

# ASSESSMENT OF THE PRINCIPLE OF CREDIBILITY WITH REGARD TO GRANTING REFUGEE STATUS

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## I. Introduction

The protection of refugee rights constitutes one of the major challenges in international law.<sup>1</sup> Due to the current global situation, internal conflicts, personal reasons, and various other factors, individuals are often forced to leave their countries and seek refuge in a safe state.<sup>2</sup> The number of such individuals has reached 123.2 million.<sup>3</sup> According to data from the Ministry of Internal Affairs of Georgia, for the year of 2024, 1,641 individuals have been registered as asylum seekers in Georgia.<sup>4</sup> When making an emotionally driven decision such as leaving one's country – especially in the light of fear and other unfortunate factors – the process of granting refugee status becomes critically important, encompassing both legal and ethical values. Due to the complexity of this process, it is only natural that various problematic issues arise; among them, the assessment of credibility during the examination of international protection claims for the purposes of status determination stands out as one of the most essential components, incorporating a range of evaluative criteria.<sup>5</sup> Credibility assessment is a complex and multifacet-

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<sup>1</sup> Hathaway, 272.

<sup>2</sup> Ustun, 363.

<sup>3</sup> UNHCR – The UN Refugee Agency, Global Trends: Rofced Displacement in 2024. <https://www.unhcr.org/global-trends-report-2024>

<sup>4</sup> Ministry of internal affairs, Number of citizens registered as asylum seekers 2024 [https://info.police.ge/page?id=863&parent\\_id=258](https://info.police.ge/page?id=863&parent_id=258)

<sup>5</sup> Bodström, 623.

ed process that often depends on the applicants' ability to recall – specifically, how accurately they can remember and recount events, particularly when those events involve traumatic experiences or instances of torture.<sup>6</sup> It is worth examining to what extent the competent administrative authority takes into account the applicant's psycho-emotional condition when assessing credibility. Where is the boundary drawn between private and public interests – particularly when, on the one hand, stands the individual's fundamental right to protection, and on the other, the state's obligation to ensure national security? The proper, effective, and fair assessment of credibility determines the future of many individuals, ensures the full implementation of international obligations, and upholds the legality of the refugee status determination process. Therefore, given its significance and specificity, credibility assessment remains one of the most pressing issues in this field.

In Georgia, the procedures for rejecting asylum applications lack transparency.<sup>7</sup> At the stage of obtaining refugee status, the asylum seeker must demonstrate a well-founded fear of persecution, which must be substantiated by appropriate evidence.<sup>8</sup> For the substantive examination of the case, the submission of adequate evidence by the applicant is of crucial importance.<sup>9</sup> All of this places an additional burden on the applicant. The process requires the evaluation of numerous factors, such as the natural characteristics of memory, psychological trauma, and other relevant circumstances.<sup>10</sup> The UNHCR has developed specific criteria for the assessment of credibility.<sup>11</sup>

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<sup>6</sup> McDonald, 118.

<sup>7</sup> Institute for Development of Freedom of Information, *The Procedure for Refusing Asylum in Georgia Is Not Transparent* (Tbilisi, 2017), 3.

<sup>8</sup> Law N42-1b of Georgia "On International Protection", 1 December 2016, Art. 13.

<sup>9</sup> *Saadi v. Italy*, App. No. 37201/06, European Court of Human Rights, 28 February 2008, para. 128.

<sup>10</sup> *Ibidem*.

<sup>11</sup> European Asylum Support Office, *Practical Guide: Evidence Assessment* (Luxembourg: European Asylum Support Office, 2015).

In the case law of the European Court of Human Rights, numerous important decisions have been adopted concerning the issue of credibility, which establish the legal standards for credibility assessment and specifically clarify its role in the protection of human rights.<sup>12</sup> Credibility assessment requires particular caution with regard to individual circumstances.

The aim of this article is to explore, examine, and identify the legal and ethical issues that arise during the credibility assessment stage, including how administrative authorities and the common courts of Georgia apply decisions of the European Court of Human Rights in credibility evaluations, whether such decisions are applied on a case-by-case basis, and to what extent international judgments and treaties are utilized. For this purpose, the study employs comparative legal, systemic, analytical, and descriptive research methods. Through the comparative legal method, the case law of the European Court will be analyzed in the context of refugee status determination. Systemic, analytical, and descriptive methods will be used to assess the accuracy and relevance of procedures for granting refugee status.

## II. The Role of the Principle of Credibility in the Refugee Status Determination Process

Refugee status is granted to a foreign national or a stateless person who is outside their country of origin and has a well-founded fear of being persecuted on the grounds of race, religion, nationality, mem-

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<sup>12</sup> *N. v. Sweden*, App. No. 23505/09, European Court of Human Rights, 20 July 2010, para. 42; *F.G. v. Sweden*, App. No. 43611/11, European Court of Human Rights, 23 March 2016, para. 145; *A.A. v. Switzerland*, App. No. 58802/12, European Court of Human Rights, 7 January 2014, para. 41; *J.K. and Others v. Sweden*, App. No. 59166/12, European Court of Human Rights, 23 August 2016, para. 53; *Sufi and Elmi v. the United Kingdom*, App. Nos. 8319/07 and 11449/07, European Court of Human Rights, 28 June 2011, para. 202.

bership in a particular social group, or political opinion, and who is unable or, owing to such fear, unwilling to return to the country of origin or to avail oneself of its protection.<sup>13</sup> One of the core elements in determining refugee status is the assessment of credibility, which plays a crucial role in establishing whether the applicant meets the criteria for being granted refugee status.<sup>14</sup> The administrative authority and the court assess the truthfulness and plausibility of the information provided by the applicant.<sup>15</sup>

The procedure for granting refugee status is closely linked to the determination of the truthfulness of the information provided by the applicant and involves several stages, namely: submitting an application, registering the individual as an asylum seeker, and conducting the asylum seeker's interview.<sup>16</sup> The interview is the initial stage during which primary information is obtained from the asylum seeker, and it plays an important role in the subsequent examination and credibility assessment process. In many cases, this represents the applicant's first direct interaction with the administrative authority of the host country. Within four months from the registration of the application, the Ministry conducts an interview with the asylum seeker.<sup>17</sup> In the process of determining refugee status, individual interviews are conducted not only with the asylum seeker but also with each adult member of their family, provided they are present in the territory of Georgia.<sup>18</sup> The interview is one of the key procedures through which it is possible to obtain detailed and specific information from the applicant.<sup>19</sup>

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<sup>13</sup> Law N42-Ib of Georgia "On International Protection", 1 December 2016, Art. 15.

<sup>14</sup> Kinchin, Mougouei, 1.

<sup>15</sup> Decision N3/7538-15 of the Tbilisi City Court, 5 January 2016.

<sup>16</sup> Law N42-Ib of Georgia "On International Protection", 1 December 2016, Art. 27.

<sup>17</sup> Ibidem, Art. 35.

<sup>18</sup> Order N33 of the Minister of Internal Affairs of Georgia on the Approval of the Asylum Procedure, 6 July 2020, Art. 27.

<sup>19</sup> European Asylum Support Office, Practical Guide: Evidence Assessment (Luxembourg: European Asylum Support Office, 2015), 10.

Following the completion of the interview and registration stages, the administrative authority identifies the essential facts, the evaluation of which takes place within the framework of the principle of credibility.<sup>20</sup> The conclusion issued by the relevant structural unit of the Ministry regarding the granting or refusal of asylum is based on the following factors: the asylum seeker's registration interview; the interview conducted with the asylum seeker; the analysis of the credibility of the information and facts provided by the asylum seeker, as well as the applicant's behavior; the verification of information obtained from the asylum seeker and accompanying family members; country-of-origin information (COI); and the comprehensive examination of the circumstances related to the applicant's departure from the country of origin, transit through third countries, and entry into and stay in Georgia.<sup>21</sup>

Credibility assessment is a crucial component of the refugee status determination process and significantly influences the final decision. At every stage, it is essential for the applicant to provide the administrative authority with consistent and coherent information; therefore, a clear explanation of the content and a precise definition of the assessment criteria are imperative.

### 1. Definition of the Principle of Credibility

The principle of credibility refers to the legal assessment of the reliability of the information provided and the evidence submitted by the applicant during the stages of application, registration, and interview.<sup>22</sup> Credibility assessment generally involves the examination of three main aspects: internal consistency – whether the applicant's state-

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<sup>20</sup> Decision N3/3111-24 of the Tbilisi City Court, 31 July 2024.

<sup>21</sup> Law N42-1b of Georgia "On International Protection", 1 December 2016, Arts. 27, 35, 53.

<sup>22</sup> Beyond Proof: Credibility Assessment in EU Asylum Systems (Brussels: European Union Agency, 2013), 13.

ments are coherent with one another; external consistency – whether the information provided aligns with known and verified facts; and plausibility and reasonableness – whether the described circumstances are realistic and likely to have occurred.<sup>23</sup> As a result of this assessment, it is determined which evidence may be considered credible and used in the process of establishing a well-founded fear of persecution and the real risk of serious harm.<sup>24</sup>

The principle of credibility is one of the essential components of the refugee status determination process. It is based on the assessment of the consistency, plausibility, and conformity of the applicant's statements with objective facts. This principle serves as the basis for determining whether the claim is credible and whether it can be used to establish a well-founded fear of persecution.

## 2. Assessment Criteria under the Principle of Credibility

Credibility assessment is not formally listed among the criteria for granting refugee status; however, it is essential for the applicant to substantiate a real and well-founded fear of persecution.<sup>25</sup> The protection of refugees has always had a political dimension;<sup>26</sup> as a result, states have developed their own distinct criteria for assessing credibility.<sup>27</sup> These criteria are shaped by the state's internal policies and its interest in ensuring national security.<sup>28</sup> One of the core principles of immigration policy is the assessment of credibility in relation to asylum seekers.<sup>29</sup> According to the practice developed by UNHCR, five key

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<sup>23</sup> Weston, 88.

<sup>24</sup> European Union Agency, *Beyond Proof: Credibility Assessment in EU Asylum Systems* (Brussels, 2013), 13.

<sup>25</sup> Gyulai, 22.

<sup>26</sup> Goodwin-Gill, 560.

<sup>27</sup> Ustun, 365.

<sup>28</sup> Goodwin-Gill, 560.

<sup>29</sup> UK Home Office, *Assessing Credibility and Refugee Status in Asylum Claims Lodged on or after 28 June 2022* (Accessible) (London: UK Home Office, 2023), 7.

criteria are considered in the assessment of credibility, namely: (1) sufficiency of detail and specificity; (2) internal consistency – the coherence between the information provided orally and/or in written or material form by the asylum seeker; (3) external consistency – the consistency between the applicant’s statements and the information provided by family members and/or other witnesses; (4) consistency with the country-of-origin information (COI); and (5) plausibility.<sup>30</sup> In one particular case, the Tbilisi City Court applied credibility assessment criteria recognized in international practice in the reasoning of its decision.<sup>31</sup> In another ongoing case concerning the granting of refugee status to the applicant’s relative, the court did not address the aforementioned credibility assessment criteria separately, nor did it place any particular emphasis on them in its decision.<sup>32</sup> Nevertheless, the court did, to some extent, take into account the international legal framework and practice, which was reflected in the reasoning of its decision.<sup>33</sup> It is also worth noting that, during the court hearing, the judge refused to accept the claimant’s new arguments, emphasizing that such information should have been submitted in advance to the administrative authority. Consequently, the court did not consider the newly presented evidence at the judicial stage to be credible.

In the process of assessing credibility, the court must evaluate the accuracy and substantiation of the presented facts, as well as the logical coherence and consistency of the circumstances described by the asylum seeker.<sup>34</sup> The court considers the credibility assessment to be fundamentally based on the plausibility, seriousness, consistency, and perceived significance of the information provided by the appli-

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<sup>30</sup> European Asylum Support Office, Practical Guide: Evidence Assessment (Luxembourg: European Asylum Support Office, 2015), 10.

<sup>31</sup> Decision N3/3112-24 of the Tbilisi City Court, 17 July 2024.

<sup>32</sup> Decision N3/3111-24 of the Tbilisi City Court, 31 July 2024.

<sup>33</sup> Ibidem.

<sup>34</sup> Decision N3683-16 of the Tbilisi City Court, 14 September 2016.

cant.<sup>35</sup> However, even when the information provided is consistent and credible, the applicant may still receive a refusal from the administrative authority. This suggests that the submission of relevant evidence is essential, and that a persuasive and coherent narrative alone may not suffice. Nonetheless, neither the law nor judicial practice explicitly addresses this issue. Any inconsistency in the content of the information is evaluated by the administrative authority on the basis of the principle of credibility. Given its importance, both the administrative authority and the court must interpret the principle of credibility in accordance with human rights protection standards. The final decision must be based on an analysis of the potential consequences of the applicant's expulsion, which includes both the general conditions in the receiving country and a detailed examination of the applicant's personal circumstances.<sup>36</sup> During the asylum-seeking stage, earning the applicant's trust is of particular importance, as the process involves evaluating the credibility of the applications and documents they submit in support of their own protection.<sup>37</sup> If the information provided casts reasonable doubt on the asylum seeker's claims, the individual is obliged to clarify any potential inconsistencies with a satisfactory and substantiated explanation.<sup>38</sup>

In the process of granting refugee status, credibility assessment is based on the following internationally recognized criteria: sufficiency of detail, internal consistency between the oral and/or material information provided by the asylum seeker, consistency of the applicant's statements with those of family members and/or other witnesses, consistency with the country-of-origin information, and overall plausi-

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<sup>35</sup> Decision N3/3111-24 of the Tbilisi City Court, 31 July 2024.

<sup>36</sup> *Vilvarajah and Others v. the United Kingdom*, App. Nos. 13163/87, 13164/87, 13165/87, 13447/87, and 13448/87, European Court of Human Rights, 30 October 1991, para. 107.

<sup>37</sup> *N. v. Sweden*, App. No. 23505/09, European Court of Human Rights, 20 July 2010, par. 42.

<sup>38</sup> *Ibidem*.



bility. Although Georgian courts – including the Tbilisi City Court – reflect these criteria in certain cases, their application in practice is often superficial and merely formal. The lack of in-depth analysis indicates that the genuine implementation of credibility assessment standards in Georgia is still at a formative stage.

### III. Credibility Assessment Based on Individual Grounds of Persecution and its Impact on Human Rights

A refugee is a person who may be subjected to persecution on the grounds of race, religion, belief, nationality, membership in a particular social group, or political opinion.<sup>39</sup> Each of these grounds is linked to the personal characteristics of the asylum seeker. The International Association of Refugee and Migration Judges (IARMJ) recognizes the importance of protecting the rights of refugees and actively supports this objective.<sup>40</sup> The IARMJ holds that protection from persecution on the grounds of race, belief, nationality, membership in a particular social group, or political opinion constitutes an individual right established under the norms of international law.<sup>41</sup> Although the rights of asylum seekers and refugees are protected under both international and domestic law, their practical realization remains limited.<sup>42</sup>

The rights of refugees are protected under the Constitution of Georgia. At the stage of granting refugee status, it is essential to ensure the proper protection of the applicant's rights.<sup>43</sup> The rights set forth in the Universal Declaration of Human Rights have been firmly incorporated into the national legislation of many countries, as well

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<sup>39</sup> Convention Relating to the Status of Refugees, 28 July 1951, Art. 1.

<sup>40</sup> European Union Agency for Asylum, Qualification for International Protection (Tbilisi: EUAA, 2022), 3.

<sup>41</sup> Ibidem.

<sup>42</sup> Amit, 560.

<sup>43</sup> Nirmal, 94.

as into international legal instruments.<sup>44</sup> When discussing refugee rights, it is important to highlight the 1951 Convention Relating to the Status of Refugees, which Georgia acceded to by Resolution No. 1996-II of the Parliament of Georgia on 28 May 1999. By doing so, Georgia assumed international obligations aimed at protecting the rights of refugees, along with ensuring fairness in the refugee status determination process. One of the main objectives of the adoption of Georgia's Law on International Protection was to align national legislation as closely as possible with international standards.<sup>45</sup> At the stage of status determination, the administrative authority is obliged not only to analyze the facts presented by the applicant, but also to safeguard the applicant's private interests, primarily by ensuring the protection of their fundamental rights.<sup>46</sup> At the stage of seeking asylum, applicants are protected from deportation; however, as this represents a transitional period for them, they are often unable to fully enjoy fundamental rights such as access to education, employment, family life, and other basic benefits.<sup>47</sup>

The principle of credibility has a significant impact on the protection of human rights, as the evaluation of asylum seekers' claims is fundamentally based on this principle. When credibility assessments are not conducted in good faith, objectively, and transparently, there is a risk that individuals who genuinely face persecution or a real risk of serious harm may be left without access to protection mechanisms. In this process, particular importance is attached to the consideration of the applicant's individual characteristics, as the risk of persecution is directly linked to these personal attributes – such as race, religion, nationality, membership in a particular social group, and political opinion.

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<sup>44</sup> Amit, 557.

<sup>45</sup> Explanatory Note to the Draft Law of Georgia "On International Protection", Tbilisi.

<sup>46</sup> Wachenfeld, 183.

<sup>47</sup> Amit, 560.

## 1. Specific Aspects of Credibility Assessment in Cases of Persecution on Religious Grounds

In refugee cases, freedom of religion constitutes one of the most sensitive and subjective grounds for seeking asylum.<sup>48</sup> Furthermore, it presents unique challenges in terms of evaluation.<sup>49</sup> Freedom of religion encompasses an individual's right to have or not to have a religious belief, to change that belief, and to freely express it.<sup>50</sup> Freedom of thought, conscience, and religion includes beliefs that are characterized by sufficient coherence, seriousness, and substantive significance.<sup>51</sup> Decision-making authorities often question the claims of asylum seekers and consider that their affiliation with a persecuted religious group may be asserted solely to avoid deportation.<sup>52</sup> In each individual case, the authorities examine the sincerity of the foreign national's belief and seek to determine their religious conviction.<sup>53</sup>

As part of this assessment, the authorities evaluate the circumstances surrounding the conversion and determine whether the applicant would be able to live according to their new faith in their country of origin.<sup>54</sup> In one of the cases, the court agreed with the reasoning of the administrative body and found it justified that the Ministry denied the asylum seeker refugee status.<sup>55</sup>

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<sup>48</sup> *F.G. v. Sweden*, App. No. 43611/11, European Court of Human Rights, 23 March 2016, para. 145.

<sup>49</sup> Musalo, 218.

<sup>50</sup> International Covenant on Civil and Political Rights, 16 December 1966, Art. 18.

<sup>51</sup> *Eweida and Others v. the United Kingdom*, App. Nos. 48420/10, 59842/10, 51671/10, and 36516/10, European Court of Human Rights, 15 January 2013, para. 81; *Bayatyan v. Armenia*, App. No. 23459/03, European Court of Human Rights, 7 July 2011, para. 110.

<sup>52</sup> Musalo, 218.

<sup>53</sup> *F.G. v. Sweden*, App. No. 43611/11, European Court of Human Rights, 23 March 2016, para. 145.

<sup>54</sup> Ibidem.

<sup>55</sup> Decision N3683-16 of the Tbilisi City Court, 14 September 2016.

Specifically, the claimant failed to substantiate the existence of persecution in the country of origin, as well as the risk of physical harm faced upon return.<sup>56</sup> The Ministry did not consider the asylum seeker's explanation regarding the religious affiliation to be credible, as the applicant lacked knowledge of the fundamental, general, and basic tenets of the specific faith, and the narrative contradicted the information obtained by the Ministry about the country of origin.<sup>57</sup>

Granting refugee status becomes even more complex when the applicant claims to have converted to a religion that constitutes a ground for persecution in the country of origin, and this conversion occurred in a so-called *sur place* situation – after leaving the home country.<sup>58</sup>

In one case, the Swedish authorities were confronted with a situation in which an individual had converted to Christianity in Sweden (*sur place*). Initially, they had to determine whether the applicant's conversion was sincere and credible, and whether it was based on serious and significant reasons, before assessing whether the person would face treatment upon return to Iran that would constitute a violation of Articles 2 and 3 of the Convention.<sup>59</sup>

In the context of asylum claims based on religious grounds, two distinct scenarios can be identified in practice: in the first scenario, the individual converts to a new religion while still in the country of origin and leaves the country for that reason; in the second one, the applicant adopts a new faith in the host country – in a so-called *sur place* situation. In both cases, it is the responsibility of the decision-making authority and the court not only to determine the applicant's religious affiliation, but also to assess whether the conversion was sincere, serious, and rooted in genuine personal identity.

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<sup>56</sup> Ibidem.

<sup>57</sup> Ibidem.

<sup>58</sup> Musalo, 218.

<sup>59</sup> *F.G. v. Sweden*, App. No. 43611/11, European Court of Human Rights, 23 March 2016, para. 144.

At the subsequent stage, once the authenticity of the applicant's faith is established, the authorities examine whether the applicant's country of origin is likely to become aware of the religious conversion and whether such awareness would result in persecution, ill-treatment, or a threat to the applicant's life. Accordingly, in cases involving claims for refugee status based on religion, particular attention is paid not only to the formal declaration of faith but also to a comprehensive analysis of the circumstances that demonstrate the genuineness of the belief and the risk of persecution.

## 2. Credibility Assessment in Cases of Persecution Based on Sexual Orientation and Gender Identity

In many regions of the world, individuals who have – or who are perceived to have – a different sexual orientation and/or gender identity are systematically subjected to serious legal violations and forms of persecution, which constitute a grave breach of international human rights protection standards.<sup>60</sup> Establishing the applicant's membership in the LGBTQ community is closely linked to the assessment of credibility.<sup>61</sup> Such cases must be assessed on an individual basis, taking into account the applicant's psychological condition and emotional state, as well as a full consideration of relevant circumstances.<sup>62</sup> The U.S. Board of Immigration Appeals reviewed the case of *Toposo-Alfonso*, a Cuban national who sought asylum in the United States due to a fear of persecution based on his sexual orientation.<sup>63</sup> This is one of the landmark decisions that established the standard for reviewing similar cases.

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<sup>60</sup> UNHCR, Guidelines on International Protection No. 9: Claims to Refugee Status Based on Sexual Orientation and/or Gender Identity, 2012, 2.

<sup>61</sup> UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection (Geneva: UNHCR, 2019), 181.

<sup>62</sup> *Ibidem*.

<sup>63</sup> *Matter of Toboso-Alfonso*, US Board of Immigration Appeals, A-2322064, 12 March 1990.

According to this standard, the following elements must be assessed: first, the applicant's membership in a particular social group must be established; second, the applicant must demonstrate a real risk of persecution in the country of origin on the basis of sexual orientation (e.g. arrest, physical or psychological violence, discrimination); third, it must be shown that the applicant personally faces this risk; and finally, that the state is either unable or unwilling to provide effective protection against such persecution.<sup>64</sup>

In asylum cases based on sexual orientation, due to the difficulties in obtaining and presenting evidence, the assessment of the claim largely depends on the information provided by the applicant.<sup>65</sup> There is no single universal formula for obtaining adequate information from the applicant, nor is there a specific list of 'correct' answers.<sup>66</sup> Under such circumstances, decision-makers should, in cases of doubt, give the benefit of the doubt to the applicant's account.<sup>67</sup>

In cases of persecution based on sexual orientation and gender identity, credibility assessment plays a decisive role, as objective evidence is often unavailable. Decisions in such cases must be based on individualized evaluations, taking into account the applicant's psychological condition and the credibility of their narrative. According to established case law, the applicant must prove membership in a particular social group and demonstrate a real risk of persecution, while the state must be shown to be either unable or unwilling to provide protection. Under these conditions, even in the presence of doubt, the benefit of the doubt should be given to the applicant's account.

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<sup>64</sup> Ibidem.

<sup>65</sup> UNHCR, Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity (Geneva: UNHCR, 2008), 18.

<sup>66</sup> UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection (Geneva: UNHCR, 2019), 181.

<sup>67</sup> UNHCR, Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity (Geneva: UNHCR, 2008), 18.

### 3. Credibility Assessment in Evaluating Claims of Persecution on Political Grounds

An individual's political opinion is one of the legally recognized grounds for persecution.<sup>68</sup> The mere fact that an individual's political opinions differ from those of the government is not sufficient to qualify for refugee status – it must be demonstrated that the fear of persecution arises specifically because of those political views.<sup>69</sup> For persecution on political grounds to be considered well-founded, it must be established that the individual's political opinions are unacceptable to the authorities, conflict with their political interests or methods of operation, and are either known to the authorities or imputed to the individual by them (for example, in the case of teachers, writers, or other public figures).<sup>70</sup> The ground of political opinion is not limited to support for a specific political party or ideology – it encompasses any form of opinion concerning matters related to the state, government, public affairs, or official policy.<sup>71</sup>

In one case, an asylum seeker from Iran applied for asylum in Sweden on the grounds that he had cooperated with opponents of the Iranian regime and faced political persecution in his country of origin. Additionally, after arriving in Sweden, he converted to Christianity, which placed him at risk of execution upon return to Iran.<sup>72</sup> In this case, the court clarified that if there are substantial grounds for believing that, upon expulsion, an individual would face a real risk of execution, torture, or inhuman or degrading treatment, then the contracting states are prohibited from carrying out the expulsion under Articles 2 and 3.<sup>73</sup>

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<sup>68</sup> Convention Relating to the Status of Refugees, 28 July 1951, Art. 1.

<sup>69</sup> UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection (Geneva: UNHCR, 2019), 181, 24.

<sup>70</sup> Ibidem.

<sup>71</sup> Ibidem, 197.

<sup>72</sup> *F.G. v. Sweden*, App. No. 43611/11, European Court of Human Rights, 23 March 2016, para. 13.

<sup>73</sup> Ibidem, para. 110.

#### 4. The Conflict of Fundamental Rights

Everyone has the right to seek asylum in another country and to enjoy asylum there.<sup>74</sup> Any individual whose fundamental rights are violated in their home country has a legitimate right to escape persecution and to seek protection in a state that provides safe environment.<sup>75</sup> This right applies regardless of whether the violations in question meet the criteria set out in the Refugee Convention.<sup>76</sup>

States have the right, within the framework of international law and treaties – including their obligations under the Refugee Convention – to control the entry, residence, and expulsion of foreigners within their territory.<sup>77</sup> The underlying purpose of the principle of credibility is grounded in the public interest, particularly in safeguarding national security.<sup>78</sup> Restrictions imposed by the state are compatible with Article 6 of the Convention only if the state pursues legitimate aims and the principle of proportionality is observed between the measures applied and the objectives sought.<sup>79</sup> The protection of refugees is not merely an act of goodwill; it is a legal obligation undertaken by the state. Individuals who meet the relevant criteria must be ensured access to robust legal protection mechanisms. In each case, the matter must be assessed on an individual basis, relying on a comprehensive evaluation of the specific circumstances of the case.<sup>80</sup>

No contracting state shall expel or return ('refouler') a refugee to the frontiers of a territory where their life or freedom would be threat-

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<sup>74</sup> Universal Declaration of Human Rights, 10 December 1948, Art. 14.

<sup>75</sup> Ibidem.

<sup>76</sup> Amit, 560.

<sup>77</sup> *Hirsi Jamaa and Others v. Italy*, App. No. 27765/09, European Court of Human Rights, 23 February 2012, para. 113

<sup>78</sup> Decision N3ð/1076-15 the Tbilisi Court of Appeals, 7 December 2016.

<sup>79</sup> *Golder v. the United Kingdom*, App. No. 4451/70, European Court of Human Rights, 21 February 1975, para. 38.

<sup>80</sup> Decision N3ð/1076-15 the Tbilisi Court of Appeals, 7 December 2016.



ened on account of their race, religion, nationality, membership in a particular social group, or political opinion.<sup>81</sup> This provision shall not apply to refugees who are, on reasonable grounds, regarded as a danger to the security of the country in which they are present, or who, having been convicted by a final judgment of a particularly serious crime, constitute a danger to the community.<sup>82</sup>

This precisely reflects the state's obligation to strike a fair balance between the protection of public and private interests when assessing an individual's credibility.<sup>83</sup> Because the granting of refugee status inherently entails both positive and negative obligations on the part of the state.<sup>84</sup>

In the process of granting refugee status, the state's positive and negative obligations require a proportional protection of both individual rights and the public interest. On the one hand, international law recognizes every person's right to seek asylum and to be protected from persecution – even in cases where the violations do not formally fall within the categories set out in the Refugee Convention. On the other hand, states retain sovereign authority to control the entry, residence, and expulsion of foreigners in a manner that preserves national security and public order. One of the primary mechanisms for balancing these two values is the assessment of credibility. This principle is not merely a technical tool – it reflects the state's responsibility to evaluate not only the information submitted by the applicant, but also to ensure fairness in the decision-making process, an individualized approach, and respect for fundamental human rights.

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<sup>81</sup> Convention Relating to the Status of Refugees, 28 July 1951, Art. 31.

<sup>82</sup> Ibidem.

<sup>83</sup> Decision N3ð/1076-15 the Tbilisi Court of Appeals, 7 December 2016.

<sup>84</sup> Ibidem.

#### IV. Challenges in Assessing the Principle of Credibility in the Refugee Status Determination Process

As outlined in the previous chapters, credibility assessment is one of the most complex stages in the refugee status determination process. Due to its inherently multifaceted nature, credibility assessment encompasses numerous legal and ethical challenges. When a person leaves their country, this often also implies leaving behind their place of residence – a decision that is far from easy and typically requires a strong and well-founded justification.<sup>85</sup> Such a decision may be prompted by a variety of reasons, most notably those related to an individual's personal and/or psychological, social, or even philosophical outlook. In such cases, it is essential to assess the extent to which the person was compelled to leave their country against their will. Often, the only decisive element in this evaluation may be the existence of extremely difficult living conditions.<sup>86</sup>

The administrative authority must examine the factual circumstances of the case, identify potential grounds for persecution, and assess them accordingly. Frequently, different grounds for persecution overlap. For example, an individual may simultaneously be a political opponent and a member of a particular religious or ethnic group. The combination of such factors, when considered alongside the applicant's individual circumstances, may be crucial in substantiating a well-founded fear of persecution.<sup>87</sup> One of the most critical stages in the refugee status determination process is the assessment of the risk of ill-treatment upon return to the country of origin. At this stage, the approach of the relevant administrative authority is of decisive importance, as it must determine the likelihood of such treatment occurring.

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<sup>85</sup> Karabulut, 194.

<sup>86</sup> Ibidem.

<sup>87</sup> UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees (Geneva: UNHCR, 2019), 23.

This assessment raises significant questions regarding the credibility of the evidence presented and the objective analysis of factual circumstances, thereby requiring a fair and impartial approach.<sup>88</sup>

It is the applicant's responsibility to identify the circumstances that form the basis for seeking asylum. Accordingly, if the applicant does not consider it necessary to disclose the specific personal grounds for the asylum request – be it religious or political beliefs, sexual orientation, or any other reason – and deliberately refrains from doing so, the competent state authority cannot independently make a determination or establish such grounds on behalf of the applicant.<sup>89</sup>

According to the court's interpretation, persecution or a well-founded fear thereof arises in situations where a person is systematically deprived of fundamental rights and is unable to obtain protection from the state – either because the violations originate from the authorities themselves or because the state is unwilling or unable to provide protection. A person can be considered a refugee only if he/she is compelled to leave the country of origin due to a fear of persecution, and not by choice. Persecution must involve serious violations, such as torture, violence, or other forms of harm, and must create a necessity for leaving the country of origin.<sup>90</sup>

### 1. The Risks of Subjective Assessment in Administrative Authorities

A lack of credibility may be one of the main reasons for refusing to grant refugee status.<sup>91</sup> In the absence of a thorough assessment of factual circumstances, the risk of biased interpretation and erroneous conclusions increases.<sup>92</sup> There are frequent cases in which individuals

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<sup>88</sup> Ustun, 373.

<sup>89</sup> *F.G. v. Sweden*, App. No. 43611/11, European Court of Human Rights, 23 March 2016, para. 127.

<sup>90</sup> Decision N3/3111-24 of the Tbilisi City Court, 31 July 2024.

<sup>91</sup> Kinchin, Mougouei, 7.

<sup>92</sup> Ibidem.

are not perceived as genuinely fearful, despite the existence of a real risk of persecution in their country of origin.<sup>93</sup> Accordingly, the existence of a real risk must be assessed thoroughly and in detail.<sup>94</sup> The applicant must demonstrate both a subjective fear – based on personal feelings – and an objective fear, derived from external factors.<sup>95</sup> A refusal to grant refugee status may be based on a lack of credibility, which is often attributed to the perceived absence of objective fear on the part of the applicant. In such cases, the party is frequently deprived of the opportunity to have other relevant and substantive evidence properly assessed.<sup>96</sup> In such cases, the court must determine, taking into account all relevant circumstances, whether there existed a real risk that the individual would face the treatment prohibited under Article 3 of the Convention upon return to the country of origin. If such a risk is established, the applicant's expulsion would inevitably amount to a violation of Article 3 – regardless of whether the threat arises from a general situation of violence in the country, the applicant's personal circumstances, or a combination of both.<sup>97</sup>

As for the burden of proof, it is essential for applicants to present evidence demonstrating that they are genuinely at risk, and that any measure taken against them upon return to their country of origin would amount to a violation of Article 3 of the Convention. Where such evidence exists, it is the responsibility of the administrative authority to dispel all reasonable doubts.<sup>98</sup> In order to determine the risk of ill-treatment, the court must assess the impact that applicants' ex-

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<sup>93</sup> Ibidem.

<sup>94</sup> *Chahal v. the United Kingdom*, App. No. 22414/93, European Court of Human Rights, 15 November 1996, para. 96.

<sup>95</sup> Ibidem.

<sup>96</sup> Hathaway, Hicks, 534.

<sup>97</sup> *Sufi and Elmi v. the United Kingdom*, App. Nos. 8319/07 and 11449/07, European Court of Human Rights, 28 June 2011, para. 218.

<sup>98</sup> *Saadi v. Italy*, App. No. 37201/06, European Court of Human Rights, 28 February 2008, para. 129.

pulsion would have on their condition, examine the general situation in the country of origin, and take into account applicants' personal circumstances.<sup>99</sup> If the applicant claims to belong to a group that is systematically subjected to ill-treatment, the application of Article 3 of the Convention becomes necessary. In such cases, there must be sufficient and credible evidence to support the conclusion that the applicant indeed belongs to that group.<sup>100</sup>

While the risk of subjective assessment can never be completely eliminated, it is essential to mitigate the likelihood of subjectivity, biased interpretation, and procedural injustice. To that end, it is crucial that asylum seekers be accompanied by a qualified legal representative. The participation of a lawyer should be mandatory during the administrative proceedings, as it ensures the effective protection of the applicant's procedural rights, promotes a fair and balanced credibility assessment, and allows for the applicant's position to be presented comprehensively, clearly, and in a legally sound manner at both the administrative and judicial levels. In the absence of legal representation, there is a heightened risk that the evidence or narrative submitted by the applicant may be misinterpreted or insufficiently evaluated, thereby undermining the fairness of the final decision.

Georgian legislation provides for the possibility of legal assistance for asylum seekers; however, this mechanism is primarily applicable at the judicial stage.<sup>101</sup> Specifically, state-provided legal aid includes representation before the court and the preparation of relevant legal documents.<sup>102</sup> Moreover, legal assistance is not provided during the administrative procedure – that is, the initial stage at which credibility is assessed based on the interview, registration, and the initial application. As a result, the applicant's ability to effectively present their po-

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<sup>99</sup> Ibidem, para. 130.

<sup>100</sup> Ibidem, para. 132.

<sup>101</sup> Law N4955 of Georgia "On Legal Aid", 19 June 2007, Art. 5.

<sup>102</sup> Ibidem, Art. 3.

sition and supporting evidence is significantly weakened at the most decisive phase of the status determination process.

## 2. Lack of Evidence and its Misinterpretation

A well-founded fear of persecution may be substantiated through a variety of evidence, including country of origin reports, expert opinions, personal documents, or witness testimonies.<sup>103</sup> The applicant is obliged to provide all relevant information necessary for the determination of refugee status. In many cases, the granting of refugee status is complicated by the absence or insufficiency of supporting evidence.<sup>104</sup> Although this does not mean that applicants must necessarily possess documentary evidence – the information they provide must be detailed, consistent, and credible.<sup>105</sup>

In many cases, this established practice is directly linked to an individual's ability to convey information in a credible manner – even when that information may not reflect reality. A person's capacity for persuasive communication may depend on factors such as their professional background, age, work experience, or other personal characteristics. As a result, relying solely on the applicant's ability to speak convincingly, in the absence of supporting evidence, cannot serve as a fair standard for assessing credibility across a wide range of individuals. It is also important to take into account the criteria used by the specific official of the administrative authority who is assessing credibility, as such evaluations are inherently subjective and often vague in defining what constitutes a 'credible' statement. Whether credibility is judged based on the applicant's manner of speaking, rhetorical strategies, factual accuracy, the use of examples, or a combination of these elements, remains unclear. However, assigning responsibility to the administrative authority for evaluating an applicant's psy-

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<sup>103</sup> Gyulai, 22.

<sup>104</sup> McDonald, 115.

<sup>105</sup> Decision N3/3111-24 of the Tbilisi City Court, 31 July 2024.

cho-emotional state is inappropriate, as such matters fall outside the scope of its competence.

Accordingly, the determination of whether a person is speaking credibly and consistently should be made by an appropriate specialist – namely, a psychologist – rather than by an administrative official. In assessing credibility, the authority considers the consistency of the facts presented, including the information disclosed in the registration form and during the interview. It is essential that the applicant presents all relevant information comprehensively at the administrative stage, as introducing new information only during the judicial proceedings may cast doubt on their credibility.<sup>106</sup>

As a general rule, the burden of proof lies with the party asserting a particular fact.<sup>107</sup> With regard to the activities of individuals who become so-called ‘sur place’ refugees in the receiving country, the court has held that it is difficult to determine whether such actions reflect a genuine personal interest, involve political or religious elements, or were undertaken solely to create a sufficient basis for claiming asylum after arrival.<sup>108</sup> The information provided by the asylum seeker may be based on written or oral statements, expert opinions, witness testimonies, as well as country-of-origin information (COI).<sup>109</sup>

The assessment must be based on both the general conditions in the receiving country in the event of deportation and the individual circumstances of the applicant.<sup>110</sup> The assessment by the administrative authority must be adequate and properly substantiated, relying both on internal materials and on information obtained from other re-

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<sup>106</sup> Ibidem.

<sup>107</sup> *F.G. v. Sweden*, App. No. 43611/11, European Court of Human Rights, 23 March 2016, para. 122.

<sup>108</sup> *A.A. v. Switzerland*, App. No. 58802/12, European Court of Human Rights, 7 January 2014, para. 41.

<sup>109</sup> Kinchin, Mougouei, 6.

<sup>110</sup> *Salah Sheekh v. the Netherlands*, App. No. 1948/04, European Court of Human Rights, 11 January 2007, para. 136.

liable and objective sources, such as states that are parties or non-parties to the relevant conventions, United Nations agencies, and reputable non-governmental organizations.<sup>111</sup>

### 3. Cultural and Linguistic Barriers

A refugee is someone who has left the home country, family, friends, and job, and has sought refuge in a foreign country in the hope of starting a new life.<sup>112</sup> A refugee may have fought against injustice and sought to improve human rights, yet were ultimately unable to achieve their goal and were forced to flee the home country.<sup>113</sup> Such a traumatic experience is often accompanied by pain and despair, especially as individuals must cope with these challenges in an unfamiliar environment.<sup>114</sup>

It is widely recognized that many applicants may be in a vulnerable position and may struggle to articulate their experiences – particularly due to trauma, exposure to violence, or health-related issues.<sup>115</sup> The majority of asylum seekers are unable to bring relevant evidence with them when leaving their country, which further increases the importance of assessing the credibility of the information they provide.<sup>116</sup> The United Kingdom provides appropriate support services for individuals for whom there are concerns related to physical or mental health, experiences of torture, trafficking, sexual or domestic violence, or issues concerning child protection.<sup>117</sup> In reviewing refugee cases, decision-making authorities must consider that some applicants may have difficulty recounting their stories, which may be the result of psycho-

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<sup>111</sup> Ibidem.

<sup>112</sup> Herlihy, Turner, 176.

<sup>113</sup> Ibidem.

<sup>114</sup> Ibidem.

<sup>115</sup> UK Home Office, *Assessing Credibility and Refugee Status in Asylum Claims Lodged on or after 28 June 2022* (Accessible) (London: UK Home Office, 2023), 7.

<sup>116</sup> Gyulai, 22.

<sup>117</sup> Ibidem.



logical trauma. Such trauma may stem from experiences of persecution, violence, or even from the asylum process itself.

Translation and/or the accurate interpretation of the translation constitutes one of the essential and decisive components of credibility assessment.<sup>118</sup> Within the asylum procedure, both asylum seekers and individuals granted international protection status are entitled to the assistance of an interpreter.<sup>119</sup> In one case, the court partially upheld the claim, as it did not accept the administrative authority's position regarding the alleged inconsistency and discrepancy in the information provided by the asylum seeker.<sup>120</sup> The court took into account the applicant's explanation that it was difficult to understand the interpreter involved in the proceedings and required interpretation in the Bengali language. The applicant had raised this concern during both the registration and interview stages. The authority was under an obligation to verify, with the assistance of an interpreter fluent in the appropriate language, whether the applicant's responses corresponded to the content of the questions asked. In case of any inconsistencies, the authority should have determined whether these were due to the applicant's own lack of coherence or the result of a procedural flaw stemming from the use of an interpreter not proficient in the applicant's native language.<sup>121</sup> In one case, the court disagreed with the administrative authority's decision to consider the applicant's statements as lacking credibility. It held that any potential inaccuracies could be explained by factors such as the applicant's age, the passage of time, and the manner in which the information was obtained. Therefore, the existing doubt had to be resolved in favor

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<sup>118</sup> Noll, 188.

<sup>119</sup> Order N33 of the Minister of Internal Affairs of Georgia, 6 July 2020, Art. 7.

<sup>120</sup> Decision N3/1965-16 of the Administrative Cases Chamber of Tbilisi City Court, 23 December 2016.

<sup>121</sup> Ibidem.

of the asylum seeker.<sup>122</sup> Although asylum seekers – like witnesses and victims – often communicate through interpreters, the assessment of the credibility of their oral statements requires particular caution and in-depth analysis to ensure the accurate transmission of information and the fairness of the evaluation.<sup>123</sup>

By definition, refugees have left their home country. Some may have fought against injustice or tried to improve human rights within their own state but ultimately found themselves defeated – losing, in the process, fundamental values such as the ability to protect their families. They may have been forced to abandon deeply held beliefs and to acknowledge their failure. Some live with a profound sense of loss and despair, while others strive to uphold their principles in a new environment and may react strongly – even aggressively – to perceived injustices, no matter how minor they are.<sup>124</sup>

Regardless of their emotional condition, an asylum seeker is required to provide detailed information about the relevant facts to the decision-making authority. At the stage of applying for asylum, particular importance is placed on the applicant's ability to recall and describe negative experiences endured. In this process, the applicant's memory plays a crucial role, as it is expected to recount events with sufficient accuracy despite the psychological impact of past trauma.<sup>125</sup> Traumatic experiences endured in the country of origin may significantly affect an asylum seeker's ability to provide accurate and consistent information during an interview or court proceedings. In one study addressing the reliability of memory, an asylum seeker initially described the incident during questioning as 'we were beaten severely,' whereas at a later stage, the same event was described with the words 'we were slapped.' Such discrepancies in statements may serve as a basis for questioning

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<sup>122</sup> Decision N3/1752-16 of the Tbilisi City Court, 18 July 2016.

<sup>123</sup> Noll, 188.

<sup>124</sup> Herlihy, Turner, 173.

<sup>125</sup> Ibidem.

the applicant's credibility. However, it must be considered that the applicant provided this information at different times and under varying emotional conditions.<sup>126</sup> Cultural and linguistic barriers, psychological trauma, and emotional stress significantly affect an asylum seeker's ability to accurately and consistently convey past experiences. When assessing credibility, decision-making authorities must take into account the natural fragmentation of memory, the linguistic adequacy of interpretation, and the impact of traumatic experiences on the applicant's narrative. Failure to do so may result in the real risk being overlooked, while a negative credibility assessment may be based solely on inaccurate communication or subjective factors, thereby undermining the fairness of the evaluation process.

## V. Conclusion

The determination of an applicant's credibility constitutes a central and decisive component in the refugee status determination process, directly influencing the substance of the final decision. At the stage of granting refugee status, particularly during the interview and questionnaire phases, it is essential that the applicant provides the administrative authority with coherent, logical, consistent, and mutually corroborative information. In assessing the eligibility for refugee status, the administrative body takes into account not only the applicant's statements, but also any submitted documentary, photographic, video, or other forms of evidence.

The assessment of credibility inherently involves numerous challenges, including cultural differences, language barriers, personal and subjective factors, and the impact of traumatic experiences, all of which may undermine the consistency of the applicant's narrative. Additionally, the natural erosion of memory over time, interviewer bias or preconceived stereotypes, fear and mistrust toward state authori-

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<sup>126</sup> Ibidem.

ties, which hinder open and honest communication, and the lack of documentary evidence further complicate the credibility assessment process. Credibility assessment must be conducted based on the accuracy of these individual characteristics and the extent of the real risk associated with them. When an applicant's narrative concerns their religious beliefs, sexual identity, or political opinions, the state is obliged not only to approach this information with neutrality, but also to ensure that the standards applied in the assessment do not violate the individual's rights, including the right to private life and the freedom of expression.

It is desirable for the state to have appropriate services in place to ensure that asylum seekers are able to freely and comprehensively describe their circumstances. This is crucial, as administrative bodies often tend to deem even minor discrepancies in the applicant's initial account as indicators of unreliability. Moreover, courts generally do not consider new facts or evidence and base their decisions solely on the information submitted to the administrative authority. Consequently, the thorough and accurate presentation of information by the applicant at the initial stage becomes of decisive importance.

In assessing credibility, the common courts of Georgia do, in fact, refer to the case law of the European Court of Human Rights and to international treaties, and such references are often reflected in the reasoning sections of their decisions. However, despite this formal acknowledgment, the practical application of these standards remains limited. In most cases, the courts do not conduct a thorough individual assessment of the applicant's personal circumstances. As a result, the approach of the European Court often appears merely declarative and fails to exert a decisive influence on the analysis of factual circumstances.

In the refugee status determination process, the assessment of credibility is based on internationally established standards, which

encompass the following aspects: the richness and accuracy of factual details; the consistency between the applicant's oral and written statements; the coherence between his/her account and the testimonies of family members and witnesses; the alignment of his/her narrative with objective country-of-origin information; and, ultimately, the overall plausibility of the account. These criteria, alongside international standards, are to some extent reflected in the jurisprudence of Georgian courts, including decisions issued by the Tbilisi City Court.

However, the existing practice indicates that these standards are, in most cases, applied only superficially. Although courts often refer to the components of credibility assessment in the text of their decisions, there is a notable lack of substantive discussion or in-depth analysis of the applicant's testimony. In practice, there is insufficient examination of whether the narrative presented corresponds to a real and objectively substantiated risk of persecution. As a result, despite a formally correct approach, the credibility assessment process is frequently declarative in nature and fails to reflect the standards required for a rights-based and fair determination of refugee status. At this stage, the application of the credibility standard in Georgia remains largely in a developmental phase.

Georgian legislation provides for the possibility of legal assistance for asylum seekers; however, such assistance is mainly limited to the judicial stage of the procedure. This support typically includes legal representation before the court and the preparation of relevant legal documentation. In contrast, during the administrative stage, which encompasses registration, interviews, and the initial assessment of credibility, free legal aid is virtually unavailable. As a result, applicants are often left without legal support precisely at the stage that plays a decisive role in determining refugee status.

Therefore, it is crucial to establish appropriate support services to ensure that asylum seekers are able to present their position clearly,

comprehensively, and in legally adequate terms from the earliest phase of the process. Doing so would significantly reduce the risk of inaccurate or inconsistent credibility assessments and enhance the overall fairness of the procedure.

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