



The Review of the Cases of Azerbaijani Journalists and Activists

EMC

The Review of the Cases of Azerbaijani Journalists and Activists

(Initial Report)

1. Introduction

The present document studies cases of the journalists residing in Georgia who were pursued from Azerbaijan for being critical of the Aliyev government as well as the cases of representatives of non-profit organizations and opposition political parties relating to refusal of granting the refugee status and residence permits, facts of their alleged harassment and persecution on the territory of Georgia.

The case analyses show that since the year of 2016 the government of Georgia, based on the abstract reason of protection of national security has been refusing to grant refugee statuses or residence permits to the persons pursued from Azerbaijan for being actively involved in the journalism and activism. Additionally, there are cases of their harassment, persecution in the territory of Georgia and rejection to enter the Country. The report particularly studies case of Afgan Mukhtarli, a journalist who was forcibly disappeared on May 29, 2017, and arrested by the Azerbaijani law enforcement agencies. The trends observed in these cases indicates on political loyalty of the government of Georgia towards the government of Azerbaijan and also, raise doubts as to the informal illegal cooperation between law enforcement agencies of the two countries.¹

This year, Human Rights Education and Monitoring Center (EMC) studied **six cases** (involving 8 persons in total) of journalists, activists and politicians living in Georgia who were subjected to persecution in the Republic of Azerbaijan. In two of those cases, an Azerbaijani activist was denied residence permit by the State Service Development Agency. In one case, Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia refused to grant the person subjected to the political persecution in Azerbaijan (and his family members) the refugee status. In another case, Azerbaijani journalist, the employee of the media outlet banned in Azerbaijan, was denied the entry to Georgia. In parallel with the complications of obtaining the legal documents, most of the cases (4 cases) establish facts of control, persecution, and threats *allegedly* imposed by the Azerbaijani government/its affiliated physical persons over the journalists and activists. As of today, these facts have not been effectively investigated by the law enforcement agencies of Georgia.

Below initial study is based on the statements obtained from Azerbaijani journalists, activists, politicians, also their attorneys and the relevant experts, also, official legal documents received from the Georgian authorities and information disseminated by media outlets. EMC continues to study the similar cases and will provide the society with the final and complete report in future.

2. Overview of the General Political Context Existing in Azerbaijan

In the context of the political processes taking place in Azerbaijan, it shall be generally noted that problem of violation of fundamental human rights in the country is critical.² It is a common practice of the Country to exercise political persecution of the politicians, journalists, civil activists (the bloggers included), experts, and human rights workers for criticizing the government. The mentioned political persecution is conducted by openly illegal acts as well as unfounded “legal persecution”. In 2016,

¹ <https://jam-news.net/?p=38944&lang=ka>
<http://netgazeti.ge/news/198801/>

² <https://www.state.gov/j/drl/rls/hrrpt/2010/eur/154413.htm>

president Aliyev released 15 prisoners based on the act of pardon. Dissidents were released from custody before serving the sentence, however, their legal rehabilitation never took place. If they stay in the country, there is a threat that the people who are critical of the government will become victims of further pressure. In any event, their public activism and freedom of movement remains restricted. Despite the decision of European Court of Human Rights (2014),³ leader of opposition movement “Republican Alternative” - Ilgar Mammadov still remains in custody.

The government of Azerbaijan often invokes economic crimes against media representatives and activists, especially the journalists representing or cooperating with Meydan TV. The case of Leila and Arif Yunus is especially famous among human rights defenders.⁴ The dissidents sought refuge in the Netherlands, however, their persecution has not been ceased.

In addition to using the excuse of combating the corruption and terrorism, several cases of threat, harassment, and unfounded detention has been observed. When it comes to legal persecution of the dissidents, cases of torture are very common, also using threat through torture, including sexual torture (rape) and illegal incrimination into the drug crimes (case of Elgiz Gahraman was particularly notorious).⁵

Since 2014, by virtue of the actions of Ministry of Justice and Chief Prosecutor’s Office, pressure on NGOs was exceptionally intensified. The bank accounts of many organizations working on human rights and governmental transparency problems were blocked. Due to this reason, procedures for obtaining the grants from foreign donors became complicated, while several unions were forced to operate from outside of Azerbaijan.

Events in Turkey following the state coup attempt of July 2016 also affected Azerbaijan - political environment was worsened, namely, freedom of speech and expression, as well as the rights of media representatives, became more restricted. The Aliyev regime began persecution of number of journalists and civil activists invoking their alleged support of Gulen's "terrorist organization" as an excuse.⁶

3. Brief overview of the cases concerning the journalists and activists subjected to persecution in Azerbaijan

3.1 Case of the journalists Leila Mustafaeva and Afgan Mukhtarli

Leila Mustafaeva and her husband Afgan Mukhtarli were active journalists in Azerbaijan,⁷ they used to cover cases of human right violations committed by the government of Azerbaijan and were openly

³ [http://hudoc.echr.coe.int/eng#{"fulltext":\["CASE OF ILGAR MAMMADOV v. AZERBAIJAN"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-144124"\]}](http://hudoc.echr.coe.int/eng#{)

⁴ <https://www.radiotavisupleba.ge/a/27683860.html>

⁵ <https://www.hrw.org/news/2016/08/19/azerbaijan-activist-arrested-held-incommunicado>

⁶ <http://nopoliticalprisoners.org/en/report-and-news/news/988-the-term-of-the-arrest-of-fuad-ahmadli-and-faig-amirov-extended.html>

⁷ While living in Azerbaijan, Leila Mustafaeva was in cooperation with the opposition newspaper “New Musavi” and iwpr.net <http://musavat.com/ru/archive>

After living Azerbaijan she continued her cooperation with Meydan TV and iwpr.net.

<https://iwpr.net/global-voices/sadness-media-rights-group-closes-azerbaijan>

<https://iwpr.net/global-voices/azerbaijan-law-makes-it-easier-stifle-media>

<https://iwpr.net/global-voices/azeri-newspaper-fight-property-seizure>

<https://www.meydan.tv/az/site/opinion/22895/>

<https://www.meydan.tv/en/site/society/23025/>

critical of the ruling party. For this reason, they often encountered problems, among others, they were prevented from exercising journalistic activities. The journalist used to repeatedly become victim of physical violence by the government officials. As for his wife, she was offered particular material benefits if the articles were not published, she was victim of threat, blocking the financial accounts and imprisonment.⁸

Since 2015, as the illegal actions undertaken by the Azerbaijani government against them have been intensified, Leila Mustafaeva and Afgan Mukhtarli arrived in Georgia, obtained residence permit and continued their journalistic activities within the scope of their cooperation⁹ with iwpr.net¹⁰ and [Meydan. Tv](http://meydan.tv).¹¹

According to Leila Mustafaeva's statements, Azerbaijani government's tightened control over them after moving to Georgia was triggered by the article written by Afgan Mukhtarli in October-November 2015, which covered business activities and contacts of Aliyev's family in Georgia.¹² During this period, with the help of a friend in Azerbaijan, the family found out that Afgan Mukhtarli was likely to be under surveillance, that he was put on *so-called* "second list" and was expected to be detained and imprisoned upon crossing the border of Azerbaijan.¹³

In August of 2016, Mustafaeva's residence permit expired and she applied to the State Service Development Agency for renewal. Several days later, she received a call from Counterterrorism Center under State Security Service of Georgia and was asked to visit a specific address in Rustavi.¹⁴ They interviewed her about her life and work in Georgia, also, demonstrated interest in her past activities in Azerbaijan. In the course of the interview, Mustafaeva found out that the interviewer possessed the application submitted by her to House of Justice for obtaining the residence permit. In couple of days

<https://www.meydan.tv/az/site/culture/23015/>

<https://www.meydan.tv/en/site/politics/17639/>

The journalist's husband Afgan Mukhtarli, being a journalist himself, cooperated with iwpr.

<https://iwpr.net/global-voices/limited-voting-rights-azerbajians-displaced>

<https://iwpr.net/global-voices/euro-observers-shun-azerbajian-election>

<https://iwpr.net/global-voices/azeri-opposition-party-says-government-behind-hq-blast>

<https://iwpr.net/global-voices/azerbajani-border-villages-living-edge>

<https://www.meydan.tv/author/%C6%8Fqan+Muxtarl%C4%B1>

<http://netgazeti.ge/news/198281/>

<http://primetime.ge/%E1%83%90%E1%83%96%E1%83%94%E1%83%A0%E1%83%91%E1%83%90%E1%83%98%E1%83%AF%E1%83%90%E1%83%9C%E1%83%94%E1%83%9A%E1%83%98-%E1%83%9F%E1%83%A3%E1%83%A0%E1%83%9C%E1%83%90%E1%83%9A%E1%83%98%E1%83%A1-6/>

⁸ <http://www.tabula.ge/ge/story/120635-azerbajianis-mier-afgan-muxtarlis-devna-da-misi-kritikuli-statiebi>

⁹ Explanations of Leila Mustafaeva obtained by the representatives of Human Rights Education and Monitoring Center (EMC), 24.04.2017

¹⁰ The Institute for War & Peace Reporting supports local reporters, civil journalists (citizen journalists) and civil activists, promotes peace and good governance by strengthening media and civil society, which is exercised by training, studies, reportages and supporting reporters. Information on iwpr is accessible: <https://iwpr.net/what-we-do>

¹¹ Meydan Tv is an Azerbaijani media outlet, transmitted in Azerbaijani language and established in Germany. Meydan Tv is critical of the Aliyev government and actively covers matters related to the governmental corruption in Azerbaijan. Information regarding activities of Meydan.tv is accessible: <https://www.meydan.tv/en/site/aboutus/402/>

¹² <https://www.meydan.tv/en/site/politics/8759/>

<https://www.meydan.tv/en/site/society/9330/>

¹³ Explanations of Leila Mustafaeva obtained by the representatives of Human Rights Education and Monitoring Center (EMC), 24.04.2017

¹⁴ It was Leila Mustafaeva's perception that the meeting was held at the Prosecutor's Office.

following the interview the mentioned application was rejected and she was denied the residence permit on the grounds of the possibility of creating a threat to the state and public security of Georgia as prescribed by article 18, sub-paragraphs “a” and “c” of Law of Georgia on the Legal Status of Aliens and Stateless Persons. Leila Mustafaeva has never appealed decision of the Ministry of Justice, as it was obvious to her family that the government of Georgia was acting in accordance with the will of the Azerbaijani government.

After receiving refusal from the Agency, Mustafaeva and her husband continued living in Georgia on a tourist visa, however, on May 29, 2017, Afgan Mukhtarli forcibly disappeared from the territory of Georgia and was detained in the Republic of Azerbaijan on charges of illegal crossing of border and smuggling.¹⁵ According to information disseminated by Afgan Mukhtarli’s attorney in Azerbaijan, he was arrested and forced into a car near his house in Tbilisi. As stated by the attorney, the detainees never introduced themselves, however, it is Mukhtarli’s opinion that they should have been employees of Georgian Special Services. Afgan Mukhtarli’s attorney also states that a bag was placed on his client’s head and he was driven by car to an unknown direction for about two hours. The car was changed twice. According to Mukhtarli, persons in the third car were speaking in Azerbaijani. As stated by Azerbaijani journalist, when the bag was removed, he was already at the Azerbaijani border checkpoint, where 10,000 Euros have been planted.¹⁶ Despite high public and political interest in the case, the information about the progress and results of the investigation initiated by Georgia is yet unknown. Since there can be an issue of liability for cooperation of law enforcement bodies, institutions working on human rights demand assignment of investigation to prosecutor’s office for institutional independence of the investigation,¹⁷ however, this demand has not been satisfied yet. Even more, official statements issued by the Minister of Interior regarding this case unequivocally relying on the information reported by the Azerbaijani government, are problematic in terms of political neutrality and adequacy.¹⁸ The authenticity of the video material that was obtained in the course of investigation and which depicts the relevant scene is disputable¹⁹. As of today, the party affected by the event has not been granted the victim status.²⁰ Therefore, it is impossible to have an access to the case materials and monitor investigation progress for the Mukhtarli’s defense team.

3.2. Case of Journalist Günel Mövlud Imanova

Since 2013, Azerbaijani journalists Günel Mövlud Imanova and her husband Haji Hajiev have been cooperating with Internet television Meydan TV and Radio “Freedom”, both banned in Azerbaijan. Due to this fact they were often subjected to persecution and harassment from the Azerbaijani government that was reflected in blackmailing, threats and illegal detention of their family members. As the situation became more complicated, in 2013 Imanova and her husband left Azerbaijan and stayed in Germany for a year. They pursued journalistic activities in Germany, which is why, as explained by Günel Imanova, police employees would visit and threaten members of her family. Some of her relatives were unreasonably dismissed from their jobs. Considering these circumstances and G. Imanova’s and

¹⁵ <http://netgazeti.ge/news/197862/>

¹⁶ <https://www.radiotavisupleba.ge/a/azerbajaneli-zhurnalisti/28519142.html>

¹⁷ <https://emc.org.ge/2017/05/30/emc-288/>

¹⁸ <http://netgazeti.ge/news/198391/>

¹⁹ <http://rustavi2.ge/ka/news/78374>

²⁰ <http://www.tabula.ge/ge/story/120950-raionulma-prokuraturam-muxtarlis-da-mis-cols-dazaralebulis-statusi-ar-mianicha>

her husband's desire to live in Georgia (it would also be convenient for communicating with the family members), they moved to Tbilisi.²¹

After arrival in Georgia in 2015, Imanova obtained labor residence permit and continued her cooperation with Meydan TV and international NGO - Human Right Watch. Shortly after Imanova started activities in Georgia, her family members in Azerbaijan were detained. In August 2016, term of residence permit expired and Imanova's husband applied to the State Service Development Agency for labor residence permit. However, application was not satisfied and the Agency refused to grant the residence permit on the grounds of the possibility of creating a threat to the state and public security of Georgia as prescribed by article 18, sub-paragraphs "a" and "c" of Law of Georgia on the Legal Status of Aliens and Stateless Persons.²²

Günel Mövlud Imanova and her husband linked the decision issued by the Ministry to the existing cooperation between Azerbaijan and government of Georgia and decided not to appeal the decision. Shortly, Imanova's family left the territory of Georgia through the program announced for journalists by one organization.²³

3.3. Case of politicians Dashgin Agalarli and his son Orkhan Agalarli

Since 2014, members of the Azerbaijani opposition party "Musavat" - Dashgin Agalarli and his son Orkhan Agalarli, have been living in Georgia and trying to obtain the refugee status.²⁴

While living in Azerbaijan, Dashgin Agalarli was subjected to political persecution from the government, he had to often face life threatening actions and detention cases. After his participation in the Internet program "Azerbaijan Hour", which was unacceptable to the Azerbaijani authorities, actions of persecution have escalated even more. In 2013, Agalarli left Azerbaijan and spent the following one year in Ukraine and Turkey. It was during this period that he found out that he was wanted by the Azerbaijani government for the tax evasion charges and therefore, was forced to leave the territory of Turkey immediately. Dashgin Agalarli arrived in Georgia and as he was wanted by Azerbaijani INTERPOL through Red Circular, Georgian border guards detained him upon crossing the border and on March 4, 2014, by the decision of Khelvachauri District Court, he was sentenced to 3 months of provisional imprisonment before extradition. After the decision, Dashgin Agalarli requested refugee or humanitarian status in Georgia as he believed that Azerbaijan's demand for his detention was triggered by the political persecution. In August 2014, he was released from custody.²⁵

As Dashgin Agalarli explained, his son (Orkhan Agalarli) faced problems in Azerbaijan in the same period. Namely, with the help of a relative Agalarli's family members found out that police was surveilling Orkhan Agalarli and planning to arrest him. After receiving this information, Orkhan Agalarli arrived in Georgia and requested the refugee status.

²¹ Explanations of Günel Mövlud obtained by the representatives of Human Rights Education and Monitoring Center (EMC), 13.04.2017

²² Decision N1000494949 issued by the State Service Development Agency on September 15, 2016.

²⁴ <http://netgazeti.ge/news/151153/>

²⁴ <http://netgazeti.ge/news/182241/>

²⁵ <http://www.cso.ge/view.php?type=news&slug=adamianis-uflebata-centris-dakhmarebit-azerbajianis-mogalageebs-tbilis-saqalao-sasamartlom-ltolvilis-statusi-mianicha&lang=ge>

Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia (hereinafter the Ministry) started examination of the case. However, by virtue of the decision of October 30, 2015, requests of Dashgin and Orkhan Agalarli on granting the refugee status were not satisfied. It was clarified to Dashgin Agalarli that although the Ministry considered it possible that he and his son may be subjected to political persecution upon their return to Azerbaijan, *at the same time*, there was a reasonable assumption that their presence in Georgia contradicted the interests of the country and public security.²⁶

The mentioned decision was annulled by judgment of the court of the first instance. Annulment was caused by the fact that the report of the Security Services existing in the case lacked substantive grounds for denying the status. Therefore, Dashgin and Orkhan Agalarlis' request was satisfied and the Ministry was instructed to issue an individual-legal act on granting the refugee status.²⁷

Decision of the court of the first instance of June 27, 2016 was appealed by the Ministry of Accommodation and Refugees and based on a new circumstances submitted to the Court of Appeal (which represents a secret), decision of the court of the first instance was annulled by decision of higher court of March 21, 2017 and Dashgin and Orkhan Agalarli were denied the refugee status.²⁸

D. Agalarli indicates that while living in Georgia he was under constant control of Azerbaijani government, which in his opinion was supported by the Georgian Security Services.²⁹ After being denied the refugee status, on September 6, 2016, Dashgin Agalarli received a phone call from the representative of the Georgian Security Services and was invited to a meeting that would be in his interests as explained during the phone call. However, after Agalarli requested the meeting to be held in the official department together with his attorney, the meeting never took place.³⁰ As explained by Agalarli, in the next few days, his wife in Azerbaijan was summoned by the Immigration Service and it was pointed out that her husband refused to meet with the representatives of the Georgian Security Service.

3.4. Case of the journalist - Gulnur Kazimova

Gulnur Kazimova used to work as a regional operator of Radio Freedom and at the same time was cooperating with iwpr.net.³¹ According to her, her journalistic activities were often hindered by imprisonments, transfers to Azerbaijani police stations and physical assaults aggravated with her family members' dismissals from their jobs and harassment.

²⁶ Decision N02-01/05/28141 issued by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia on 30/10/2015

²⁷ Decision N3/8868-15 of Tbilisi City Court Administrative Panel, dated June 23, 2016

²⁸ Explanations of Dashgin Agalarli obtained by the representatives of Human Rights Education and Monitoring Center (EMC), 20.04.2017

²⁹ Explanations of Dashgin Agalarli obtained by the representatives of Human Rights Education and Monitoring Center (EMC), 20.04.2017

also <http://netgazeti.ge/news/162749/>

³⁰ Explanations of Dashgin Agalarli obtained by the representatives of Human Rights Education and Monitoring Center (EMC), 20.04.2017

<http://netgazeti.ge/news/162749/>

³¹ The Institute for War & Peace Reporting supports local reporters, civil journalists (citizen journalists) and civil activists, promotes peace and good governance by strengthening media and civil society, which is exercised by training, studies, reportages and supporting reporters. Information on iwpr is accessible: <https://iwpr.net/what-we-do>

As the pressure was escalated, in December 2014, Kazimova together with her family left Azerbaijan and continued her journalistic activities in Georgia, however, she could still feel the control of Azerbaijani government, which, according to her statement, was strengthened by cooperation with the relevant Georgian authorities.

Mrs. Kazimova points out that in Georgia she was allegedly watched by representatives of Azerbaijani government. Once in Tbilisi, on Leselidze Street a car followed her and someone from that car took photos of her. Kazimova informed police regarding this fact, however, they failed to take actions - at first police refused to include the photos of the car taken by journalist as an evidence, while later they noted that the indicated car could not be found.³²

Due to the above mentioned facts, concerns of family safety and the common practice of denying the Georgian residence permits to the activists and journalists persecuted in Azerbaijan, Gulnur Kazimova left Georgia with her family and went to another country within the scope of one of the projects.³³

3.5. Case of the activist - Vidadi Isganadrov

Vidadi Isganadrov, head of “Democracy Defenders Society”, NGO existing in Azerbaijan, clarifies that since 2010, the Azerbaijani government subjected him to pressure and various illegal actions, mostly expressed in threats and groundless detentions. Despite active persecution and pressure, Isganadrov left Azerbaijan only after his wife’s and minor children’s health and life faced serious threats.

On June 15, 2016, after arriving in Georgia he learnt that criminal persecution had been launched against him in Azerbaijan and in case of the relevant request put forward by Azerbaijan, he might have been subjected to extradition. Due to the received information, in June Isganadrov applied to the Ministry for refugee status.³⁴

Despite being in Georgia, several facts of threats and violence were observed in relation to Isganadrov during the past year.³⁵

Vidadi Isganadrov states that after his arrival in Georgia, he prepared a series of articles for Swedish outlet covering the Azerbaijani politics. After his engagement with the organization, in February 2017, in Tbilisi, upon returning home in the evening he was physically assaulted by several people. According to his perception, they were Azerbaijani nationals. He informed police regarding this fact and the investigation is still pending.³⁶ Several months after the specified fact, as noted by Isganadrov, Azerbaijani nationals (probably the ones participating in his physical abuse) threatened his wife and children on Lisi lake, saying that her husband “just does not get a grasp of it and it should be the child

³² Explanations of Gulnur Kazimova obtained by the representatives of Human Rights Education and Monitoring Center (EMC), 04..05.2017

³³ Explanations of Gulnur Kazimova obtained by the representatives of Human Rights Education and Monitoring Center (EMC), 04..05.2017

³⁴ Explanations of Vidadi Isgandarov obtained by the representatives of Human Rights Education and Monitoring Center (EMC), 04..05.2017

³⁵ Explanations of Vidadi Isgandarov obtained by the representatives of Human Rights Education and Monitoring Center (EMC), 01.05.2017

³⁶ see explanations of Vidadi Isgandarov obtained by the representatives of Human Rights Education and Monitoring Center (EMC), 01.05.2017

Certificate N MIA 1 17 00796484 issued by the II Station of Vake-Saburtalo Police under MIF, 04/04/2017

they have to feel sorry for”.³⁷ After a while, as stated by Isganadrov, one Azerbaijani threatened to kill him on social network Facebook.³⁸

It was clarified by Isganadrov that on June 3, 2017, two persons that were waiting for him near the house threatened to kill him.³⁹ He declared regarding this fact to police, however, according to Isgandarov, the investigation has not yet been launched.

According to Isgandarov, he and his wife can identify the persons responsible for abuse and threats. These individuals should also have been recorded by the cameras allocated on Lisi lake, however, as mentioned by Isgandarov and his attorney, law enforcement agencies make no effort in terms of investigation and till now the case made no progress. As of June 3, no investigation into the threats against Isganadrov has been launched.

3.6. Case of journalist Jamal Ali

Jamal Ali is an Azerbaijani citizen currently living in Germany with a refugee status on political ground. He is an employee of Azerbaijani online media-platform Meydan.tv. Meydan TV is critical of Aliyev and actively covers matters of governmental corruption in Azerbaijan. The majority of its employees are subjected to persecution in Azerbaijan due to their political or different views.

On April 19, 2018 Jamal Ali flew to Georgia on business trip. He was delayed at passport control for about 25 minutes and afterward police staff member clarified to him that the latter was not allowed to enter the country and granted him decision on refusal to enter Georgia. The reason for refusal indicated in the decision stated that he “failed to comply with other requirements prescribed by Georgian legislation”.

Although neither the decision nor police employee clarified specific reason for refusal to enter Georgia, Jamal Ali links the mentioned decision to the protest rally held in Tbilisi on March 29, 2017 where prohibition of MeydanTV’s and Jamal Ali’s activities on the territory of Georgia was the main demand. The rally was directed towards the story prepared by Jamal Ali and aired by MeydanTV on January 16, 2017. The main objective of the story was to demonstrate different policies of SOCAR in Georgia and Azerbaijan. The video story demonstrated that provision of natural gas to the population in Azerbaijani villages and residential areas near Baku is vastly problematic. For this reason, majority of population has problems with heating in winter. As claimed by the journalist, instead of directing its resources to resolve the existing problems in Azerbaijan, SOCAR provides religious buildings in Georgia with free gas.

Considering the events in Georgia regarding the opinions of Jamal Ali in Georgia, there is a doubt that Georgian authorities, due to the critical, different opinions, rejected Jamal Ali’s request to enter Georgia due to their loyalty to the Azerbaijani government.

Jamal Ali appealed the decision of the representatives of the border police in the Ministry of Interior⁴⁰. Ministry of Interior did not satisfy the appeal based on the decision on June 8, 2017. The Ministry reasoned that there was no legal ground for annulling decision of the Border Immigration Control

³⁷ see explanations of Vidadi Isgandarov obtained by the representatives of Human Rights Education and Monitoring Center (EMC), 01.05.2017.

³⁸ *Ibid.*

³⁹ <http://rustavi2.ge/ka/news/77365>
<http://1tv.ge/ge/news/view/163652.html>

⁴⁰ <https://emc.org.ge/2017/05/05/emc-269/>

Division of Tbilisi Main Division of MIA Patrol Police Department on prohibition of Jamal Ali's entry in the country since according to article 11 of the Law on Legal Status of Aliens and Stateless Persons, the foreigner may be refused to enter the Georgian territory if he or she fails to meet the requirements established by the law ⁴¹. There is no detailed factual and legal justification given in MIA decision.

4. Legal Analysis of Cases

4.1. Overview of National Law Requirements in Relation to Granting the Refugee Status and Residence Permit

Analysis of the presented cases demonstrate that since 2016, persons subject of political or other persecution in Azerbaijan encounter problems while obtaining refugee status or residence permit in Georgia

Refugee status should be granted to the person if there is a risk that he or she will become subject to persecution in home country due to his or her race, religion, nationality, representation of special social group or political opinion and is not able or willing to return to home country or request protection from such country due to the fear.⁴² In the mentioned cases, the Ministry invokes the threat to the State security, territorial unity or public order as a ground for rejecting the refugee status as determined in sub-paragraph "b" of paragraph 1 of article 17 of the Law of Georgia on International Protection⁴³.

Motif of protecting State and/or public security may also be a reason for rejecting issuance of residence permit. Namely, paragraph 1 of article 18 of the law of Georgia on Aliens and Stateless Persons, determines grounds for refusing residence permit including the cases when there is a report of the authorized body not recommending residence of the applicant in Georgia due to the state and/or public security concerns. Paragraph 2 of the same article specifies the cases of protecting the state and/or the public security interests, such as: *a) residence of the applicant in Georgia threatens the relationship with other states and/or international organizations; b) there is an information that indicates with high degree of probability that the applicant is connected to: b.a) the armed forces of the country/organization having hostile approach to the defense and security of Georgia; b.b) foreign intelligence services; b.c) terrorist and/or extremist organizations; b.d) illegal trafficking of drugs, arms, mass destruction weapons or their components, human trafficking and/or other criminal organizations (including the transnational criminal organizations).*

Granting the refugee status or issuance of the residence permit ensures legal protection an individual. Therefore, the person holding the status is on the one hand protected in the host country from the threat of expulsion or extradition⁴⁴, while on the other hand, is provided with the social and civil rights⁴⁵. Considering the status, the person has right to movement, work, education, health protection etc to establish conditions for the good life and development.

Except for the refugee status, residence permit is a mechanism for legal residence and guaranteeing of rights for the aliens. One of the most common types of the residence permit is a labor residence permit that provides opportunity to carry out labor or entrepreneurial activities (including for the free

⁴¹ Decision #1357197 of the Patrol Police Department of the Ministry of Interior of Georgia, dated June 8, 2017

⁴² Article 15 of the Law of Georgia on International Protection

⁴³ Dashgin and Orahn Agaralis' refugee status applications were rejected by the Ministry based on sub-paragraph "e) of article 3 of the Law of Georgia on Refugee and Humanitarian Status existing before adoption of the Law of Georgia on International Protection invoking ground of threat to state security, territorial unity or the public order (*find: <http://mra.gov.ge/res/docs/2014022416541838532.pdf>*)

⁴⁴ Granting the refugee status is a condition prohibiting extradition in accordance with paragraph 1 of article 25 of the Law of Georgia on International Cooperation in the Field of Criminal Law.

⁴⁵ Rights are determined in article 58 of the Law of Georgia on International Protection.

profession individuals).⁴⁶ Such permit provides different rights for the alien, namely, right to work, invest, carry out entrepreneurial activities, health protection, freedom of movement and choosing residence, freedom of speech, opinion, belief, religion, gatherings and manifestations, right to apply to court, right to education and other property or non-property rights including the right to get married and have asylum⁴⁷.

In the reviewed cases, Azerbaijan journalists were using the residence permits in the beginning of their residence in Georgia giving them right to legally reside and live in Georgia as well as to observe the political and social processes in Azerbaijan and maintain contact with the family members due to the territorial proximity of the countries. Each of them were carrying out journalistic activities in Georgia in cooperation with different organizations and publications. However, since 2016, due to the changed practice, Georgia lost the value of the safe and democratic political environment for the activists and journalists.

4.2. Overview of Relevant International Standards

1951 Geneva Convention regarding refugee status determines the conditions when the state is obliged to grant the refugee status to the applicant Contracting party of the Convention shall not oblige the applicant in any form to return to the territories where his or her life and freedom will be at risk due to his or her race, religion, nationality, representation of social group or political opinions⁴⁸.

United Nations High Commissioner for Refugees, which is tasked to oversee the compliance with the Convention explains that countries must not oblige the person to return to the territories where his or her life and freedom is threatened. Hesitation to comply with the provision of the Convention (such as making reservation) is not allowed in any event. According to the Commissioner, this obligation of a state represents expression of the right to asylum acknowledged in the Universal Declaration of Human rights and is considered as a part of customary international law binding any country. In addition, prohibition of expulsion is part of the protection against the torture, humiliating and inhuman treatment and it is related to refugees irrespective of their status. The Commissioner explains that this obligation of state includes any measure that is affiliated with the state and ultimately results in the person returning to the territory where his or her life and freedom is threatened or where it will become subject to persecution. These measures include the rejection to cross the border, taking from the road or indirect expulsion⁴⁹.

The European Union foundation document, Treaty on Functioning of the European Union declares that the EU shall elaborate common policy regarding the refugees that is expressed in granting the status to the person who needs international protection as well as prohibition of expulsion in case of such threat⁵⁰. The policy shall be in compliance with the Geneva Convention and other international agreements. In addition, EU Human Rights Charter directly includes reference to the right to asylum in article 18.

European Court on Human Rights considers transfer of a person to other country in case of the risks of him or her being tortured as a result of political persecution as a breach of article 3 of the Convention.⁵¹ The European Court also mentions that despite the emergency situations due to the terrorism threat, it is an unequivocal obligation of a state not to transfer an individual to the other country where he or

⁴⁶ Sub-paragraph "a" of article 15 of the Law of Georgia on Legal Status of Aliens and Stateless Persons.

⁴⁷ Articles 27-46 of the Law of Georgia on Legal Status of Aliens and Stateless Persons.

⁴⁸ Section 33.1 of the Geneva Convention.

⁴⁹ [http://hudoc.echr.coe.int/eng#{"fulltext":\["M.S.S."\], "documentcollectionid2":\["GRANDCHAMBER"\], "itemid":\["001-103050"\]}](http://hudoc.echr.coe.int/eng#{)

⁵⁰ The Treaty on the Functioning of the European Union (as amended by the Treaty of Lisbon, which entered into force on 1 December 2009), Chapter 2 of Title V "Policies on border checks, asylum and immigration". Article 78 §

⁵¹ 1 Chamber Judgment Y.P and L.P. v. France 02.09.2010

she may become victim of improper treatment based on justified doubt⁵². Despite enforcement of the state decision on deportation of the person, the Court still maintains that there is a breach of article 3 in case of enforcement of such decisions European Court justifies actions of states and sees no risk of expulsion in case the state issues any order equivalent to the residence permit giving the individual possibility to legally stay in the Country.⁵³

4.3. Legal Analysis of the Discussed Cases

Analysis of the cases studied by EMC demonstrates that the government of Georgia has been substantively rejecting the refugee status and residence permit applications filed by the Azerbaijan journalists and activists since 2016 in parallel to the escalation of repressive policy against activists in Azerbaijan. Relevant administrative bodies justify rejections of the refugee status or residence permit applications by invoking general interests of protecting of the national security⁵⁴ while it is actually impossible to check reasoning and relevance of the grounds due to the secret nature of the reports of the respective security services. Cases dealt in this Report also shows that there are facts of persecution, oppression and control of the individuals living in Georgia allegedly carried out by the persons connected with the Azerbaijani government as declared by the individuals. Georgian law enforcement bodies blatantly neglect to effectively react to such facts. Effective and timely investigation is not ensured in these cases.⁵⁵ There are doubts in some cases as to informal cooperation between Georgian and Azerbaijan law enforcement structures that was critically demonstrated in cases related to forceful disappearance of Afgan Mukhtarli and rejection of entry of Jamal Ali into Georgia. These cases indicate on political loyalty of Georgian government to the non-democratic authorities of Azerbaijan and may be considered as a political choice against the values and principles of protection of human rights. Residence in Georgia gave a possibility to the journalists and activists persecuted by Azerbaijan government to maintain close ties with their families and continue working, however, considering the anti-human rights policy of the government of Georgia, they are obliged to leave the country.

Present sub-chapter provides the legal assessment of the practice of rejecting the refugee status and residence permit applications based on argument on protection of national security.

As demonstrated in the discussed cases, authorized bodies dealing the refugee and residence permit applications are mostly invoking abstract threats to national security based on the secret report created by the Georgia State Security Service. Considering the weak and formal court control on the report, the executive branch of government has a room for arbitrary decision-making and contains high risks of violating fundamental rights.

While discussing the potential threat to the national security, the Ministry for Refugees and Accommodation addresses to the State Security Service with the relevant letter⁵⁶ and for the matters related to potential threat to public order, the Ministry applies to the Ministry of Interior for recommendation and makes decision after receiving the response.⁵⁷ Report prepared by the State

⁵² Chahal v. the United Kingdom, §§ 73-74; Soering v. the United Kingdom, §§ 88-91; Shamayev and 12 Others v. Georgia and Russia, §§ 355;

⁵³ [http://hudoc.echr.coe.int/eng#{\"fulltext\":\[\"\\\"CASE OF B.B. v. FRANCE\\\"\"\],\"documentcollectionid2\":\[\"GRANDCHAMBER\",\"CHAMBER\"\],\"itemid\":\[\"001-58224\"\]}](http://hudoc.echr.coe.int/eng#{\);
[http://hudoc.echr.coe.int/eng#{\"fulltext\":\[\"\\\"CASE OF AHMED v. AUSTRIA\\\"\"\],\"documentcollectionid2\":\[\"GRANDCHAMBER\",\"CHAMBER\"\],\"itemid\":\[\"001-58001\"\]}](http://hudoc.echr.coe.int/eng#{\)

⁵⁴ Sub-paragraph „b” of paragraph 1 of article 17 of the Law of Georgia on International Protection; sub-paragraph „a” of paragraph 1 of article 18 of the Law of Georgia on Legal Status of Aliens and Stateless Persons.

⁵⁵ In cases of Gulnur Kazimova and Vidadi Isgandarovi, Kazimova filed a complaint in the police regarding the illegal surveillance, while Isgandarovi became victim of physical assault several times. However, both of them states that the police is trying everything to avoid starting of investigation.

⁵⁶ Articles 67, 68 and 69 of the Law of Georgia on International Protection.

⁵⁷ Sub-paragraphs „d.h” or “e.g” of paragraph 2 of article 34 of Order #79 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, dated January 26, 2017.

Security Service is considered as a secret information and applicant has no access to its substance. While making the decision, the administrative body has discretion, however, due to the restriction of access to the secret documents, decisions of the Ministry bears mere formal nature. The secret documentation is provided for the review of judge in case of appeal to the court ⁵⁸.

There is no due definition of the notion of national security. However, the main actions that may be threatening the state security and may become ground for rejecting refugee status or residence permit application are indeed defined. According to paragraph 2 of article 69 of the Law of Georgia on International Protection: *potential threat of state security of Georgia means the case when there is a sufficient ground for assumption that the asylum seeker or person having international protection has connection with: a) the armed forces of the country/organization having hostile approach to the defense and security of Georgia; b) foreign intelligence services; c) terrorist and/or extremist organizations; d) illegal trafficking of drugs, arms, mass destruction weapons or their components, human trafficking and/or other criminal organizations (including the transnational criminal organizations* ⁵⁹.

Mentioned provisions demonstrate that the state is authorized to reject the refugee status or residence permit application 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 evidences**. The legislator uses the standards of “sufficient ground for assuming threat” ⁶⁰ and “high degree of probability” ⁶¹ for determining the threat to national security and also, lists the specific actions implementation of those or doubt of implementation of which creates expectation that the state has possibility to reject the status based on national security grounds.

It should be noted that in the above discussed cases, the administrative bodies fail to refer to the relevant sub-paragraphs of the applicable legislation listing the specific circumstances that may cause a threat to the national security. General and abstract reference to the national security by the decision-making administrative bodies makes it very difficult for the applicants to prepare for litigation and realize their rights. Therefore, decisions of relevant administrative bodies made in reliance of the reports of State Security Service should include reference to the grounds determined in specific sub-paragraph or general factual circumstance that (without disclosing the state secret) demonstrates possibility of damaging the national security interests of the country. It is obvious that such approach will support protection of individuals from arbitrary and discriminative actions of the executive government ⁶².

For assessment of this issue, decision of the court of first instance in Dashgin Agararli case is very interesting openly referring to lack of justification and arbitrary nature of the rejection of refugee status:

*“The court prioritizes the matters of protection of state and public interests, however, also believes that the approach should be analyzed and decisions should be comprehensively examined and justified in each individual case. [...] The court found that the report prepared by the Counter-Intelligence Service **“does not include justification as to the potential nature of the threat, specific threat that the host country may face in case of granting the request as well as analysis of the seriousness of the threat in total absence of justification of such element as requirement of proportionality. I. e. if the information does not include the justification as to the seriousness of the threat to the country’s security, probability of realizing such***

⁵⁸ #04/07/10268 letter of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, dated April 26, 2017.

⁵⁹ Paragraph 2, article 18 of the Law of Georgia Legal Status of Aliens and Stateless Person.

⁶⁰ Paragraph 2, article 69 of the Law of Georgia on International Protection.

⁶¹ Paragraph 2, article 18 of the Law of Georgia Legal Status of Aliens and Stateless Person.

⁶² Find the special report of the Public Defender “Legal Situation of the Asylum Seekers, Refugees and Persons Having Humanitarian Status in Georgia”, 2015, page 14.

<https://drive.google.com/file/d/0B9BM3M8hbgAUb0FhZGRDdFNUMm8/view>

*risk and its imminent nature, chance of elimination or decrease of such threat in case of expulsion of individual and nature and seriousness of the risk in absence of such threat”.*⁶³

For such cases, the European Court of Human Rights establishes standard according which despite the interests of the national security, the states shall ensure existence of mechanisms protecting individuals from malicious discretion of state⁶⁴. In one of the cases against the United Kingdom, the Court noted that the applicant was given short instruction about the reasons for deportation and the Court could not determine justification of detainment of the person for national security reasons.⁶⁵

Rejection of refugee status and residence permit applications shall be justified and based on specific and serious existing threat to the state security. It was the matter of existence of the serious threat, which was discussed in the case Attorney-General v. Zaoui and Others (No. 2), where the Court noted that for rejecting the refugee application, the threat should be sufficiently serious⁶⁶. Seriousness of the threat is emphasized in case Suresh vs Canada⁶⁷ highlighting the need for objective evidences demonstrating the threat and its significant nature.

The court emphasizes the need for the effective court supervision even if the state is referring to the national security and terrorism risks.⁶⁸

In Al-nashif v. Bulgaria, case related to deportation of alien due to the national security reasons, the court reasoned that rule of law obliged the country to ensure some form of competitive procedure before the independent body (special representative, vetted by the security services, was invoked as an example) while limiting the fundamental rights despite the state security risks who would check the grounds of the decision and respective evidences and have need-basis access to the secret information through the relevant procedural restrictions.

The court specifies that the individual shall be given possibility to challenge the allegation of the executive government as to existence of the national security risks. The court recognizes wide discretion of states to qualify matters as relating to the national security, however, at the same time notes that the independent body should be given possibility to react to such cases when *there is no rational connection between the national security interests and presented facts or when there is an arbitrary or illegal definition of national security or when the interpretation is against the publicly accepted perceptions of the notion.*

The court also clarifies that the example discussed in the case clearly demonstrated the possibility of balancing the interests of security and ensuring procedural fairness in relation to confidants.⁶⁹ According to the court, unlike the specific nature of secret audio surveillance, which is effective only if it is kept as secret, it is less difficult to balance the interests of maintaining secrecy of sensitive information in relation to deportation of foreign citizen and legal protection right of individual.⁷⁰ Despite the need for the procedural restrictions for protecting the national security related information from disclosure, such need may not justify ignorance of procedural guarantees.

Considering the above-mentioned, it is clear that interests of protection of national security is a legitimate interest of the state, however, it is necessary to ensure that such threat is proven in each individual case

⁶³ Decision #3/8868-15 of Tbilisi City Court Administrative Division, dated June 23, 2016.

⁶⁴ Liu and Liu v. Russian, para: 49 [http://hudoc.echr.coe.int/eng#{"itemid":\["001-155350"\]}](http://hudoc.echr.coe.int/eng#{)

⁶⁵ CASE OF CHAHAL v. THE UNITED KINGDOM [http://hudoc.echr.coe.int/eng#{"fulltext":\["chahal"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["01-58004"\]}](http://hudoc.echr.coe.int/eng#{)

⁶⁶ Attorney-General v. Zaoui and Others (No. 2) available at: http://www.refworld.org/cases,NZL_CA,49997af11a.html

⁶⁷ http://www.refworld.org/cases,CAN_SC,3c42bdfa0.html

⁶⁸ Chahal v. the United Kingdom, para. 122, 131; 132;

⁶⁹ Chahal v. the United Kingdom, paras. 131, 132.

⁷⁰ Al-nashif v. Bulgaria, paras. 94,95,97,123,124,136-138.

with individual characteristics of applicant, factual circumstances and proportionality to avoid unjustified decisions of state bodies and risking grave violation of the applicant's rights.

Against the mentioned standard it is clear in the mentioned cases that the grounds invoked by the state bodies in the decisions adopted lacks due reasoning and raises doubt as to the arbitrary and discriminative actions of the executive authorities. This assessment is supported with the fact that in all studied cases state actions are similar and represent somewhat standard decisions.

Conclusion

Based on the above-mentioned assessments, we would like to hereby present the findings of the Initial Report:

- Since 2016, the government of Georgia has been rejecting the refugee status and residence permit applications of the activists and journalists persecuted by the non-democratic regime of Azerbaijan that should be caused due to the political loyalty to the Azerbaijani government. In all cases, the respective administrative bodies would justify the rejection invoking the secret reports issued by the security services and refer to the abstract and unjustified national security protection interest.
- In the above-discussed cases, the administrative bodies would not refer to the relevant sub-paragraphs of applicable legislative acts listing the specific circumstances when the national security of the country may be at risk. Mere general and abstract reference to the national security interests from the decision-making administrative bodies make the due preparation for the court procedures and protecting rights of the applicants much difficult. Considering these circumstances, decisions adopted by the relevant bodies based on the reports of the State Security Service should include reference to the grounds determined in the specific sub-paragraphs or general factual circumstance that (without disclosing state secrets) would demonstrate the possible damage to the state national security interests.
- Rejection of the relevant administrative bodies to issue grant the refugee status or residence permit is subject to appeal to the court. However, due to the blatantly non-substantiated decisions, the applicant is deprived of opportunity to duly carry out the litigation in court. Judicial control on such decisions is weak and bears mostly merely formal nature ⁷¹.
- Except for the rejections of the refugee status and residence permit applications, the activists and journalists living in Georgia are often subject of persecution and threats from the persons probably connected with the Azerbaijani government. Failure of the law enforcement bodies to effectively investigate such cases may also be related to loyal approach of Georgian government to the Azerbaijani government.
- In some cases, there are doubts as to the informal illegal cooperation between the Georgian and Azerbaijani law enforcement bodies as also demonstrated in the case of forcible disappearance of Afgan Mukhtarli and prohibiting of Jamal Ali from entering the Georgian territory.
- Process of limiting rights of journalists persecuted by Azerbaijani government has recently taken much obvious and arbitrary nature in Georgia as most clearly demonstrated in Jamal Ali and Afgan Mukhtarli cases.
- Considering these, journalists and activists fled from Azerbaijan are leaving Georgia since they feel the threat of persecution and disappearance in Georgia. These facts significantly damage the process of building democracy and protection of human rights in Georgia.

Considering the above-mentioned, the government of Georgia should understand how critical these processes are for the development of democracy and building of the rule of law and ensure provision

⁷¹ special report of the Public Defender "Legal Situation of the Asylum Seekers, Refugees and Persons Having Humanitarian Status in Georgia", page 31, available at: <https://drive.google.com/file/d/0B9BM3M8hbgAUb0FhZGRDdFNUMm8/view>.

of the conditions for legal residence and safe activities for journalists and activists persecuted by Azerbaijan in Georgia. Among others, it is essential that:

Government of Georgia ensures detailed study of the presented and similar cases, identifies errors in activities of relevant bodies and plan complex measures for creation due conditions for legal and safe life and activities for the persons pursued from Azerbaijan (as well as other non-democratic countries) in Georgia.

State Services Development Agency and the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia shall ensure that their decisions on issuance of residence permits and refugee status to meet the criteria of due justification, persuasion and equality. It is essential for the state bodies to ensure the due examination of each individual case including the study of individual characteristics of the applicant, factual circumstances of the case, existence of actual threat and imminence of danger as well as testing the case from the perspective of proportionality. In addition, it is important for the bodies to make reference to the specific sub-paragraph of the law or general factual circumstance that may be posing threat to the national security interests.

The courts shall generally ensure the full and comprehensive examination of the decisions of administrative bodies regarding the granting the refugee status and residence permits including the deep analysis of the justification of the reports issued by the state security services that are subject to exclusive control of the court;

The Ministry of Interior shall ensure protection of safety and free movement of activists and journalists persecuted from Azerbaijan as well as effective reaction and investigation of cases related to their persecution, threats and other facts of violations;

Prosecution shall ensure effective, independent and timely investigation of the case of forcible disappearance of Afgan Mukhtarli including the detailed study of the possible participation of the Georgian authorities in the process of disappearance and/or issue of inaction and immediately took over the case for investigation. Considering the high public and political interest about the case, the prosecution shall ensure the permanent informing of the society about the progress of the investigation.

Parliament of Georgia shall ensure hearing and effective parliamentary control of the representatives of the relevant state authorities regarding the cases presented in this report and related political trends.

