4 and another showing him waiting for the bus where a bald man can be seen in the frame watching him. Investigators indicated that they had not tried to identify the man in question. Investigators also stated that there is no official government CCTV video footage available from any point along the route, including at the border, because the CCTV systems were not working on that day.

On 20 July, after considerable local and international attention to the case, the Prosecutor’s Office announced that it would take over the investigation. This move came nearly a month after Georgia’s Ombudsman Ucha Nanuashvili called into question the sincerity of the investigation into Afgan’s disappearance, saying: “there are shortcomings in the case of the Azerbaijani journalist and, based on these, the case should be investigated by another structure. As there were allegations that the employees of the Ministry of Internal Affairs participated in this case, it is necessary that investigative actions be carried out by a more independent agency, in this case the prosecutor’s office.”³⁶ Moreover, the Minister of Internal Affairs Giorgi Mgebrishvili announced at a special briefing on 20 July that he had suspended the head of Georgia’s Border Police and the chief of the Counter Intelligence Agency of Ministry of Internal Affairs from performing their duties until the investigation on Afgan’s case is fully completed. The Minister stressed the step was taken to “exclude any questions in the case.”³⁷ However, victim status has still not been granted to Leyla, and Afgan’s case is still being considered only as a deprivation of liberty.

INDEPENDENT INVESTIGATION INTO AFGAN’S ABDUCTION

Beginning on 6 June, the Organized Crime and Corruption Reporting Project (OCCRP) and TV station Rustavi 2 conducted a private investigation into Afgan’s abduction, specifically searching for available CCTV camera footage from private individuals in the area where he disappeared. They were successful in finding some private cameras that were directed onto streets along the route Afgan is believed to have been taken. Some shopkeepers refused requests to view the footage. One shopkeeper stated that the CCTV, while mounted on their shop and accessible through a computer in their shop, was actually the property of the Ministry of Internal Affairs.

On 6 June, the OCCRP journalists located two surveillance cameras at a pawn shop that pointed in the direction of the place where Afgan waited for the bus on the night of his disappearance. The shopkeeper allowed OCCRP to view the footage, stating that police officers had already been there to view the footage, and that they had “done something” to the file on the computer that hosted the footage. The journalists viewed the CCTV video files, and noted that the footage appeared to have been tampered with. Initially, they reported, the footage of the evening of 29 May showed a street view that is dark and rainy, however, around the time that Afgan would have appeared to wait for the bus, the frame shifted, and, after an apparent “break” showed a scene of a clear sunny evening. Additionally, the vehicles and pedestrians do not match between frames, and the timestamp on the video appears to leap backwards. The next day the journalists returned to the shop and learned that the police had returned the previous night and deleted the videos entirely.

Next, the journalists found a private camera situated on a street where they believe Afgan might have been taken. The shopkeeper agreed to allow them to view the footage, however a technician was required to help access and view the file. While they were waiting for the technician, another technician from the Joint Operations Center of the Ministry of Internal Affairs came into the shop, along with defense lawyers involved in a separate case. The shopkeeper asked the government technician if the CCTV footage could be shared with the OCCRP journalists and he refused to grant permission.

On 19 June, OCCRP located a surveillance camera on a family house on another street in the area where Afgan lived and was abducted. One resident of the house agreed to allow the journalists to view the CCTV footage in a file on the residents’ laptop computer. However, the file had been deleted. The resident stated that police had been there a week earlier and had “done something” on the computer. The journalists learned later that the police had gone back to the house on the same day they had visited.

36 EU Parliament Representative Investigating Mukhtarli Case in Tbilisi, Meydan TV (27 June 2017), available at <https://www.meydan.tv/en/site/politics/23810/>.

37 Briefing by the Minister of Internal Affairs, Media-Holding Reportiori (20 July 2017), available at https://www.youtube.com/watch?v=LoeH84_E1jo.

3.2. Cross border harassment and threats: political and human rights activist Vidadi Isgenderli

- Cross-border harassment and threats
- Ineffective Investigation by Georgian authorities

Vidadi Isgenderli is a lawyer, a former parliamentary candidate, and a long-time human rights advocate in Azerbaijan who fled to Georgia after years of harassment by the Azerbaijani government in retaliation for his efforts to fight government corruption. Because of the well documented persecution he faced in Azerbaijan, Vidadi and his family received asylum in Georgia in 2016. However, the Azerbaijani authorities continued to harass Vidadi and his family in Georgia as well as other relatives who remained in Azerbaijan. Vidadi reported to Georgian police five instances of verbal harassment and physical attacks, and while investigations into the incidents were opened, the genuine pursuit of those investigations is in doubt.

BIOGRAPHY AND HISTORY OF HARASSMENT, THREATS AND ARBITRARY ARRESTS IN AZERBAIJAN

After graduating from law school in 1989 in Ukraine, Vidadi began working as an investigator with the prosecutor's offices of Odessa and Nikolaev in Ukraine. He returned to Azerbaijan in 1992 and joined the Prosecutor General in Baku, where he remained until 2002. During this time he recorded numerous instances of corruption by officials, based on claims submitted to his office. After 10 years, Vidadi resigned from his position with the Prosecutor General because he was increasingly concerned at the systemic corruption that was being carried out with impunity.

Vidadi began speaking publicly about government corruption and in 2008, after four years of unsuccessful attempts, he registered an NGO called Foundation for Protection of Democracy, which aimed to fight corruption. Vidadi and his organization gained popularity due to their efforts to defend the rights of victims of government corruption and abuse. In one notable example, Vidadi led efforts to advocate on behalf of more than 1,000 people who were defrauded by businesspeople connected to and protected by the government.³⁸

As Vidadi continued to expose government corruption, he faced increasing harassment and threats of imprisonment by officials. He was also at times offered lucrative positions in the government, in apparent attempts to silence his public criticism. Eventually, the government began bringing various criminal cases against him. For example, a defamation case was brought by three officials, including the Prosecutor General; cases relating to his presence at peaceful public protests; and a case related to interference in elections after Vidadi, who had stood as a parliamentary candidate in the 2010 election, publicly accused the government's party of ballot stuffing. Vidadi served various periods of detention, the longest of which was one year and nine months for the election-related allegations. He was released in 2012 after a presidential pardon with more than one year of his three-year sentence left.

Eventually, and after more years of harassment and threats by authorities, Vidadi and his family fled to Georgia in June 2016. Soon after arriving in Georgia, he learned from family members in Azerbaijan that police officers were looking for him. Vidadi then applied for refugee status in Georgia, which he received on 22 March 2017.

IN GEORGIA: CROSS-BORDER HARASSMENT AND THREATS

Since fleeing to Georgia, Vidadi and his family have reported being subjected to harassment and threats in Tbilisi. It is not clear who the alleged perpetrators are and whether they acted in an official capacity on behalf of the Azerbaijani government. Vidadi and other Azerbaijanis living in Tbilisi believe they are individuals connected to SOCAR, which maintains a large office in Tbilisi and is widely regarded as an arm of the Azerbaijani government. While in Tbilisi, Vidadi documented five specific instances of attacks, harassment, and threats. On 24 June 2016 at around 11pm, he was attacked by an unknown person from behind as he walked along a street in Tbilisi. Vidadi was injured in the attack and required hospital treatment. A police inspector visited him in hospital to take his testimony and opened a case of bodily injury under Article 125 of the Criminal Code. Vidadi told the police inspector about the threats he had received from someone on Facebook, and a cybercrimes case was opened under Article 151. Vidadi's wife and children were questioned about these two cases. Both of these attacks were precipitated by an article Vidadi published in a Swiss paper about Azerbaijani corruption. On 10 July, Vidadi's wife and one of his daughters were on their way to get ice cream in Tbilisi when two males approached them in a

³⁸ Fraud Victims Accuse Baku Mayor of Conspiring with Construction Company, Obyektiv TV (21 May 2012), available at <https://www.youtube.com/watch?v=OTzLm47BvQ0>.

park and threatened to decapitate the women. Reportedly, there are CCTV cameras in the area that may have captured the threatening exchange. On 22 February 2017, after delivering a speech denouncing the appointment of Azerbaijan's first lady as Vice President, Vidadi was approached by two men with guns near his house who told him he "hadn't gotten the message yet." A new case was opened by police for systematic threat to life under Article 248. Not long before Vidadi received refugee status in Georgia, representatives of the authorities called Vidadi and told him that he should leave Georgia because the Azerbaijan authorities were putting pressure on them about him, and they could not ensure his safety. On 3 June, Vidadi was attacked again.

Feeling that their lives were in danger, on August 2017, Vidadi and his family moved to Western Europe.

Meanwhile, the Azerbaijani authorities have continued to harass members of Vidadi's family back in Azerbaijan. Six of his nephews and nieces were dismissed from their jobs. On 19 July, the pro-government AzVision.az website posted a letter allegedly signed by Vidadi's mother and older brother denouncing Vidadi and referring to him as a "stain on the family reputation." When Vidadi spoke to his sister about the letter, she said that it was done so that the government would stop harassing them.

In August, Vidadi received a letter from the Azerbaijani government informing him that his state pension, whose disbursements he had been receiving, had been frozen.

INEFFECTIVE INVESTIGATION BY GEORGIAN POLICE

Vidadi reported all incidents to the local police in Tbilisi and five cases were opened. In all of the cases, police officers questioned Vidadi and his family. Referring to the attack believed to have been caught on CCTV, police officers claimed that they had viewed the footage but were not able to identify the man who threatened Vidadi's wife and daughter. After the abduction of fellow Azerbaijani dissident Afgan Mukhtarli in May, and once Vidadi had secured legal representation, the police appeared to engage more actively in investigations regarding the attacks on Vidadi, coming up with photographs and sketching of the alleged perpetrators. Police officers have subsequently followed up on these with Vidadi three times. He has written more than 20 letters of complaint to various Georgian officials including the Prosecutor's Office, the Minister of Internal Affairs, the Ombudsman, and the President. Only the Ombudsman responded to his appeals. Despite some police follow up, the police have not reported any meaningful progress in his cases.

Before Vidadi moved to Europe, Georgian officials indicated to him and to other European counterparts that they are not confident that they are able to guarantee his safety.

3.3. Surveillance and ineffective investigation: journalist Gulnur Kazimova

- Surveillance in Georgia
- Ineffective investigation into surveillance by Georgian law enforcement authorities

Gulnur Kazimova is an Azerbaijani journalist from Ganja, a city in northwestern Azerbaijan, who was forced to leave the country after increasing persecution by the Azerbaijani authorities in retaliation for her critical reporting. In December 2015, Gulnur relocated to Georgia together with her husband and their two children after a criminal case was opened against her in Azerbaijan for dissemination of false information. Gulnur reported cases of surveillance in Tbilisi, which she believes the Georgian police have so far failed to effectively investigate. She faced additional problems with the Georgian authorities for her journalistic reporting on various issues in Georgia. Gulnur is currently living in Germany where she sought asylum together with her family.

HISTORY OF HARASSMENT AND THREATS IN AZERBAIJAN

Between 2007 and 2008, Gulnur attended a two-year journalism course with the International Center for Journalism and started working as a journalist for RFE/RL in Baku soon afterwards. In 2010, she graduated with a degree in primary education. In 2013, she received a degree in finance and credit from the Azerbaijan State Agricultural University. In 2014, she moved back to Ganja and worked as correspondent for RFE/RL until December 2014.

Gulnur reported having been subjected to considerable pressure and harassment by local authorities in Ganja. On 1 June 2009, a senior official of Ganja police threatened Gulnur after she published an article about a local

orphanage where children were being mistreated.³⁹ Gulnur was questioned for five hours at the police station during which time police officers taunted her by saying that they could plant drugs on her. After enquiries were made by RFE/RL colleagues and the US embassy, Gulnur was released.

In November 2009, Gulnur was covering a local protest where residents were protesting a newly introduced ban on calls to prayer when she was apprehended by police as she took photos. They dragged her away, confiscated her camera, and deleted the photographs.⁴⁰

In 2011, Gulnur came under further pressure from the chief of police to cease her journalistic activities after she reported on the destruction of small shops by local officials for the purpose of “beautifying” the city without providing adequate compensation.⁴¹ As Gulnur refused to stop her reporting, her father who owned a stall at a local market was forced to close down and her brother lost his job at a local wedding palace, which was reportedly owned by a person close to the Minister of National Security.

Members of Gulnur’s family also faced pressure and harassment from the local authorities. Local officials called her husband several times, accusing him of “not being able to control his wife.” In 2012, he was “invited to resign” from a company that was co-owned by the first lady of Azerbaijan, where he worked as a director of a regional branch in the Shemkir area. He received hints that the harassment was linked to his wife’s activities and that he would face fraud accusations if he refused to resign.

On 28 December 2014, Gulnur learned that authorities had opened a criminal case against her, although she had not received formal notification. Gulnur and her son left Azerbaijan for Georgia the same night. Her husband and a second child joined them the next day. In the afternoon of 29 December 2014, police investigators and representatives of the Prosecutor General visited her father’s house looking for Gulnur and told her father that a criminal case had been opened against her, in which she was accused of organizing protests and spreading false information. On 5 January 2015 representatives of the Prosecutor General in Ganja forcefully entered her father’s apartment and threatened to arrest him if Gulnur was not found.

ARRIVAL IN GEORGIA: SURVEILLANCE AND PROBLEMS WITH GEORGIAN POLICE

Gulnur arrived in Tbilisi on 28 December 2014 and started working as a reporter for IWPR in March 2015. She covered issues relating to the conflict in Nagorno-Karabakh, political prisoners, the military, and social problems in Azerbaijan. IWPR assisted her in obtaining a work visa and a residence permit in Georgia, which were valid for six months. In July 2015, she also started working for a project run by the NGO Human Rights House Tbilisi where she reported on social and cultural discrimination against the Azeri minority community in Georgia. She also reported on issues of domestic violence and youth marriage in Georgia and her articles were published on Georgian news websites.

In 2016, Gulnur investigated several issues in Georgia, such as child marriages, cases of spousal abuse, and the cases of four ethnic Azeri women who were killed by their husbands in the Georgian village of Ponicala. Underage marriages were criminalized in Georgia in January 2016, and Gulnur found cases of police taking bribes from local men seeking to avoid criminal liability for marrying minors. Before the article was published, Gulnur received emails from police officers, accusing her of defamation. The case attracted attention from the Ministry of Internal Affairs and the Prime Minister’s Office after Gulnur sent inquiries to authorities. The article was published in the Georgian media.⁴²

On 9 May 2016, Gulnur’s husband noticed an unknown man taking photos of his wife from a car on Leselidze Street in central Tbilisi. Gulnur’s husband took photos of the car and noted the type of camera that was used. On 19 May 2016, the couple and their lawyer, who worked for a member organization of the Human Rights House Tbilisi, reported the incident to the Tbilisi Ortachala police department.

39 Terrible Tales of the Children’s Home, Radio Azadliq (12 May 2009), available at <http://www.azadliq.org/content/article/1683361.html>.

40 Confrontation between the police and religious believers in Ganja, Radio Azadliq (4 Nov. 2009), available at <http://www.azadliq.org/media/video/1868686.html>.

41 New Chief Executive of Ganja Destroys Stores, Radio Azadliq, (21 March 2011), available at <http://www.azadliq.org/content/article/2344935.html>.

42 Another Death by Domestic Violence: Ombudsman Calls for Better Risk Assessment, Georgia Today (4 Aug. 2016), available at <http://georgiatoday.ge/news/4387/Another-Death-by-Domestic-Violence%3A-Ombudsman-Calls-for-Better-Risk-Assessment>; Girls Who Chose Death Instead of a Bridal Dress, Netgazeti (22 Dec. 2015), available at <http://netgazeti.ge/life/86547/>.

The authorities opened an investigation into the incident but proved reluctant to include the photographs taken by Gulnur's husband into the case file and did so only at the lawyer's insistence. Three months later police officers contacted Gulnur and asked that she provide additional testimony. This time, the police informed her that they were unable to find a record of the photographed car and that they had decided to close the case. When Gulnur asked if the car might have belonged to SOCAR, the officer replied that would not be possible as this was the type of car used by the Georgian State Security Service. Gulnur was asked to keep this information confidential.

After many attempts, Gulnur was eventually able to obtain a copy of her police report in February 2017. On the copy provided by the police, she noticed that her second testimony had been altered. It stated erroneously that Gulnur had said it was a hot day when the photograph was taken and she could have mistakenly identified the car. The record also quoted Gulnur as apparently admitting that no surveillance had taken place.

In March 2017, Gulnur's family encountered further problems in Georgia. Her husband was working for a steel production factory, which was co-owned by an Azerbaijani national. The co-owner was approached by representatives of the Financial Department of the Azerbaijani Ministry of Economic Development, who demanded that he dismiss Gulnur's husband because his wife "was an enemy of the state." As a result, her husband was forced to resign. On the day he resigned, their landlord in Tbilisi told the couple that they had to leave, although their lease was still valid. Previously, the family had already had to change apartments nine times over an 11 month period, after being warned by Human Rights House Tbilisi that they were in potential danger.

On 2 May 2017, Gulnur and her family left Georgia for Germany.

3.4. Unjustified denial of asylum claim: political opposition activist Dashgin Aghalarli

- Denial of asylum claim on security grounds without any substantiation

BIOGRAPHY

For the last two decades, Dashgin Aghalarli has been an active member of the political opposition in Azerbaijan, at times with the Popular Front Movement and the Musavat Party. In 1992-1993, he served as Deputy Minister of Energy and Oil and currently acts as Advisor to the Chairman of Musavat Party. He is a persistent critic of the government of Azerbaijan and the Aliyev family. He was particularly active in trying to mobilize the Azerbaijani diaspora in Ukraine and Turkey ahead of the 2013 presidential election.

Dashgin currently resides in Georgia, together with his son. His wife and daughter live in Baku.

POLITICAL PERSECUTION IN AZERBAIJAN AND ABROAD

Dashgin reported persecution by the Azerbaijani authorities through surveillance, harassment, and threats which began in 2003. This harassment further intensified in 2013 when the Azerbaijani opposition actively campaigned on behalf of joint candidate Jamil Gasanli in the October 2013 presidential election. As the repression grew inside the country, Dashgin left for Ukraine and Turkey and continued campaigning efforts from there. On 25 June 2013, he was invited to meet someone in Kiev, Ukraine called Akbar who introduced himself as a representative of the Ministry of Foreign Affairs in Azerbaijan and threatened Dashgin with arrest if he did not cease his political activities. On 10 July 2013, Dashgin received a phone call from the Azerbaijani tax authorities and was informed that he was wanted as a witness to a case and was told he would face arrest if he did not appear in Baku. He was not given any further details about the case. Around the same time, the Prosecutor General in Azerbaijan opened a criminal case against Ganimad Zakhid, editor-in-chief of the Azadliq newspaper, who was in Ukraine with Dashgin at that time, of libel for allegedly offending the Minister of Interior Affairs and Minister of Emergency Situations.

On 30 July 2013, after receiving warnings that the Azerbaijani authorities might seek his extradition from Ukraine in connection with an investigation into alleged tax evasion in Azerbaijan, Dashgin left Ukraine for Turkey where he continued campaigning for his party's candidate, primarily on social media. During this time, the Azerbaijani authorities harassed his family in Baku through phone calls and visits. For example, after he posted a message on social media critical of President Aliyev's victory, authorities reportedly visited his wife in Baku telling her that her husband was accused of attempting to overthrow the government. In December 2013, Dashgin reported being offered money if he stopped criticizing the president.

In early 2014, Dashgin appeared on Ulusal TV, an alternative TV program in Turkey where he spoke critically about President Aliyev and corruption issues in the country. On 24 February 2014, he was summoned by Istanbul police and informed that the Azerbaijani authorities were seeking his extradition. Fearing extradition to Azerbaijan, he left Turkey for Georgia on 1 March 2014.

ARRESTED AND DENIED ASYLUM IN GEORGIA

As he tried to enter Georgia on 1 March 2014, Dashgin was arrested by Georgian border officials and informed that there was an Interpol red notice issued against him on the basis of the allegedly ongoing investigation into tax evasion in Azerbaijan. He then was taken to a police station in Batumi, in western Georgia. On 4 March 2014, the Batumi City Court issued a three-month extradition arrest for Dashgin and he was taken to Kutaisi prison where he was held until 27 March 2014. He reported not being allowed to make any contact with his family to inform them of his whereabouts during that period. On 27 March 2014, he was transferred to Gldani prison No. 8 in Tbilisi and held there until 29 August 2014 when he was released on bail.

On 4 March 2014, Dashgin applied for asylum in Georgia and his application was transferred to the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees (Ministry of Refugees). As part of the asylum claim review, the representatives of the Ministry of Refugees interviewed Dashgin in May and June 2014 in Gldani prison, and later in October 2015, a few days before the decision on his asylum was made. Dashgin's son Orkhan (who arrived to Georgia in February 2015) applied for asylum as well and their applications were reviewed jointly.

Although Georgian legislation provides that asylum applications are to be reviewed within a six-month period from the moment of registration⁴³, Dashgin and his son did not receive a decision from the Ministry of Refugees until 30 October 2015, 18 months after they applied. They did not receive any other information – neither in writing nor orally – from the Ministry of Refugees during that period. They did not receive any support from the government and lived in generally poor conditions.

In its decision of 30 October 2015, the Ministry of Refugees recognized that the two asylum seekers may be subjected to persecution on political grounds if returned to Azerbaijan and therefore met the requirements set forth by Article 1(A)2 of the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees (Refugee Convention) and Article 2 of the “Law of Georgia on Refugee and Humanitarian Status” for granting refugee status. However, despite this recognition the Ministry of Refugees took the decision to refuse asylum to Dashgin and his son on the grounds that their presence “contradicts the interests of the country” “due to serious circumstances,” in accordance with Article 3(e) of the Law on Refugee and Humanitarian Status. The decision did not provide any further information on the grounds for the refusal. Article 3 stipulates a list of grounds under which refugee status can be refused, with paragraph (e) specifically providing for a refusal where there are “reasonable grounds for believing that he/she may create a threat to state security and/or to the territorial integrity and public order of Georgia.” Only during the judicial proceedings before the Tbilisi City Court, did Dashgin learn that the Ministry's decision was based on the letter from the State Security Service, which provided that there were reasonable grounds for believing that he may create a threat to state security and/or to the territorial integrity and public order of Georgia.⁴⁴

On 11 November 2015, Dashgin and his son appealed the decision to the Tbilisi City Court arguing that the Ministry of Refugees failed to substantiate its decision, even to a minimum level, as to what constituted the potential threat that he and his son allegedly created for Georgia, in violation of domestic legislation.⁴⁵ They also argued that, as the Ministry of Refugees had already recognized, if returned to Azerbaijan they would face persecution and ill-treatment.

On 23 May 2016, the Tbilisi City Court upheld the appeal and ordered the Ministry of Refugees to grant refugee status to Dashgin and his son. The court was given access to the material on which it was originally concluded that Dashgin and his son posed a threat and found that the information provided by the Ministry failed to justify the potential character of the threat or analyse its seriousness, and that the proportionality principle argued by the Ministry of Refugees was not supported by any evidence. The court determined that the “contested decision

43 Article 14(1) of the Law on Refugee and Humanitarian Status states that an application for asylum shall be reviewed “within 6 months from the moment of its registration. The Ministry may extend the revision period for no more than 3 months, of which the asylum-seeker shall be notified in writing.” This law was replaced with Law on International Protection on 1 December 2016.

44 Tbilisi City Court, Decision 3/8868-15 (23 May 2016).

45 Article 53(1) of the General Administrative Code states that “an administrative decree shall include a written justification.”

on rejecting the application of the asylum seeker was made by the defendant administrative authority without proper analysis and evaluation of the abovementioned factors.”

On 15 November 2016, the Ministry of Refugees appealed the decision to the Tbilisi Appeals Court on the same grounds as it had used to reject the asylum claim.

On 21 March 2017, the Tbilisi Appeals Court overturned the lower court's decision and upheld the decision of the Ministry of Refugees rejecting the asylum request. The Appeals Court based its decision on the opinion of the Counter-Intelligence Department and referred to the same arguments as were submitted by the Ministry of Refugees in its appeal. The Appeals Court, however, recognized in its decision the possibility that Dashgin may face persecution if returned to Azerbaijan.

As the Appeals Court is the last instance for asylum cases in Georgia, its decision was the last legal remedy for Dashgin and his son, and left them without legal protection in Georgia. On 20 June 2017, after an appeal was lodged by the NGO Human Rights Centre, on behalf of Dashgin and his son, the Migration Department at the Ministry of Internal Affairs of Georgia returned their passports and issued them with one-year identity cards certifying their non-expulsion. These do not, however, grant them legal status or entitle them to any social support in Georgia. Non-expulsion cards can be cancelled by the Ministry of Internal Affairs without prior notice if it is believed that the person would no longer face persecution in their country or origin.

After the first instance court decision, Dashgin reported increased pressure on him in Tbilisi. In one incident on 6 September 2016, he received phone calls from two people purporting to be Georgian officials; one claimed to be a representative of the Ministry of Internal Affairs and the other of the State Security Service. Both institutions later denied that their representatives had contacted Dashgin, and neither reacted to his lawyer's requests for an investigation into the matter. Around the same time, several Azerbaijani pro-government media outlets published smearing articles about Dashgin calling him a traitor.⁴⁶ Concerns for the safety of Azerbaijanis like Dashgin have grown as reports of surveillance in Tbilisi have increased and especially since Dashgin's colleague and friend, Azerbaijani journalist Afgan Mukhtarli disappeared.

3.5. Denial of residence permit: journalist Leyla Mustafayeva

- Denial of residency permit on security grounds

Leyla Mustafayeva is an Azerbaijani journalist living in Tbilisi. She was harassed by Azerbaijani authorities and after relocating to Tbilisi was denied the extension of a residency permit on security grounds in Georgia. Leyla is the wife of abducted Azerbaijani journalist Afgan Mukhtarli.

BIOGRAPHY

Leyla studied foreign languages, specializing in English, at the University of Baku. After graduating in 2007, she started working for Yeni Musavat, which was regarded as an opposition newspaper at the time. She covered social and political stories, and was initially given considerable autonomy in deciding what to report on. She focused mainly on political protests, allegations of corruption by officials, and stories about political prisoners and their families. For example, she wrote about political prisoners Vidadi Isgenderli, Arif Hajili, and Tural Abasli. During this time, she also collaborated with IWPR.

Leyla's work as an investigative journalist did not go unnoticed by the authorities in Azerbaijan. In one incident that precipitated her quitting the newspaper, Leyla was questioned by police about her presence at a food market where an altercation had taken place between officers and a foodseller. Leyla had been there working on a story about rising food prices and she observed and photographed a scene where officers appeared to be treating a foodseller roughly. Police accused Leyla of interfering in a police investigation by taking photographs and demanded she turn over the negatives. She refused but they grabbed her camera, lightly injuring her, and deleted all photos. Leyla notified the newspaper about the incident and a complaint was lodged with the Ministry of Internal Affairs. However, the authorities took no action and the newspaper did not follow up. The lack of support demonstrated by the newspaper in this incident and a growing frustration with the paper's reluctance to print stories that were critical of the government compelled Leyla to leave her job in 2013.

⁴⁶ Anti-Azerbaijani underground in Tbilisi: appearance, money, instructions, Haqqin (4 May 2017); available at <https://haqqin.az/news/99120>.

In 2014, Leyla applied for and was awarded a scholarship by the US Embassy for a program in Tbilisi with the Georgian Institute of Public Affairs. Leyla and her husband, journalist Afgan Mukhtarli, moved to Tbilisi in January 2015. Once in Tbilisi, both Afgan and Leyla continued working as journalists.

Shortly after arriving in Georgia, Leyla applied for a residency permit, which was granted. She later received an extension. In September 2016, she applied for a second extension based on a work contract she had with a local furniture company where she had been offered a job as a public relations manager. Soon after submitting her application, she was called to an address in the town of Rustavi. She arrived to a government building of some kind and was escorted into an office. On the desk were copies of her application full of handwritten notes. The man behind the desk, who did not introduce himself, asked her questions about when she arrived in Georgia, what she was doing in Tbilisi, and what organizations she was working with or connected to.

Ten days after filing the application for a permit, she received a letter from the Public Service Hall of Georgia, known locally as Justice House, which informed her that the government rejected her request for residency on the grounds that she was “engaged in dangerous activity” and providing her with residency would be “against state interest.” The furniture company decided not to appeal the decision on Leyla’s behalf.

Leyla continues to live in Tbilisi on a visitor’s visa, which, as an Azerbaijani citizen, entitles her to stay up to 360 days. She continues to work as a freelance reporter covering stories about Azerbaijan. For example, around the time that she was denied a residency permit, she published an article for Meydan TV about the political ambitions of President Aliyev’s 19-year-old son Heydar.⁴⁷

Just like her husband believed that he was being followed and watched while in Tbilisi, Leyla reported also being subjected to surveillance. On several occasions she had the impression that someone was listening to her conversations, and observed behaviour from those nearby that seemed suspicious, for example when someone dropped off a laptop near her in a cafe, only to return a short time later and collect it. On another occasion, while at a hotel meeting with a political opposition leader from Azerbaijan, she noticed a drone flying nearby, making repeated dips near where they were sitting.

3.6. Denial of visa-free entry to Georgia: musician and reporter Jamal Ali

- Denied entry to Georgia on unspecified grounds

Jamal Ali, an engineer by education, is an Azerbaijani opposition-minded rapper and journalist, currently working for Meydan TV in Berlin, Germany where he received political asylum in 2012. Previously, he led the music band Bulistan, which often produced songs critical of the authorities in Azerbaijan.

PERSECUTION IN AZERBAIJAN

Jamal became popular among young people in Azerbaijan as a musician around 2011. In his music, Jamal and Bulistan often covered social and political issues and became particularly active around the Eurovision Song Contest that took place in Baku in 2012. Ahead of the contest, on 17 March 2012, Jamal performed at a Baku protest, at which activists called on the government to release political prisoners and for officials to resign.⁴⁸ During the performance, Jamal was accused of insulting President Aliyev and was immediately arrested by police along with two other musicians. While in detention, the three activists were denied access to their lawyers and families. A court charged all three men with petty hooliganism and ordered five to 15 days in administrative detention.

Jamal reported being physically mistreated by police while at the police station, in court, and in detention. For example, while in the detention facility, he was handcuffed with his hands behind him and pushed on a chair. His legs were put on another chair in front of him with one policeman sitting down on them and the other beating his feet “so that he could not walk to another protest.”

After he was released, Jamal was monitored by authorities and threatened with more time in detention. He

47 Azerbaijani Referendum Opens Politics to President’s Teenage Son Heydar Aliyev, Meydan TV (23 May 2016), available at <https://www.meydan.tv/en/site/politics/17639/>.

48 Chronology of March 17 Rally, Radio Azadliq (17 March 2012), available at <https://www.azadliq.org/a/24518656.html>.

decided to leave the country, fearing for his safety and hoping to continue his work abroad. Just hours before his departure, he released a new song that he wrote with his friends about the illegal demolition of family homes in Baku to create space for Crystal Hall, which hosted Eurovision. The music video shows a bearded Jamal and fellow band members walking past the ruins of demolished buildings wearing bags over their heads in reference to the torture Jamal experienced after his arrest.⁴⁹

ASYLUM IN GERMANY

Jamal fled to Germany where he received political asylum in 2012. He continued writing and recording music and joined Meydan TV as a producer and reporter in February 2013.

His next video was dedicated to two young activists, Giyas Ibrahimov and Bayram Mammadov, who were ill-treated and sentenced to 10 years in prison for drug possession in Azerbaijan after painting a slogan on a statue of Heydar Aliyev, the former President of Azerbaijan, on the latter's birthday in May 2016. The video was released on 31 December 2016 and soon reached over 100,000 views on YouTube.⁵⁰

Soon after the video went viral, the police came to the home of Jamal's mother and brought her to the Sabunchi police department in Baku. They told her that she was being detained because her son, in Germany, was beyond their reach. They threatened her regarding the music videos and demanded that they be deleted. The officers also threatened an uncle and two cousins and detained them at a police station for several hours three days in a row. Through family members, Jamal was warned that if he did not remove the videos, more than 40 relatives would lose their jobs, be arrested, or banned from leaving the country. Jamal did not comply and instead publicized the threats. The authorities did not follow through with their threats.

REPORT ON SOCAR'S SUPPORT TO GEORGIAN CHURCH AND DENIAL OF ENTRY

On 19 April 2017, Jamal travelled to Tbilisi from Berlin via Istanbul for work purposes and was denied entry by Georgian border guards at the Tbilisi airport. After checking his passport and entering his details into the system, they informed Jamal that he was not allowed into the country. Additionally, they handed him a document confirming denial of entry to the country and for the reason they ticked the box "other cases envisaged by Georgian legislation."⁵¹ Jamal's passport was returned to him and he was put on a plane back to Berlin on the following day.

Jamal believes that the Georgian authorities denied him entry to the country because of his vocal criticism of the Azerbaijani government and that the Azerbaijani authorities had likely pressured the Georgian authorities. He believes that a report that he prepared for Meydan TV in early 2017 about SOCAR providing free gas to Georgian churches may have played a role.⁵² The report sparked a protest rally⁵³ against Meydan TV in Tbilisi, during which protesters criticized Jamal, Meydan TV, and Azerbaijani dissidents residing in Tbilisi.

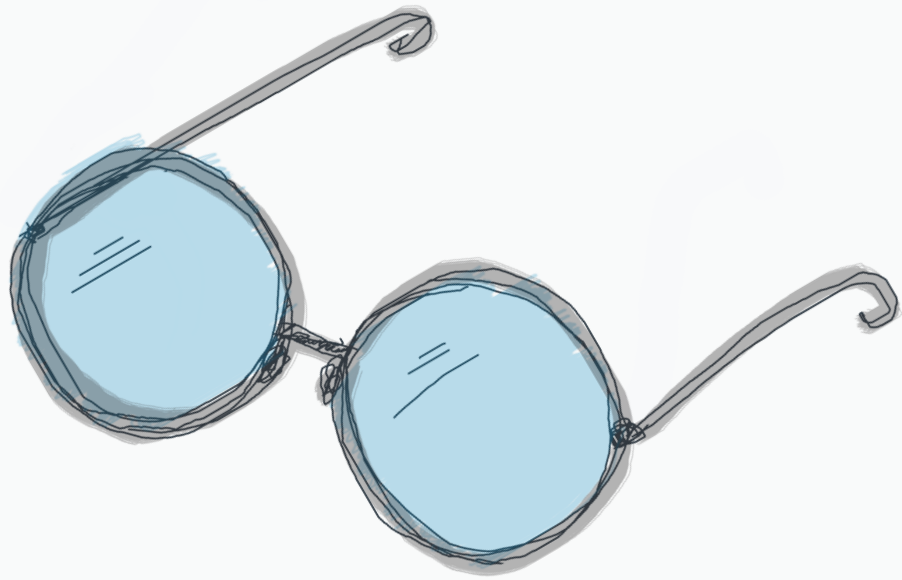
49 Bulistan – Vermisel, BulistanGroup (16 May 2012), available at <https://www.youtube.com/watch?v=naylKpnnCyo&feature=youtu.be>.

50 D.W.A. - Heykəl Baba (Censored), Art for Democracy (31 Dec. 2016), available at <https://www.youtube.com/watch?v=A63uO-HiAWHY>.

51 Decision on denial of entry to Georgia, Ministry of Internal Affairs (19 April 2017).

52 Does SOCAR Give Gas to Churches in Georgia?, Meydan TV (16 Jan. 2017), available at <https://youtu.be/7AHetMZRMMy0>.

53 Georgian Azeris Protest Against Meydan TV, Azerbaijan Diaspora (30 March 2017), available at <http://diaspor.az/gur-custan-azerbaycanlilarindan-meydan-tv-ye-etiraz-video/>.



4. Legal analysis - the plight of Azerbaijani exiles in Georgia

The previous chapter described the cases of six Azerbaijani exiles, each of whom has been subjected to different kinds of human rights violations in Georgia. This chapter identifies the main violations reported by the six men and women and analyses them in the context of Georgian legislation as well as Georgia's obligations under international human rights law. The chapter is divided into sections that highlight the following concerns:

- concerns over the lack of effectiveness of police actions and investigations; and
- denials of asylum and residence permits on vaguely-worded grounds of national security and public order, and denial of entry to Georgia for Azerbaijani visitors.

4.1. Shortcomings and concerns about police action and investigations

The Azerbaijani dissidents whom the researchers interviewed in the course of the research reported threats, surveillance, and harassment from unknown persons presumed to be connected to the Azerbaijani government. These individuals have made strong claims that the Georgian authorities have not done enough to effectively investigate these allegations. Moreover, in the case of Azerbaijani journalist Afgan Mukhtarli, there are allegations that the Georgian authorities participated directly in the perpetration of a crime.

The following section reviews and assesses the actions of the Georgian police and prosecution in the case of Afgan and other journalists and activists who reported surveillance, harassment, and other pressures.

4.1.1. THE CASE OF ABDUCTED JOURNALIST AFGAN MUKHTARLI

4.1.1.1. Lack of independence in police investigation

There are allegations that Afgan was abducted by officers of the Ministry of Internal Affairs of Georgia, which are based on Afgan's report to his lawyer that he was kidnapped by Georgian-speaking persons dressed in police uniforms.⁵⁴ Therefore, the institutional independence of the investigation is of critical importance. Nonetheless, the very agency accused of the wrongdoing was leading the investigation for the initial critical period of two months. It was only on 20 July 2017 that the case was transferred to the Prosecutor's Office.⁵⁵ Because Afgan

54 Facts About Afgan Mukhtarli's Case, Human Rights House Tbilisi (16 Aug. 2017), available at http://hrht.ge/%E1%83%A4%E1%83%90%E1%83%A5%E1%83%A2%E1%83%94%E1%83%91%E1%83%98_%E1%83%90%E1%83%A4%E1%83%92%E1%83%90%E1%83%9C_%E1%83%9B%E1%83%A3%E1%83%AE%E1%83%97%E1%83%90%E1%83%A0%E1%83%9A%E1%83%98%E1%83%A1_/.

55 Afgan Mukhtarli's Case Will Be Investigated by the Prosecutor's Office, Radio Tavisupleba (20 July 2017), available at <https://www.radiotavisupleba.ge/a/28628718.html>.

does not have official victim status, which would grant him the right to access more information about the investigation, the authorities are still not forthcoming with information about the progress of the investigation, including the internal investigations they may or may not be undertaking.

Georgian law establishes the requirement for institutional investigatory independence and the investigatory responsibility for certain crimes. As per Article 2 of Annex to the Order Number 34 of the Minister of Justice of Georgia on Determination of Investigative and Territorial Subordination on Criminal Cases, the investigation of a crime committed by a police officer or a state security employee falls under the responsibility of the Prosecutor's Office to investigate. In similar cases, pursuant to Article 14 of the aforementioned Order, investigators determining that a case is not subject to their investigative responsibility are obliged to immediately transfer the case to a prosecutor. If the necessary grounds for such a transfer are clear and investigators do not transfer the case, evidence collected may not be admitted as evidence at trial.⁵⁶ Critically, there is also the concern that evidence might be tampered with or destroyed.

While Afgan's case was eventually transferred to the Prosecutor's Office for investigation on 20 July 2017, this occurred too late. Officers of the Ministry of Internal Affairs had already begun collecting evidence, taking witness statements, and possibly even destroying evidence as the testimony provided by OCCRP indicates.⁵⁷ The Georgian government has offered few substantive comments on the case and given no indication that police officers within the Ministry of Internal Affairs are under investigation.

4.1.1.2. Unfounded refusal to grant victim status

The official investigation into Afgan's disappearance and alleged abduction was opened on 30 May 2017, however, the police and the Prosecutor's Office have not yet granted him and his wife victim status. Without victim status in Georgia – a matter of law and practice – a victim and/or their family are not entitled to be kept informed about developments in the investigation.

In Afgan's case, the authorities stated that victim status is not warranted due to a lack of evidence and insufficient grounds to believe that any damage was inflicted. This decision by the authorities was appealed by Afgan's lawyer, but the appeal was unsuccessful on the grounds that the alleged crime does not fall under the category of "grave crimes."⁵⁸

According to the Criminal Procedure Code, a person is considered a victim, if they have "incurred moral, physical or material damage directly" as a result of a crime.⁵⁹ Accordingly, in order for a person to be recognized as a victim, both material and formal conditions must be met. Material conditions require a determination that damage of some kind has been inflicted on the person. The formal conditions involve the prosecutor's decision on granting of victim status (Article 56.6 of the Criminal Procedural Code of Georgia).⁶⁰

In Afgan's case, the material conditions for granting victim status under the law have been met in that the crime committed resulted in physical and moral damage to him and his family members.

As observed by local organizations in certain cases,⁶¹ the Prosecutor's Office employs complicated and unfounded standards when deciding whether or not to grant victim status. Namely, although the Criminal Procedure Code requires only confirmation of infliction of damage as a result of a crime, in practice, the Prosecutor's Office demands both satisfaction of the standard of unreasonable doubt that a crime has been committed and confirmation of causality between the criminal activity and the damage inflicted. Such a requirement does not comply with the Criminal Procedure Code which only necessitates a standard of reasonableness in order to grant victim status.⁶²

56 Commentary on the Criminal Procedure Code of Georgia, American Bar Association (2015), p. 332.

57 Source on file with author.

58 Article 56(5) of the Criminal Procedure Code states that if a prosecutor does not grant a victim status within 48 hours after application, an appeal may be filed to a supervising prosecutor, and if the crime committed was a major felony, the person is entitled to appeal to the court and request granting of a victim status.

59 Article 3(22) of the Criminal Procedure Code.

60 Commentary on the Criminal Procedure Code of Georgia, p. 219.

61 In EMC's experience, in certain cases, the Prosecutor's Office links the granting of a victim status to confirmation of the crime committed and infliction of damage.

62 Article 3(11) of the Criminal Procedure Code states that "a totality of facts or information that, [together] with the totality of circumstances of a criminal case in question would satisfy an objective person that the accused has committed an offence...."

In *Khatuna Shubitidze v. the Parliament of Georgia*, the Constitutional Court of Georgia put an emphasis on the significance of a victim's participation in the process of investigation. It stated that "the victim, as a result of their interest, is naturally more than a simple witness, which, in itself, requires their adequate and sufficient participation in the process. The victim shall be informed about the progress of the case at every stage, in case of all categories of crimes have the right to appeal, including to the court, the decision of a prosecutor on refusal to grant a victim status or to prosecute, as well as on termination of the investigation/prosecution, to receive copies of the criminal case materials, unless it contradicts the interests of the investigation have the right to be present at the hearing and present their statements, points of view, and evidence."⁶³

Without victim status, Afgan and his wife are deprived of the opportunity to monitor the ongoing investigation process. This is of particular concern, given the allegations that the police were directly involved in the abduction.

4.1.1.3. Ineffectiveness of the police investigation

Generally, investigations by Georgian police into the abuses committed against Azerbaijani exiles have not been thorough. Since the investigation on Afgan's case was opened, most of the investigative activities have involved questioning witnesses and obtaining video recordings from street cameras. Nevertheless, several people who appear in the recordings and were seen by witnesses, who may be connected to the crimes or possess vital information, have yet to be identified. According to Afgan and Leyla's lawyer, several people were spotted at the place where Afgan was last seen who appeared to be watching him suspiciously. Leyla has also since noticed people watching her and eavesdropping on her conversations with other Azerbaijanis. In spite of numerous appeals by Afgan's lawyers, the Ministry of Internal Affairs and the Prosecutor's Office have still not traced any of these people. Most surprising of all is that the victim himself has not yet been questioned directly about the circumstances of the crime despite the fact that Afgan's current whereabouts in Azerbaijan are known.

Moreover, the decision by authorities to investigate the crime under Article 143.1 of the Criminal Code of Georgia (deprivation of liberty) is unclear. The facts of the case suggest that the crime against Afgan was committed with prior agreement by a group of people who, by abducting the victim and taking him across a state border, inflicted on him significant damage. This set of facts, as described by the victim, indicate that aggravating circumstances that should be investigated in accordance with more serious crimes as provided in paragraphs 2, 3 and 4 of Article 143 of the Criminal Code of Georgia.⁶⁴

4.1.1.4. Investigation requirements under international law

In addition to its investigation deficiencies detailed above under Georgian law, as discussed above, Georgia's half-hearted investigation into the kidnapping of Afgan is problematic under international law.

In accordance with Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR) and Article 13 of the European Convention of Human Rights (ECHR), Georgia has an obligation to provide an effective remedy to an individual for violations of his or her rights which occurred in any territory or jurisdiction under Georgia's control. Such remedies must be available to all individuals, including "asylum seekers, refugees, migrant workers and other persons."⁶⁵

Both the European Court of Human Rights (the European Court) and the UN Human Rights Committee (the Human Rights Committee) have confirmed that a proper investigation into alleged violations of individuals' rights is required in order for a remedy to be effective. The European Court has found that, in the case of alleged mistreatment by a state agent, the state must sua sponte carry out an official investigation, which requires a thorough and serious attempt to determine what occurred.⁶⁶ Specifically, where an individual has been abducted

63 *Khatuna Shubitidze v. the Parliament of Georgia*, Constitutional Court of Georgia, Decision 1/8/594 (30 Sep. 2016).

64 Article 143 of the Criminal Code states "Deprivation of liberty shall be punished by imprisonment for a term of two to four years. The same act committed: by taking the victim abroad; against official foreign representatives or persons subject to international legal protection; c) for the purpose of concealing or facilitating any other the crime, shall be punished by imprisonment for a term of four to seven years. The same act committed: a) with a prior agreement by a group; b) repeatedly; c) against two or more persons; d) knowingly by the offender against a pregnant woman, a minor or a helpless person; e) using violence or threat of violence dangerous for life or health, - shall be punished by imprisonment for a term of seven to ten years."

65 Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, CCPR/C/21/Rev.1/Add. 1326 May 2004, 10, (29 March 2004).

66 *Aslakhanova and Ors. v. Russia*, ECtHR, Applications Nos. 2944/06, 8300/07, 50184/07, 332/08, and 42509/10, 144-147, (18 Dec. 2012) (finding that where Russia failed to make a serious attempt to thoroughly investigate the ill treatment of detained person, including taking steps to obtain additional information about the alleged crime, it violated Article 3 of the ECHR in its procedural aspect); *Husayn (Abu Zubaydah) v. Poland*, ECtHR, Application No. 7511/13, 479-480, (24 July 2014) (noting that, where

and detained without legal grounds or an acknowledgment of such detention, an effective criminal investigation is a required remedy.⁶⁷ In the case of expulsion, such scrutiny must also be undertaken “without regard to what the person may have done to warrant his expulsion or to any perceived threat to the national security of the state from which the person is to be removed.”⁶⁸ The investigatory response must be prompt in order to restore public confidence in the rule of law and to prevent any appearance of collusion in or tolerance of unlawful acts.⁶⁹

Similar to Georgian law, the hallmark of such an investigation under international law is its independence, which implies “not only the absence of a hierarchical or institutional connection, but also independence in practical terms.”⁷⁰ The investigation should also be independent from the executive and from anyone implicated in the events.⁷¹ In the case of *Avsar v. Turkey*, for instance, the European Court considered the abduction and murder of an individual in the context of counter-insurgency measures and found that there was “no convincing reason given for entrusting the investigation to [those gendarmerie] who were implicated in the course of events.”⁷² Doing so led to “serious defects in the reliability, thoroughness and independence” of the investigation.⁷³

Ultimately, an investigation into state mistreatment of an individual must be capable of leading to an establishment of facts and to the identification and punishment of those responsible for any abuses.⁷⁴ During investigation, the authorities must take reasonable steps to secure evidence, such as eyewitness testimony or forensic evidence.⁷⁵ Any deficiency which undermines the investigation’s ability to identify the persons responsible for the abuse may fatally endanger ability of the investigation to provide an effective remedy.⁷⁶

There must also be sufficient public scrutiny of the investigation and its results; in particular, the victim and victims and their families must be provided access to the investigatory procedure.⁷⁷ In *Ognyanova and Choban v. Bulgaria*, the European Court found, inter alia, a violation of Article 2 of the ECHR where, despite a number of requests from the attorney, the applicants, family members of the victim, were not informed regularly on the progress of investigation. Additionally, the European Court noted that the applicants needed sufficient access to the case materials in order to participate effectively in proceedings aimed at challenging decisions made in the course of the investigation.⁷⁸ In *Khadisov and Tsechoyev v. Russia*, the European Court found a violation of Article 3 of the ECHR, inter alia, where the applicants, victims themselves, had no access to materials of the criminal case and were not adequately informed about the progress of investigation. Moreover, they had no effective power

an individual has raised an arguable claim that he has been tortured by state agents or by foreign agents with the state’s acquiescence, the state must conduct an effective official investigation); *Gongadze v. Ukraine*, ECtHR, Application No. 34056/02, 175, 177 (8 Nov. 2005) (“The authorities must act of their own motion, once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigatory procedure [...]. There is also a requirement of promptness and reasonable expedition implicit in this context.”). A lack of such effective investigation can lead to a finding of violations not only under Article 13 of the ECHR, but also Articles 2 and 3. See *id.*

67 *Pitsayeva and Ors. v. Russia*, ECtHR, Applications Nos. 53036/08, 61785/08, 8594/09, 24708/09, 30327/09, 36965/09, 61258/09, 63608/09, 67322/09, 4334/10, 4345/10, 11873/10, 25515/10, 30592/10, 32797/10, 33944/10, 36141/10, 52446/10, 62244/10 and 66420/10, 480-482, (9 Jan. 2014) (“In the absence of the results of the criminal investigation, any other possible remedy becomes inaccessible in practice.”).

68 *Husayn (Abu Zubaydah) v. Poland*, ECtHR, Application No. 7511/13, 543, (24 July 2014).

69 *Gongadze v. Ukraine*, ECtHR, Application No. 34056/02, 177 (8 Nov. 2005). See also *Avsar v. Turkey*, ECtHR, Application No. 25657/94, 395 (10 July 2001).

70 *Husayn (Abu Zubaydah) v. Poland*, ECtHR, Application No. 7511/13, 480, (24 July 2014).

71 *Husayn (Abu Zubaydah) v. Poland*, ECtHR, Application No. 7511/13, 480, (24 July 2014) (“The investigation should be independent of the executive.”); *Gongadze v. Ukraine*, ECtHR, Application No. 34056/02, 176, (8 Nov. 2005)

72 *Avsar v. Turkey*, ECtHR, Application No. 25657/94, 397 (10 July 2001).

73 *Id.* at 398.

74 *Aslakhonova and Ors. v. Russia*, ECtHR, Applications Nos. 2944/06, 8300/07, 50184/07, 332/08, and 42509/10, 144, (18 Dec. 2012). See also, e.g., *Gongadze v. Ukraine*, ECtHR, Application No. 34056/02, 176, (8 Nov. 2005); *Avsar v. Turkey*, ECtHR, Application No. 25657/94, 394, (10 July 2001).

75 *Aslakhonova and Ors. v. Russia*, ECtHR, Applications Nos. 2944/06, 8300/07, 50184/07, 332/08, and 42509/10, 145, (18 Dec. 2012). See also, e.g., *Avsar v. Turkey*, ECtHR, Application No. 25657/94, 394, (10 July 2001); *Husayn (Abu Zubaydah) v. Poland*, ECtHR, Application No. 7511/13, 480, (24 July 2014).

76 *Aslakhonova and Ors. v. Russia*, ECtHR, Applications Nos. 2944/06 and 8300/07, 50184/07, 332/08, 42509/10, 145, (18 Dec. 2012) (“Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.”). See also *Husayn (Abu Zubaydah) v. Poland*, ECtHR, Application No. 7511/13, 480, (24 July 2014).

77 *Aslakhonova and Ors. v. Russia*, ECtHR, Applications Nos. 2944/06, 8300/07, 50184/07, 332/08, and 42509/10, 121, 145, (18 Dec. 2012); *Husayn (Abu Zubaydah) v. Poland*, ECtHR, Application No. 7511/13, 480, (24 July 2014) (“Furthermore, the victim should be able to participate effectively in the investigation in one form or another.”).

78 *Ognyanova and Choban v. Bulgaria*, ECtHR, Application No. 46317/99 (23 Feb. 2006).

to appeal the actions of the investigative authority to the court.⁷⁹ Further, Recommendation (Rec. (2006)8) of the Committee of Ministers of the Council of Europe confirmed that: “states should ensure the effective recognition of, and respect for, the rights of victims with regard to their human rights; they should, in particular, respect the security, dignity, private and family life of victims and recognise the negative effects of crime on victims.”⁸⁰

In the case of *Aslakhanova and Ors. v. Russia*, the European Court considered the failed investigation into the abduction of several individuals who had been taken by armed men, allegedly working for the Russian government.⁸¹ The European Court noted shortcomings in the criminal investigations into the abductions, such as “delays in the opening of the proceedings and in the taking of essential steps; lengthy periods of inactivity; failure to take vital investigative steps, especially those aimed at the identification and questioning of the military and security officers who could have witnessed or participated in the abduction; failure to involve the military prosecutors even where there was sufficient evidence of the servicemen’s involvement in the crimes; inability to trace the vehicles, their provenance and passage through military roadblocks; belated granting of victim status to the relatives; and failure to ensure public scrutiny by informing the next of kin of the important investigative steps and by granting them access to the results of the investigation.”⁸² In light of such investigatory defects, the European Court found that the authorities failed to carry out a thorough and effective criminal investigation and thus violated Articles 2 and 3 of the ECHR in their procedural aspects.⁸³

Likewise, in the case of *Husayn (Abu Zubaydah) v. Poland*, the European Court considered the case of a suspected terrorist who had been allegedly held and tortured in Poland at a CIA secret detention facility before being expelled to the US Naval Base at Guantanamo Bay. The European Court determined that although the Polish authorities opened an investigation into allegations of the CIA “black site” over six years prior to its opinion—and about six years after the atrocities allegedly committed against the complainant—no proper investigation had ever occurred; the investigation lacked independence and was continually delayed, evidence had not been effectively gathered, no persons bearing responsibility had been identified and the proceedings were inaccessible to the victim’s representatives and the general public.⁸⁴ The European Court thus found that the investigation “failed to meet the requirements of a ‘prompt’, ‘thorough’ and ‘effective’ investigation” in violation of Article 13, taken in conjunction with Articles 3, 5 and 8 of the ECHR.⁸⁵

The Human Rights Committee has confirmed that similar guarantees of investigatory quality are necessary for a remedy to be effective. In General Comment No. 31 to the ICCPR, the Human Rights Committee clarified that ensuring individuals have accessible and effective remedies requires states to “investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies.”⁸⁶ Such an investigation must be expeditious, carried out by competent authorities and effective.⁸⁷ The UN Working Group on Enforced Disappearances has also specified that, in the context of enforced disappearances, investigations must be thorough, impartial, protect complainants, witnesses and relatives, safeguard victims’ access to documentation and other relevant information; and ensure that those suspected of having committed the enforced disappearance are not in a position to influence the investigation.⁸⁸

A state’s failure to conduct an independent and impartial investigation can, in and of itself, give rise to a separate breach of the ICCPR, including a possible claim under Article 7 of the ICCPR (prohibition of torture and cruel, inhuman or degrading ill-treatment or punishment) if the state’s failure to properly investigate a victim’s

79 *Khadisov and Tsechoyev v. Russia*, ECtHR, Application No 21519/02 (5 Feb. 2009).

80 Recommendation Rec (2006)8 of the Committee of Ministers to member States on assistance to crime victims, Council of Europe Committee of Ministers (14 June 2006), available at: https://victimsupport.eu/activeapp/wp-content/uploads/2012/09/Recommendation-Rec20068-of-the-Committee-of-Ministries_Council-of-Europe11.pdf.

81 *Aslakhanova and Ors. v. Russia*, ECtHR, Applications Nos. 2944/06 and 8300/07, 50184/07, 332/08, 42509/10, 9-42, (18 Dec. 2012).

82 *Id.* at 123.

83 *Id.* at 127, 147.

84 *Husayn (Abu Zubaydah) v. Poland*, ECtHR, Application No. 7511/13, 481-493, (24 July 2014).

85 *Id.* at 493, 545.

86 Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, CCPR/C/21/Rev.1/Add. 1326 May 2004, 15, (29 March 2004).

87 *Kalamiotis v. Greece*, UN Doc. CCPR/C/93/D/1486/2006, 7.3, (5 Aug. 2006). See also, *Banda v. Sri Lanka*, UN Doc. CCPR/C/91/D/1426/2005, 7.3, (13 Nov. 2007).

88 Committee on Enforced Disappearances, “Statement: Enforced Disappearances and Military Jurisdiction”, Report of the Committee on Enforced Disappearances on Its Eighth Session, Annex VI, para 3, (2-13 Feb. 2015), available at http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/1_Global/INT_CED_SED_8_23242_E.pdf.

maltreatment leads to anguish for the victim's family.⁸⁹ Moreover, in addition to providing a proper investigation, in order to guarantee an effective remedy a state must make reparations to individuals whose rights have been breached, which may include "restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations."⁹⁰ Impunity for perpetrators of human rights violations can give rise to an additional breach of the ICCPR.⁹¹ Finally, states must take measures to prevent the recurrence of such a violation.⁹²

Afgan's case is similar to that of *Gongadze v. Ukraine*, in which the European Court considered the compromised investigation into the abduction and murder of Myroslava Gongadze, a journalist known for his criticism of the government.⁹³ In that case, the Ukrainian authorities conducting the investigation were also indecisive about whether or not to grant Mr. Gongadze's wife civil party status, which would have allowed her greater participation in the case; and as a result she struggled to gain access to investigation materials.⁹⁴ The Ukrainian investigators also delayed and impeded the investigation by confiscating evidence.⁹⁵ The European Court ultimately found that the "authorities were more preoccupied with proving the lack of involvement of high-level state officials in the case than with discovering the truth about the circumstances of the disappearance and death" of Mr. Gongadze, in violation of Ukraine's obligation to investigate.⁹⁶ Although the delays and official misconduct in Mr. Gongadze's case were more extensive than in the case of Afgan there are a number of troubling similarities which indicate that international courts might take issue with Georgia's handling of this investigation.

It is worth noting that Afgan alleges he was handed to the custody of Azerbaijan by the Georgian authorities. In the light of this, should Georgia claim that Afgan's kidnapping was merely a fast-tracked deportation, their actions would also be considered unlawful under international law. Although Article 5(1)(f) of the ECHR permits the detention of a person "against whom action is being taken with a view to deportation or extradition," because such a detention constitutes a major interference with individual freedom it is subject to rigorous scrutiny.⁹⁷ Likewise, Article 13 of the ICCPR guarantees that an alien may be expelled from the territory of a state "only in pursuance of a decision reached in accordance with law." First and foremost, such a detention must be effectuated in accordance with a procedure prescribed by domestic law, which was not the case in regard to Afgan.⁹⁸ Furthermore, international law guarantees any detainee the right to a review of the lawfulness of his or her detention.⁹⁹ Finally, an alien "must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one."¹⁰⁰ For instance, in the case of *Garcia v. Ecuador*,

89 Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, CCPR/C/21/Rev.1/Add. 1326 May 2004, 15, (29 March 2004); *Amirov v. Russian Federation*, UN Doc. CCPR/C/95/D/1447/2006, 11.7, (22 April 2009).

90 Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, CCPR/C/21/Rev.1/Add. 1326 May 2004, 16, (29 March 2004); *Amirov v. Russian Federation*, UN Doc. CCPR/C/95/D/1447/2006, 13, (22 April 2009) (holding that a remedy to the husband of a disappeared and murdered victim would include, in addition to an impartial investigation, prosecution of persons responsible, adequate compensation, and prevention of such future violations); *Husayn (Abu Zubaydah) v. Poland*, ECtHR, Application No. 7511/13, 541, (24 July 2014).

91 Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, CCPR/C/21/Rev.1/Add. 1326 May 2004, 18, (29 March 2004).

92 Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, CCPR/C/21/Rev.1/Add. 1326 May 2004, 17, (29 March 2004); *Amirov v. Russian Federation*, UN Doc. CCPR/C/95/D/1447/2006, 13, (22 April 2009) (noting that a state is also under an obligation to prevent similar violations in the future.)

93 *Gongadze v. Ukraine*, ECtHR, Application No. 34056/02, (8 Nov. 2005).

94 *Gongadze v. Ukraine*, ECtHR, Application No. 34056/02, 26, 27, 38, 39 (8 Nov. 2005).

95 *Id.* at 22 (8 Nov. 2005).

96 *Id.* at 179 (8 Nov. 2005).

97 See Article 5(1)(f) of the ECHR; *Z.A. and Ors. v. Russia*, ECtHR, Applications Nos. 61411/15, 61420/15, 61427/15, and 3028/16, 94, (28 March 2017) (noting that, although states have an undeniable right to control aliens' entry into and residence in their territory, any detention "must always be subject to rigorous scrutiny.")

98 See Article 5(1) of the ECHR ("No one shall be deprived of his liberty save [...] in accordance with a procedure prescribed by law"); *Z.A. and Ors. v. Russia*, ECtHR, Applications Nos. 61411/15, 61420/15, 61427/15, and 3028/16, 94, (28 March 2017). *Giry v. Dominican Republic*, CCPR/C/39/D/193/1985, 5.5 (1990).

99 *Georgia v. Russia*, ECtHR, Application No. 13255/07, 183, 188 (3 July 2014) (noting that detained persons are entitled to a review on such procedural and substantive conditions for "lawfulness" and that, in the absence of such effective and accessible remedies available to Georgian nationals after collective arrests and expulsions, Russia had violated Article 5(4) of the ECHR). See also, *Giry v. Dominican Republic*, CCPR/C/39/D/193/1985, 5.5, (1990); *Hammel v. Madagascar*, UN Doc. Supp. No. 40 (A/42/40), 20 (1987).

100 See Human Rights Committee, CCPR General Comment No. 15: The Position of Aliens Under the Covenant, 10, (11 April 1986).

the Human Rights Committee held that Ecuador had violated Articles 9 and 13 of the ICCPR when its police, along with US agents, detained and immediately extradited Mr. Garcia at the behest of the United States without giving him any ability to challenge his extradition.¹⁰¹

4.1.2. ASSESSMENT OF INVESTIGATIONS INTO CROSS-BORDER THREATS AND HARASSMENT OF OTHER AZERBAIJANI ACTIVISTS

A number of other Azerbaijani exiles report that Georgian authorities have failed to properly investigate the cases that they have filed. For example, journalist Gulnur Kazimova reported that the police initially refused to open an investigation regarding the alleged surveillance and harassment she endured; it was only after her lawyer intervened that the police reluctantly agreed to investigate. Unfortunately, this investigation also appeared to cover up official wrongdoing. For example, during the investigation the police informed Gulnur that the car she claimed had been following her did not exist, before finally admitting that it was a vehicle owned by the police. Moreover, Gulnur alleges that police tampered with her statement.

Georgian police have also failed to effectively investigate harassment and physical abuse of Azerbaijani activists by agents of the Azerbaijani authorities, which may indicate a troubling cooperation between the two states. Dashgin Aghalarli and Vidadi Isgenderli, among others, reported that they asked the police to investigate such allegations, but to no avail. Dashgin went so far as to show the police a photograph of the individuals who were following him. The picture had been taken by the owner of a restaurant who had been asked by Dashgin's watchers how often he frequented the restaurant. Later, after receiving phone calls from an unknown person asking him to meet, Dashgin passed on the mobile number of the callers to the Georgian authorities. Still, the Georgian police took no steps to investigate this harassment.

According to Vidadi, who until recently resided in Georgia as a refugee, he reported five cases of threats and attacks by unknown individuals to the Georgian police. The investigations into the allegations progressed slowly and other than drawing up a sketch of one of the alleged perpetrators the authorities have reportedly taken no further steps to identify the perpetrators. Vidadi had not been granted victim status at the time of writing.

It is important to note that actions committed against Vidadi and his family have been of a continuous and systemic nature, allegedly carried out by people connected to the Azerbaijani government, which could lead to violations of Article 156 of the Criminal Code of Georgia.¹⁰²

Analysis under international law

States are obliged to protect the human rights of all persons, including non-citizens, within the state's effective control.¹⁰³ This obligation to protect requires that a state ensures protection for individuals and groups, not only from abuses by its own agents,¹⁰⁴ but also from abuses perpetrated by third party actors.¹⁰⁵ Failing to safeguard an individual's rights by "permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities" may lead to attribution of such violation to the state itself.¹⁰⁶

Aggressive harassment by a third party may violate an individual's rights to freedom of expression, religion,

101 Garcia v. Ecuador, CCPR/C/43/D/319/1988, 2.1-2.4, 6.1 (1991).

102 Article 156(1) of the Criminal Code criminalizes "persecution of persons because of their speech, opinion, conscience, confession, faith or creed, or political, social, professional, religious or scientific activities."

103 Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, CCPR/C/21/Rev.1/Add. 1326 May 2004, 10, (29 March 2004). See also, UN Office of the High Commissioner of Human Rights, International Human Rights Law, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>.

104 While most of the harassment discussed in this section stems from Azerbaijani agents in Georgia, some harassment may be directly attributable to Georgian agents, as was likely the case with the car following and surveilling Gulnur Kazimova, which was later revealed to belong to Georgian police. Georgia is of course obliged not to harass individuals on its territory in a way which may infringe on their fundamental rights. See Article 2(1) of the ICCPR.

105 Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, CCPR/C/21/Rev.1/Add. 1326 May 2004, 8, (29 March 2004) ("[T]he positive obligations on states parties to ensure Covenant rights will only be fully discharged if individuals are protected by the state, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities.").

106 Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, CCPR/C/21/Rev.1/Add. 1326 May 2004, 8, (29 March 2004).

assembly, association, etc. For example, in order to safeguard the free exercise of religion, the UN General Assembly has urged states to provide protection to individuals from third party acts of intimidation or coercion.¹⁰⁷ The Human Rights Committee has confirmed that states' obligation to ensure free expression under Article 19 of the ICCPR requires states "to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities."¹⁰⁸ Where significant acts of intimidation discourage individuals from freely exercising these rights, states should take measures to protect individuals from such harassment.

Beyond harassment, states are also obliged to protect individuals from criminal acts by third parties – particularly when an individual's rights to life or freedom from torture might be at risk.¹⁰⁹ For instance, in the case of *Gongadze v. Ukraine*, the European Court considered whether Ukraine's failure to take measures to protect a journalist that reported surveillance and who was subsequently disappeared and murdered constituted a substantive violation of its obligation to protect the journalist's right to life under Article 2 of the ECHR. The European Court found that states have a primary duty to "[put] in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. [This duty] also extends, in appropriate circumstances, to a positive obligation on the authorities to take preventive operational measures to protect an individual or individuals whose lives are at risk from the criminal acts of another individual."¹¹⁰ The European Court specified that state liability may arise where the authorities knew or should have known of the existence of a real and immediate risk to an individual's life from the criminal acts of a third party and failed to take protective measures.¹¹¹

In its draft General Comment on the Right to Life (which is still under review and has not yet been adopted), the Human Rights Committee concurred that states are "under a due diligence obligation to undertake reasonable positive measures, which do not impose on them impossible or disproportionate burdens, in response to foreseeable threats to life originating from private persons and entities, whose conduct is not attributable to the state."¹¹² The Human Rights Committee further indicated that special measures of protection may be required for human rights defenders, journalists and other persons in situations of vulnerability.¹¹³ Such measures might include the assignment of around-the-clock police protection, the issuance of protection and restraining orders or consented-to protective custody,¹¹⁴ as well as the punishment of perpetrators following a prompt, impartial and comprehensive investigation.¹¹⁵ The European Court has likewise noted that where vulnerable persons are concerned, states should take all steps that can be reasonable expected to prevent such real and immediate risks.¹¹⁶

Moreover, the Human Rights Committee in its Draft Comments has indicated that the state obligation to protect an individual from criminal acts by a third party extends to abuses by a foreign state acting within its territory.¹¹⁷

107 General Assembly Resolution: Combating Defamation of Religion, UN Doc. A/Res/64/156, 16, (8 March 2010).

108 Human Rights Committee, General Comment No. 34: Article 19: Freedoms of Opinion and Expression, UN Doc. No. CCPR/C/GC/34, 7, (12 Sep. 2011).

109 See e.g., *D.F. v. Latvia*, ECtHR, Application No. 11160/07, 83, (29 Oct. 2013); *Ahani v. Canada*, UN Doc. CCPR/C/80/D/1051/2002, 10.7, (2004); Human Rights Committee, Draft General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, 23, available at <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx> ("[Article 6(1)] also implies that state are under an obligation to take appropriate positive measure in order to protect life from all possible threats, including from threats emanating from private persons and entities.").

110 *Gongadze v. Ukraine*, ECtHR, Application No. 34056/02, 164, (8 Nov. 2005).

111 *Gongadze v. Ukraine*, ECtHR, Application No. 34056/02, 165-171, (8 Nov. 2005). See also *Osman v. United Kingdom*, ECtHR, Application No. 87/1997/871/1083, 116, (28 Oct. 1998).

112 Draft General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, 25, available at <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx>.

113 Draft General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, 26, available at <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx> (detailing categories of vulnerable persons whom the state should take exceptional measures to protect).

114 Draft General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, 26, available at <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx> (detailing potential measures of protection for vulnerable individuals).

115 Human Rights Committee Concluding observations on the third periodic report of Paraguay, UN Doc. No. CCPR/C.PRY/CO/3, 15, (29 April 2013) (recommending that Peru take steps to ensure that perpetrators are punished for threats and attacks against human rights defenders).

116 *O'Keefe v. Ireland*, ECtHR, Application No. 35810/09, 144; See also, *D.F. v. Latvia*, ECtHR, Application No. 11160/07, 83, (29 Oct. 2013).

117 Draft General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life,

In *Garcia v. Ecuador*, the Human Rights Committee found Ecuador to be liable where it refused to protect an individual against kidnapping from within its territory conducted by police “merely execut[ing] an ‘order’ coming from the Embassy of the United States.”¹¹⁸ Two of these police later identified themselves as direct agents of the United States.¹¹⁹

Because a number of Azerbaijani human rights activists have reported harassment from individuals who are likely to be state agents of Azerbaijan acting in Georgia, Georgia must take action to protect the threatened activists from such harassment, or risk bearing the responsibility for it. Georgia must ensure respect for the Azerbaijani exiles’ freedom of speech, association or assembly. Moreover, to the extent that harassment and intimidation presents a real and immediate risk to life, Georgia is obligated to take protective measures; this obligation is heightened because many of the individuals being targeted fall into the vulnerable category of human rights defenders and journalists. The fact that the persecution is carried out by agents of another state acting extra-territorially does not diminish the responsibility of Georgia to protect the human rights of all individuals within its borders.

4.2. Denial of asylum, residence, and visits on state security and public order grounds

This section analyses alleged violations committed by the Georgian authorities when turning down applications for asylum and residence handed in by Azerbaijani activists residing in the country on dubious national security and public order grounds. It examines the cases of Azerbaijani activist Dashgin Aghalarli and his son, who were both denied asylum, and Leyla Mustafayeva whose request to renew her residence permit was denied. Such decisions were made on the basis of information classified as secret by the State Security Service; in not disclosing such information Georgia thus prevented the individuals concerned from being able to effectively challenge the decision.

The section also examines the case of Jamal Ali who was denied entry to Georgia without being given any explanation as to the reasons why.

4.2.1. DENIAL OF ASYLUM

4.2.1.1. Domestic procedure for reviews of asylum claims

The “Law of Georgia on International Protection,” (Law on Asylum) was adopted on 1 December 2016, replacing the “Law on Refugee and Humanitarian Status” and was intended to bring the legislation into compliance with the Refugee Convention as well as best practices in international law.¹²⁰

The Law on Asylum provides that the refugee status is granted to a foreigner or a stateless person, who is outside their country of origin, and who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, and owing to the same fear, is unable or unwilling to return to their country of origin or benefit from the protection of it.¹²¹ This definition is in accordance with the Refugee Convention.¹²² Granting an individual asylum protects that person from expulsion or extradition to the country from which they are seeking refuge;¹²³ and guarantees certain civil and political rights under Georgian law.¹²⁴

The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of

25, available at <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx> (“States parties should also take appropriate measures to protect individuals against deprivations of life by other states operating within their territory.”).

118 *Garcia v. Ecuador*, UN Doc. No. CCPR/C/43/D/319/1988, 2.2-2.4, 6.1, (1991).

119 *Id.* at 2.2.

120 Explanatory Note on the Draft Law on International Protection, Parliament of Georgia, available at <http://info.parliament.ge/file/1/BillReviewContent/120318>.

121 Article 15(1) of the Law on Asylum.

122 UN General Assembly, Convention Relating to the Status of Refugees, 189 UNTS 137/ [1954] ATS 5, at Article 1(2)

123 Article 25(1) of the Law on International Cooperation on Criminal Matters states that “[e]xtradition may not be conducted if a person subject to extradition has been granted asylum in Georgia...”

124 Article 58 of the Law on Asylum.

Georgia (Ministry of Refugees) determines whether to grant a person refugee status.¹²⁵ A person wishing to obtain refugee status must apply to the Ministry of Refugees in writing¹²⁶ and then attend an interview.¹²⁷ The Ministry of Refugees is responsible for collecting relevant information required to assess the application.¹²⁸ Applications are generally decided within six months or in some cases, nine months.¹²⁹

According to the Law on Asylum, the authorities may reject a person's application on the following grounds: a) the applicant does not meet the requirements set for refugee status; b) there are reasonable grounds to believe that the applicant represents a threat to state, territorial integrity or public order in Georgia; or c) the applicant has been convicted of committing an especially grave crime in Georgia by a court judgement which has entered into legal force.¹³⁰

When considering the category of "threat to state security," the Ministry of Refugees is required to contact the State Security Service for its recommendation. The State Security Service is responsible for tracking threats to security in the country. It is a body powerful within the government. Following input from this agency, a decision is made on whether to grant an individual refugee status.¹³¹

By law, a potential danger to state security means a situation when there are sufficient grounds for suspecting that an asylum seeker or a person under international protection has ties with: a) military forces of the state/organization hostile to state defense and security of Georgia; b) intelligence services of another country; c) terrorist and/or extremist organizations; or d) other criminal organizations (among others, transnational criminal organizations) and/or illegal circulation of arms, weapons of mass destruction or its components.¹³²

4.2.1.2. Denial of asylum to Dashgin Aghararli and his son Orkhan

Dashgin and Orkhan's asylum applications were rejected on the 'reasonable grounds for believing that he/she may create a threat to state security and/or to the territorial integrity and public order of Georgia.'¹³³ In its decision to refuse asylum, the Ministry of Refugees admitted that Dashgin and Orkhan met the requirements for refugee status and acknowledged that Dashgin might be subject to political persecution in Azerbaijan. However, the Ministry of Refugees nevertheless denied Dashgin's application on the grounds that his presence in Georgia threatened Georgian state interests due to "significant circumstances."¹³⁴

The decision made by the Ministry of Refugees does not refer specifically to the potential danger posed by Dashgin and Orkhan to state security,--namely as spelled out in the law, whether they have ties with: a) military forces of the state/organization hostile to state defense and security of Georgia; b) intelligence services of another country; c) terrorist and/or extremist organizations; or d) other criminal organizations (including transnational criminal organizations) and/or illegal circulation of arms, weapons of mass destruction, etc.¹³⁵

According to the Law on Asylum, applicants whose asylum claims are refused are entitled to appeal to court. In the case of Dashgin and Orkhan, the Tbilisi City Court reviewed the classified information the Ministry of Refugees had relied on to make its decision, and determined that it was insufficient, saying "[it] does not include substantiation of the potential danger, what kind of danger will follow for the receiving country in case the issue is decided positively, as well as that the seriousness of the danger is not analysed and there is no discussion of the proportionality requirement. In other words, the information presented does not discuss the seriousness of the danger to the state security, the probability of danger or why it cannot be avoided, whether the expulsion will eliminate or reduce this danger, nor the nature of the risk and its severity."¹³⁶

125 Id., Article 3.

126 Id., Article 27(1).

127 Order 79 - Procedures for Providing Shelter, Ministry of Refugees (26 Jan. 2017), annex 1, paragraph 1.

128 Id., Article 37(1).

129 Id., Article 29(1).

130 Article 17 of the Law on Asylum.

131 Order 79 - Procedures for Providing Shelter, Ministry of Refugees (26 Jan. 2017), Article 34(2).

132 Id., Article 69.

133 These decisions were rendered before the Law on Asylum was enacted, however the grounds for such rejections were defined identically in the legislation in force at that time.

134 Decision of the Ministry Refugees (30 Oct. 2015).

135 Article 25.3 of the Law on Refugee and Humanitarian status

136 Decision of Tbilisi City Court (23 June 2016).

Because the risk to national security had not been established and the information presented by the State Security Service was not supported by sufficient evidence, the court overturned the government's decision, ruling that Dashgin and Orkhan should be given refugee protection in Georgia.

The government appealed this court decision and on 21 March 2017 the Tbilisi Appeals Court overturned the City Court's decision and reinstated the Ministry of Refugee's refusal to recognize Dashgin and Orkhan as refugees.¹³⁷ The Tbilisi Appeals Court decision was based on new secret information provided to it by the State Security Service, which has never been disclosed to Dashgin and Orkhan. According to Article 380 of the Civil Procedure Code, the appeal court should not consider new facts and evidence that a party could have submitted previously during hearings at the lower court.¹³⁸ The decision of the appeals court is final.¹³⁹

Under Georgian law, the state is authorized to reject refugee status based on national security grounds if there is an objective threat, which is serious, significant in its nature and the assessment has been made based on specific evidence. The standard for review is "sufficient ground for assuming threat."¹⁴⁰ Administrative bodies should take into account fundamental rights and freedoms in the course of their functions. Article 42 of the Georgian Constitution sets out the core procedural rights for judicial proceedings and provides for scrutiny of all decisions of the state that may encroach on human rights and freedoms. "A decision made with discretionary powers shall be reasoned, as the administrative bodies have to prevent arbitrary, partial and incompetent decision-making, substantiate the compliance of the decision with the law and the need for a certain decision. Reasoned, substantiated decisions are preconditions for lawfulness. The reasoning of a decision has to persuasively indicate all circumstances, in compliance with which a concrete decision was made and another rejected."¹⁴¹

The substantiation of denials of refugee status is made more difficult when such decisions are based on state security considerations, and thus on classified information provided by security services in charge of counterintelligence activities.¹⁴² Documents, materials, and other data describing these activities may be state secrets.¹⁴³

This means that an interested party does not have access to the information or reasoning submitted by security services because of its classified nature; such information is not reflected in the negative decision made by the relevant agency. The only mechanism for checking the validity of the information submitted by the security services is through the courts. Accordingly, under such circumstances control over the state's actions depends on judges acting in good faith, and on their ability to properly exercise the inquisitorial powers granted to them.

In this context, it is important to consider to what extent the judge has the power to review the classified status of the information submitted and the reasons for the asylum determination made by the State Security Service. Based on established administrative practice the information forwarded by the State Security Service to relevant state authorities is considered part of counterintelligence activities, which, by law, is a state secret.¹⁴⁴ However, it remains debatable whether all information provided by the State Security Service is part of counterintelligence activities and accordingly whether such information should automatically be considered a state secret.

By law, counterintelligence activities are activities in the field of state security, the objectives of which are to detect and prevent threats directed against the state interests of Georgia and arising from the intelligence and/or terrorist activities of special services and organizations, groups of people, or individuals of foreign states.¹⁴⁵

Branding information as classified serves to protect the secrecy of information available in the areas of defence, economy, foreign relations, intelligence, national security and law enforcement, the disclosure or loss of which can prejudice the sovereignty, constitutional order, political and economic interests of Georgia or of any party

137 Source on file with author.

138 Article 380 of the Civil Procedure Code states that the "court of appeal shall not admit new facts and evidence that the party may have submitted during hearing at the court of first instance, but failed to do so due to an inexcusable cause."

139 Article 21(4) of the Administrative Procedure Code.

140 Article 69(2) of the Law on Asylum.

141 Decision on Case №~~db~~-525-512(3-14), Supreme Court of Georgia (19 Feb. 2015).

142 Article 1 of the Law on Counterintelligence Activities defines counterintelligence as "special kinds of activities in the field of state security, the objectives of which are to detect and prevent the threats directed against the state interest of Georgia and arising from the intelligence and/or terrorist activities of special services and organizations, groups of people and individuals of foreign states."

143 Article 6(1) of the Law on Counterintelligence Activities.

144 Id.

145 Id., Article 1.

to the treaties and international agreements of Georgia.¹⁴⁶ By law, the power to revoke an unlawful and/or unsubstantiated decision on granting classified status to information lies with the court.¹⁴⁷ However, legislation also foresees blanket recognition of information obtained through counterintelligence activities as state secrets regardless of its nature.

The information forwarded to relevant authorities by the state security services may not necessarily fall into the category of information which should be deemed as classified, but the judge's authority to carry out a judicial review into the nature of the information from the state security services, order its disclosure and ensure that all parties to the case parties have access to it may nevertheless be restricted. Therefore, while considering the lawfulness of the asylum decision and its reasoning, the court has only the competence to assess whether the information submitted by the State Security Service falls under the definition of counterintelligence activities.

4.2.1.3. Analysis of asylum under international law

Under the Universal Declaration of Human Rights (UDHR)¹⁴⁸ and the Refugee Convention, individuals who have a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group have the right to seek asylum in other countries.¹⁴⁹

The ECHR and ICCPR protect refugee-seekers from expulsion to a country where their human rights would be endangered by removal from the receiving state.¹⁵⁰ For instance, should a refugee-seeker be at risk of torture or other cruel, inhuman or degrading treatment or punishment if expelled, a receiving state has the obligation of non-refoulement; it cannot return an individual to "the frontiers of territories where his life or freedom would be threatened."¹⁵¹

Although states have wide discretion in making national security determinations, should Dashgin and Orkhan be threatened with expulsion from Georgia which may infringe on their fundamental human rights, they therefore will have the right to challenge the denial of their refugee status based on Georgia's determination that they pose a security threat. The European Court has found that "even where national security is at stake, the concepts of lawfulness and the rule of law in a democratic society require that measures affecting fundamental human rights must be subject to some form of adversarial proceedings before an independent body competent to review the reasons for the decision and relevant evidence."¹⁵² In effect, an individual must be able to challenge the executive's assertion that national security is at stake in front of a court empowered to ensure that the discretion left to the executive in making such determination is exercised on a reasonable basis, in accordance with the law and without abuse.¹⁵³

In the case of *Al-Nashif v. Bulgaria*, the European Court confirmed that a government cannot blankly refer to security grounds as preventing it from fully disclosing its case as "there are means which can be employed which both accommodate legitimate national security concerns and yet accord the individual a substantial measure of procedural justice;"¹⁵⁴ in not providing Mr. Al-Nashif with such elementary safeguards, Bulgaria had deprived him of the due process protection owed under Article 5(4) of the ECHR.¹⁵⁵

146 Article 1(1) of the Law on State Secrets.

147 *Id.*, Article 12(2).

148 Article 14(1) of the UDHR ("Everyone has the right to seek and to enjoy in other countries asylum from persecution.").

149 UN General Assembly, Convention Relating to the Status of Refugees, 189 UNTS 137/ [1954] ATS 5, at Article 1(A); UN General Assembly, Protocol Relating to the Status of Refugees, 606 UNTS 267 / [1973] ATS 37 at Article 2. See also UNHCR, Who Is a Refugee, available at <http://www.unrefugees.org/what-is-a-refugee/>; UNHCR, Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention, 11, (2012).

150 The rights most commonly at issue in the context of expulsion are the right to be free from torture and the right to respect for family life. However, there is some indication that the Human Rights Committee might consider that all rights arising under the ICCPR could give rise to non-refoulement obligations. See e.g., New Issues in Refugee Research, Research Paper No. 132, Protecting Refugee and Asylum Seekers under the International Covenant on Civil and Political Rights, p. 7, (Nov. 2006), available at <http://www.unhcr.org/4552f0d82.pdf>; *Kindler v. Canada*, UN Doc. CCPR/C/48/D/470/1991, 6.2, (11 Nov. 1993) ("However, if a state party takes a decision relating to a person within its jurisdiction, and the necessary and foreseeable consequence is that that person's rights under the Covenant will be violated in another jurisdiction, the state party itself may be in violation of the Covenant.").

151 UN General Assembly, Convention Relating to the Status of Refugees, 189 UNTS 137/ [1954] ATS 5, at Article 33(1)

152 *Al-Nashif v. Bulgaria*, ECtHR, Application No. 50963/99, 123, (20 June 2002).

153 *Id.* at 122, 124.

154 *Al-Nashif v. Bulgaria*, ECtHR, Application No. 50963/99, 97, 124 (20 June 2002). See also *Chahal v. United Kingdom*, ECtHR, Application No. 22414/93, 131, (15 Nov. 1996).

155 *Al-Nashif v. Bulgaria*, ECtHR, Application No. 50963/99, 98 (20 June 2002).

In Dashgin and Orkhan's case, as stated above, there was a judicial review of the government's denial of asylum, however, the decision of the appeal court was based on classified information from the State Security Service, which was not revealed to the father and son. Certainly, in light of international law, if Georgia returns Dashgin and Orkhan to Azerbaijan, the Georgian authorities would be unlawfully violating their human rights. Even in relation to the decision to refuse asylum, there are significant questions to be asked as to whether they were afforded a fair opportunity to contest the decision of the authorities to refuse them refugee status as is required under international law. Although the case cited above examines a case of expulsion, the requirements for transparency are applicable in Dashgin and Orkhan's case. After all, their presence in Georgia is uncertain and without being afforded protection as a recognized refugee they remain vulnerable to further human rights violations.

4.2.2. DENIAL OF RESIDENCE PERMIT

4.2.2.1. Overview of domestic procedure on provision of residence permits and the absence of substantiated decisions

One of the ways a foreigner can reside in Georgia is to obtain a residence permit. The issues related to residence permits are regulated by the "Law of Georgia on the Legal Status of Aliens and Stateless Persons" (Law on Residence Permits). In Georgia, there are several types of residence permits that can be issued,¹⁵⁶ which require that the applicants meet a set of conditions. Decisions on permits are made by the "Public Service Development Agency,"¹⁵⁷ within 30 days of application.¹⁵⁸

A residence permit or an extension of a permit maybe be denied if a) an authorized body concludes that it would not be prudent to allow the applicant residence in Georgia for reasons of state and/or public safety; b) the reasons why a residence permit was granted previously no longer exist; c) the applicant carries out activities that endanger state security and/or public order; d) the applicant has committed a crime against peace and humanity; e) the applicant is wanted for commission of a crime or was convicted of a grave crime committed five years before lodging the application (if the conviction has not been removed from the criminal record) or the applicant has been charged with commission of a crime, before the criminal proceedings are finalized; f) the applicant has an infectious or other disease whose nature, severity and length may endanger the Georgian population (the Ministry of Labor, Health and Social Affairs sets the list of such diseases); g) the applicant presented documents for obtaining residence permit that were forged or without legal force; or h) the applicant indicated a wrong date in the application or hid significant information about the circumstances which are essential for rendering a decision on granting a residence permit.¹⁵⁹

It has been observed by local organizations,¹⁶⁰ that the Georgian government often rejects residence permits and extensions to Azerbaijani activists, journalists and politicians, based on subparagraphs (a) and (c) of Article 18 of the Law on Residence Permits, which is to say the applicant is believed to carry out activities that endanger state security and/or public order.

As in the case of asylum applicants, the determination made by the Public Service Development Agency is generally based on largely classified information provided to it by the State Security Service or in the case of assessing public order, the Ministry of Internal Affairs. Accordingly, an interested party does not have access to the reasoning behind such determination.

Because of the abstract nature of the grounds for denial of a residence permit, how state security and/or public order interests are defined and determined is unclear and non-transparent. According to the limited guidance in the Law on Residence Permits, these interests include situations when: a) a person's presence in Georgia endangers relationships of Georgia with other states and/or international organizations; or b) information is available that indicates with high probability that a person has connection with military forces of a state/organization hostile to the defense and security interests of Georgia, intelligence services, terrorist and/or extremist organizations and/or illegal circulation of drugs, arms, weapons of mass destruction or its components, organizations involved in human trafficking and/or other criminal activities (among others transnational criminal organizations).¹⁶¹

156 Article 15 of the Law on Residence Permits defines the types of residence permits.

157 Id. at Article 14(1).

158 Id. at Article 17(7).

159 Id. at Article 18(1).

160 Id. at Article 18(2).

161 Id.

Those grounds that relate to endangering Georgia's relationship with other states and/or organizations are vague and create room for arbitrariness. There are no adequate legal safeguards against misuse of the law, especially because the decision can be based entirely on classified information, which deprives the applicant of an opportunity to meaningfully contest. Although granting residence permits to Azerbaijani dissidents may place Georgia at odds with Azerbaijan, such inter-state friction should not be a basis for rejecting residence permits, as it may lead to arbitrary decisions by state bodies.

The Constitutional Court of Georgia has highlighted the significance of the principle of foreseeability in legislation, stating "the legislator is obliged to adopt precise, clear, unambiguous, foreseeable legislation (norms), which address requirements of the legislative definitiveness. This circumstance is one of the core criteria for assessing the constitutionality of the norm. The said obligation of the legislator is derived from the rule of law principle."¹⁶² The Constitutional Court also stated that laws must not be vague, but instead provide precise provisions that are foreseeable and definite:

- "The provisions have to be clear and complying with the requirements of definitiveness."¹⁶³
- "Norms regulating interference into rights require particularly thorough scrutiny in view of avoiding unnecessary, disproportionate restriction of rights by state. Probability of rights violation and risks related to it, are higher when the regulation restricting rights (law or its norms) are vague to an extent that an interpretation resulting in more intense, disproportionate interference into rights is permitted and, accordingly, creates solid ground for arbitrariness."¹⁶⁴

The Law on Residence Permits is problematic as it is not precise and clear enough to allow an affected person to foresee likely outcomes and leads to arbitrariness in decision-making by government officials.

In the case of Leyla Mustafayeva, the denial of residence permit was not appealed. This was a decision taken primarily by the company that was attempting to sponsor her permit. However, it is not clear in the Law on Residence Permits what exactly the rights to appeal are. Although the law clearly states that denials of permits can be appealed, it does not specify the process, instructing only that appeals are to be made "as provided by the legislation of Georgia."¹⁶⁵ To the extent that there is some opportunity for judicial review of the denials of residence permits, then similar arguments made above regarding the requirement for meaningful review may also apply.

4.2.2.2. Analysis of the rights of residents under international law

It is well established that states have the right to control entrance into and residence in their territory by non-citizens.¹⁶⁶ States have broad discretion to "promulgate laws and regulations concerning the entry of aliens and the terms and conditions of their stay."¹⁶⁷ Nevertheless, the UN General Assembly has suggested that, once the non-citizen is lawfully in the territory of a state, he or she "may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons why he or she should not be expelled and to have the case reviewed by, and be represented for the purpose before, the competent authority or a person or persons specially designated by the competent authority."¹⁶⁸ In effect, where an individual has some entitlement to be lawfully on a state's territory and where national security is not at risk, such person cannot be arbitrarily expelled.

162 Georgian Young Lawyers' Association v. Parliament of Georgia, Constitutional Court of Georgia, Decision #1/3/407 (26 Dec. 2007), 11.

163 Natadze v. Parliament of Georgia, Constitutional Court, Decision #2/2-389 (26 Oct. 2007), 6.

164 Balancing Interests in a Democratic Society, German Society for International Cooperation (2013), p.135, available at: <http://constcourt.ge/ge/publications/books/interesta-dabalanseba-demokratiul-sazogadoebashi.page>.

165 Article 3(i) of the Law on Residence Permits.

166 See e.g., *Al-Nashif v. Bulgaria*, Application No. 50963/99, 114, (June 20, 2002) (noting that "no right of an alien to enter or to reside in a particular country is as such guaranteed by the Convention. As a matter of well-established international law and subject to its treaty obligations, a state has the right to control the entry of non-nationals into its territory"); *Liu v. Russia*, ECtHR, Application No. 42086/05, 49, (6 Dec. 2007); Carmen Tiburcio, *The Human Rights of Aliens Under International and Comparative Law*, Martinus Nijhoff Publishers, p. 218, (2001).

167 Declaration on the human rights of individuals who are not nationals of the country in which they live, UN Doc. A/RES/40/144, Article 2(1), (13 Dec. 1985).

168 Declaration on the human rights of individuals who are not nationals of the country in which they live, UN Doc. A/RES/40/144, Article 7, (13 Dec. 1985). See also, Office of the UN High Commissioner for Human Rights, *The Rights of Non-citizens*, HR/PUB/06/11, p. 19, (2006) ("Non-citizens—even non-citizens suspected of terrorism—should not be expelled without allowing them a legal opportunity to challenge their expulsion.").

In the context of expelling a person with a colourable claim that such expulsion will infringe upon a fundamental right, the European Court has found that, in order for an expulsion to be “in accordance with law” the legal basis must be both “accessible” and “foreseeable,” i.e., formulated with sufficient precision to enable any individual to regulate his conduct.¹⁶⁹

The Human Rights Committee has confirmed that even non-citizens who are suspected of being a danger to national security should not be expelled without a legal opportunity to challenge their expulsion,¹⁷⁰ and that states must provide effective safeguards and remedies to this end.¹⁷¹ In the case of *Liu v. Russia*, the European Court said “a law which confers discretion is not in itself inconsistent with the requirements of ‘foreseeability’ [...] this requirement does not go so far as to compel states to enact legal provisions listing in detail all conduct that make prompt a decision to deport an individual on national security grounds. By the nature of things, threats to national security may vary in character and may be unanticipated or difficult to define in advance [...] it remains to be ascertained whether domestic law provides for sufficient safeguards to ensure that the discretion left to the executive is exercised without abuse.”¹⁷²

In addition to a state’s inability to expel a non-citizen without an adversarial proceeding where such expulsion would infringe on such individual’s right, states cannot generally discriminate against persons because of their national origin.¹⁷³ Georgia, therefore, may not treat groups of Azerbaijani migrants differently than groups of migrants from other states.

Under international law, Georgia was likely within the bounds of its discretion when it rejected Leyla’s residency permit on the grounds of national security, even if its determination of Leyla as a national security threat was arbitrary. Because Georgia has not attempted to expel Leyla, no potential right to family life, non-refoulement or other human right has been infringed upon and, provided that Georgia does not infringe upon any such right, it has broad authority to determine under what legal status she may remain in Georgia. However, if Georgia does begin deportation proceedings against Leyla, and if she can successfully argue that such deportation will violate a fundamental right, then Georgia must allow her an opportunity to challenge the arbitrariness of the national security determination justifying her expulsion in court.

4.2.3. DENIAL OF VISITORS

Citizens of 95 countries, including Azerbaijan, are permitted to enter Georgia without visa and reside there for up to 360 days.¹⁷⁴

According to the Law on Residence Permits, an alien may be refused an entry into Georgia a) if he/she does not have documents necessary for entering Georgia as provided for by the legislation of Georgia; b) if he/she has been banned from entering Georgia or has not paid a fine imposed for an unlawful stay in Georgia; d) if he/she does not have health and accident insurance or sufficient funds to reside in Georgia and to 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, or to the protection of the health, rights, and legitimate interests of citizens of Georgia and other persons residing in Georgia; f) if his/her stay in Georgia is unacceptable because of foreign policy considerations; g) if there is a reasonable doubt that he/she will unlawfully stay in Georgia after the visa validity expires; h) if he/she does not

169 *Al-Nashif v. Bulgaria*, Application No. 50963/99, 119, (20 June 2002) (discussing domestic measures of legal protection against arbitrariness). See also, *Liu v. Russia*, ECtHR, Application No. 42086/05, 56, (6 Dec. 2007) (noting that the expression “in accordance with law” requires that the law be “accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.”).

170 Human Rights Committee, Concluding observations on the third periodic report of Yemen, UN Doc. A/57/40 (vol. I), 83 (18), (2002) (expressing concern “about cases of expulsion of foreigners suspected of terrorism without an opportunity for them to legally challenge such measures.”).

171 Human Rights Committee, Concluding observations on the second periodic report of the Syrian Arab Republic, UN Doc. A/56/40 (vol. I), 81 (22), 2001 (expressing concern over the discretionary power of the Syrian Minister of the Interior to expel “any alien, without safeguards, if security and the public interest so require” and recommending that Syria provide an alien with “sufficient safeguards and an effective remedy” prior to expulsion); *Leghaei v. Australia*, UN Doc. CCPR/C/113/D/1937/2010, 10.4-10.5, (15 May 2015) (finding that Australia had violated the rights of a long-settled resident non-citizen when it never formally provided him with the reasons for terminating his right to remain in Australia—except for the general explanation that he was a national security threat).

172 *Liu v. Russia*, ECtHR, Application No. 42086/05, 61, (6 Dec. 2007).

173 Article 2(1) of the ICCPR; Article 14 of the ECHR.

174 On the Approval of the List of Countries Who Citizens Can Enter Georgia Without a Visa, Government Resolution 255 (5 June 2015).

provide, or provides false information about his/her identity and purpose of travel; i) in other cases provided for by the legislation of Georgia.¹⁷⁵

When entry into Georgia is refused on state security grounds provided for in paragraphs (e) or (f), the law states that such decisions “will not be substantiated.”¹⁷⁶

As was discussed in the section above regarding residence permits, the law here creates even more room for arbitrariness by comparison, as the law itself explicitly eliminates the need for any substantiation. To the extent a judicial appeal is afforded to rejected visitors,¹⁷⁷ it is difficult to see how a court would be in a position to meaningfully review this decision were it called to do so. Such a limited review would likely be perfunctory and superficial.

Between January 2016 and June 2017, 212 persons were denied the right to cross into Georgia on the grounds that they were threats to state security and/or public order. Of those rejected, 127 persons were citizens of Azerbaijan.¹⁷⁸ Such a high number of Azerbaijani rejections indicates possible discrimination by Georgian authorities, although more information about other nationalities would need to be obtained in order to make this argument. Moreover, it raises significant questions as to why the government considers such a high number of Azerbaijanis to be threats to their national security when there appears to be no evidence that Azerbaijanis are a threat to Georgia, and the government provides no materials in support, instead opting to classify it all as state secret.

5. Conclusion and recommendations

Georgia was previously viewed as a safe haven by Azerbaijani activists who were forced to flee their country after the government of Azerbaijan unleashed an unprecedented crackdown in 2014. Those who moved to Georgia found relative safety and stability during 2014-2015, but the situation deteriorated in 2016 when several well-known activists started to report being followed, harassed, and attacked by unknown individuals. It has been asserted by the victims that the Georgian authorities failed to conduct prompt and effective investigations when Azerbaijani exiles lodged complaints about such incidents with the police.

The case of Afgan Mukhtarli, who was allegedly abducted by Georgian police and handed over to Azerbaijani officials in May 2017 was a further shocking deterioration. A close examination of Afgan's kidnapping and the way in which the investigation of this crime was handled by Georgian authorities revealed a number of significant flaws. The investigation by representatives of the Ministry of Internal Affairs, the very agency accused of being involved in the kidnapping, failed to meet the minimum requirement of institutional independence. The transfer of the case to the Prosecutor's Office on 20 July was a positive step toward ensuring institutional independence. However, Afghan and his wife Leyla Mustafayeva have still not been granted victim status. As a result, they have no access to the case materials, which significantly limits their and their lawyer's ability to participate in the investigation and monitor whether it is conducted effectively.

The case of political activist Dashgin Aghalarli and his son Orkhan, who were denied refugee status in Georgia reveals systemic glitches in the way asylum applications are dealt with. The vague formulation of the applicable legislation leaves room for its abusive application by relevant administrative organs, and judicial oversight appears to be inadequate and problematic. As evidenced by Leyla's case, similar problems can be found in proceedings related to the acquisition of residence permits. The Georgian authorities rejected residence permits to a number of Azerbaijani activists based on vaguely-worded state security and/or public order grounds. In all these cases decisions are made on the basis of classified information that the applicant is unable to challenge. The case of the reporter and musician Jamal Ali highlights the risk of Azerbaijani dissidents to be turned away at Georgia's border despite a visa-free travel arrangement between the two countries.

175 Article 11(1) of the Law on Residence Permits.

176 Id. at Article 11(3).

177 The type of appeal provided is not clear. Article 3 of the Law on Residence Permits provides for an appeal in accordance with Georgian law.

178 From January 2016 to June 30, 2017, 127 Citizens of Azerbaijan Refused Entry to Georgia, Georgian Young Lawyers' Association (5 July 2017) available at: <https://gyla.ge/ge/post/2016-tslis-ianvridan-2017-tslis-30-ivnisis-chatvli-azerbaijanis-127-moqa-laqes-etqva-uari-saqartveloshi-shemosvlaze#sthash.kigR4sOA.dpbs>.

Recommendations

To the government of Georgia

- ensure to the maximum extent possible the protection and physical safety of foreign nationals, among those, human rights defenders and other dissidents, including those from Azerbaijan, who reside on Georgian territory;
- provide prompt and effective investigation into allegations of surveillance, threats, physical attacks and other forms of harassment, made by foreign nationals residing in the territory of Georgia;
- enable unhindered access to justice for those who report surveillance, threats, physical attacks and other forms of harassment, in particular by granting victim status and providing full access to unclassified information in criminal case files and keeping them informed about the progress of investigation;
- conduct an effective investigation into the allegation that Georgian law enforcement representatives were involved in the kidnapping of Afgan Mukhtarli; and consider re-classifying the investigation into Afgan's case as a crime under Article 143.2 (transferring the individual abroad) of the Criminal Code of Georgia;
- provide appropriate argumentation with reference to factual circumstances and specific legal provisions when turning down asylum applications;
- ensure accessibility to the classified information and a fair process by the judicial organs, which ensures a meaningful review concerning refusal of asylum based on classified information. Consider introducing automatic judicial oversight on the process of classifying information in relation to asylum procedures;
- review relevant provisions of the Law of Georgia on the Legal Status of Aliens and Stateless Persons with the view of respecting principles of legality and predictability in relation to procedure and grounds for denying residence permits;
- provide clear, precise and detailed explanation in writing to persons who are refused entry into Georgia, although they originate from countries that have visa-free travel arrangements with Georgia.
- enable effective Parliamentary oversight on the situation and treatment of Azerbaijani dissidents by the Georgian authorities

To Georgia's international partners, particularly the European Union, Council of Europe, United Nations and other concerned states

- Seize every opportunity to raise, in public and in private, serious concerns about the lack of genuine and effective investigation into cases of harassment, threats, surveillance and other pressure against Azerbaijani exiles, including the kidnapping of Afgan Mukhtarli;
- urge Georgian authorities to ensure to the maximum extent possible the protection and physical safety of foreign nationals, including those from Azerbaijan; and that human rights defenders and other dissidents can go about their legitimate and peaceful work unhindered;
- encourage Georgia authorities to bring asylum and residence permit handling practices in line with the country's commitments under applicable international law.

