THE BALANCE BETWEEN THE PROTECTION OF REFUGEES' RIGHTS AND THE INTERESTS OF STATE SECURITY

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"Each arriving asylum seeker represents a challenge to established principles of state sovereignty."[1]

I. Introduction

The modern world has been grappling with an ongoing wave of migration for many years.[2] In some cases, the pursuit of international protection by certain unscrupulous foreigners is driven by motives such as evading punishment, committing crimes, or posing a threat to the host state or society.[3] Many states adopt strict asylum policies, often limiting their international legal obligations concerning the protection of migrants' rights – particularly when national security is at stake.[4] States with asylum systems have a firm will and obligation to protect national interests, while also ensuring that the fundamental rights of refugees are not violated upon return to their country of origin.[5] Achieving such proportionality is critically important, especially when the state's interests are weighed against potential violations of the refugee's or asylum seeker's rights – rights that may be linked to absolute protections, or where one of these two values represents a

1 Goodwin-Gill, 291.

2 Ibidem.

3 Ending International Protection, EASO Professional Development Series for Members of Courts and Tribunals, 2nd Ed., European Asylum Support Office, (2021):12–23.

4 Dawody, 3–7.

5 Lambert, 519–522.

higher legal good. In such cases, interference may be justified if the "preservation" of one outweighs the other.[6]

Due to increasing migration,[7] Georgia's asylum system – despite adopting a shared, unified legal approach and applying the practices of member states – continues to exhibit a tendency toward inconsistent judicial approaches when determining the appropriateness of revoking or denying refugee status on the grounds of state security risks. This inconsistency is largely caused by the lack of a comprehensive examination of the circumstances.[8] Additionally, there are numerous cases in which courts return cases to administrative bodies for reconsideration in order to investigate the facts and balance the anticipated risks.[9] The issue is further complicated by provisions in the legislation and asylum practice related to classified information[10] concerning state security. Under these provisions, the parties are not granted access to the reasons why the granting of refugee status to an individual is considered inappropriate.[11] This results in a violation of the principles of equality of arms and adversarial proceedings, and leads to an unsystematic examination of the issue. Consequently, the case cannot be fully and properly reviewed with regard to the grounds on which refugee status was denied or revoked.[12] It is worth noting that the issue under

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6 *Bundesrepublik Deutschland v. B and D,* Joined Cases C-57/09 and C-101/09, Court of Justice of the European Union, 9 November 2010, para. 109.

7 Ministry of Internal Affairs of Georgia, Migration Statistics https://info.police.ge/page?id=863&parent_id=258

8 Decision N3/321-22 of the Tbilisi City Court, 26 January 2023; Ruling N3b/2350-22 of the Tbilisi Court of Appeal, 30 January 2023; Decision N3/8099-22 of the Tbilisi City Court, 31 July 2024; Decision N3b/3760-24 of the Tbilisi Court of Appeal, 31 March 2025.

9 Decision N3/8221-24 of the Tbilisi City Court, 20 February 2025; Decision N3/87689-20 of the Tbilisi City Court, 29 March 2022; Ruling N3b/3262-24 of the Tbilisi Court of Appeal, 16 April 2025.

10 Law N2097 of Georgia "On Counter-Intelligence Activities", 11 November 2005, Art.6.

11 See: Procedures of Asylum Denial in Georgia are not Transparent Institute for Development of Freedom of Information, Tbilisi, (2017): 6.

12 Effective Remedies in National Security Related Asylum Cases, With Particular Focus on Access to Classified Information, European Council on Refugees and Exiles

study has been insufficiently explored in Georgian academic doctrine. Therefore, considering the limited literature available, research into this subject is of essential importance for the protection of refugee rights, the assessment of the appropriateness of granting refugee status, and the improvement of judicial practice.

This paper aims to determine, through the application of the "fair balance" test, whether interference with a protected right – arising from national interests – is justified when compared to the scale of potential higher-level threats; the paper is also to assess whether the denial of international protection to an individual on the grounds of state security meets the criteria of necessity and proportionality between the restriction imposed and the objective sought. Furthermore, the aim of the paper is to promote the implementation of established legal standards from international refugee law into the Georgian asylum system and, taking into account mechanisms tailored to national legal needs, to develop relevant recommendations and proposals. Another goal is to explore rational solutions to the challenges surrounding the subject under study, based on the approach of the EU Directive and practices from countries with extensive experience in asylum law.

The objective of the paper is to conduct a thorough analysis – based on the comparative legal research method – of the approaches of the countries within the Common European Asylum System, as well as the views of the Court of Justice of the European Union and the European Court of Human Rights, in order to analyze the objective and subjective characteristics of certain actions and identify when it is appropriate to apply the proportionality test to balance private and public interests. Using the descriptive research method, the paper provides an in-depth explanation of the importance of protecting both state security interests and refugee rights. Within the framework of hermeneutical and analytical methods, it will be possible to exam-

(ECRE) and the Hungarian Helsinki Committee (HHC), (2022): 2–3.

ine in detail the substantive content of normative sources within the Common European Asylum System, including a systematic analysis of the recommendations established by the United Nations High Commissioner for Refugees (UNHCR) and the European Union Agency for Asylum (EUAA).

The paper consists of six parts, with the first and final sections dedicated to the introduction and conclusion, respectively. Part II of the paper addresses the legal grounds for the refusal to grant refugee status for the purpose of protecting state security. It will examine the restrictive nature of access to information provided by the Counter-intelligence Department and the limitations on the procedural rights of the parties involved. Part III of the paper focuses on the principle of non-refoulement as a jus cogens norm and explores the legal boundaries of interference with this right. Part IV deals with the significance of the "fair balance" test and the grounds for its application. It emphasizes the importance of determining a balance between private and public interests in the context of reviewing the legality of denial, cessation, revocation of refugee status, and expulsion. This section will also include an overview of selected case law from the EU member states and present various scholarly opinions regarding fundamentally different legal concepts. Part V discusses the standard for assessing circumstances and examines the objective and subjective characteristics of actions based on the approaches of countries with long-standing and robust asylum systems.

II. Denial of Refugee Status on the Grounds of State Security Interest

1. The Interest of State Security

The security of a nation-state involves not only preserving its sovereignty, territorial integrity, and independence, but may also extend to maintaining external peace. However, a country's interests must

be protected in such a way that they do not violate individuals' fundamental rights.[13] The standard for evaluating state security and the protection of the rights of asylum seekers, as well as the legal regulation of these matters, originates in the preparatory works (travaux préparatoires) of the 1951 Geneva Convention. During these discussions, delegates expressed concerns that, amid large-scale movements of refugees, many dishonest migrants – referred to as "bootstrap refugees"[14] might abuse asylum procedures in order to carry out unlawful acts against the host country.[15] Therefore, it was deemed crucial to strengthen the security and public order of host countries through legally regulated norms and effective protective mechanisms.[16] The 1951 Convention addresses issues of state and public interest in Article 33(2),[17] which stipulates that the non-refoulement principle[18] established in Article 33(1) – prohibiting the return of a person to a country where his/her life or freedom would be threatened on the basis of Convention grounds – does not apply to refugees who, for serious reasons, pose a threat to the security of the state.[19] At the drafting stage of the Convention, it was emphasized that the danger a person poses to society cannot be weighed as a *quid pro quo* against the degree of risk of ill-treatment faced upon return. Therefore, it would be incorrect to require a higher standard of proof when an individual is considered a serious threat to the public. Such an approach would also be incom-

[13] *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, Supreme Court of Canada, 11 January 2002; *J. N. v. Staatssecretaris van Veiligheid en Justitie*, Case C601/15 PPU, Court of Justice of the European Union, 15 February 2016, para. 66.

[14] Mathew, 146–147.

[15] Grahl-Madsen, 140.

[16] Ibidem, 135–137.

[17] Convention Relating to the Status of Refugees, 28 July 1951, Art.33(2).

[18] Ibidem, Art.33(1).

[19] Asylum Procedures and the Principle of Non-refoulement – Judicial Analysis, EASO Professional Development Series for Members of Courts and Tribunals, European Asylum Support Office, (2018): 27–28.

patible with the absolute nature of Article 3 [of the European Convention on Human Rights].[20] Moreover, during the Convention's drafting process, attention was drawn to the importance of a risk-balancing test.[21] Specifically, the delegate from the United Kingdom noted that a state must decide whether the risk to public safety posed by allowing refugees to remain outweighs the danger that would arise from expelling them.[22]

1.1. Legal Grounds for Denial of Refugee Status

In order to strengthen the protection of fundamentally important rights, Georgia's Law on "International Protection" also introduced provisions that, similar to the Geneva Convention and EU directives[23] define the grounds for the revocation[24] or denial of refugee status[25] as well as the restrictive nature of the "non-refoulement principle,"[26] based on existing risks to state security.[27] It is noteworthy that international legislation also addresses situations where a person has been convicted by a final judgment for committing a serious crime, which constitutes a threat to the public safety of the host country.[28] Moreover, unlike the concept of a potential threat to state security, Georgia's Law on "International Protection" does not consider granting refugee status to those individuals who, on reasonable grounds, are believed

[20] See., Grahl-Madsen, 135–144.

[21] Ibidem, 138–149.

[22] Ibidem.

[23] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on Standards for the Qualification of third-country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (recast), 2011, Art.14(4).

[24] Law N42-Iს of Georgia "On International Protection", 1 December 2016, Art.52(2).

[25] Ibidem, Art. 17 (1)(„ბ").

[26] Ibidem, Art. 8(2).

[27] Ibidem, Art. 69

[28] Ending International Protection: Articles 11, 14, 16 and 19 Qualification Directive (2011/95/EU) A Judicial Analysis, European Asylum Support Office, (2016): 62–65.

to have committed a war crime or a crime against peace, a serious non-political crime, or an act contrary to the purposes and principles of the United Nations.[29] As noted by the UN High Commissioner for Refugees (UNHCR), individuals mentioned in this provision are considered undeserving of international protection and are in contradiction with the foundation of international coexistence.[30] Accordingly, these individuals are not a priori regarded as threats to state security, and they are subject to certain core rights that remain strictly protected under the "non-refoulement principle."[31]

1.2. Serious Threat

A threat to national security must be of such nature and intensity that it justifies the expulsion of an individual or the termination of refugee status.[32] A minor threat to national security cannot be considered sufficiently foreseeable or proportionate in relation to the risks posed to human rights.[33] Moreover, a sufficiently serious threat implies a high probability that the individual in question may repeat such threatening behavior.[34] However, it is clear that past conduct alone cannot be treated as a current threat.[35] Therefore, the applicant's individual actions must constitute real and sufficiently serious behavior that affects the fundamental interests of society and the protection of both internal and external security.[36]

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[29] Law N42-Iს of Georgia "On International Protection", 1 December 2016, Art.18.

[30] Guidelines on Internationl Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees, UNHCR, (2003): 4–9.

[31] Ending International Protection, EASO Professional Development Series for Members of Courts and Tribunals, 2nd Ed., European Asylum Support Office, (2021): 12–23.

[32] Zimmermann, Dörschner, Machts, 1417.

[33] Ibidem.

[34] *M. T.,* French National Court on Asylum (CNDA), No.17053942, 5 July 2019.

[35] *K v. Staatssecretaris van Veiligheid en Justitie* and *HF v. Belgische Staat (K and HF)*, Joined Cases C331/16 and C366/16, Court of Justice of the European Union, 2 May 2018, para. 51.

[36] *J. N. v. Staatssecretaris van Veiligheid en Justitie*, Case C601/15 PPU, Court of Justice of the European Union, 15 February 2016, para. 67.

The Georgian asylum legislation provides for specific grounds, within which a person may be connected to one or another of them.[37] Accordingly, a threat to national security may point to the creation of a danger to Georgia's territorial integrity, defensive security, or connections to criminal organizations.[38] It is noteworthy that in cases concerning international protection, the information obtained by the Counterintelligence Department is classified, and the authority to access it lies with the competent official of the court and the administrative body, in full compliance with the requirements of the Georgian Law on State Secrets.[39] The information obtained by the State Security Service carries a recommendatory nature for the administrative body and the court, which means that the final assessment is still made by the competent authority, required to adopt a decision that is most relevant based on a test of balancing legal interests, resulting from a comprehensive investigation and study of the case. In this context, the law grants the authority an exclusive right to access the reasoned information containing state secrets obtained by the Counterintelligence Department, which is not accessible to the party and, accordingly, cannot be used for law enforcement purposes.[40] Taking all of the above into account, the court does not, in any way, reflect this information in the court decision.[41]

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[37] Law N42-Iს of Georgia "On International Protection", 1 December 2016, Art.69(2).

[38] See., Ibidem, "The potential threat to national security, enshrined in paragraph 1 of this Article, shall constitute situations when there is a sufficient ground to believe that an asylum-seeker, refugee or international protection holder is related to: a)the country/organization that is hostile towards the self-defence and security of Georgia; b)the intelligence services of other countries; c)the terrorist and extremist organizations; and d) other crime affiliated organizations (including transnational crime affiliated organizations) and/or to the illegal circulation of arms, weapons of mass destruction and their components."

[39] Law N 3099-IIს of Georgia "On State Secrets", 19 February 2015, Art.1(7).

[40] Law N2097 of Georgia "On Counter-Intelligence Activities", 11 November 2005, Art.6.

[41] Ibidem.

2. The "Equality of Arms" Principle and the Restriction of Procedural Rights

The idea of the principle of "Equality of Arms", considers the disclosure of information to the interested party as an important basis for establishing facts.[42] However, the approaches of the European Court of Justice and the European Court of Human Rights differ from Georgia's asylum regime concerning access to state secret information.[43] The courts consider a certain degree of information transparency necessary to ensure that the interests of the protected person are not violated and that, within the framework of the 'fairness' principle, the person can present counter-arguments to the claims made against them.[44] The European Court of Justice explains that, in cases of restricting access to the case file, it is necessary to analyze, on the one hand, the effective protection of the relevant person's rights and, on the other hand, the grounds of national interests.[45] The balancing of these rights must not result in the complete deprivation of access to the means of protection for the interested person or the disregard of the right to legal protection guaranteed by the directive itself.[46] The Council of Europe directive on asylum procedures clearly defines the exercise of the right

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[42] Clear Principles, Divergent Practices: The Right to Know in National Security Related Immigration Matters in EU Member States, the Hungarian Helsinki Committee, (2024): 5.

[43] *Muhammad and Muhammad v. Romania*, Application no. 80982/12, European Court of Human Rights, 15 October 2020, para. 194; *ZZ v. Secretary of State for the Home Department*, Case C300/11, Court of Justice of the European Union, 4 June 2013, para. 57.

[44] Clear Principles, Divergent Practices: The Right to Know in National Security Related Immigration Matters in EU Member States, the Hungarian Helsinki Committee, 2024, 5.

[45] *ZZ v. Secretary of State for the Home Department*, Case C300/11, Court of Justice of the European Union, 4 June 2013, para. 57.

[46] *GM v. Országos Idegenrendeszeti Főigazgatóság, Alkotmányvédelmi Hivatal, Terrorelhárítási Központ*, Case C159/21, Court of Justice of the European Union, 22 September 2022, para. 49.

to effective legal protection[47] and the possibility for member states to establish procedures that ensure that a legal adviser or consultant who has undergone appropriate security clearance can access documents and sources containing classified information.[48] In addition, the directive indicates that the decision to deny international protection should include the reasons that make granting the status to the person in question inappropriate.[49] It is important to note that allowing only a relevant official or specialized lawyer to access the documents, without giving applicants the opportunity to learn the grounds of the negative decision concerning them, contradicts the standards set by the European Court of Human Rights and the Court of Justice of the European Union. Such an approach cannot ensure compliance with the principle of adversarial proceedings.[50]

The views of the European Court of Human Rights and the European Court of Justice are shared by about one-third of European countries.[51] Countries such as Austria, Belgium, France, Germany, the Netherlands, and Spain share the foundations of the principle of equality of arms and, accordingly, follow the recommendations of the European courts.[52] In these countries, courts review cases only within the scope of information equally accessible to applicants and their lawyers.[53] The German model supports a balanced approach to the principle of equality of arms and national security interests, which means that interested individuals are informed about the reasons

[47] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing international protection (recast), (2013): Art.46(1).

[48] Ibidem, Art.23.

[49] Ibidem, Art.11 (2).

[50] Juhász, 33–35.

[51] Clear Principles, Divergent Practices: The Right to Know in National Security Related Immigration Matters in EU Member States, the Hungarian Helsinki Committee, (2024): 1.

[52] Ibidem.

[53] Ibidem, 3–4.

they are not granted permission to certain information.[54] These issues may be related to personal data or to state interests, the disclosure of which is considered unjustifiable.[55] The court has the authority to review the grounds on which access to information was restricted for applicants and their legal representatives.[56] Among the EU member states, Slovenia is the only country that supports full transparency.[57] Slovenian administrative procedural legislation provides for complete access to information related to state security, both for applicants and their lawyers.[58] The asylum authority considered the disclosure of classified information impermissible only in a single case, where there was suspicion of actions by the individual against the purposes and principles of the UN.[59] However, the Supreme Court of Slovenia did not agree with this decision, reasoning – based on EU directive law – that withholding information from the party violated their procedural rights.[60] As for the Dutch systemic model, in addition to the obligation of the administrative body to justify its decision, the power to review the withholding of information falls under the jurisdiction of the court.[61] If the court agrees with the position of the administrative body regarding the refusal to disclose information, the obligation to provide general information regarding the essence of the grounds must still be ensured.[62]

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54 Public Order, National Security and the Rights of the Third-Country Nationals in Immigration and Citizenship Cases, Answers to Questionnaire: Germany, Supreme Administrative Court of Poland and ACA-Europe, (2017): 21.

55 Ibidem.

56 Code of Administrative Court Procedure of the Federal Republic of Germany, 19 March 1991, Art, 99.

57 Juhász, 36.

58 Ibidem.

59 Ibidem.

60 Ibidem, cited: Supreme Court, X Ips 68/2021, 16.12.2021, available: https://bit.ly/3OZ0HsF.

61 Ibidem, 33–34.

62 Ibidem.

The approach of the EU member states also includes the partial non-disclosure of information, and within this model, courts have full access to classified information, unlike applicants and their lawyers, who are only provided with general information about the grounds.[63] In Belgium, even though the obligation to disclose classified information is not defined by law, in practice, it is still plausible to explain the reasons why such information cannot be disclosed to the person concerned.[64] As for Sweden, the asylum system establishes that the disclosure of a classified document or material to the party is prohibited if, considering public or individual interests, it is of particular importance. Accordingly, there is an obligation to provide the party with information by other means,[65] such as orally, during an interview, but only in general terms, without disclosing factual circumstances.[66] In such cases, the information provided is generally of a broad nature and does not include factual circumstances related to national security issues.[67] Clearly, this approach does not contradict European standards based on the equality of arms principle, as it is extremely important for the applicant to have the opportunity to receive relevant information, ensuring the proper protection of procedural rights in accordance with the principle of adversarial proceedings. Nevertheless, any approach that completely disregards the possibility of receiving certain information cannot be considered an effective means of ensuring the equal rights of the parties.

The European Court of Human Rights, in one of its cases, considered the issue of the disclosure of confidential information, where a Macedonian citizen was subject to expulsion from the host country

[63] Clear Principles, Divergent Practices: The Right to Know in National Security Related Immigration Matters in EU Member States, the Hungarian Helsinki Committee, (2024): 6–7.

[64] Juhász, 33.

[65] Ibidem, 32.

[66] Ibidem.

[67] Ibidem.

on grounds of state security.[68] The Court noted that the administrative authority had not specified the concrete facts on which it based the relevant decision.[69] Given the significance of the equality of arms principle, it was essential to indicate the reasons related to national threats, in order to fully assess the circumstances and avoid violating the fundamental principle of the Convention – the prohibition of expulsion.[70] Thus, in the context of protecting private and public interests, particular attention must be paid, on the one hand, to human rights and their procedural interests, and on the other hand, to the protection of state secrets, in cases where this is justified for achieving a legitimate objective. Consequently, a model that supports full transparency and unequivocally prohibits refusal to disclose information concerning state security issues may create a real risk of violating the interests of the state or the rights of others.

Thus, it is of essential importance within the Georgian model to adopt the European approach, according to which the decisions of the administrative authority and the court should specify the grounds established by Article 69, paragraph 2 of the Law of Georgia on "International Protection," defining the reasons for the threat to state security that led to the negative decision regarding the applicant.

III. The Principle of Non-Refoulement and the Interest of State Security

The principle of non-refoulement is a jus cogens norm of the Geneva Convention and a strictly established principle[71] that protects individuals from violations of fundamental rights they would face if

[68] *Ljatifi v. The Former Yugoslav Republic of Macedonia*, App. No. 19017/16, European Court of Human Rights, 17 May 2018, para. 39.

[69] Ibidem.

[70] Convention Relating to the Status of Refugees, 28 July 1951, Art. 33.

[71] Den Heijer, Van der Wilt, 274–324.

returned to their country of origin. Accordingly, the state has an erga omnes obligation towards refugees.[72] The Geneva Convention considers restrictions on the right to non-refoulement permissible only in cases of threats directed at the state and society.[73] The complexity lies in the inherent tension between two fundamental principles: the state's sovereign right to protect its territorial integrity, national security, and public safety,[74] and, on the other hand, the international legal obligation not to restrict the rights of migrants when there is a well-founded fear of persecution and serious risk of harm.[75] Any decision on expulsion must demonstrate a rational connection between the removal of refugees from the country and the elimination of the threat.[76] Furthermore, return to the country of origin must be the last possible means of avoiding the threat, and the threat to the receiving country must unequivocally outweigh the expected risks in the country of origin.[77] Thus, the expulsion decision must have a positive impact on the public good of the receiving country and be justified in relation to the consequences of interfering with other rights. According to the guidelines of the Committee of Ministers of the Council of Europe concerning the protection of a range of human rights and the fight against terrorism, it was noted that the prohibition of torture is an absolute and fundamental right that admits no derogation, even in the case of persons accused of terrorism, regardless of the nature of the act committed.[78] Additionally, the Council of Europe has emphasized the importance of the principle of non-refoulement in the context of applications for international protection, highlighting its significance whenever there

[72] Gilbert, 25–28.

[73] Goodwin-Gill, 303.

[74] Wibisono, 76–77.

[75] Hathaway, Harvey, 289–294.

[76] Lambert, 532–534.

[77] See., Albrecht, 1–8.

[78] *Saadi v. Italy*, App. No. 37201/06, European Court of Human Rights, 28 February 2008, para. 64.

is a real risk of death penalty, torture, and/or inhuman or degrading treatment.[79]

1. Legal Distinction Between Exclusion from Refugee Status and Present Threat

Against the backdrop of the modern world's large-scale risks of terrorism and other crimes, most states have significantly tightened the protection of their borders.[80] The idea of the drafters of the Geneva Convention was precisely to uphold the principles of internal state sovereignty, which also implies a guarantee of the security of other states.[81] Although the Convention considers the exclusion of individuals from refugee status permissible due to the commission of certain crimes, these provisions do not inherently imply that the perpetrator should be regarded as a present threat.[82] The exclusion clause aims to preserve the integrity of the asylum system and contribute to the fight against impunity for those who have committed serious crimes,[83] while the "threat to the community" provision refers to the protection of individuals from potentially dangerous refugees.[84] Moreover, the exclusion clause is focused on past acts and, as such, involves limiting the group of individuals benefiting from refugee status, while the "threat to the community" provision is directed towards future actions.[85] For example, the fact that a person has been convicted does not provide sufficient grounds to consider them a current threat to the state.[86]

79 Ibidem.

80 Dawody, 3–7.

81 Current Issues in the Application of the Exclusion Clauses, UNHCR, (2001): 1–10.

82 Ending International Protection, EASO Professional Development Series for Members of Courts and Tribunals, 2nd Ed., European Asylum Support Office, (2021): 59–61.

83 Simentić, 114–115.

84 Walsh, 1–5.

85 Ibidem.

86 *M, X and X v. Commissioner General for Refugees and Stateless Persons*, Joined Cases C-391/16, C-77/17, and C-78/17, Court of Justice of the European Union, 14 May 2019, para. 48.

The essential distinction between "reasonable grounds" and "serious grounds"[87] lies in the difference between the crime committed and making a future threat to state security.[88] Furthermore, it does not concern serious crimes or grave non-political crimes already committed outside the country of asylum before the person received refugee status.[89] Consequently, this provision only requires evidence of a "threat to national security or public order," which clearly leaves member states a wider margin of discretion.

2. The Scope of Interference with Protected Rights

The relationship between the interests of state security and the determination of the appropriateness of granting international protection by the state – which involves setting the threshold for evaluating international protection – should be assessed in the context of the sphere of protected rights envisaged by Article 3 of the European Convention on Human Rights.[90] The European Court of Human Rights has explained that, despite the possible threats posed by the individual in the receiving country, the state's national interests cannot be used to excessively outweigh the individual's interests where there is reason to believe that the applicant would face the risk of ill-treatment if deported.[91] This approach clearly demonstrates that the greater the risks faced by the individual, the less weight should be given to national security interests.[92] The European Court's decision in Saadi v Italy, regarding a Tunisian citizen suspected of terrorism, involved the state

[87] The Michigan Guidelines on the Exclusion of International Criminals, Michigan Journal of International Law, Vol. 35, No.1, 2013, 11.

[88] Gilbert, 127–28.

[89] Ibidem.

[90] *Soering v. The United Kingdom,* App. No.14038/88, European Court of Human Rights, 07 July 1989, para. 89.

[91] *Chahal v. the United Kingdom*, App. No. 22414/93, European Court of Human Rights, 15 November 1996, para. 153.

[92] Ibidem, para. 1.

basing its decision to expel him on national interests.[93] The European Court's reasoning was primarily built around whether the applicant would face a threat guaranteed under Article 3 of the Convention if returned to his country of origin, and whether his continued presence in Italy would pose a risk to state security.[94] As the Court concluded, under international law, states have the authority to control the entry of foreigners, to grant residence permits, to expel them, and to refuse international protection, where there is a risk that the person poses a threat to national security or public order.[95] Nonetheless, the European Court of Human Rights has repeatedly invoked the Chahal v UK case and explained that this principle can only be set aside in one exceptional circumstance – when the return of the person would result in a violation of the absolute rights guaranteed by Article 3 of the Convention.[96]

It is noteworthy that the decision of the Tbilisi City Court did not prioritize the interests of state security over the violation of the rights the individual would face upon returning to the homeland.[97] The court pointed out that the information about the country of origin clearly indicated the risk of serious harm in the event of the asylum seeker's return. Within this framework, the indefinite extension of mandatory military service could be considered inhuman and degrading treatment.[98] The European Court of Human Rights has repeatedly indicated in its decisions that if there is a risk – determined through an analysis of the individual's profile and information about the country of origin – that the person might face a violation of an absolute right, then regardless of how undesirable or dangerous the individual's activities may be, expulsion cannot be justified due to the nature of the

93 *Saadi v. Italy*, App. No. 37201/06, European Court of Human Rights, 28 February 2008, para. 32.

94 Ibidem, para. 126.

95 Ibidem, para. 124.

96 Ibidem, para. 128.

97 Decision N3/321-22 of the Tbilisi City Court, 26 January 2023.

98 Ibidem.

legal interest protected.[99] Accordingly, the protection provided under Article 3 is broader than that under Articles 32 and 33 of the Geneva Convention.[100]

IV. The "Fair Balance" Test

1. Serious Crimes

The idea of the "fair balance" test is crucial to reach a fair decision between protecting the rights of refugees and safeguarding state security interests.[101] Some scholars do not consider establishing a "fair balance" an essential condition, arguing that the proper and thorough identification of the risks to national security in most cases outweighs the rights related to the return of individuals to their country of origin.[102] It is worth noting the reference to the significance of Article 33(2) of the Convention, where the legislator itself has balanced the interests of the host country and refugees, which suggests that applying an additional test is not justified.[103] In contrast, the UN High Commissioner for Refugees (UNHCR) places substantial importance on the application of the principle of proportionality, both in excluding refugee status[104] and in determining the appropriateness of granting it and implementing expulsion decisions where national security threats underlie those decisions.[105] The UNHCR explains that if a refugee faces

[99] Othman (Abu Qatada) v. the United Kingdom, App. No.8139/09, European Court of Human Rights, 17 January 2012, para. 147; *Chahal v. the United Kingdom*, App. No. 22414/93, European Court of Human Rights, 15 November 1996, para. 76; *Saadi v. Italy*, App. No. 37201/06, European Court of Human Rights, 28 February 2008, para. 140.

[100] *Saadi v. Italy*, App. No. 37201/06, European Court of Human Rights, 28 February 2008, para. 1.

[101] See., Dawody, 171–178.

[102] Hathaway, Harvey, 294–296.

[103] Ibidem.

[104] The Exclusion Clauses: Guidelines on their Application, UNHCR, Geneva, 1996, 11–12.

[105] Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees, UNHCR, 2003, 4–9.

a particularly serious risk of persecution, the crime for which he/she has been convicted must be serious enough to justify the decision not to grant refugee status.[106] The UNHCR believes that the balance test is a "useful analytical tool"[107] to ensure that exclusion clauses are applied in line with human rights protections and that the seriousness of the crime in question is carefully weighed against the consequences of exclusion.[108] Thus, the substantial importance of the proportionality test is linked to the interest of preserving the purpose of the refugee regime and can be seen as a reasonable way to avoid the arbitrary assessment of human rights within procedural frameworks.

Some scholars have a different view regarding the "fair balance" test in relation to serious crimes – crimes that, by their nature, are extremely grave and, accordingly, there is no threat of persecution that could outweigh refugee rights given the gravity of such circumstances.[109] This view is unequivocally shared by the Court of Justice of the European Union that has noted that the proportionality test is not required in cases involving exclusion from refugee status, since such cases do not concern current threats.[110] Given the high level of seriousness of international crimes, a balancing test would only be appropriate in cases where the asylum seeker faces imminent and extremely serious persecution, such as the death penalty or torture.[111] According to the perspectives of specialists in international refugee law, the nature of international crimes is already perceived as highly serious, making it

[106] UNHCR Statement on Article 1F of the 1951 Convention Issued in the Context of the Preliminary Ruling References to the Court of Justice of the European Communities from the German Federal Administrative Court Regarding the Interpretation of Articles 12(2)(b) and (c) of the Qualification Directive, UNHCR, 2009, 10–11; 33–34.

[107] Ibidem.

[108] Ibidem.

[109] Dawody, 175.

[110] *Bundesrepublik Deutschland v. B and D,* Joined Cases C-57/09 and C-101/09, Court of Justice of the European Union, 9 November 2010, para.109.

[111] Dawody, 174–175.

impossible to determine their proportionality.[112] For this reason, the use of the proportionality principle could lead to "analytical confusion" and "potential unfairness" in relation to the expected persecution. Moreover, it introduces greater uncertainty in the exclusion process, especially in terms of foreseeing exactly which crimes may have a harsher impact when weighed against individual rights.[113]

Thus, despite the fact that the risk of violating individual rights prohibits expulsion, there may still be exceptional cases when the individual faces a real threat to state security. In circumstances where return is not ruled out, applying the proportionality test is mandatory in the context of protecting individual rights. Moreover, the danger linked to the individual's potential future actions – regardless of its serious significance – must be weighed against the relevant risks within the framework of the fair balance test. Accordingly, circumstances that relate to the commission of future crimes are primarily based on assumptions, even though they must have legal justification. This distinguishes them from the objectives of the exclusion clauses of refugee status, which relate only to crimes committed in the past.

2. Risk of Inhuman or Degrading Treatment

The European Court of Human Rights considers it inadmissible to apply the balancing test in situations where there is a real risk of absolute rights violations against the individual.[114] Accordingly, inhuman or degrading treatment cannot be justified on the basis of the principle of proportionality, given its absolute nature. In contrast, in the precedent-setting case of Suresh v. Canada,[115] the Supreme Court of Canada

[112] Ibidem.

[113] Ibidem, 175–176.

[114] *Chahal v. the United Kingdom*, App. No. 22414/93, European Court of Human Rights, 15 November 1996, para. 1.

[115] *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, Supreme Court of Canada, 11 January 2002, para. 58.

formulated different views that later became the subject of criticism, particularly by the United Nations High Commissioner for Refugees.[116] In that case, the court considered deportation enforcement permissible in certain instances even when there was a real risk of torture against the individual,[117] specifically in matters concerning national security, solely on the basis of the proportionality principle.[118] Furthermore, the European Court of Human Rights, in deliberating on the enforcement of deportation orders involving national security risks, did not share the state's position that the protection under Article 3 of the European Convention was not absolute in deportation cases and that states had the discretion to justify deportation enforcement on the grounds of national security.[119] Clearly, such views are inherently inconsistent with international legal norms and the broad spectrum of values whose absolute nature is clearly enshrined in the European Convention. Therefore, state actions that are binding in nature and stem from obligations to protect internal and external security based on mass migration and the principle of state sovereignty do not imply that the state may disregard the fundamental human rights of individuals – whose superior value will always outweigh any competing right.

The position inclined to apply the balancing test views the human rights approach as a guarantee linked to the humanitarian principle underlying the refugee status.[120] The Tbilisi City Court considered a case where it found it appropriate to grant refugee status despite a recommendation letter from the State Security Service that deemed

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[116] See., UNHCR Briefing Notes, Canada: Important Court Ruling, United Nations High Commissioner for Refugees,
https://www.unhcr.org/news/briefing-notes/canada-important-court-ruling

[117] *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, Supreme Court of Canada, 11 January 2002, para. 58.

[118] Ibidem.

[119] *Chahal v. the United Kingdom*, App. No. 22414/93, European Court of Human Rights, 15 November 1996, para. 76.

[120] *Bundesrepublik Deutschland v. B and D,* Joined Cases C-57/09 and C-101/09, Court of Justice of the European Union, 9 November 2010, para. 109.

international protection for the asylum seeker unjustified.[121] The court explained that the circumstances indicated persecution on political grounds due to "fabricated" charges, as both state and non-state actors involved in the armed conflict had committed serious violations of international humanitarian law and international human rights law.[122] However, despite this reasoning, the court did not develop a detailed analysis within the framework of the fair balance test.[123] In particular, it did not specify the concrete grounds and reasons[124] related to national security risks that would explain the court's decision based on their balancing against the applicant's individual situation.[125] The fact that Georgian courts generally do not indicate the grounds related to national security in their decisions,[126] explaining that this information is classified and thus not appropriate to include, does not comply with European standards.[127] Therefore, it is desirable for decisions to specify the grounds defined in Article 69, paragraph 2 of the Law of Georgia on "International Protection."[128] Thus, although the Tbilisi City and Appellate Courts consider it appropriate, when resolving such matters, to measure the scale of risk associated with the person's return to the country of origin through the proportionality test, this remains only a formal aspect without specifying the concrete grounds that were considered within the fair balance test framework.[129]

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121 Decision N3/498-22 of the Tbilisi City Court, 13 May 2022.

122 Ibidem.

123 Ibidem.

124 See., Law N42-Ib of Georgia "On International Protection", 1 December 2016, Art.69(2).

125 *Ljatifi v. The Former Yugoslav Republic of Macedonia*, App. No. 19017/16, European Court of Human Rights, 17 May 2018, para. 39.

126 Ruling N3b/3048-22 of the Tbilisi Court of Appeal, 13 February 2023.

127 Barcza-Szabó, 14–16.

128 See., Kvachadze, Jugeli, Ghvinjilia, Dzidziguri, 104.

129 Decision N3b/1604-22 of the Tbilisi Court of Appeal, 3 May 2023.

3. Legitimate Aim

A decision to deny refugee status or to order deportation on the grounds of national security must meet the criterion of a legitimate public purpose. This means that ensuring national security constitutes a legitimate public purpose, and this goal can be achieved by deportation or by refusal to grant refugee status.[130] In asylum law, when applying the principle of proportionality, the seriousness of the security threat to the country, the likelihood of that threat materializing, and its overriding nature must be considered. It must also be determined whether deportation would eliminate or significantly reduce the anticipated threats.[131] In addition, it should be established whether the seriousness of the risks to the individual in the event of deportation is such that there are no other ways to avoid deportation that would ensure the person's transfer to a safe third country.[132] The Court of Justice of the European Union explains that a competent authority that determines that the probability of the threat is real – and thus the third-country national is seen as an object that could undermine one of the receiving state's fundamental interests, namely public order and security – must find that the threat is current and sufficiently serious, and that the revocation of refugee status is a proportionate action in response to this threat.[133] In this context, the decision of the Tbilisi Court of Appeals concerning the appropriateness of granting refugee status to an Egyptian citizen on the grounds of national security is noteworthy.[134] The court explained that refusing international protection to an asylum seeker who was a member of a sexual minority, and who faced

[130] See., Zimmermann, Dörschner, Machts, 149–1420; cited: Lauterpacht/Bethlehem, in Refugee Protection, pp. 87, 137 (para.177).

[131] Ibidem.

[132] Ibidem.

[133] *XXX v. Commissaire général aux réfugiés et aux apatrides*, Case C-8/22, Court of Justice of the European Union, 6 July 2023, para. 46.

[134] Ruling N3b/2220-21 of the Tbilisi Court of Appeal, 16 December 2021.

potential imprisonment and the risk of ill-treatment that amounted to persecution under the Convention, was unjustified when balanced against the public interest.[135] In its assessment, the court considered the documentation provided by the asylum seeker – which concerned charges of immorality, indecency, and violations of social customs – to be credible.[136] Significantly, the court accepted country-of-origin information relating to problems arising from the asylum seeker's sexual orientation, particularly where the state itself was clearly acting as the persecuting agent.[137] Accordingly, the court noted that the risk of harm to the individual far outweighed any potential threats to the state.[138]

The same principle applies to individuals subject to extradition who are considered as potential threats to the state.[139] Despite the fact that the person has committed a crime and poses a risk to state security, extradition is prohibited where there is a real risk of a violation of absolute rights.[140] Similar to deportation cases, the European Court of Human Rights establishes an analogous approach in extradition cases, balancing private and public interests, and weighing the general interests of society against the protection of the individual's fundamental rights.[141] The European Court's decision in Soering v. the United Kingdom, which has subsequently been cited repeatedly as a precedent in deportation and international protection cases,[142] held that extradi-

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135 Ibidem.

136 Ibidem.

137 Ibidem.

138 Ibidem.

139 See., Zimmermann, Dörschner, Machts, 1407–1408.

140 Ibidem.

141 *Vilvarajah and Others v. the United Kingdom*, App. Nos. 13163/87, 13164/87, 13165/87, 13447/87, 13448/87, European Court of Human Rights, 30 October 1991; *Soering v. The United Kingdom,* App. No.14038/88, European Court of Human Rights, 07 July 1989, para. 89.

142 See., *Saadi v. Italy*, App. No. 37201/06, European Court of Human Rights, 28 February 2008, para. 124; *Chahal v. the United Kingdom*, App. No. 22414/93, European Court of Human Rights, 15 November 1996, para. 79.

tion to the United States was not appropriate in that case because the applicant faced the death penalty. The Court therefore concluded that the measure was not an effective means to achieve a legitimate aim.[143] The long period of time spent on death row, with its severity and intensity, created a risk of violating the rights guaranteed by Article 3 of the European Convention on Human Rights. The fear engendered by the phenomenon of the death penalty, along with its severe impact on the individual, was sufficient to establish a violation of Article 3.[144]

Thus, third-country nationals who are considered a potential threat to the security of the host country, or have been convicted by a final judgment of a serious crime, must have the risks associated with their criminal acts thoroughly examined, and the termination of their status must be the result of a necessary, reasonable, and rational decision. The competent authority is obliged to consider any developments that have occurred since the applicant committed the crime, in order to determine whether there is a real and well-founded risk as of the date on which the state must decide whether to revoke refugee status or execute expulsion.[145]

V. Standard of Circumstances Assessment

1. The "Reasonably Foreseeable Future Test"

The method of evidence assessment is a significant legal instrument by which asylum seekers must prove that their subjective fear[146] is substantiated by objective circumstances.[147] The UN High Commissioner for Refugees (UNHCR) notes, in the context of evidence assessment, that persecution against a person must be confirmed to the standard

[143] *Soering v. The United Kingdom,* App. No.14038/88, European Court of Human Rights, 07 July 1989, para. 111.

[144] Ibidem.

[145] Ibidem.

[146] Anderson, Foster; Lambert, McAdam, 160–162.

[147] Lambert, 535.

of reasonable suspicion, and the individual must explain the risks they face with relevant reasons.[148] Unlike the UNHCR, the European Court of Human Rights (ECtHR) sets a higher standard of proof and specifies two important elements that an asylum seeker must demonstrate to establish a well-founded fear.[149] On the one hand, there must be "substantial grounds" that the asylum seeker would face ill-treatment upon return to the country of origin, and on the other hand, a "real risk" must be established to show that the decision to deport would directly result in a violation of fundamental rights inherent to that person.[150] It is noteworthy that, in establishing a "well-founded fear" of persecution, European states require the asylum seeker to provide sufficient facts to enable the deciding authority to reach a conclusion – by whatever means available – holding that the asylum seeker would face a risk of serious harm upon return to the country of origin.[151] An interesting case is one of the European Court of Human Rights' important decisions, which involved a Somali national who faced the death penalty due to membership in a certain party.[152] He was granted refugee status in Austria, but this status was subsequently revoked after he was convicted of an attempted robbery.[153] Ultimately, the ECtHR, taking into account both the general situation in Somalia and the individual's profile, concluded that the risk of execution and serious harm was real and thus found the decision to deport him to be unjustified.[154] Accordingly, in examining such cases, it is crucial that the fear perceived by the

[148] Ibidem, 536–537.

[149] *Chahal v. the United Kingdom*, App. No. 22414/93, European Court of Human Rights, 15 November 1996, para. 80; *Saadi v. Italy*, App. No. 37201/06, European Court of Human Rights, 28 February 2008, para. 125.

[150] Ibidem.

[151] Çalı, Costello, Cunningham, 374–376.

[152] *Ahmed v. Austria*, App. No. 25964/94, European Court of Human Rights, 17 December 1996, para. 28.

[153] Ibidem.

[154] Ibidem, para. 45.

applicant be corroborated by objective circumstances within a reasonable assessment framework.

2. Mechanism for Assessing the Risk to National Security

The information gathered by the State Security Service, which is used to justify either denying refugee status to an individual or deeming expulsion appropriate, must be thoroughly substantiated.[155] Vague and incomplete information is irrelevant, even based on the facts established by the Court of Justice of the European Union.[156] The court explains that information provided on national security concerns must be substantiated in such a manner that there is a possibility of determining foreseeable consequences, based on which a person is denied international protection or the legality of the deportation decision can be reviewed.[157] Regarding this issue, it is interesting to note the decision of the French National Court of Asylum, which refused to terminate a person's refugee status when there was not sufficient evidence in the case to confirm any imminent threats to France's national security.[158] In contrast to this decision, in another case, the French National Court of Asylum confirmed a higher standard of evidence in terminating the refugee status of a serial offender who had committed more than 70 crimes over a period of three years.[159] The court found that there were serious reasons to conclude that he was considered a threat to the se-

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[155] *Bundesrepublik Deutschland v. B and D,* Joined Cases C-57/09 and C-101/09, Court of Justice of the European Union, 9 November 2010, para. 109.

[156] Ibidem.

[157] *H. T. v. Land Baden-Württemberg,* Case C-373/13, Court of Justice of the European Union 24 June 2015, para. 97.

[158] Ending International Protection, EASO Professional Development Series for Members of Courts and Tribunals, 2nd Ed., European Asylum Support Office, (2021): 61; See., Citation: Council of State (Conseil d'état, France), judgment of 30 January 2019, OFPRA c M. A.C.B., No 416013 A, FR:CECHR:2019:416013.20190130, Para.18.

[159] Ibidem, cited: National Court of Asylum Law (CNDA, France), judgment of 31 December 2018, M. O., No 17013391, Para. 18.

curity of the state and society. This conclusion was based on signs of allegiance to jihadist terrorism during his imprisonment, including continuous verbal and physical assaults on other prisoners and prison staff, which demonstrated his support for the Islamic State.[160] Accordingly, the court logically considered such circumstances sufficient to establish the existence of a threat to state and public security. Regarding the practice of the common courts of Georgia, in one case, the Tbilisi City Court explained that in the case under consideration, there were no solid grounds in the state security letter, which deprived the court of the possibility to thoroughly explain the probability of creating a threat to the applicant.[161]

Moreover, the court noted that in a document containing classified information, the risks that may pose a threat to state security must be confirmed with a high degree of certainty.[162] It is also noteworthy that the Court of Justice of the European Union has explained that Member States cannot use the provision of a risk to national security in the context of general prevention. Therefore, they must directly relate it to the specific case.[163] As such, there must be a "reasonable basis" to consider the refugee a threat to the security of the country where they reside. Thus, the decision-making body cannot act arbitrarily or formally; instead, it must specifically investigate, based on an ex nunc assessment, whether there is a future risk, and the conclusion on this issue must be supported by well-founded evidence.

3. Information about the Country of Origin

When assessing the element of risk of ill-treatment, it is important to analyze information about the country of origin and its relevance

[160] Ibidem.

[161] Decision N3/8221-24 of the Tbilisi City Court, 20 February 2025.

[162] Ibidem.

[163] *Commission v. Poland, Hungary and the Czech Republic*, Joined Cases C-715/17, C-718/17, and C-719/17, Court of Justice of the European Union, April 2, 2020.

to the individual's personal circumstances.[164] In the Saadi v Italy case, the European Court of Human Rights explained that the examination of information about the country of origin had a substantial basis in the context of thoroughly investigating the case, especially when the matter concerns refugee rights and the internal security of the state.[165] The Court pointed out that despite the existing threat related to the individual's involvement in terrorist activities, it would not be relevant to weigh this against the violation of refugee rights, as these rights are by their nature absolute.[166] Accordingly, weighing the risk of ill-treatment is unreasonable in the context of threats to state security, since imposing a high standard of proof on the individual, when there is already a clear violation of Article 3 of the Convention identified on the basis of relevant information, becomes meaningless.[167] Moreover, the state's position, which justifies expulsion if a high standard of evidence is established in the presence of a risk to national security that outweighs the risks of ill-treatment, is unjustified because it clearly implies expelling a person to a country where this person's fundamental rights are threatened.[168]

Accordingly, weighing risks where the risk of violation of absolute rights is real, and this risk has been verified by relevant authoritative sources and an examination of the individual's personal circumstances, the threat to state security, no matter how clearly it may be substantiated, cannot be equated to those human rights for which derogation is impermissible under any circumstances. Unlike in the Saadi v Italy and Chahal v UK cases, in the H.L.R. v France decision, the European Court did not find a violation of Article 3 of the Convention, despite

[164] Lambert, 536–539.

[165] *Saadi v. Italy*, App. No. 37201/06, European Court of Human Rights, 28 February 2008, para. 143.

[166] Ibidem, para. 139.

[167] Ibidem, para. 140.

[168] *K.I. v. France*, App. No. 5560/19, European Court of Human Rights, 15 April 2021, para. 124.

the substantive similarity of the cases.[169] Based on the proprio motu principle, the Court assessed information about the country of origin and determined that there was no risk of ill-treatment.[170] Notably, in a decision of the Tbilisi Court of Appeals, the court did not share the opinion of the first-instance court regarding the administrative body's incomplete investigation of the circumstances. It noted that despite the facts established by the decision-making body, which were based on internationally recognized sources and reports on the situation in the country, granting international protection was not justified due to the threat to state security, which in the court's view, given the specific circumstances, was of higher value than the risk of violating the individual's rights.[171] Therefore, in the context of examining the risk element, the standard for evaluating evidence and the analysis of information about the country of origin are substantially important in the context of protecting private and public interests.

VI. Conclusion

The Georgian court practice in asylum cases is characterized by inconsistent decisions, whose legal justifications largely rely on unsubstantiated and vague evidence of threats to state security. Furthermore, in the decisions of administrative bodies and courts, when balancing private and public interests, there is no specific and detailed demonstration of the superior nature of the legal interests involved. Accordingly, in the context of sharing the Common European Asylum System and the experiences of foreign countries, and in balancing the protection of refugee rights with state security interests, it is crucial to consider the following recommendations:

[169] *H.L.R. v. France*, App. No. 24573/94, European Court of Human Rights, 29 April 1997, para. 44.

[170] Ibidem, para. 42.

[171] Decision N3b/1610-23 of the Tbilisi Court of Appeal, 22 February 2024.

1. It is essential for Georgia's asylum system to adopt the European model, which supports a balanced approach by the parties and unequivocally prohibits decisions based on undisclosed information to applicants, where the court relies solely on the reasoning of the administrative body and the party and their lawyers are deprived of the opportunity to challenge the reasons for the negative decision against them. Therefore, it is extremely important that the decisions of the administrative body and the court clearly reflect the grounds that link the asylum seeker or the person with international protection to the circumstances defined in Article 69, Paragraph 2 of the Georgian Law on International Protection. Indicating the specific grounds of this norm will provide greater clarity about the reasons for which the denial of refugee status is justified on the grounds of a threat to state security;
2. When rejecting refugee status and enforcing a deportation decision on the grounds of a threat to state security, the assessment of circumstances must include considering, based on the standard of a well-founded suspicion, the gravity and nature of the committed or expected crime, the real nature of the potential threat, its seriousness, and the legal risks associated with future danger. Furthermore, if the administrative body or the court, applying the "Reasonably Foreseeable Future" test, determines that the return of the applicant to the country of origin would result in the violation of certain rights that may amount to persecution under the Convention, it is crucial that the decision of the administrative body or the court satisfies the criteria of a legitimate aim. In this framework, it must be evaluated whether the refusal to grant status or the decision to deport the person was the only effective means of achieving the stated legitimate objective. More-

over, the assessment should consider whether the expected risks to national security would be eliminated or significantly reduced by the removal of the applicant from the country or by the refusal to grant refugee status. Accordingly, it is fundamentally important that, in the decision-making process on expulsion, particular attention is paid to the possibility of deportation to a safe third country if such an option is feasible for the individual in question following an assessment of the specific circumstances;

3. It is extremely important for the administrative body and the court to conduct a detailed analysis of information about the country of origin, including an assessment of the reliability of relevant sources and a cross-check of this information as the basis for researching the individual profile of the applicant. In cases where it is determined that the applicant faces a risk of absolute rights violations, the administrative body and the court should not assess the scale of the individual's risks and the anticipated risks to the state on the basis of the "fair balance" test.

In conclusion, the research suggests that aligning the regulation of the denial of refugee status and deportation decisions on the grounds of state security with the Eurodirective framework is indeed a step forward, although certain shortcomings are still observed in practice. Addressing these problems is possible by adhering to the equality of arms principle and adversarial proceedings, the reasonable application of the fair balance test, the comprehensive assessment of circumstances investigated by the state security, the establishment of the criterion of a legitimate public objective, and the thorough examination of information about the country of origin in connection with the applicant's individual circumstances.

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