

# RESIDENCE PERMIT, JUDICIAL DISCRETION AND THE GEORGIAN CASE LAW

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## I. Introduction

Citizenship represents a special relationship with the state,<sup>1</sup> which not only carries symbolic significance but also serves as an important legal foundation for individuals to enjoy rights and obligations of a particular nature. Parallel to citizenship exists the institution of residence, which is no less significant in terms of state relations and close connections, and often does not fall short of citizenship in substantive terms.<sup>2</sup> According to the interpretation of the Constitutional Court of Georgia, foreign nationals residing in Georgia, like citizens, are actively engaged in civic, socio-economic, and cultural processes, making important contributions to state development.<sup>3</sup> In light of this, residence permits, which may serve as the foundation for non-standard and potentially long-term relationships between foreigners and Georgia, necessitate special regulation.

The Georgian legislation establishes both substantive and procedural norms regarding residence permits. However, a particular ethos pervades all of this: granting residence permits to individuals constitutes a special discretionary power of the state and its administrative bodies. Administrative discretion often entails risks of arbitrariness and violations of fundamental rights, making it essential to minimize these

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<sup>1</sup> Heater, 1.

<sup>2</sup> Decision №2/3/540 of the Constitutional Court of Georgia, 12 September 2014, II-6.

<sup>3</sup> Decision №3/1/512 of the Constitutional Court of Georgia, 26 June 2012, II-94,95.

risks,<sup>4</sup> which is frequently achieved through judicial control. The purpose of judicial control over administrative discretion is not to interfere with executive activities, but rather to assess the rationality of those<sup>5</sup> and determine compliance with minimal requirements of fairness.<sup>6</sup>

In administrative disputes, cases frequently arise where courts maintain a uniform approach to specific types of cases, and unless other circumstances emerge, decisions yield the same outcome regardless of the judge hearing the case. This type of decision-making characterizes disputes related to obtaining residence permits.<sup>7</sup> Judicial discretion assumes particular importance in administrative proceedings concerning residence permits. Due to the specificity of dispute resolution – stemming from classified information and restricted access to such information – the court’s initiative plays a pivotal role. In such cases, courts must not only maintain a reasonable balance between controlling the legality of administrative bodies’ activities,<sup>8</sup> but also consider public interest, state immigration policy, national security, and similar factors.

This paper aims to identify legal problems related to judicial discretion in requesting and examining state security conclusions and relevant evidence through critical analysis of Georgian administrative proceedings practice concerning residence permits, and to develop systematic recommendations for fair decision-making. The article examines Georgian regulation regarding residence permit issuance at the level of principles and general procedures to create a clear understanding of the discretion of administrative bodies and the problems that arise when exercising it.

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<sup>4</sup> Rosenbloom, O’Leary, Chanin, 34.

<sup>5</sup> De Falco, 171.

<sup>6</sup> Rosenbloom, O’Leary, Chanin, 62.

<sup>7</sup> Decision N3/3624-21 of the Tbilisi City Court, 17 November 2021; Decision N3/4332-22 of the Tbilisi City Court, 16 December 2022; Decision N3/8884-22 of the Tbilisi City Court, 4 April 2023; Decision N3/7615-22 of the Tbilisi City Court, 28 December 2022; Decision N3/7011-22 of the Tbilisi City Court, 14 December 2022.

<sup>8</sup> Alder, 386.

The research is primarily based on the practice of the Georgian common courts, predominantly first-instance court decisions, since trends in proceedings related to residence disputes are mainly formed at the city/district court level. The analysis also encompasses appellate and Supreme Court practices that are in some way connected to resolving administrative cases related to residence permits.

## II. Residence Permit, State Security and Human Rights

Matters related to residence permits in Georgia are regulated at the legislative level by the Law of Georgia “*On the Legal Status of Aliens and Stateless Persons*,” specifically Chapter Four. This law serves as the principal legal framework, under which various subordinate normative acts have been issued. However, those acts are of a procedural, supplementary nature. The law defines the types of residence permits, the categories of individuals eligible to apply, the grounds and procedures for issuing permits by the Legal Entity of Public Law – Public Service Development Agency, as well as the grounds and procedures for the refusal of a permit, among other aspects.

One of the grounds for refusing a residence permit to a foreign national is the applicant’s engagement in activities that pose a threat to national security or public order.<sup>9</sup> In such cases, the assessment is conducted by the Counterintelligence Department of the State Security Service of Georgia. This department has exclusive responsibility to evaluate potential threats stemming from the individual’s activities and communicates only the final conclusion to the Agency, which subsequently makes a decision based on that conclusion.<sup>10</sup>

The European Court of Human Rights recognizes that regulating the entry into and residence within a state, as well as the terms for

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<sup>9</sup> Law N2045-IIIb of Georgia on the Legal Status of Aliens and Stateless Persons, 5 March 2014, Art. 18(1)(„g”).

<sup>10</sup> Lomidze, 18–19.

departure, falls within the exclusive power of particular states. However, it must be exercised in accordance with the principles of respect for and protection of fundamental human rights.<sup>11</sup> There must be an effective legal mechanism through which individuals can defend their rights by balancing public and private interests.<sup>12</sup> This is particularly crucial in the realm of national security, where the executive enjoys broad discretion<sup>13</sup> – leaving this discretion unchecked could be especially dangerous.

Given the confidential nature of activities carried out by national security agencies, there is a significant risk that, under the pretext of protecting national interests, the actions of these agencies may undermine democratic principles and infringe upon human rights.<sup>14</sup> Therefore, the existence of an independent, impartial, and effective mechanism of judicial control is essential.<sup>15</sup> It is the judiciary that must assess, on one hand, the reasonableness and proportionality of the administrative authority's decision,<sup>16</sup> and on the other, the scope and boundaries of the discretion exercised.<sup>17</sup>

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<sup>11</sup> *Al-Nashif v. Bulgaria*, no. 50963/99, European Court of Human Rights, 20 June 2002, para. 114; *Liu v. Russia*, no. 42086/05, European Court of Human Rights, 12 June 2007, para. 49; *Nunez v. Norway*, no. 55597/09, European Court of Human Rights, 28 June 2011, para. 66; *Berrehab v. the Netherlands*, no. 10730/84, European Court of Human Rights, 21 June 1988, para. 28; *Jeunesse v. the Netherlands*, no. 12738/10, European Court of Human Rights, 3 October 2014, para. 100; *De Souza Ribeiro v. France*, no. 22689/07, European Court of Human Rights, 13 December 2012, para. 77; *Boughanemi v. France*, no. 22070/93, European Court of Human Rights, 24 April 1996, para. 41; *Popov v. France*, nos. 39472/07 and 39474/07, European Court of Human Rights, 19 January 2012, para. 137.

<sup>12</sup> Lomidze, 11.

<sup>13</sup> *Liu v. Russia*, no. 42086/05, European Court of Human Rights, 12 June 2007, para. 57.

<sup>14</sup> *Rotaru v. Romania*, no. 28341/95, European Court of Human Rights, 4 May 2000, paras. 55, 59.

<sup>15</sup> *Al-Nashif v. Bulgaria*, No. 50963/99, European Court of Human Rights, 20 June 2002, paras. 123–124; *Chahal v. United Kingdom*, No. 22414/93, European Court of Human Rights, 15 November 1996, paras. 127, 145

<sup>16</sup> Leyland, Anthony, 317.

<sup>17</sup> Endicott, 235.

The confidential nature of the Security Agency's assessment under Georgian legislation does not automatically imply a violation of human rights.<sup>18</sup> What matters is that the individual must have the opportunity to challenge the administrative decision, question the executive's determination claiming that their activities are incompatible with state security, and request the competent court to examine the classified documents.<sup>19</sup>

The core issue in Georgia is whether the judiciary – specifically, the common courts – can ensure the objective, impartial, and effective adjudication of disputes related to residence permits. Furthermore, it is crucial to assess how rigorously and comprehensively the judiciary fulfills this function in practice, by adhering to the principles of proportionality between public and private interests and the inquisitorial nature of administrative proceedings. This is especially relevant in a context where public trust in the Georgian judiciary is extremely low and where numerous systemic challenges persist.<sup>20</sup>

### III. Administrative Proceedings: Between Motion and Self-Initiative

#### 1. Requesting Secret Information by the Court

In disputes concerning residence permit, courts examine evidence containing classified information, which influences only the judge's internal conviction and is not reflected in the decision as evidence. For instance, when the administrative organ refuses to issue a residence permit to a foreign national, citing classified information provided by the State Security Service as grounds in the disputed act, the court –

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<sup>18</sup> *Dalia v. France*, No. 154/1996/773/974, European Court of Human Rights, 2 February 2010.

<sup>19</sup> *Al-Nashif v. Bulgaria*, No. 50963/99, European Court of Human Rights, 20 June 2002, paras. 132, 137.

<sup>20</sup> See: European Commission, Georgia 2023 Report, SWD(2023) 697, 8 November 2023, 21–42.

either upon a party's motion or on its own initiative – requests this information and examines it during the evidence review stage in closed session without the parties' presence.<sup>21</sup> Moreover, the decision indicates that the court examined the aforementioned evidence; however, since the information constitutes a state secret, it is not directly reflected in the judicial act.<sup>22</sup> What type of information was received, examined, and how it was assessed by the judge cannot be determined. The examination and evaluation of such evidence depends solely on the judicial discretion, and its presumptive assessment can only be made based on the final outcome.

Court practice also presents divergent cases. In an administrative dispute, a citizen of the Islamic Republic of Iran sought residence in Georgia for family reunification purposes. During the evidence examination stage, the court established that the applicant's child had been granted a study residence permit in Georgia, while the applicant was denied a residence permit for family reunification based on a conclusion issued by the State Security Service. The court evaluated the classified information requested from the Service and ultimately partially satisfied the claim on grounds that the respondent administrative body had not fully examined and evaluated the evidence. In the court's view, the applicant met the criteria for residence in Georgia for family reunification purposes. Therefore, the respondent was ordered to re-request classified information from the State Security Service, assess the fact that the applicant's child had been granted a study residence permit in Georgia, and issue a new act based on this assessment.<sup>23</sup>

The court had the authority to completely annul the disputed act and satisfy the claim; however, in this case, the judge considered this to be within the administrative discretion and partially satisfied the claim – annulling the disputed act and ordering to issue a new act. In

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<sup>21</sup> Administrative Procedural Code of Georgia, 23 July 1999, Art 20<sup>1</sup>(1).

<sup>22</sup> Decision N3/6427-21 of the Tbilisi City Court, 17 December 2021.

<sup>23</sup> Decision N3/9754-23 of the Tbilisi City Court, 2 May 2024.

such cases, the administrative body exercises discretion, which is a fundamental issue, since executive agencies possess exclusive authority in such matters, which also implies discretion in its exercise.<sup>24</sup> Ultimately, courts cannot interfere with this, as doing so would violate the principle of separation of powers and unjustifiably restrict executive power, over which the court exercises control rather than replacement.<sup>25</sup> By the court's decision, the administrative body is obligated to restart evidence examination; however, it retains the alternative to either decide the residence issue in favor of the foreign national or again reach a negative decision. Due to such examples, foreign nationals are often compelled to appeal to the court again with the same request following administrative refusal.<sup>26</sup>

Between 2017 and 2022, judicial practice in residence permit disputes generated a significant problem. Foreign nationals who were refused residence permits by the Agency and appealed these acts to court would request corresponding certificates that courts could issue immediately, within a maximum of three days. The court document contained the applicant's personal data, dispute parties, and information about the court hearing date. Based on this certificate, which foreign nationals submitted to the Public Service Hall, their legal stay in Georgia would be extended.<sup>27</sup> Subsequently, applicants would withdraw their cases without requiring the respondent's consent and retained the right to re-appeal to court. After the person's legal stay period in Georgia expired, they would again approach the administrative body and, in case of refusal, appeal to court following the same principle, with cases ultimately remaining unexamined.

A portion of judges concluded that this constituted abuse of rights by individuals, leading to the scheduling of main hearings and

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<sup>24</sup> See: Cane, 155.

<sup>25</sup> Gegenava, 643.

<sup>26</sup> Decision N3/6056-23 of the Tbilisi City Court, 29 September 2023.

<sup>27</sup> Law N2045-III of Georgia on the Legal Status of Aliens and Stateless Persons, 5 March 2014, Art. 48(1)(„გ“).

evidence requests at the admissibility stage itself. In such cases, when applicants requested to leave cases unexamined, the respondent's consent became necessary. If the court hearing was scheduled within a short timeframe, the judge would consider this motion during the session; otherwise, they would address the respondent in writing, requesting notification of agreement or disagreement with satisfying the applicant's motion regarding leaving the case unexamined. In case of the respondent's refusal, since a main hearing had been scheduled, the case would be examined on its merits.

On the one hand, courts initially avoided individuals' bad faith approaches, but on the other hand, they restricted individuals' procedural rights. Scheduling main hearings after the admissibility stage cannot be considered appropriate. Eventually, the administrative body changed its practice: filing a claim in court and submitting court documents (certificates) to the Agency of Public Service Hall no longer constitutes legal grounds for extending a person's legal stay in Georgia. Following this change, the problem was resolved and litigation procedures returned to their normal format, as confirmed by current practice.

## 2. Access to Classified Conclusions Related to Residence Permits

A court does not render a decision on the issuance of a residence permit until it has requested and examined evidence concerning the inadvisability of granting such a permit. In these cases, the judge ensures both the appropriateness of applying the inquisitorial principle<sup>28</sup> and the reliance on evidence that forms the basis of the administrative authority's refusal. Where the evidence presented clearly establishes a specific circumstance, the court follows well-established judicial practice. For example, if a foreign national is denied a residence permit in Georgia on the grounds of national security, and this justification is

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<sup>28</sup> See: Gegenava, 636.



substantiated by the evidence obtained by the court,<sup>29</sup> the court will unequivocally reject the claim.<sup>30</sup>

Once the classified evidence is reviewed, courts typically do not consider it necessary to obtain further evidence and rely exclusively on what is already on record. In practice, the principal – and often the only – piece of evidence independently obtained by the court is the classified opinion issued by the State Security Service.<sup>31</sup> This pattern also applies to disputes concerning residence permits based on employment<sup>32</sup> or permanent residence.<sup>33</sup>

There are, however, exceptional cases in practice where, after evaluating evidence obtained *ex officio*, the court concludes that the claimant's application should be granted. In one administrative dispute, the court fully upheld the claim of a foreign national seeking a study-based residence permit. The evidence presented indicated that the claimant had previously been granted a residence permit for employment purposes. However, upon the expiration of that permit, the Agency denied its extension on the basis of a classified opinion from the State Security Service – though it did issue a study-based residence permit valid for one year. Despite the fact that the claimant was a student at a Georgian higher educational institution, the Agency again denied the extension of the study-based residence permit, citing the same classified opinion. In response, the court requested the relevant information from the State Security Service and reviewed it during a closed session. Although the content of this classified material was not disclosed in the judgment, the court nevertheless concluded that there were no legitimate grounds to deny the individual a study-based resi-

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<sup>29</sup> Ruling N3/5001-21 of the Tbilisi City Court, 27 October 2021.

<sup>30</sup> Decision N3/5001-21 of the Tbilisi City Court, 27 October 2021.

<sup>31</sup> Ruling N3/8454-23 of the Tbilisi City Court, 28 November 2023; Ruling N3/7702-23 of the Tbilisi City Court, 16 October 2023.

<sup>32</sup> Decision N3/8810-23 of the Tbilisi City Court, 20 March 2024.

<sup>33</sup> Decision N3/6256-21 of the Tbilisi City Court, 3 February 2022; Decision N3/6511-23 of the Tbilisi City Court, 7 December 2023.

dence permit. As a result, the court fully granted the claim – annulling the administrative act issued by the Agency and ordering the issuance of a new act granting the claimant the requested residence permit.<sup>34</sup> This decision was subsequently upheld by the Tbilisi Court of Appeals.<sup>35</sup>

### 3. Evaluation of Evidence

In assessing the necessity of evidence, the judge's *inner conviction* is essential. This characteristic distinguishes administrative proceedings from other types of legal procedures. In administrative litigation, the court is entitled to substantiate its reasoning by referencing evidence, including the one it may obtain on its own initiative.<sup>36</sup> The judge's inner conviction is a matter of subjective assessment – it may be viewed as a belief, opinion, or internal interpretation of the value of the evidence.<sup>37</sup> However, it is important to note that this inner conviction must be grounded in evidence, not merely in subjective impressions or emotional considerations; it must be supported by objective reasoning.<sup>38</sup>

There are cases where the respondent administrative authority adheres correctly to the evidentiary standards during administrative proceedings, yet the claimant presents new evidence at the court hearing – evidence that was not previously available. Such circumstances may constitute grounds for annulling the disputed administrative decision. In these cases, courts generally grant the claim in part.

For example, in an administrative dispute, a foreign national sought a permanent residence permit. During the court hearing, the claimant submitted evidence of being in a registered marriage with a Georgian citizen and of having had a high income in Georgia over the

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<sup>34</sup> Decision N3/8061-23 of the Tbilisi City Court, 24 April 2024.

<sup>35</sup> Ruling N3ð/1966-24 of the Tbilisi City Court, 24 March 2025.

<sup>36</sup> See: Gegenava, 641–643.

<sup>37</sup> Nadareishvili, Lomsadze, 118–121.

<sup>38</sup> Kaufman, 495–516.

past year. Despite a negative opinion from the State Security Service, the court found that the respondent should have re-evaluated this new evidence and thus partially upheld the claim. The court annulled the contested individual administrative-legal act without deciding on the merits of the permit itself and instructed the Agency to reexamine the newly presented, materially significant facts and issue a new act accordingly.<sup>39</sup>

In another administrative case concerning a short-term residence permit, the court established that the claimant owned residential property in Georgia and had no criminal record. It rejected the conclusion of the State Security Service, which had deemed the issuance of a permit inadvisable. The court partially upheld the claim, reasoning that the denial lacked sufficient justification and did not enable a comprehensive evaluation of the matter – particularly when the claimant met all legal requirements for a short-term residence permit, including property ownership and a clean criminal record. Considering both the classified opinion from the Counterintelligence Department and the established factual circumstances, as well as the proportionality of public and private interests, the court held that the Agency should have further consulted the State Security Service. The Agency was instructed to issue a new administrative-legal act after synthesizing the newly obtained information and the established facts.<sup>40</sup>

Judicial practice reveals that residence permit disputes are typically adjudicated in a simplified manner, with the outcome largely dependent on the judge's perspective. In the area of evidentiary assessment, the court is, in practice, constrained – especially in articulating the rationale when classified information is involved, which is understandable. If a claim is fully granted, it typically indicates that the judge rejected the conclusion of the State Security Service. If granted in part, it usual-

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<sup>39</sup> Decision N3/3923-23 of the Tbilisi City Court, 15 December 2023.

<sup>40</sup> Decision N3/7382-21 of the Tbilisi City Court, 24 March 2022.

ly reflects disagreement with the administrative authority's decision. However, this distinction cannot be definitively asserted, since the judicial reasoning and the specific information on which the decision is based are often absent from the written judgment.

#### IV. Residence Permit and Judicial Review of First Instance Court Reasoning

##### 1. Court of Appeals and Administrative Discretion

The only formal mechanism for reviewing the reasoning of a first instance court in residence permit cases is the right to appeal to a higher court. The appellate court evaluates the lower court's decision both on factual and legal grounds.<sup>41</sup> It also examines classified evidence in the same manner, explicitly stating in its decision that the materials were reviewed, while the content itself remains undisclosed in the judgment due to its confidential nature.<sup>42</sup>

The appellate court independently requests relevant information from the State Security Service. Since this content is not included in the decision of the lower court, access to the full evidentiary record is necessary to ensure appropriate oversight and the fair resolution of the dispute. In practice, appellate courts typically adopt the reasoning of the first instance court without modification. This dual-level scrutiny of the evidence effectively raises the evidentiary review standard. Moreover, while classified information is reviewed at the first instance by a single judge, in the Tbilisi Court of Appeals, the review is conducted by a panel of three judges – indicating that decisions are not based solely on the subjective conviction or evaluation of one judge.<sup>43</sup> Therefore, in cases where the claim is rejected, the right to appeal becomes substantively significant.

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<sup>41</sup> Civil Procedural Code of Georgia, 14 November 1997, Art. 377(1).

<sup>42</sup> Ruling N3ð/374-22 of the Tbilisi Court of Appeals, 29 March 2022.

<sup>43</sup> Ruling N3ð/3715-24 of the Tbilisi Court of Appeals, 30 December 2024.

There are noteworthy exceptions in which the appellate court does not agree with the first instance ruling. In one administrative case, a foreign national sought a short-term residence permit. The first instance court evaluated the evidence, including the classified opinion from the State Security Service, and fully upheld the claim.<sup>44</sup> The Public Service Development Agency appealed. The Administrative Chamber of the Tbilisi Court of Appeals granted the appeal, annulled the decision of the lower court, and issued a new judgment rejecting the claimant's request.<sup>45</sup> The appellate court noted that, based on the classified information it reviewed, the challenged administrative act was lawful. The court found that the content of the classified material fully substantiated the appellant's argument regarding the inadequacy of the first instance court's reasoning. However, due to the confidential nature of the documents, their contents could not be disclosed in the judgment.<sup>46</sup>

In another administrative dispute, a foreign national challenged the denial of a permanent residence permit. Despite the negative opinion issued by the State Security Service, the first instance court upheld the claim.<sup>47</sup> However, on appeal by the Agency, the Administrative Chamber of the Tbilisi Court of Appeals agreed with the appellant, finding that the administrative procedure had complied with legal requirements and that the process of issuing the administrative act had not violated applicable rules. As a result, the appellate court annulled the lower court's decision and issued a new judgment denying the claim.<sup>48</sup> This decision was further appealed to the Supreme Court of Georgia, but the cassation ruling has not yet been delivered.

When appellate and first instance courts reach divergent conclusions, the process of evaluating the case becomes more complex, as the

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<sup>44</sup> Decision N3/2967-22 of the Tbilisi City Court, 12 July 2022.

<sup>45</sup> Decision N3ð/453-22 of the Tbilisi Court of Appeals, 16 January 2024.

<sup>46</sup> Ibidem.

<sup>47</sup> Decision N6/5963-22 of the Tbilisi City Court, 2 December 2022.

<sup>48</sup> Decision N3ð/740-23 of the Tbilisi Court of Appeals, 7 November 2023.

same set of evidence may lead to different outcomes. In such cases, the claimant is entirely dependent on the professional judgment, integrity, and fairness of the judges involved.

There are also cases where the denial of a residence permit is not based on a classified opinion issued by the State Security Service.<sup>49</sup> In such situations, appellate review tends to be more transparent and logically structured, since the higher court's reasoning is based on legal analysis, deductive reasoning, and standard methods of legal interpretation.

## 2. The Supreme Court of Georgia and Disputes Related to Residence Permits

The right to appeal enables both parties in legal proceedings to present their arguments before a higher court. As judicial practice shows, there are numerous instances where the appellate court overturns the decision of the city/district court and issues a new ruling. Given that the Tbilisi City Court and the Court of Appeals may occasionally hold divergent views, an additional mechanism is available for reviewing the decisions or rulings issued by the appellate court. The dissatisfied party has the right to lodge a cassation appeal with the Supreme Court of Georgia, which conducts a substantive review of the case, including the assessment of conclusions issued by the State Security Service regarding the inadvisability of granting residence to a foreign national.

Several important considerations must be taken into account in the cassation review of residence permit disputes:

1. Jurisdiction and Mandate of the Supreme Court of Georgia – In reviewing appellate decisions, the Supreme Court is limited to legal issues; its scrutiny is of a purely legal nature. If there are doubts concerning the improper evaluation of facts or ev-

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<sup>49</sup> See: Decision N3ð/1011-22 of the Tbilisi Court of Appeals, 12 July 2022.

idences, the Supreme Court's mandate is confined to remanding the case back to the appellate court for reconsideration.

2. Prevailing Practice of Finalizing Such Cases at the Appellate Stage – A significant number of cassation appeals are deemed inadmissible or are not pursued further by the parties.
3. Lack of Consistent and Uniform Jurisprudence – Due to the limited number of cases reviewed at the cassation level, there is a lack of established, uniform case law in this area.

The Supreme Court of Georgia places particular emphasis on the specificity and relevance of classified information provided by the Counterintelligence Department. The Court assesses whether the information is directly applicable to the case at hand and pertains specifically to the applicant seeking residence. If the intelligence is sufficiently specific and identifies facts that raise a substantiated suspicion of activities threatening national security or public order, this may serve as an adequate ground for denying the residence permit.

However, it is equally important to note that the classified information may be general in nature, containing only abstract statements regarding potential threats. In such cases, additional factors and a holistic assessment of the available evidence must be considered to ensure the legality of the administrative decision.<sup>50</sup> Owing to the confidential nature of the information, courts are granted broad discretion, which leaves substantial room for interpretation. The applicable criteria should be more detailed and exhaustively defined so that not only the Supreme Court but also lower court judges can render certain and predictable decisions based on uniform evidentiary standards and principles of assessment.

The fact that an applicant for residence has not committed a crime or legal violation does not, in itself, render a negative conclusion by the State Security Service unlawful. According to the Supreme

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<sup>50</sup> See: Decision Nòb-267(3-24) of the Supreme Court of Georgia, 28 May 2024; Ruling Nòb-1248(3-20) of the Supreme Court of Georgia, 30 September 2021.

Court's jurisprudence, such a conclusion must be evaluated by balancing public and private interests, with preference given to public interest – namely, the protection of national security and public order – when risks are identified.<sup>51</sup>

Nonetheless, under the standard established by the Supreme Court, even when classified materials clearly demonstrate a risk to national security or public order – backed by appropriate reasoning and factual support – this does not relieve the administrative authority of its obligation to weigh public and private interests and to apply the principle of proportionality when making its decision.

Given the nature of residence permit disputes, the involvement of classified information, and the role of the State Security Service, it is evident that the mere existence of risk – be it a substantiated suspicion or a potential, hypothetical threat – is not sufficient in itself to justify denial of a residence permit. Despite these considerations, the administrative body remains obliged to provide reasoned justification and to apply a proportionality test. Any decision must be fully substantiated and comply with the foundational principles of administrative procedure and legality.

## V. Conclusion

Judicial practice in Georgia regarding the granting of residence status is highly diverse and can hardly be described as consistent. This is entirely understandable, as such disputes involve numerous variables, each of which renders the cases unique and leads to divergent outcomes. Analysis of court decisions reveals several key points:

1. Within the scope of its discretion, the court typically requests information from the State Security Service through a simplified procedure;

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<sup>51</sup> Decision Nðb-782(j-23) of the Supreme Court of Georgia, 27 February 2024; Decision Nðb-67(j-22) of the Supreme Court of Georgia, 5 October 2023.



2. If the court deems it necessary, it is authorized to involve the administrative authority that provided the classified information as a third party in the proceedings. However, this depends solely on the discretion of the judge, and, based on prevailing judicial practice, such participation is no longer observed;
3. The court reviews the information submitted by the State Security Service independently but does not disclose it in its final ruling;
4. The court's ultimate decision is often based exclusively on this classified information.

While courts formally adhere to all fundamental principles established by law, the denial of residence status to a foreign national frequently raises serious concerns – not only regarding judicial transparency, but also the reliability and accuracy of the information forming the basis for such a decision. Evidently, in these disputes, the judiciary tends to adopt a formalistic approach, which effectively diminishes the relevance of the parties' arguments and the presentation of additional evidence. In practice, the only evidence relied upon by the judge is classified information that is neither disclosed in the reasoning of the judgment nor made accessible to the parties.

The case law across all three levels of the Georgian court system demonstrates that decisions concerning residence permits are subject to judicial review at all levels of the judiciary. Notably, appeals to higher courts can, in some cases, reverse the decisions of lower-instance courts. Ultimately, the particularities of adjudicating residence-related disputes reveal a twofold judicial approach: on the one hand, courts heavily rely on assessments provided by the State Security Service; on the other hand, the Supreme Court of Georgia has made it clear that such assessments alone cannot justify the denial of residence status to a foreign national. According to the Supreme Court's interpretation,

regardless of the reliability, substantiation, or specificity of classified information, any administrative decision must also be based on the principle of proportionality between public and private interests. Otherwise, the legality and reasonableness of the administrative discretion exercised are called into question.

Formally, Georgian courts act in accordance with the consistent case law of the European Court of Human Rights, acknowledging the discretion and institutional autonomy of executive authorities in matters related to the issuance of residence permits. Furthermore, judicial oversight is ensured over administrative decisions, and appellate or, in some cases, cassation-level supervision is provided over first-instance court rulings. However, despite these formal safeguards, a fundamental challenge remains – namely, that the current legal reality is often reduced to mere formality. The closed nature of residence-related administrative proceedings and the unpredictability of their outcomes can only be offset by fair and impartial justice, which, under current conditions in Georgia, remains not only difficult to achieve but practically unattainable.

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