Sulkhan-Saba Orbeliani University
Prince David Institute for Law

MIGRATION POLICY AND LEGAL RESPONSES

Comparative Perspectives from Visegrad, Western Balkans, and Eastern Partnership Countries

Edited by
Mariam Jikia
Professor, Georgian Technical University
Dimitry Gegenava
Professor, Sulkhan-Saba Orbeliani University

Sulkhan-Saba Orbeliani University Press

UDC-325
M-67

Migration Policy and Legal Responses: Comparative Perspectives from Visegrad, Western Balkans, and Eastern Partnership Countries

Edited By **Mariam Jikia** and **Dimitry Gegenava**

Prince David Institute for Law of Sulkhan-Saba Orbeliani University
Sulkhan-Saba Orbeliani University Press, Tbilisi, 2025

Copy Editor: Tinatin Tabidze

Visegrad Fund

Supported by Visegrad Fund
within the Grant Project N22410079

ISBN 978-9941-8-8000-1

CONTRIBUTORS

MARIAM JIKIA, Professor, Faculty of Law and International Relations, Georgian Technical University

JAROSLAV MIHÁLIK, Associate Professor, Faculty of Social Sciences, Institute of Political Science and Public Administration, University of Ss. Cyril and Methodius in Trnava

NIKOLA MEDOVÁ, Assistant Professor, Department of Development and Environmental Studies, Palacky University Olomouc

LUCIE MACKOVÁ, Assistant Professor, Department of Development and Environmental Studies, Palacky University Olomouc

IVONA SHUSHAK LOZANOVSKA, Assistant Professor, University "St. Kliment Ohridski" – Bitola

LARISA VASILESKA, Associate Professor, University "St. Kliment Ohridski" – Bitola

JAKUB BARDOVIČ, Associate Professor, University of Ss. Cyril and Methodius in Trnava

TSISIA OKROPIRIDZE, Ph.D. Candidate, Assistant, Sulkhan-Saba Orbeliani University

KETEVAN BAKHTADZE, Ph.D. Candidate, Head of Legal Clinic, Sulkhan-Saba Orbeliani University

DIMITRY GEGENAVA, Professor, Faculty of Law, Sulkhan-Saba Orbeliani University

SALOME TSIKLAURI, Ph.D. Candidate, Assistant, Sulkhan-Saba Orbeliani University

NINO TSIKHITATRISHVILI, Ph.D. Candidate, Sulkhan-Saba Orbeliani University

TAMAR KHUBULURI, Ph.D. Candidate, Assistant, Sulkhan-Saba Orbeliani University

KIZEITAR GOJAEVA, Ph.D. Candidate, Sulkhan-Saba Orbeliani University

CONTENTS

IMPLEMENTATION OF THE EU TEMPORARY PROTECTION DIRECTIVE FOR UKRAINIAN REFUGEES: A COMPARATIVE ANALYSIS OF MEMBER STATE RESPONSES

Mariam Jikia

I. Introduction

Russia's military invasion of Ukraine, which began on the 24th of February 2022, triggered widespread political, economic and social changes that extended beyond Ukraine's borders, especially affecting neighbouring countries. The immediate challenge confronting European Union member states was managing the massive influx of Ukrainian refugees seeking safety, a situation that continues today, though with reduced intensity.

Following Russia's invasion, the European Union implemented a significant policy decision regarding the protection of refugees. Notably, the EU activated Directive 2001/55/EC, which establishes temporary protection measures (referred to as the Temporary Protection Directive). This directive had remained unused since its creation, even during previous situations involving large-scale population movements.[1]

The Temporary Protection Directive's Article 2 (d) characterizes "mass influx" as the substantial arrival of displaced individuals from a particular nation or region, occurring either through spontaneous migration patterns or organized evacuation efforts. Nevertheless, quantifying "mass influx" remains challenging due to the absence of precise

[1] Kortukova et al., 668.

legal definitions in EU legislation and the lack of interpretive guidance from the Court of Justice of the European Union.[2]

The temporary protection framework emerged from the European Union's response to refugee emergencies during the late 1990s, establishing a vital safeguarding mechanism for war survivors,[3] in particular it established reception procedures for displaced populations, with its conceptual foundation rooted in the Yugoslav conflicts. During that period, several European nations extended protection to individuals fleeing conflict zones while circumventing traditional refugee status procedures. Building on this approach, the European Union developed this legal framework through the Temporary Protection Directive, enabling individuals to obtain temporary sanctuary without navigating the complex and time-intensive refugee status determination process.

Currently, the Temporary Protection Directive creates a transnational framework for coordinated responses when sudden, large-scale displacement occurs. This means temporary protection applies when substantial numbers of people enter the European Union fleeing armed conflict, civil warfare, or widespread systematic human rights violations, particularly when standard asylum procedures cannot be implemented due to time constraints or practical limitations.[4] The temporary protection system aims to prevent EU asylum frameworks from becoming overwhelmed, as they lack the capacity to rapidly handle hundreds of thousands or millions of cases.

Remarkably, from its establishment in 2001 until recently, the European Union had never implemented the Temporary Protection Directive, but Russia's military aggression altered this precedent. The EU Council formally activated the Temporary Protection Directive for Ukrainian nationals on March 4, 2022.[5] From February 24, 2022 on-

[2] Sybirianska et al., 86.

[3] Genç, Öner, 9.

[4] Vitiello, 21.

[5] Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of

ward, approximately 8 million individuals have departed Ukraine, representing roughly 17% of the country's total population. The vast majority of Ukrainians seeking refuge from Russian military actions in foreign countries consist primarily of women and children. Data from the UNHCR indicates that around 8 million Ukrainian refugees have been documented throughout Europe, with close to 5 million enrolled in Temporary Protection programs or equivalent national protection frameworks across European nations.[6]

The Temporary Protection Directive and especially its lack of earlier activation has been widely criticized.[7] While some EU states like Hungary and Croatia had built fences and used force to repel Syrian asylum seekers in 2015, and others like Germany welcomed them through standard asylum procedures, the EU never activated temporary protection for Syrians. However, the present research contends that several interconnected elements influenced the European Union decision to adopt a distinct approach during Ukraine's 2022 crisis. Contributing factors included Ukraine's close geographic location, the view of the conflict as a temporary cross-border military intervention, the refugee population being primarily comprised of women, the presence of established Ukrainian communities within EU territories, existing visa-free movement arrangements for Ukrainian citizens across the European Union. These combined elements generated an extraordinary demonstration of public solidarity and citizen involvement, which subsequently enabled the successful implementation of the EU's temporary protection initiative.

The present research seeks to analyze EU migration policy and its capacity to address humanitarian emergencies. It will examine the legal framework governing temporary protection across the EU, investi-

Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32022D0382.

6 Kuzmenko et al., 225.

7 Tottos, 186.

gating its implementation within EU member states. Additionally, the article will evaluate the obstacles and prospects related to implementing temporary protection systems. This encompasses concerns including service accessibility, community integration within host nations, and potential system misuse. A thorough examination of these elements will allow policymakers to pinpoint improvement opportunities and guarantee that temporary protection continues serving as a practical and successful instrument for safeguarding displaced individuals in years to come.

II. The Temporary Protection Directive – Development and Activation

1. Historical Basis of TPD

The European Union's asylum framework has been and continues to be founded upon the international legal obligations of its Member States, requiring that EU asylum policy "must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties".[8] Nevertheless, EU Member States gradually realized that apart from refugees fulfilling the criteria set out in the Geneva Convention, there are other groups of people that may require different forms of international protection based on different types of recognition.[9] Such alternative protection mechanisms may differ from refugee status either through subsidiary criteria or through temporal limitations in the duration of protection provided.

The concept of temporary protection emerged during the Balkan conflict of the 1990s. In the early 1990s, EU member states processed 674,000 asylum applications.[10] Following the commence-

8 Treaty on the Functioning of the European Union, 25 March 1957, Article 78(1).

9 Tottos, 186–187.

10 Koo, 103.

ment of hostilities in the former Yugoslavia, the UNHCR instituted temporary protection as a humanitarian response mechanism and advocated for state implementation of protective frameworks. Subsequently, European nations initiated diverse schemes for the provisional admission of displaced populations throughout the former Yugoslav conflict.[11] Consequently, no harmonized regulations or methodologies existed for temporary protection provision during this period. The European Commission therefore established the objective of coordinated collective action regarding the conflict. During 1992–1993, European ministerial consultations addressed displaced persons' circumstances and the imperative to formulate resolution strategies. These deliberations culminated in Council Resolution No 31995Y1007(01) (1995) concerning burden-sharing mechanisms for temporary admission and residence of displaced persons, and the Council Decision of 4 March 1996 establishing alert and emergency procedures for burden-sharing regarding temporary admission and residence of displaced persons. These instruments defined the categories of individuals EU member states would provisionally accept during armed conflicts or civil wars: prisoners-of-war, wounded persons, those with severe illnesses, victims of sexual violence, and individuals arriving directly from conflict zones.[12]

However, the temporary protection instruments introduced within the EU lacked coherence, resulting in divergent policy implementations across EU Member States. The Treaty of Amsterdam served as a pivotal agreement that established the foundation for harmonization in migration and asylum matters. Under the provisions of Title IIIa concerning visas, asylum, immigration and related policies governing freedom of movement, specifically Article 73k, the EU Council is mandated to establish "minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their

[11] Genç, Öner, 7.

[12] Malynovska, 59.

country of origin and for persons who otherwise need international protection".[13]

As a result, Council Directive 2001/55/EC was specifically designed to foster equitable burden-sharing in managing large-scale displacement within Europe by providing immediate protection to individuals fleeing armed conflict, thereby preventing the saturation of Member States' asylum frameworks. The Directive establishes an exceptional mechanism whereby the existence of mass displacement must be determined through a Council Decision adopted by qualified majority voting upon the European Commission's proposal. Such Decisions are legally binding upon all Member States regarding the displaced populations within their scope. Upon adoption of the Council Decision, Member States must facilitate entry to their territories for individuals requiring temporary protection, minimizing administrative procedures due to the exigent nature of the circumstances. Following entry into the EU, any individual falling within the personal scope of the Council Decision receives temporary protection and is entitled to request official documentation confirming this status. Through this mechanism, the protracted application processes typically required for asylum claims can be circumvented.[14]

Under Article 1 of TPD, "the purpose of this Directive is to establish minimum standards for giving temporary protection in the event of a mass inlux of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons".[15] Considering the extraordinary nature of the measures established under this Directive to address mass dis-

[13] Treaty of Amsterdam, 2 October 1997.

[14] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, Article 9.

[15] Ibid.

placement or the imminent prospect of large-scale displacement of third-country nationals unable to return to their countries of origin, the protection provided should be temporally constrained.[16]

The TPD has remained unactivated throughout its existence. The two institutions responsible for its activation – the Commission and the Council – have frequently faced criticism for failing to utilize this mechanism despite encountering substantial asylum-seeker influxes. Academic scholars contend that justifications for reluctance to activate the Directive, including concerns about creating attraction factors or arguments regarding insufficient displacement volumes, lack adequate foundation. Thielemann observes that migration patterns are predominantly influenced by expulsion factors rather than attraction factors,[17] while Ineli-Ciger maintains that individuals escaping armed conflict or violence are not necessarily seeking optimal conditions, but rather any location offering safety.[18]

2. Activation of TPD

In the aftermath of Russia's military aggression against Ukraine, millions of individuals, predominantly women and children, entered the EU during the initial months of conflict. The four EU Member States sharing borders with Ukraine (Poland, Slovakia, Hungary and Romania) along with Moldova prioritized addressing the immediate accommodation and protection requirements of refugees. As a result, these nations opened their eastern frontiers and facilitated unrestricted yet regulated entry into their territories. The Commission similarly recognized their contributions upon directly observing the extensive support initiatives these countries implemented.[19]

---

16 Tottos, 187.

17 Thielemann, 22.

18 Ineli-Ciger, 234.

19 European Commission, "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Solidarity with Refugees and Those Fleeing War in Ukraine," COM(2022) 107 final, March 8, 2022, 4.

A significant proportion of arrivals benefited from visa-free movement within the Schengen zone, while national immigration legislation of pertinent EU Member States also established various pathways for obtaining residence permits, grounded in either humanitarian considerations or legal migration frameworks (such as employment or family reunification). During an extraordinary Justice and Home Affairs Council session on 27 February 2022, Home Affairs Ministers assessed responses to the consequences of the Ukrainian conflict. To facilitate situation monitoring, coordinate solidarity initiatives, and engage all relevant stakeholders, the Presidency subsequently implemented full activation of the EU Integrated Political Crisis Response (IPCR) mechanisms following these discussions. As arrivals increased, Member States continued receiving individuals fleeing the Ukrainian war, though the reception capacities of primary host countries, particularly Poland, progressively reached saturation. Ministers also deliberated the establishment of suitable temporary protection arrangements for receiving these nationals, which garnered widespread endorsement.

This development provided the Commission with the impetus to propose TPD mechanism activation for the inaugural time on 2 March 2022.[20] Subsequently, during their Council session on 3 March, Home Affairs Ministers formally endorsed the Temporary Protection Directive activation through the adoption of a Council Decision.[21] he primary objective was to enable EU Member States to furnish individuals escaping the Ukrainian conflict with an adequate response tailored to their circumstances by providing EU-harmonized status while simultaneously supporting Member States experiencing strain. Additionally,

[20] European Commission, "Proposal for a Council Implementing Decision establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Council Directive 2001/55/EC of 20 July 2001, and having the effect of introducing temporary protection," COM(2022) 91 final.

[21] Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, ST/6846/2022/INIT.

this action carried symbolic significance, illustrating European unity and solidarity in addressing this crisis unfolding within the continental heartland. As a result, from the initial conceptualization on 27 February 2022 to its publication in the EU Official Journal on 4 March 2022, the TPD mechanism activation required merely five days.

III. The scope and main concepts of TPD

The Council determined to establish three distinct categories of eligibility for temporary protection:

a) Ukrainian citizens who were resident in Ukraine prior to 24 February 2022;
b) stateless individuals and third-country nationals other than Ukraine who received international protection or comparable national protection within Ukraine before 24 February 2022;
c) family members of individuals specified in categories (a) and (b).

In contrast to the Commission's initial proposal, category (b) underwent substantial restriction, as it was originally intended to encompass all third-country nationals or stateless individuals with legal residence in Ukraine who were unable to return safely and sustainably to their countries or regions of origin. The criterion of inability to return safely and sustainably to their country or region of origin would not apply to third-country nationals or stateless persons with established long-term legal residence in Ukraine. Reports indicate that this modification occurred at Poland's request along with several other nations, and the narrowing of personal scope through the Council Decision may be attributed to both political and legal considerations. Regarding TPD application to non-Ukrainian nationals, this matter may invoke recent troubling memories of irregular migration being weaponized by Belarus at the EU's eastern frontiers. This hybrid warfare strategy may have influenced Member States' cautious stance when limiting mandato-

ry TPD application to those who had previously received international protection or equivalent national protection in Ukraine prior to 24 February 2022.

In implementing this scope limitation consistent with EU acquis, the degree of harmonization could have served as a valuable benchmark. Although the EU acknowledges various international protection statuses, no harmonized EU-level status exists for tolerated residence that should be granted to individuals who cannot be removed either due to the applicability of the non-refoulement principle[22] or because certain factors impede their removal. Therefore, the Council Decision excluded such individuals from harmonized temporary protection coverage even when fleeing Ukraine, instead delegating this determination to Member States. However, the Council Decision further subdivides this category by establishing a mandatory protection obligation for those with permanent Ukrainian residence, while merely offering discretionary TPD application to those with temporary legal residence in Ukraine. It should be emphasized that where the non-refoulement principle applies, domestic legislation should permit affected individuals to remain even when the Council Decision does not mandate or authorize EU harmonized temporary protection status for that particular category. The second category, where the Council prioritizes protection substance over classification type, encompasses stateless individuals and third-country nationals other than Ukraine who can demonstrate legal Ukrainian residence prior to 24 February 2022 based on valid permanent residence permits issued under Ukrainian law, and who cannot return safely and sustainably to their countries or regions of origin. The third category, to whom TPD may be discretionally applied, includes stateless persons and third-country nationals other than

[22] Under international human rights law, the principle of non-refoulement guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. This principle applies to all migrants at all times, irrespective of migration status.

Ukraine who maintained legal Ukrainian residence and cannot return safely and sustainably to their countries or regions of origin.

TPD sets out various forms of solidarity for the activation of the Directive. Within the contemporary framework of the ongoing Common European Asylum System (CEAS) reform spanning several years, the central inquiry concerned whether these solidarity measures should be implemented mandatorily or whether Member States retain discretionary authority over their application. To comprehend the legal framework, it is essential to recognize that the TPD represents the inaugural EU Directive enacted within the asylum domain. As it constitutes a Directive "belonging to a different era where the EU had different legal competences in the Treaties and migration priorities",[23] the articulation of the Directive's provisions remains relatively imprecise. Nevertheless, it establishes a repertoire of solidarity instruments that may be implemented should Member States elect to do so upon Directive activation. Accordingly, the mechanisms employed during specific activations and their legal character depend upon Council determination.

Multiple assistance instruments are available, including operational support from pertinent EU agencies. On 7 March 2022, the EU Agency for Law Enforcement Training (CEPOL), situated in Budapest, Hungary, issued a declaration on behalf of the consortium of nine EU Agencies operating within the freedom, security and justice framework.[24] According to this statement, EU Justice and Home Affairs Agencies support EU institutional and Member State efforts in

[23] Carrera et al., 16.

[24] The European Institute for Gender Equality (EIGE), the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), the EU Agency for Asylum (EUAA), the EU Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), the EU Agency for Criminal Justice Cooperation (Eurojust), the EU's Law Enforcement Agency (Europol), the EU Agency for Fundamental Rights (FRA), the European Border and Coast Guard Agency (Frontex) and the EU Agency for Law Enforcement Training (CEPOL).

assisting Ukraine and its population as conflict has once again reached European territory. Through collaborative efforts and leveraging each agency's specialized expertise, they respond urgently to assist EU Member States regarding humanitarian support, fundamental rights observance, EU external border management, visa measures, hybrid threat anticipation, and reception of war refugees.

Subsequently, three principal forms of assistance established and provided at EU level merit emphasis:

- **Financial Support** – Article 24 of the TPD establishes financial assistance provisions for Member States. While the Directive originally referenced the European Refugee Fund (now the Asylum, Migration and Integration Fund – AMIF), this does not encompass all available financial support mechanisms. Through its Communication, the Commission articulated objectives to facilitate rapid and flexible EU fund utilization by Member States, enabling tailored funding to expeditiously support Member State, organizational, and civil society efforts in actualizing temporary protection rights.

  On 4 April 2022, the Council enacted legislative amendments to EU funds, demonstrating sustained EU solidarity with Ukrainian refugees and hosting Member States, particularly those bordering Ukraine. These modifications ensure adequate resources for addressing escalating housing, education, and healthcare requirements by providing enhanced flexibilities for both cohesion policy and home affairs funds while redirecting resources to assist individuals escaping Russian military aggression.[25]

  Regarding cohesion policy, the Council adopted the Cohesion's Action for Refugees in Europe (CARE) Regulation, amending the 2014–2020 European Structural and In-

[25] Tottos, 192–193.

vestment Funds (ESIF) and Fund for European Aid for the Most Deprived (FEAD) frameworks. These changes introduce exceptional flexibility for resource transfers between European Regional Development Fund and European Social Fund programs to address refugee influx, including reallocating infrastructural project resources for Ukrainian refugee healthcare and education. Member States can access up to EUR 9.5 billion through REACT-EU's 2022 allocation and unallocated 2014–2020 cohesion resources, with CARE extending 100% EU budget financing for cohesion programs by one accounting year, potentially releasing approximately EUR 17 billion.[26]

- **Monitoring and coordination –** Article 25 of the Directive emphasizes Member States' capacity to accommodate individuals benefiting from the Directive's activation. The TPD theoretically requires Member State reception capacity to be specified in the Council Decision through numerical or general terms. However, current practice renders this potentially impractical or ineffective, as certain Member States may expand capacities when necessary, while other Member States' available capacities could become occupied by non-Ukrainian asylum-seekers. Consequently, rather than adhering strictly to the Directive's provisions, the Council Decision adopted an alternative approach by establishing a 'Solidarity Platform' where Member States share information regarding reception capacities and the number of individuals enjoying temporary protection within their territories, enabling Union coordination and close monitoring to provide additional support as required.

  Recently, various platforms have been created to facilitate Member State cooperation, with the EU Migration Prepared-

[26] Ibidem.

ness and Crisis Blueprint Network (Blueprint Network)[27] being the most recent initiative from the Commission's Asylum and Migration Pact Communication. This framework aims to monitor and anticipate migration flows and situations, build resilience, and organize crisis responses. Member States also contribute to collective situational awareness through integrated political crisis response (IPCR) arrangements.

The new European response and Solidarity Platform specifically monitors the Ukrainian war situation and Member State capacities, while the Blueprint Network and IPCR continue collecting information. The Solidarity Platform gathers information, examines Member State needs, and coordinates operational responses, while the Blueprint Network shares situational information and consolidates migration management data related to Russian aggression against Ukraine, including Directive 2001/55/EC implementation. Although parallel networks with overlapping information collection, analysis, and coordination functions may create duplicative processes, Member State officials are encouraged to regularly share and assess information through these networks.[28]

- **Assistance related to intra-EU mobility –** A crucial question concerns why certain Member States' capacities become exhausted. The answer may be found in Article 26 of the TPD, which stipulates that "for the duration of temporary protec-

[27] European Commission, "Commission Recommendation (EU) 2020/1366 of 23 September 2020 on an EU mechanism for preparedness and management of crises related to migration (Migration Preparedness and Crisis Blueprint)," C/2020/6469.

[28] Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, and having the effect of introducing temporary protection, Article 3.

tion, Member States shall cooperate regarding transferal of residence of persons enjoying temporary protection from one Member State to another, subject to the consent of the persons concerned."[29]

The Directive employs the term "transferal of residence," potentially synonymous with the contemporary term "relocation." In ongoing CEAS reform debates, the key issue is whether this constitutes an obligation or option. The Directive only mandates Member States to communicate transfer requests and inform requesting states of their reception capacity, while no distribution mechanism is envisioned, though it does not prohibit establishing one for this specific situation.

However, a different legal context must be considered. Ukraine is listed in Annex II to Regulation (EU) 2018/1806,[30] exempting Ukrainian nationals from visa requirements for stays up to 90 days within any 180-day period. Therefore, Ukrainian citizens with biometric passports enjoy visa-free Schengen travel for three months, enabling many Ukrainian refugees to practice short-term free movement within the EU.

Commission Guidelines emphasize that TPD beneficiaries also enjoy movement rights after Member States issue residence permits under Article 8, allowing travel to other Member States for 90 days within 180-day periods. However, double statuses must be avoided; when individuals move to another Member State, the initial residence permit and associated rights must expire and be withdrawn according to

[29] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, Article 26(1).

[30] Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

Articles 15(6) and 26(4) of Directive 2001/55/EC. While the Eurodac Regulation does not cover temporary protection beneficiaries' data, Member States and the Commission are developing an ad hoc scheme compliant with EU data protection provisions for regular data exchange to identify potential double statuses.[31]

Importantly, it is the Council Decision, not Member State-issued residence permits, that creates temporary protection rights for those within the personal scope categories. Consequently, while Article 11 requires Member States to take back temporary protection persons who remain or seek unauthorized entry into another Member State's territory, this is hardly implementable given residence permits' declarative nature.

Therefore, applying the provision allowing Member States to decide bilaterally not to apply this Article was logical. Supporting Member States serving as main entry points for Ukrainian mass arrivals, Member States agreed not to apply Article 11 when activating the TPD through the Council Decision.[32] This approach proves practical for two reasons: first, it allows Ukrainian nationals to find optimal Member States providing ideal family, friend, employer, or state support crucial for integration during longer stays; second, it alleviates pressure on EU Member States bearing disproportionate burdens from Ukrainian mass influx. Rather than artificial relocation schemes where Member States decide transfers, this Article 11 disapplication allows situations more focused on Ukrainian refugees' needs. Nevertheless, this approach was only possible because it extends solely to those enjoying temporary protection from their initial EU territory entry, distinguishing them from other international protection seekers.

[31] Tottos, 195.

[32] Ibidem, 196.

IV. Temporary Protection in Practice

From the conflict's onset through 15 June 2022, over 7.7 million border crossings from Ukraine were documented, with more than 5 million Ukrainian refugees reaching Europe. Primary host nations included Poland (1170000) and Germany (780000), alongside additional neighboring countries such as Slovakia (78500), Hungary (24500), Romania (98000), and Moldova (85500).[33] Western European nations, including France, Italy, the UK, Spain, and the Netherlands, also served as significant host countries for refugee assistance, along with Bulgaria (80000) and Turkey (70000).[34]

The circumstances on 19 July 2022 remained comparable, with 5988696 Ukrainian refugees documented across Europe. European "temporary protection" or equivalent national protection schemes registered 3709329 individuals. Border crossings from Ukraine between 24 February 2022 and 19 July 2022 reached 9567033, while border crossings into Ukraine since 28 February 2022 totaled 3793403.[35] Poland remained the primary destination for Ukrainian refugees on 19 July due to geographical and cultural proximity, with 1234718 individuals registered for temporary protection, followed by other neighboring Ukrainian countries including Slovakia (85771), Romania (45530), and Hungary (26932).[36]

Following eight months of conflict, Russian aggression had displaced one-third of Ukraine's population. Nearly 7.8 million individuals had departed Ukraine for other European countries, while over 6.2 million were internally displaced within Ukraine. Among those who left Ukraine, more than 4 million enrolled in EU temporary protection or comparable national temporary protection programs. EU Member

---

33 UNHCR, Ukraine Situation: Global Report 2022 (Geneva: 2022).

34 Koroutchev, 305.

35 UNHCR, Operational Data Portal: Ukraine Refugee Situation (Geneva: 2022), https://data.unhcr.org/en/situations/ukraine.

36 UNHCR, "Ukraine Situation: Global Report 2022" (Geneva: 2022).

States mostly bordering Ukraine, but not only, documented the highest registration numbers for temporary protection, in particular:

Country	Number of Persons registered for TP
Poland	1,470,000
Czech Republic	455,000
Slovakia	99,000
Romania	78,000
Hungary	31,000
Bulgaria	145,000
Lithuania	70,000
Latvia	42,000
Estonia	38,000
Germany	710,000
Italy	160,000
Spain	145,000
France	105,000

Based on Member State feedback regarding Council Decision and Temporary Protection Directive implementation, the Commission identified several areas requiring guidance and issued operational guidelines for Member States. The addressed issues primarily concerned the Council Decision's scope, including individuals excluded from coverage, child handling procedures (particularly for unaccompanied minors), questions regarding inter-Member State movement rights, registration processes, and information provision.

Commission Guidelines stipulate that no application procedure for temporary protection or equivalent national protection should occur, as these individuals' protection rights are immediate. Consequently, persons presenting themselves to authorities to access temporary protection rights need only demonstrate their nationality, international protection status, Ukrainian residence, or family connections as applicable. However, the Council Decision's special legal character

generates several practical concerns.[37] Primarily, declaratory documentation remains practical and is anticipated by Article 8 of the Directive to prevent questioning eligibility for additional temporary protection rights. Secondly, requirements persist despite the absence of application procedures, including evidence that individuals belong to specified Directive categories and verification that exclusion criteria do not apply. Therefore, Member States must organize proper administration and registration of concerned persons.

Another challenge for national legislators involves determining the Council Decision's personal scope. As previously discussed, the Council Decision provided Member States discretionary flexibility regarding the second and third beneficiary categories. Subsequently, this analysis examines EU harmonization's diverse effects on different member states.

Article 7 TPD permits Member States to extend temporary protection to additional displaced person categories beyond those specified in Article 5 of the Council Decision. Member States must immediately notify the Council and Commission upon applying this provision. According to Section 19 of Hungary's Act LXXX of 2007 on asylum,[38] Hungary grants temporary protection both under the TPD and through Government decision. Prior to 2014, Parliament held this authority, but competence transferred to the Government in 2014 – presumably following the Crimean conflict – to establish expedited activation procedures. Nevertheless, like the TPD, national application processes remained unactivated before the Ukrainian war.

On 24 February 2022, the Hungarian Government immediately activated national temporary protection mechanisms for Ukrainian refugees through Government Decree. The national activation's personal scope was remarkably broad, extending to all Ukrainian citizens arriving from Ukraine and all third-country nationals legally residing

[37] Tottos, 197.

[38] Act XVI of 2014 on the Amendment of Certain Acts Related to the Reinforcement of the Effectiveness of Procedures Related to Immigration, Section 277(2).

in Ukraine, including those with temporary legal residence. However, following EU-level TPD activation, a new Government Decree repealed the previous one, significantly narrowing eligible temporary protection categories.[39]

Regarding the second personal scope category, Section 2(2) declares Hungary's decision not to apply the Council Directive to stateless persons and third-country nationals with valid permanent Ukrainian residence permits who cannot safely return to their origin countries. Section 2(3) stipulates that immigration authorities shall apply general national rules instead of EU harmonized temporary protection status. Hungary's humanitarian legislation provides ample protection alternatives, including Section 13(2) of Act II of 2007, which permits exceptional entry and residence for international obligations, urgent humanitarian reasons, or national interests.

Concerning optional personal scope extension, while national activation initially covered third-category persons with temporary Ukrainian legal status regardless of return ability, the Hungarian Government subsequently excluded such persons from temporary protection eligibility. Although not contrary to EU law, this results in rejection of temporary protection applications submitted between 24 February and 7 March 2022 under the initial Government Decree. However, immigration authorities issue temporary stay certificates, allowing adequate time for residence decisions and subsequent Hungarian residence permit applications.

Ireland and Denmark maintain opt-outs from EU home affairs harmonization. While Ireland is bound by the Temporary Protection Directive and participated in the Council Decision's adoption, Denmark, pursuant to Articles 1 and 2 of Protocol No 22 concerning Denmark's position (annexed to the TEU and TFEU), does not participate

[39] Decree N56/2022 (II. 24.) of the Government of Hungary on the different application of the transitional rules of the asylum procedure set out in Act LVIII of 2020 on transitional rules and epidemiological preparedness related to the cessation of the state of emergency.

in Council Decision adoption and remains unbound by its provisions or application. However, Denmark unilaterally demonstrated solidarity by enacting special legislation on temporary residence permits for Ukrainian displaced persons.[40] The new Danish provisions enable Ukrainians to apply for Danish residence permits. Individuals may obtain temporary residence permits under the Ukrainian displaced persons law if residing in Denmark and holding either Ukrainian citizenship or recognized refugee status in Ukraine. Close family members of persons in Denmark who have received residence permits under this Special Act are also eligible for residence permits.

Romania encountered significant implementation challenges across multiple sectors while applying the Temporary Protection Directive for Ukrainian refugees. The labor market integration proved particularly problematic despite being relatively faster compared to other refugee groups. Language barriers constituted a primary obstacle, with Romanian language courses available only through territorial employment agencies and select NGOs, limiting accessibility for many refugees. Additionally, childcare responsibilities prevented many Ukrainian women from entering the workforce, as children under six years could not enroll in kindergartens due to linguistic barriers and insufficient information regarding diploma recognition procedures.[41]

Healthcare access presented equally formidable challenges, primarily stemming from systemic inefficiencies within Romania's healthcare infrastructure. The national digitalized system failed to accommodate Ukrainian citizens, preventing their registration with family doctors. Although authorities established a free Ukrainian-language medical telephone hotline, its practical effectiveness remained limited.[42]

---

[40] Act on Temporary Residence Permits for Displaced Persons from Ukraine (Special Act), adopted by the Danish Parliament on 16 March 2022, entered into force on 17 March 2022.

[41] UNHCR, "Situation Ukraine Refugee Situation," January 3, 2025, https://data.unhcr.org/en/situations/ukraine.

[42] Raluca Tudor, 62.

Educational system constraints further complicated the integration process, particularly in large urban centers where state kindergartens and schools faced severe overcrowding. This situation became so acute that Romanian parents occasionally relocated to secure preschool places for their own children. The shortage of Ukrainian-speaking teachers and inadequate teaching methodologies in Ukrainian language created additional barriers for refugee children's educational integration, while communication difficulties between educational institutions and Ukrainian families persisted throughout the implementation period.[43]

Administrative and social challenges compounded these sectoral difficulties. Bureaucratic delays plagued the 50/20 financial assistance program, causing months-long payment delays to beneficiaries. Information dissemination proved inadequate, with few Ukrainians accessing official platforms like dopomoha.ro, instead relying on unofficial sources such as Facebook groups for crucial information. Moreover, populist narratives and discriminatory attitudes emerged within Romanian society, particularly targeting perceived wealthy Ukrainian refugees, creating additional social integration obstacles.

Bulgaria faced several key challenges while implementing the Temporary Protection Directive for Ukrainian refugees that mirror broader European integration difficulties. The primary obstacle centered on economic factors, as most available employment opportunities offered only minimum wage compensation, which proved insufficient to cover the monthly living expenses of refugees, particularly women with children who comprised the majority of arrivals. This economic constraint was compounded by significant childcare complications, as working mothers encountered substantial difficulties due to the nationwide shortage of municipal nurseries and kindergartens, creating a barrier to workforce participation that ultimately contributed to massive outflows from the country.[44]

[43] Ibidem, 63.

[44] Koroutchev, 307.

Labor market integration presented additional structural challenges despite Bulgaria's cultural and linguistic similarities with Ukraine that theoretically should have facilitated smoother adaptation. While approximately 7,400 Ukrainian refugees had secured employment by July 2022, representing 11.4% of working-age temporary protection recipients, the concentration of opportunities remained heavily skewed toward the hospitality sector (64%) and coastal regions, particularly around resort areas like Nessebar, Varna, and the Black Sea coast. This geographic concentration reflected both the seasonal nature of available work and the presence of established Russian and Ukrainian-speaking communities that could provide linguistic support, but it also highlighted the limited diversification of employment opportunities across different sectors and regions.[45]

The implementation process revealed significant administrative and institutional weaknesses that hindered effective integration. Despite the government's initial humanitarian response program providing accommodation support of 40 BGN per day per refugee for shelter and food, bureaucratic barriers prevented optimal labor market entry for skilled refugees. The ongoing issues with skills assessment and recognition of qualifications, a problem that extends across Europe but was particularly relevant in Bulgaria's case given the high educational background of many Ukrainian refugees. Additionally, the uncertainty surrounding long-term accommodation arrangements with the transition from hotel accommodation to recreational facilities in June 2022 created instability that encouraged many refugees to leave the country, with departure numbers initially exceeding arrivals until the situation stabilized. These challenges underscore the complexity of implementing temporary protection measures even in countries with favorable cultural conditions for integration.

[45] Ibidem, 306.

V. Conclusion

The temporary protection framework, though a relatively contemporary development within international legal doctrine, has established itself as an essential instrument for preserving the fundamental rights of forcibly displaced populations during humanitarian emergencies. This distinctive protection mechanism functions as an expedited collective response designed to furnish immediate interim safeguards for individuals experiencing large-scale displacement events. In contrast to conventional refugee determination procedures, which operate through individualized assessments requiring comprehensive evaluation of persecution claims or substantiated fears thereof, temporary protection constitutes a group-based intervention applicable to populations fleeing specific armed conflicts or humanitarian crises. The mechanism distinguishes itself from traditional refugee status through divergent legal architectures, beneficiary categories, and procedural methodologies. This structural differentiation facilitates accelerated administrative processes, thereby enabling state authorities to deliver critical services and assistance to displaced populations with enhanced efficiency.

Nevertheless, the directive's operationalization has encountered significant implementation obstacles. Concerns regarding discriminatory practices and differential treatment standards, particularly affecting third-country nationals, have emerged as prominent issues. Additionally, the lack of harmonized implementation across EU member states has generated procedural inconsistencies and disparate protection outcomes. Such disparities compromise the effective safeguarding of displaced persons while undermining the European Union's coordinated approach to migration governance. These implementation deficiencies highlight the imperative for systematic refinement and standardization of the temporary protection legal framework.

Addressing these institutional deficiencies there is a need for reinforcement of the legal architecture underpinning temporary pro-

tection mechanisms, advancement of standardized implementation protocols, and assurance of equitable application across all beneficiary categories. Drawing upon the analytical findings presented herein, this study proposes several strategic recommendations to enhance the operational efficacy of temporary protection within the European Union framework and preserve its viability as a rights-protective instrument for displaced populations:

- European Union should undertake a revision of the Temporary Protection Directive, incorporating empirical insights and institutional knowledge acquired through its implementation during the Ukrainian displacement crisis. Such reforms may encompass the clarification of beneficiary eligibility parameters, expansion of service accessibility provisions, and consolidation of compliance enforcement mechanisms.
- Member states should collaborate in establishing harmonized standards and operational guidelines governing temporary protection implementation. This standardization process will facilitate uniform and equitable treatment of displaced persons throughout EU territories.
- Member states must intensify their collaborative frameworks and coordination mechanisms in administering temporary protection programs. This encompasses enhanced information sharing protocols, dissemination of best practices, resource pooling arrangements, and collective problem-solving approaches to address shared implementation challenges.

Through the operationalization of these strategic recommendations, the European Union can optimize the effectiveness of temporary protection mechanisms while ensuring their continued utility as essential instruments for displaced persons' rights protection during humanitarian emergencies.

REFERENCES

- Carrera, Sergio, Elspeth Guild, Meltem Ineli-Ciger, Stefan Salvatici, and Joanna Vosyliute. 2022. "The EU Grants Temporary Protection for People Fleeing War in Ukraine." *CEPS Policy Insights*, no. 2022–09 (March). https://ceps.eu/wp-content/uploads/2022/03/CEPS-PI2022-09_ASILEEU-grants-temporary-protection-for-people-fleeing-war-in-Ukraine-1.pdf.
- Genç, Hüseyin Deniz, and Nilgün Arzu Şirin Öner. 2019. "Why Not Activated? The Temporary Protection Directive and the Mystery of Temporary Protection in the European Union." *International Journal of Political Science & Urban Studies*7 (1): 1–18. https://doi.org/10.14782/ipsus.539105.
- Ineli-Ciger, Meltem. 2015. "Has the Temporary Protection Directive Become Obsolete? An Examination of the Directive and Its Lack of Implementation in View of the Recent Asylum Crisis in the Mediterranean." In *Seeking Asylum in the European Union: Selected Protection Issues Raised by the Second Phase of the Common Asylum System*, edited by Celine Bauloz, Meltem Ineli-Ciger, Sarah Singer, and Vladislava Stoyanova, 223–44. Leiden: Brill.
- Koo, John. 2016. "The European Union Temporary Protection Directive: An Example of Solidarity in Law But Not in Practice. A Review of Temporary Protection in the European Union 1990–2015." *The Future of Refugee Law: RLI Working Paper Series Special Edition*: 96–113. https://sas-space.sas.ac.uk/9171/1/WPS%20Special%20Edition%201st%20Annual%20Conference_final.pdf.
- Koroutchev, Rossen. 2023. "The Explosive Ukrainian Migration due to the Russian Armed Conflict in 2022: The Case of Bulgaria." *Journal of Liberty and International Affairs* 9 (1): 303–11.
- Kortukova, Tamara, Yevgen Kolosovskyi, Olena L. Korolchuk, Rostyslav Shchokin, and Andrii S. Volkov. 2023. "Peculiarities of the Legal Regulation of Temporary Protection in the European

Union in the Context of the Aggressive War of the Russian Federation against Ukraine." *International Journal for the Semiotics of Law* 36 (2): 661–82.

- Kuzmenko, Oksana, Vira Ryndiuk, Liudmila Kozhura, Viktoriia Chorna, and Roman Tytykalo. 2023. "Legal Aspects of Temporary Protection for Ukrainians in the Member States of the European Union." *Juridical Tribune* 13 (2): 214–28.
- Malynovska, Olena. 2023. "How Temporary Is Temporary Protection: The Example of Forced Migrants from the Former Yugoslavia." *Demography and Social Economy* 51 (1): 53–72. https://doi.org/10.15407/dse2023.01.053.
- Sybirianska, Yuliia, Mykhailo Dyba, Igor Britchenko, Alla Ivashchenko, Yurii Vasylyshen, and Yevheniia Polishchuk. 2018. "Fintech Platforms in SME's Financing: EU Experience and Ways of Their Application in Ukraine." *Investment Management and Financial Innovations* 15 (3): 83–96. https://doi.org/10.21511/imfi.15(3).2018.07.
- Thielemann, Eiko R. 2012. "How Effective Are National and EU Policies in the Area of Forced Migration?" *Refugee Survey Quarterly* 31 (4): 1–29.
- Tottos, Agnes. 2022. "The Activation of the Temporary Protection Directive for People Fleeing from Ukraine." *Hungarian Yearbook of International Law and European Law 2022*: 179–210.
- Tudor, Oana Raluca. 2025. "Welcoming Ukrainian War Refugees in Romania: Addressing the Challenges of Human Security." *Romanian Intelligence Studies Review* 33: 52–67.
- Vitiello, Daniela. 2022. "The Nansen Passport and the EU Temporary Protection Directive: Reflections on Solidarity, Mobility Rights and the Future of Asylum in Europe." *European Papers* 7: 15–30.

THE EVOLVING ROLE OF SLOVAK LOCAL GOVERNMENTS IN INTEGRATING MIGRANTS FROM UKRAINE IN SLOVAKIA

Jaroslav Mihálik

I. Introduction

Geographically positioned at significant European crossroads, Slovakia has historically experienced emigration rather than immigration.[1] Since gaining independence in 1993, this trend has continued, with Slovakia remaining a less common destination for migrants. Since joining the European Union in 2004, Slovakia has been subject to EU immigration policies and has participated in the Schengen Area.[2] Currently, the country is working to overcome the challenges of immigration while adapting to shifting geopolitical dynamics and economic changes.[3]

Slovakia's migration patterns underwent significant transformation since its inception. After the dissolution of Czechoslovakia, emigration was the main trend.[4] This trend continued after 1993, with Slovakia remaining a less favored destination for international migrants. The reasons include Slovak nationalism[5], political uncertainty in

1 Přívarová, 1084–1093.

2 OECD, "International Migration Outlook 2024: Slovak Republic." 2024. https://www.oecd.org/en/publications/international-migration-outlook-2024_50b0353e-en/full-report/slovak-republic_09b0120f.html.

3 Migration and Home Affairs, "Migrant Integration in Slovakia." February 28, 2025. https://home-affairs.ec.europa.eu/policies/migration-and-asylum/legal-migration-resettlement-and-integration/integration/eu-migrant-integration-platform/eu-countries-updates-and-facts/migrant-integration-slovakia_en.

4 Divinský.

5 Mesežnikov, 2000, 55–60.

the 1990s[6], shifts in the economy and lower income levels in the early years of independence.[7] New migration patterns emerged in the late 1990s.[8] Slovakia has become more of a transit country than a final destination for immigrants, along with relatively low immigration rates and a significant number of high-skilled Slovaks emigrating to pursue opportunities abroad.[9]

In recent years (especially after EU accession in 2004), however, the country has witnessed an increase in immigration, including labour migration and refugees seeking asylum.[10] Furthermore, shifts in demographics have structural implications for the nation's economic and social dynamics.[11] After thirty-two years of the Slovak Republic's independence, the inflow of foreign immigrants increased gradually, in line with the evolution of migration policies, the country's accession to the European Union, economic development, and its democratic nature.[12] Bargerová further asserts that between 1993 (the year of the Slovak Republic's establishment) and 2004 (the year of its EU accession), the topic of migration was virtually absent from political, public, and media discourse.[13]A considerable discourse transformation regarding migration in Slovakia occurred during the migrant and refugee crisis in Europe since 2015.[14] The influx of migrants, particularly from the Middle East and North Africa, led to migration becoming a political and debated issue, significantly influencing the 2016 Slovak elections.[15] Security

6 Bargerová, 17–36.

7 Přívarová.

8 Bargerová.

9 IOM Slovakia. "Migration in Slovakia." Last modified March 27, 2023. https://www.iom.sk/en/migration/migration-in-slovakia.html.

10 OECD, "International Migration Outlook 2024: Slovak Republic."

11 Migration and Home Affairs, "Migrant Integration in Slovakia."

12 IOM Slovakia. "Migration in Slovakia."

13 Bargerová.

14 Karolewski, Benedikter, 98–132.

15 Mesežnikov.

concerns[16] became a vital aspect of the political discourse surrounding migration.[17] More recently, following the military invasion by Russia in February 2022, Slovakia has experienced a continuous influx of people fleeing Ukraine which we will explore further.

This article, designed as a qualitative study, examines the evolving role of Slovak local governments in the process of Ukrainian migrants´ integration after the 2022 Russian invasion. We identify the main challenges for local governments including insufficient resources, gaps in legislation, and the lack of effective coordination between central institutions, non-governmental organisations and local authorities. Furthermore, the article draws attention to the most effective strategies currently employed by Slovak sub-national governments in their attempts to facilitate the integration of Ukrainian migrants. The strategies include the provision of linguistic instruction, employment support services for those seeking to enter the labour market, as well as programs and activities for children and young people. Utilising both qualitative and quantitative data, the article investigates the factors that either enhance or hinder the success of these integration measures.

Research emphasises the need for better inter-institutional collaboration, better laws and more flexible access to funding and humanitarian needs. It also underlines the importance of local governments working together to help Ukrainian migrants fit into Slovak society. Our critical approach demonstrates the importance of local governance in crisis response and the need for continued collaboration. To address these challenges, we need stable financial support, better coordination, clear long-term policies for refugees, targeted integration programmes and better governance.

---

16 Mihálik, Jankoľa, 1–25.

17 Filipec, Mosneaga, Walter.

II. Migration Policy of the Slovak Republic in the 21st Century

The evolution of migration policy in Slovakia has been shifted several times since its independence in 1993. As we mentioned earlier, Slovakia was primarily a country of emigration due to political and economic challenges.[18] However, after its accession to the European Union in 2004, the number of migrants in Slovakia increased. This rise in immigration is driven by factors such as family reunification, marriage, business, and education.[19] Economic reasons also motivate some internal migration within Slovakia, with a significant percentage of respondents in under-developed regions expressing a desire to move for better opportunities.[20] After Slovakia's entry into the European Union in 2004, its labor market opened to EU citizens, which increased the immigration resulting mainly in an influx of workers.[21] On the other hand, Slovakia was required to adopt EU laws related to migration, the protection of migrants´ rights and their integration.[22] Slovakia joined the Schengen Area in 2007 which helped opening the borders for simplified movement of people within the EU, but also created new challenges for external border protection and the regulation of illegal migration. Despite often being a transit country, Slovakia's international migration patterns were largely shaped by its history, with only few permanently settled migrants.[23] The 2015 migration crisis was also a critical point in Slovakia's migration policy. As Gruszczynski and Friedery argue, Slovakia engaged in a contentious debate with the European Union regarding the distribution of refugees based on established

18 Divinský.

19 Štefančík, Stradiotová, Seresová, 965–981.

20 Kahanec, Kureková.

21 Přívarová, Rievajová, Galstyan, Gavurová, 305–322.

22 Filipec, Borárosová, 55–71.

23 Práznovská, 2019, 211–219.

quotas.[24] This period gave rise to extensive discourse on the matter of migration policy, with Slovakia adopting a position of opposition to the implementation of mandatory quotas, a stance that aligned with the positions of other Central European countries.[25] As illustrated in Table 1, there has been a clear trend in the number of asylum grants from 1993 to 2025.

TABLE 1: Number of Asylum Applications and First Instance Decisions in Years (1993–2023)

Year	Applications Total	Asylum Granted	Subsidiary Protection Granted	Negative Decisions	Cessation of Procedure
1993–2003	33289	459	x	1560	28499
2004	11395	15	x	1592	11782
2005	3549	25	x	827	2930
2006	2849	8	x	861	1940
2007	2642	14	82	1177	1693
2008	909	22	66	416	457
2009	822	14	98	330	460
2010	541	15	57	243	284
2011	491	12	91	120	232
2012	732	32	104	264	340
2013	441	15	34	137	292
2014	331	14	99	99	137
2015	330	8	41	72	128
2016	146	16	12	56	35
2017	166	29	25	34	73
2018	178	5	37	46	69
2019	232	9	19	51	179
2020	282	11	27	40	177

[24] Gruszczynski, Friedery, 221–244.

[25] Práznovská, 2023, 95–117.

2021	370	29	13	90	212
2022	547	23	48	76	387
2023	416	37	43	77	322
2024	165	41	22	59	58
31.3.2025	66	17	7	12	23
Total	**60889**	**870**	**925**	**8239**	**50709**

Source: *Ministry of Interior of the Slovak Republic, "Štatistiky," 2025*

Building on this historical context, the present study explores the socio-economic challenges currently being experienced by Slovak migration policy, particularly with regard to the labour market and the integration of workers from non-EU countries. Recent economic growth has attracted primarily unskilled workers, but Slovakia is also focused on labour migration, including integration issues, and aims to attract high-skilled experts. Conversely, Slovakia grapples with deficiencies in institutional coordination, an absence of reliable data, and ambiguous objectives within its migration strategy. Brain drain, defined as the emigration of skilled professionals, constitutes a significant challenge for the country.[26]

The Slovak migration policy reflects both national legislation and EU directives. As an EU member state, it aligns its immigration regulations with broader European frameworks. Stojarová frames the legislation on migration in Slovakia into five stages[27]:

- Alien Act from 1992 which was adopted during Czech and Slovak Federal Republic (Act no. 123/1992 Coll.)
- Slovak Alien Act (Act no. 73/1995 Coll.) and Refugee Act (Act no. 283/1995) which have been in force until 2002 and replaced by Act no. 48/2002 Coll. on Residence of foreigners

[26] Ministerstvo vnútra Slovenskej republiky, Migračná politika Slovenskej republiky s výhľadom do roku 2025 (Bratislava: Ministerstvo vnútra SR, schválené vládou 8. septembra 2021), available at https://www.minv.sk/?zamer-migracnej-politiky-slovenskej-republiky&subor=419162.

[27] Stojarová, 97–114.

that has replaced the original Alien Act; and Act no. 480/2002 Coll. on Asylum which has replaced the Refugee Act

- Concept of the Migration of the Slovak Republic approved in 2005
- Concept of the Integration of Foreigners in the Slovak Republic from 2009 and the Act on Residence of Aliens (Act no. 404/2011 Coll.)
- Amendments to the Alien Act and the „migration crisis" since 2011.[28]

One of the current strategic documents governing migration in Slovakia is the Migration Policy of the Slovak Republic with a view to 2025.[29] There is no update yet considering the lifespan of the document.

In the past, strategic documents were focused on the migration and asylum policy of the Slovak Republic:

- *Migration Policy of the Slovak Republic overlooking the year 2020,*
- *Conceptual intentions of the Migration Policy of the Slovak Republic for the period 2011–2015,*
- *The Concept of the Integration of Foreigners in the Slovak Republic 2009–2011,*
- *The Concept of Migration Policy 2005–2010.*[30]

The above mentioned strategies, concepts and legislation confirm that Slovak migration policies are governed by a comprehensive legislative framework. The Act on Residence of Foreigners (404/2011) and the Act on Asylum (480/2002) form the cornerstone of migration law, addressing the legal aspects of residence and asylum-seeking. Additionally, adherence to EU directives and the Schengen Agreement shapes the country's approach to migration.

[28] Mihálik, Garaj.

[29] Ministerstvo vnútra Slovenskej republiky, Migračná politika Slovenskej republiky s výhľadom do roku 2025.

[30] Mihálik, Garaj.

No significant migration legislation was adopted before Slovakia joined the EU. The Principles of Migration Policy (adopted through Government Resolution no. 846/1993) marked the start of Slovakia's migration policy after Czechoslovakia's breakup. However, the Slovak government focused on asylum policy rather than the broader migration framework,[31] and the Principles failed[32] to address specific foreign migration challenges.[33]

The Challenges of Slovak Migration and Integration Policies

Joining the EU hasn't made Slovakia more liberal on migration, even though it is part of this global movement. The government has hesitantly followed EU policies, but not on matters of mandatory relocation. In 2015 it blocked the relocation of 120,000 asylum seekers. The European Court of Justice later approved the relocation, but this didn't make the EU more generous on migration.[34]

Slovakia opposed mandatory quotas along with the Visegrad Group states, calling for a voluntary approach in accepting refugees.[35] The Slovak government argued about the technical ineffectivity and unfeasibility of the quotas, stressing the importance of protecting national interests and sovereignty in migration matters. Central Europe's migration policy is cautious, with several countries choosing national solutions over European initiatives. This demonstrates the tension between EU membership and national sovereignty, which is important for Slovakia's approach to European migration initiatives.[36]

---

31 Práznovská, 2019.

32 Bolečeková,.

33 Divinský.

34 Folk,.

35 Zachová, Zgut, Gabrižová, Zbytniewska, Strzałkowski.

36 Jaroslav Mihálik and Matúš Jankoľa, "European Migration Crisis: Positions, Polarization and Conflict Management of Slovak Political Parties"

The Migration Policy of the Slovak Republic with a view to 2025 constitutes an ambitious and broadly conceived document aimed at addressing the main challenges associated with migration. It includes measures to support legal migration, prevent illegal migration flows, and integrate migrants. Despite its positive aspects, however, the policy faces criticism from various perspectives, which we elaborate further in this chapter. International migration, according to Castles and Miller, is a phenomenon that requires comprehensive, long-term sustainable, and flexible approaches.[37] This reflects an attempt to harmonize Slovak policy with European Union legislation, while maintaining security and human rights. However, the dominance of security aspects may lead to an insufficient consideration of the root causes of migration, such as conflicts, economic inequalities, and climate change.[38]

The primary objective of Slovak policy is the combatting of illegal migration and the protection of the EU's external borders; a goal which is aligned with the legislation and strategies established by the Union. However, this approach may fail to address the causes of migration, focusing only on security, as argued by Carrera and Lannoo.[39] Although the Slovak migration policy highlights the need for integration, its practical implementation lags behind. According to Gallo Kriglerová et al., insufficient systemic measures complicate the involvement of immigrants in society and the labor market.[40] The policy fails to effectively address language and cultural barriers, which remain significant obstacles to integration.[41]

Slovakia faces a significant outflow of skilled professionals, and reintegration programs have proven to be unattractive.[42] Francelová

37 Castles, Miller.

38 Geddes, Scholten.

39 Carrera, Lannoo.

40 Kriglerová, Kadlečíková, Chudžíková, Píšová.

41 Bolečeková, Olejárová, 225–239.

42 Behúňová, Oboňová.

Hrabovská suggests that effective reintegration policies must offer competitive conditions and incentives for the return of professionals, yet such policies are notably absent in the Slovak context, hindering efforts to reverse the brain drain.[43] The growing influence of misinformation and negative prejudices against migrants presents a significant challenge.[44] The authors emphasize that public institutions should provide accurate and balanced communication to combat misinformation, a goal the current policy fails to achieve effectively, thus perpetuating public misconceptions (Ibid).

Finally, issues of climate migration are marginally reflected in Slovak policy. Scissa and Martin warn that climate change will increasingly influence migration flows, making it crucial to integrate this dimension into future policy planning and measures.[45] However, Slovak policy has yet to adequately consider the potential impact of climate-related migration.

In response to these identified shortcomings, academic research and practical experience suggest several remedial measures to improve Slovakia's migration policy. The introduction of inclusive programs to support the integration of migrants, which would consider their language and cultural needs, is one such measure.[46] Additionally, strengthening cooperation with countries of origin and transit to mitigate conflicts and economic inequalities is essential.[47] Another important aspect is the implementation of public campaigns to promote a positive image of migration and combat misinformation.[48]

Slovakia's migration policy represents an important step toward modern and effective migration management. Its success depends on adapting to challenges and implementing recommendations from

43 Hrabovská.

44 Komendantova, Erokhin, Albano, 168.

45 Scissa, Martin.

46 Drozd, Duchovič, Lukačovičová, Paulenová, Tašká.

47 Geddes, Scholten.

48 Szakács, Bognár.

critical analysis. Managing migration requires a systematic approach considering national and international contexts. The strategy also takes Slovakia's historical experience of significant emigration, due to socioeconomic and political issues such as labour outflow, into account. This shapes Slovakia's current stance on migration, combining caution with pragmatism.

Value frameworks and strategic priorities are central to Slovakia's migration policy, with a focus on pragmatism and security. Migration is viewed as a tool for economic development, but must be strictly controlled to ensure it doesn't threaten security. Three main areas of focus reflect these concerns: border protection, combating illegal migration and development cooperation with third countries. This suggests a preference for addressing migration challenges away from its own territory. On the other hand, the internal dimension highlights the need for an integrated policy towards foreigners, but such integration is conditioned on respecting Slovakia's cultural, linguistic, and legal norms. This creates the impression of an asymmetric integration process, where foreigners are expected to adapt to the majority society, which remains unchanged.

Slovakia must balance its commitments to the EU with its national priorities. It is willing to cooperate with the EU but wants flexibility on obligations like asylum seeker relocation. It must also address demographic issues, an ageing population and labor shortages.[49]

The document also reflects the influence of globalization and geopolitical contexts. Slovakia recognises the growing importance of globalisation in migration. Its strategic position between Eastern and Western Europe affects its geopolitical interests, particularly with the Western Balkans and Ukraine. These countries are important to Slovakia, especially during war conflicts, economic inequalities and climate

[49] "Integration Policy of the Slovak Republic," Bratislava: Ministry of Labour, Social Affairs and Family of the Slovak Republic, 2014.

change. The document also addresses rising xenophobic sentiments and misinformation. The policy is neutral and aims to maintain order. The Migration Policy of the Slovak Republic with a view to 2025 is pragmatic, security-based, and economically focused. Slovakia does not see migration as an opportunity for cultural and societal transformation. Instead, it is controlling, restricting and regulating in migration flows. This may be effective in addressing short-term challenges, but could limit Slovakia's potential to engage with the multicultural discourse within the EU.

Criticism of the migration or integration policies has been voiced by various organizations including the Supreme Audit Office of the Slovak Republic.[50] The Human Rights League points out the lack of specificity and timeliness in the document. They argue that the proposal is overly general, without a deeper analysis of the situation or an evaluation of previous measures.[51] Furthermore, there was insufficient participation in the creation process, as non-governmental organizations and representatives of migrants were not invited to consultations, which, according to the League, contradicts the principles of open governance (Ibid). Finally, the document overlooks the need for institutional reforms, such as the establishment of a separate immigration office to handle the natural process of integration and naturalization, a step that had previously been considered in the government's program declarations (Ibid).

In conclusion, the migration policy of Slovakia reflects a combination of national security interests, economic priorities, and cautious pragmatism. While it aligns with EU commitments, its focus on restrictive measures may limit its capacity to contribute to a more dynamic and inclusive European migration discourse.

---

[50] Supreme Audit Office of the Slovak Republic, "Bez jasného cieľa a merania výsledkov v integrácii cudzincov Slovensko prešľapáva na mieste," 2025.

[51] The Human Rights League, "Pripomienky Ligy za ľudské práva k návrhu Migračnej politiky Slovenskej republiky s výhľadom do roku 2025," 2020

III. Slovak Local Governance Framework and Key Responsibilities

Slovakia is a unitary country with two distinct subnational tiers of self-governing bodies (municipalities and regions/Higher Territorial Units). Municipalities gained autonomous authority in 1991; regional governments were established in 2001. Following the collapse of communism, this dual system of publicadministration was fully re-established in 1990. Slovakia currently has eight Self-Governing Regions and approximately 2,890 municipalities. The capital city, Bratislava and the eastern metropolis, Košice hold special status.[52]

In Slovakia's decentralized system of state authority, regional and local governments possess distinct competencies, finances, and administrative structures as shown in the Table 2.

TABLE 2: Key Responsibilities of Slovak Municipalities and Regions

Category	Municipalities (Examples of Responsibilities)	Regions (Examples of Responsibilities)
General Public Services (Administration)	Internal administration; Management of movable property and real estate; Building permits; Registry offices.	Internal administration; International and trans-regional cooperation.
Public Order and Safety	Municipal police; Public order; Fire-fighting; Civil defence (in co-operation with State bodies).	Civil defence (in co-operation with State bodies).
Economic Affairs / Transports	Supervision of economic activities; Consumer protection; Local roads; Local public transport; Tourism.	Transport (roads, railways); Regional economic development.
Environment Protection	Protection of the environment; Sewage; Heating; Refuse collection and disposal.	Protection of the environment.

[52] There are a total of 2927 municipalities and city parts in Slovakia. This number includes 17 city parts belonging to Bratislava and 22 city parts belonging to Košice. If we consider Bratislava and Košice as single units and exclude their city parts, the total number of municipalities is 2890.

Housing and Community Amenities	Housing and town planning; Cemeteries; Public lighting; Water supply; Parks and open spaces; Urban regeneration; Social housing.	Housing and town planning.
Health	First aid stations and primary medical centers.	Secondary hospitals; Management of non-State healthcare (e.g., psychiatric hospitals, dental services).
Culture and Recreation	Sports facilities; Cultural facilities.	Regional theatres; Libraries; Museums; Galleries; Cultural centers.
Education	Pre-school and primary schools; Kindergarten and nurseries.	Secondary, professional, art and vocational schools; Construction and maintenance of buildings; Payment of teachers (on behalf of the State).
Social Welfare	Social aid for elderly and children.	Homes for children.
Crisis Management / Civil Protection	Develop analysis of possible emergency events; Prepare protection plans; Organize civil protection training; Oversee rescue operations; Plan and execute evacuation; Provide emergency accommodation; Create municipal civil protection units; Keep records of evacuated persons.	Analyze possible emergencies within Regions; Plan and ensure coordination of evacuation; Train people for self-defense; Promote civil defense activities; Provide necessary materials for regional analysis and action plans to District office.

Source: *World Observatory on Subnational Government Finance and Investment. Slovak Republic, 2025*

There is a degree of overlap in crisis management responsibilities, with municipalities focusing on local-level planning and immediate response, while regions provide broader coordination and analytical support. The Ministry of Interior plays a central role in coordinating national and regional risk assessments, and municipalities are specifically responsible for preparing local flood plans, which are crucial documents for managing common risks in Slovakia.

IV. Immediate Response and Emergency Measures: The Role of Local Authorities

The full-scale Russian invasion of Ukraine on February 24, 2022, was Europe's largest and deadliest conflict since World War II.[53] The aggression caused an immediate humanitarian crisis, with 11 million people fleeing within the first eight months.[54] Slovakia, a neighbour, became a transit and host state for those seeking refuge. Since February 2022, over 840,000 refugees have been registered, and as of February 2024, the temporary protection status was granted to more than 139,000 Ukrainians.[55] The majority are women, children, and older adults, presenting unique and complex needs (Ibid). The influx caused substantial logistical challenges for Slovak authorities and exacerbated existing internal dynamics.[56]

Beyond the central state authorities, these sub-national entities have been instrumental in addressing the significant influx of individuals fleeing the war in Ukraine. Their crucial contributions include the provision of healthcare, shelter and accommodation, educational enrollment (kindergartens, primary, and secondary schools), consultations, psychological support, child vaccinations, and social care services. As interpreted in the Ukraine Situation Regional Refugee Response Plan: *"local communities have taken a welcoming stance, with humanitarian actors, civil society, the private sector and community volunteers complementing the governmentled efforts by providing significant support at border reception points and urban areas."*[57] These efforts led to strengthening the capacities of local institutions providing services both for refugees and local communities "*to streamline the legislative*

[53] Bowen.

[54] Seberíni, Lacová, Gubalová, Svidroňová.

[55] UNICEF, "Delivering Humanitarian Cash Transfers to Ukrainian refugees in Slovakia," 2024.

[56] Ogrodnik.

[57] UNICEF, "UNICEF Emergency Response Office Slovakia," 2023, 8.

framework and create a favourable protection environment to enable refugees' socio-economic inclusion and integration".[58]

In the first months, local authorities were vital frontline responders, providing essential services such as shelter and food, working closely with NGOs and international bodies such as UNICEF and UNHCR.This highlighted the role of civil society in complementing the state. Local governments shifted their focus towards long-term strategic integration.As the crisis evolved from an emergency to a protracted situation,

From the onset of Russia's full-scale military intervention in Ukraine, the Slovak Republic has extended multifaceted support through its state administration at various levels, local government bodies, and the private and civil sectors. Between 2022 and early 2024, this support encompassed:

- At the state administration and main institutional levels (Government of the Slovak Republic, National Council, President of the Slovak Republic, ministries), Slovakia's support for Ukraine has included: dispatching a diplomatic convoy to Kyiv; providing humanitarian and development aid; voting in favor of UN General Assembly resolutions condemning Russian aggression; formally receiving the Ukrainian ambassador; advocating for Ukraine's EU membership; planning for involvement in Ukraine's reconstruction; establishing initial reception points; conducting public information campaigns for Ukrainian arrivals; creating a temporary refuge system for displaced individuals; issuing statements strongly condemning Russia's annexation of Ukrainian territory; supporting the establishment of an OECD office and analytical unit in Kyiv; sharing refugee stories on public broadcaster RTVS; supplying military equipment; monitoring the situation and collecting relevant statistics; and implementing financial assistance programs for those arriving from Ukraine.

[58] UNICEF, "UNICEF Emergency Response Office Slovakia," 2023, 16.

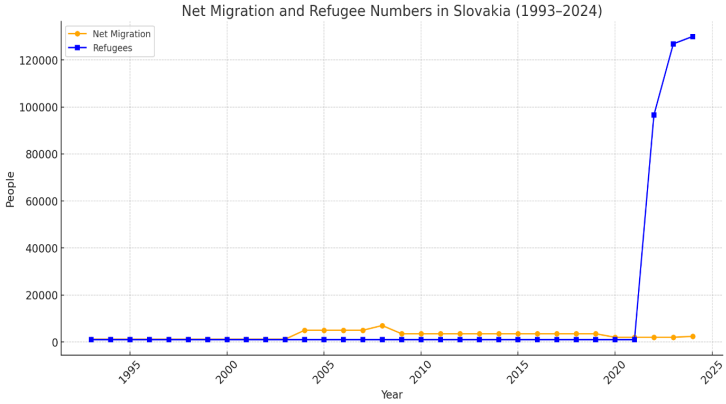
- At the municipal level, support has involved: assisting in the establishment of temporary accommodation facilities; providing aid at border crossings; offering financial and material support; re-establishing cooperative relationships between Slovak and Ukrainian cities; and ongoing monitoring and assistance efforts.
- The private and civil sectors, including municipalities, have contributed through: organizing financial and material aid collections for Ukraine; preparing Slovak businesses for Ukraine's post-war reconstruction; tracking data and monitoring the situation; providing healthcare, psychological support, and social assistance; offering various forms of aid and remote support; arranging temporary housing; providing Slovak language courses; conducting interviews; facilitating accommodation; supporting education and social inclusion; delivering food and medicine; and offering financial aid to individuals arriving from Ukraine.

Since the outbreak of Russia's ongoing war of aggression against Ukraine, Slovakia has experienced an unprecedented number of new arrivals displaced from Ukraine. This is illustrated in Chart 1 below. More than 130 000 such people have applied for temporary protection by 2025, leading to significant pressure on public authorities to adopt various local integration measures. These include, for example, the development of strategic documents for integration at the local level.

One of the most immediate priorities for Slovak authorities was providing emergency accommodation and services. In the Košice Self-governing Region, officials established shelters in hostels and school dormitories, while information stands at transport hubs helped refugees navigate their new environment. A free hotline, available in Slovak and Ukrainian, and free transportation within the region further underscored the commitment to ensuring refugees' safety and mobility.[59]

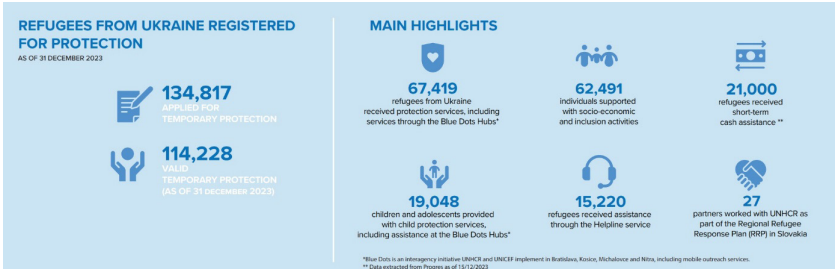
[59] Košice Regional Authority, "Všetky základné informácie k pomoci Ukrajine," 2022.

CHART 1: Net Migration and Refugee Numbers in Slovakia (1993–2024)



Source: *United Nations High Commissioner for Refugees (UNHCR) and UNRWA through UNHCR's Refugee Data Finder at unhcr.org/refugee-statistics*

CHART 2: Ukraine Assistance Dashboard UNHCR Slovakia – December 2023 Achievements



Source: *Slovakia: UNHCR Achievements Report – December 2023, available online: https://data.unhcr.org/en/documents/download/107813*

Nitra identified integration as a priority. The city adopted a comprehensive Strategy for the Integration of Foreigners, developed with input from the Centre for the Research of Ethnicity and Culture and UNICEF Slovakia.[60] This strategy aims to integrate foreigners into Nitra

60 "Strategy for the integration of foreigners (including refugees and displaced persons) in the city of Nitra with a outlook until 2035," 2024.

and is primarily for those involved in managing migration. It includes a migration and integration situation analysis. The plan outlines pathways to facilitate employment, education, housing and community involvement for refugees, with ambitious integration goals through 2035. Slovakia introduced a funding scheme allocating 12 million euros to municipalities for humanitarian and integration initiatives to support these efforts.

Equally important was ensuring access to healthcare and social services. Local governments worked with the Ministry of Interior and organizations such as UNHCR to provide schooling for refugee children and secure appropriate housing. These efforts aimed to balance immediate needs with the long-term sustainability of refugee support systems.[61] Similar efforts have been introduced by regional authorities, especially in Prešov and Košice regions which are situated at the border with Ukraine. In Prešov the region set up accommodation for refugees in the former school which also includes social and psychological counseling. The temporary shelter has been used here by Ukrainian mothers with children. Trnava Region provided refugees from Ukraine with beds at dormitory. They also provide psychological and material assistance together with all important information. They helped the refugees to handle all administrative matters at the Foreign Police and the Labor Office. Additionaly, the regional council of the Trnava Self-Governing Region canceled a memorandum on mutual cooperation with the government of the Leningrad region of the Russian Federation. This symbolical gesture expressed disagreement with the unjust unilateral aggression of Russia against Ukraine, accompanied by numerous civilian victims. At the same time, it has approved several measures allowing the helpful steps of regional self -government against refugees from Ukraine, including EUR 100,000 for humanitar-

[61] UNHCR Slovakia, "Slovakia launches the 2025–2026 Refugee Response Plan for Ukrainian refugees," 2025.

ian purposes. Both Košice and Prešov regions have established free travel for Ukrainian citizens heading for Slovakia.

All regions have also introduced free hotlines for refugees from Ukraine to seek assistance, counselling and established humanitarian aid warehouses. Slovakia mobilized a broad wave of solidarity for a humanitarian response that involved state agencies, municipalities, individuals, and civil society organizations from the outset in a prompt, efficient, and humane manner. The UN agencies, such as UNICEF, UNHCR, IOM, and WHO that provided support for Ukraine's refugee crisis response through its current municipal and government structures were warmly welcomed by the Slovak government.[62]

The Ministry of Labour, Social Affairs and Family of the Slovak Republic, in cooperation with the Office of the Plenipotentiary of the Government of the Slovak Republic for the Development of Civil Society have prepared a new funding scheme for regional and local governments´ authorities to financially contribute to humanitarian and integration activities and costs associated with such expenses. The primary effort was to focus on several key areas related to the quality of life, and therefore topics such as housing, education, employment, health or social care. These components of life of refugees from Ukraine in Slovakia are the aim of measures to support the integration of refunds at different levels and thus help the state to be most effectively integrated. Previously, the self-governing entities have used their own resources which was in direct opposition to government promise about reimbursing such costs. This funding scheme provided financial support to local governments in order to maintain their activities related to Ukrainian refugees lasting until the end of 2023 but using retroactivity since February 2022.[63] The eligibility of the funding scheme was

[62] UNICEF, "UNICEF Emergency Response Office Slovakia," 2023.

[63] European Commission, "Slovakia: New funding scheme for municipalities and self-governments promotes the integration of people displaced from Ukraine," 2023.

granted to municipalities and self-governing regions including entities established or founded by them. The total sum allocated for this call was more than 12 million EUR.[64]

Another call for applications was announced in March 2023 by the Ministry of Investment, Regional Development and Informatisation of the Slovak Republic as a managing body for the Integrated Regional Operational Program. Financial contributions to support operations aimed at addressing migration challenges as a result of military aggression against Ukraine could have been reached by municipalities with a total fund allocation of EUR 126 916 400.[65]

The Shift from Emergency to Long-Term Integration Strategies

As the humanitarian crisis evolved into a protracted displacement situation, Slovak local governments necessarily adapted their approach. Slovak local governments have shifted their approach towards more comprehensive and long-term integration strategies in various sectors. The plan for 2025–2026 is to move from emergency to integration. The Ministry of Interior and UNHCR have identified key priorities: refugee enrolment in schools, access to healthcare, and self-reliance.[66] The Slovak government reduced asylum seeker waiting times through 2022 legislative amendments and increased access to social services and counselling. Slovakia's approach is multi-pronged: emergency measures addressed urgent needs, while integration strategies (with financial support) ensured long-term assistance. Collaboration between local, international and national authorities was crucial in the establishment of a robust and sustainable framework for refugee as-

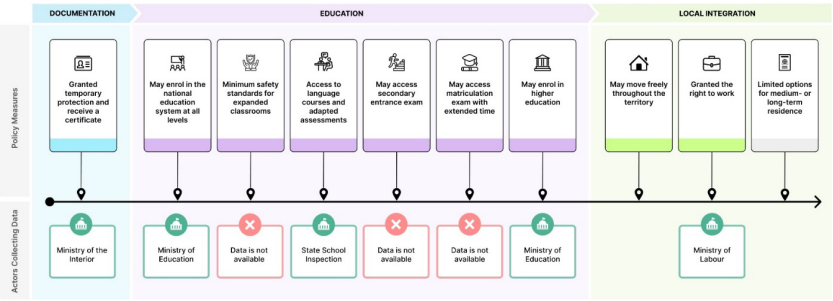
[64] Implementation Agency of Ministy of Labour, "Solidarita s Ukrajinou," 2023.

[65] ZMOS, "Výzva pre miestne samosprávy na riešenie migračných výziev v dôsledku vojenskej agresie voči Ukrajine," 2023.

[66] UNHCR Slovakia, "Slovakia launches the 2025–2026 Refugee Response Plan for Ukrainian refugees," 2025.

sistance (Scheme 1). This comprehensive response demonstrates Slovakia's solidarity with Ukraine and sets a precedent for EU refugee policy.

SCHEME 1: Policy pathway for Ukrainian refugees in Slovakia



Source: *https://www.unesco.org/en/ukraine-war/education/slovakia-support*

Integration Pillars

Local governments prioritized education as a primary focus. The Ministry of Interior has been actively engaged in intensive collaboration with local governments to facilitate the enrollment of refugee children in schools.[67] The City of Bratislava, for instance, in partnership with UNICEF, has developed a diverse range of support programs, including language courses for children and youth, and providing recreational opportunities through Leisure Centres.[68] By November 2024, a substantial majority of children aged 6 to 14 (93%) were attending primary schools, and 89.7% of those aged 15 to 17 continued their studies in secondary schools. Despite this high enrollment, language barriers continue to pose a significant obstacle to their full integration into the school environment.[69]

---

67 UNHCR Slovakia, "Slovakia launches the 2025–2026 Refugee Response Plan for Ukrainian refugees," 2025.

68 UNICEF, "City of Bratislava, Eurocities and UNICEF call for continued solidarity and support for Ukrainian refugees as war persists," 2023 .

69 European Commission, "Slovakia: Progress and challenges in the integration of people displaced from Ukraine," 2025.

Access to Healthcare for Temporary Protection status holders also saw an evolution. Initially, from January 2023, only those under 18 years of age had access to free emergency and primary healthcare, while adults were limited to emergency life-saving services.[70] However, recognizing the pressing need, the Government of Slovakia announced new legislation in June 2023 to extend social coverage, granting all TP holders, including adults, access to primary healthcare from September 2023. To bridge the gap during this transitional period, the Slovak Red Cross and IFRC implemented an innovative cash-for-health program (Ibid).

In terms of Employment, national policies are designed to eliminate legal obstacles and promote positive actions for integration into the labor market. By December 2023, 39,307 Ukrainian migrants were employed in Slovakia.[71] A November 2024 study indicated that 67% of Ukrainian refugee respondents were engaged in paid work, with nearly two-thirds securing employment corresponding to their qualifications.[72] Nevertheless, challenges persist, particularly for vulnerable groups such as single mothers, with 22.3% of workers on temporary contracts, leading to lower incomes and job instability. A notable disparity in earnings was also observed, with men earning significantly more than women (Ibid).

Securing decent and stable Housing remains a considerable challenge for many displaced persons. The reduction of financial support for accommodation providers has exacerbated this uncertainty, particularly affecting larger families and single mothers with children.[73]

---

70 Kuchumov, Šujanská.

71 Seberíni, Lacová, Gubalová, Svidroňová.

72 European Commission, "Slovakia: Progress and challenges in the integration of people displaced from Ukraine," 2025.

73 European Commission, "Slovakia: Progress and challenges in the integration of people displaced from Ukraine," 2025.

Multi-Stakeholder Collaboration

Local governments play key role in coordinating the response to the refugee crisis together with UNICEF, UNHCR and IFRC. These international organisations provide important services, including education, mental health support, and helping people to fit in with society. They are very important in managing cash assistance programmes.[74] The UNHCR is working on a plan to help refugees called the Refugee Response Plan 2025–2026. The plan is being run with the help of 19 other organisations, and more than half of these are from the countries where the refugees are. These partners are working to provide support to Ukrainian refugees and the communities that are hosting them.[75] Working together with Ukrainian cities across the border has also been very important. Projects like the one involving the City of Košice, which is working with partners from Slovakia and Norway, have increased cooperation between institutions in Ukraine. These plans look at things like good management, being open about what they are doing, and how they can improve their business. It should be noted that the project adapted to the wartime context by moving activities online and using saved funds to provide humanitarian aid.[76] In addition, an organisation called the "Ukrainian-Slovak House" was set up to help Kharkiv and Slovakia work together more closely. The Eurocities network has organised important meetings. The City of Bratislava works closely with other European towns and cities and UNICEF to share experiences and develop long-term plans for including refugees. This work always highlights the need for local governments to pro-

[74] UNICEF, "Delivering Humanitarian Cash Transfers to Ukrainian refugees in Slovakia," 2024.

[75] UNHCR Slovakia, "Slovakia launches the 2025–2026 Refugee Response Plan for Ukrainian refugees," 2025.

[76] EFTA, "Cities in the Enlarged European Area: Joint Development of Capacities of Public Institutions by Slovak-Ukrainian Cross-border Cooperation and Improving Integrity in Public Affairs (CEEA)," 2025.

vide ongoing financial support to effectively move from emergency responses to long-term strategies.[77]

The data reveals a significant, often overlooked, economic benefit of refugee integration. The activation of the Temporary Protection Directive, granting the right to work, directly enabled this economic contribution.[78] This challenges the common perception that refugees are solely a financial burden. Local governments, by facilitating access to services like education and healthcare (which enable employment), indirectly contribute to this economic boost. The fact that two-thirds of the direct assistance costs were covered by the EU further amplifies the net positive financial impact for Slovakia's national and, by extension, local budgets.[79] This supports the argument for investing in refugee integration, especially in employment and education.Viewing refugees as economic contributors, not just recipients of aid, can change policy towards integration measures that yield societal and economic benefits for host nations.Local governments can help by creating an environment that encourages employment and social inclusion.

This policy framework facilitated the observed evolution in local government roles from immediate humanitarian aid coordination to active, strategic integration efforts, demonstrates a critical adaptive capacity within Slovak local governance. Initially, they acted as crucial facilitators and conduits for immediate humanitarian aid, often relying on the rapid mobilization of NGOs and international partners. As the crisis persisted, their role matured into that of strategic integrators, actively shaping and implementing policies for long-term inclusion in education, healthcare, and social life. This evolution showcases their ability to move beyond reactive crisis management to proactive policy development and service delivery, reflecting a deeper understanding of the protracted nature of the displacement.

77 UNICEF, "UNICEF Emergency Response Office Slovakia," 2023.

78 Seberíni, Lacová, Gubalová, Svidroňová.

79 Kulakova.

The following Table 3 details the key measures adopted by Slovak local governments and their crucial collaborations.

TABLE 3: Key Local Government Measures and Collaborations

Response Area	Specific Local Government Measures	Key Collaborating Partners
Humanitarian Aid / Reception	Provision of temporary shelter, food, basic supplies; Free local transport; Initial psychological and social support.	NGOs (Slovak Red Cross, People in Need, Slovak Humanitarian Council, Human Right League, Mareena, SME SPOLU); UN Agencies (UNICEF, UNHCR, IFRC); Volunteers; Central Government (Ministry of Finance, Ministry of Interior).
Crisis Management / Civil Protection	Local emergency planning and execution; Management of rescue operations; Provision of emergency accommodation; Maintenance of records for evacuated persons.	Regional departments of civil protection and crisis management (District offices); Ministry of Interior.
Education	Intensive efforts for school enrollment of refugee children; Provision of language courses for children and youth; Support for children in Leisure Centres.	Ministry of Interior; UNICEF; Eurocities; Local schools.
Healthcare	Coordination with health providers to ensure access; Support for primary health-care access for all TP holders.	Ministry of Interior; Slovak Red Cross; IFRC; Health insurance companies.
Employment Support	Facilitating access to labor markets; Coordination with Central Office of Labor, Social Affairs, and Family; Information provision on job opportunities.	Ministry of Labor, Social Affairs and Family; UNHCR; UNICEF; Private sector.

Housing	Provision of emergency accommodation; Site mapping and monitoring of collective accommodation.	UNHCR; IOM; Accommodation providers.
Financial Assistance	Facilitating access to national Material Needs Benefit program; Partnering for Humanitarian Cash Transfers; Cash-for-shelter programs.	Ministry of Labor, Social Affairs and Family; UNICEF; UNHCR; IFRC; Western Union.
Cross-Border Cooperation	Intensified institutional cooperation with Ukrainian cities (e.g., Košice-Uzhhorod) on good governance, transparency, business infrastructure; Allocation of funds for humanitarian aid to Ukraine; Organization of humanitarian convoys to Ukrainian cities.	Ukrainian cities (Uzhhorod, Kharkiv, etc.); FEMAN Association; Centre for Central European Cooperation.

Source: *UNHCR Slovakia, "Slovakia launches the 2025–2026 Refugee Response Plan for Ukrainian refugees," 2025; Andrea Seberíni, Žaneta Lacová, Jolana Gubalová, and Mária Murray Svidroňová. 2024. "The Challenges of Ukrainian Refugees in Slovakia – Labour Market Integration Aspects with the Help of NGOs," 2024.*

V. Conclusion

Slovakia's decentralized local government structure, established after 1990, was crucial for a immediate humanitarian response during the initial crisis. Local municipalities and regions had existing laws and the ability to act independently of the central government. This local control allowed for fast and flexible actions on the ground, leading to a more organized initial response. This demonstrates that a strong, decentralized government with clear local responsibilities is key to a country's ability to handle major crises effectively and build national resilience. The inherent local autonomy, distinct from central government directives, enabled agile actions that would otherwise have been significantly hampered.

Despite the commendable efforts and adaptive capacity demonstrated by Slovak local governments, several significant challenges and limitations continue to impact their ability to sustain and optimize refugee integration efforts.

First, the initial response to the humanitarian crisis highlighted a *"lack of experience, coupled with scarce infrastructure, insufficient legal framework and resourcing, and poor coordination"* among various actors, particularly within the Visegrad Group countries, including Slovakia.[80] While international and national support has been substantial, local governments continue to face significant financial limits. Although the European Union has funded a considerable portion of refugee assistance, there remains a pressing need for continued and stable financial support at the local level. This support is crucial to enable the transformation of emergency responses into long-term strategic approaches without compromising essential services for refugee children and host communities. The reduction of financial support for accommodation providers, for example, has already introduced uncertainty regarding housing stability for refugees. The sheer volume of displaced individuals (over 139,000 Temporary Protection holders in a country of approximately 5.5 million inhabitants) has inevitably strained human resources and administrative capacities at the local level.

Local government responses are inevitably influenced by broader national political and economic contexts. The situation in Slovakia has been challenging due to its unstable political climate. The central government is struggling to make decisions about important issues because of arguments within the ruling coalition and the need to deal with the pandemic, energy crisis and war in Ukraine.[81] It is challenging to implement effective policies and ensure fair resource distribution when confronted with significant challenges, which places additional pressure on local communities. The Ukrainian refugee crisis exposed

[80] Seberíni, Lacová, Gubalová, Svidroňová.

[81] Nemec, Flaška, Kološta, Malová, Guasti.

significant flaws in Slovakia's governance system, particularly in its interaction with local administration. It is clear that when there are clear legal rules for local self-government, big problems like political interference, corruption, and making policies without evidence can stop us from responding to a crisis in a strong and lasting way. These challenges can strain the capacity of local administrative entities.

The shifting national stance on aid only adds to this complexity. Despite initial strong diplomatic, humanitarian, and military support for Ukraine, the government under Prime Minister Robert Fico announced a halt to military aid in late 2023. The Prime Minister has also warned that he will stop all humanitarian aid and significantly reduce or completely withdraw benefits for Ukrainian war refugees if certain reciprocal measures with Ukraine are not met. This creates considerable uncertainty and potential challenges for local governments, which are heavily reliant on national policy frameworks and financial support for their integration programs. Local governments are significantly dependent on national policy frameworks and financial support. This means that their commendable efforts in refugee integration are highly vulnerable to shifts in central government political will and priorities. For effective long-term refugee integration, there is a critical need for national policies that are insulated from short-term political fluctuations and are based on evidence (e.g. economic benefits of integration). International partners must explore mechanisms to directly support local governments and civil society. These mechanisms are the key to making sure that essential services continue, especially when people in the country are not as committed. This shows how important local groups like the Association of Towns and Villages of Slovakia (ZMOS) are in explaining what municipalities need and what problems they have.

REFERENCES

- Bargerová, Zuzana. 2016. "Migrácia ako spoločenský fenomén: historické, sociálne a právne aspekty." In *Otvorená krajina alebo nedobytná pevnosť? Slovensko, migranti a utečenci*, edited by Miroslava Hlinčíková and Grigorij Mesežnikov, 17–36. Praha: Heinrich Böll Stiftung.
- Behúňová, Kristína, and Soňa Oboňová. 2021. "Výročná správa o migrácii a azyle v Slovenskej republike za rok 2020." Bratislava: IOM.
- Bolečeková, Martina. 2010. *Migračná politika*. Banská Bystrica: Univerzita Mateja Bela v Banskej Bystrici.
- Bolečeková, Martina, and Barbora Olejárová. 2018. "Instruments of Migration Policy: A Case of the Slovak Republic." *Journal of International Studies* 11 (1): 225–39. https://doi.org/10.14254/2071–8330.2018/11–1/17.
- Bowen, S. Andrew. 2023. "Russia's War in Ukraine: Military and Intelligence Aspects." Congressional Research Service. https://www.congress.gov/crs-product/R47068.
- Carrera, Sergio, and Karel Lannoo. 2018. "We're in This Boat Together: Time for a Migration Union." *CEPS Policy Insights*, No. 2018/09. https://aei.pitt.edu/94158/1/SCandKL_PI2018_09_MigrationUnion.pdf.
- Castles, Stephen, and Mark J. Miller. 2009. *The Age of Migration*. New York: Guilford Publications.
- Divinský, Boris. 2009. "Migračné trendy v Slovenskej republike po vstupe krajiny do EÚ (2004–2008)." IOM Slovakia. https://www.emn.sk/phocadownload/external_studies/iom_migracne_trendy_v_sr_2004-2008.pdf.
- Drozd, Peter, Jakub Duchovič, Katarína Lukačovičová, Paula Paulenová, and Marianna Tašká. 2024. "Strengthening the Inclusion of Temporary Protection Holders and Foreigners

in the Slovak Republic – Roadmap of Priority Measures." Bratislava: IOM.

- Filipec, Ondřej, and Ingrid Borárosová. 2017. "Europeanization of Slovak Migration Policy: From Modernization to Fortification?" *Polish Migration Review* 2 (1): 55–71.
- Filipec, Ondřej, Valeriu Mosneaga, and Aaron T. Walter. 2018. *Europe and the Migration Crisis: The Perspective of the EU Member States*. Gdańsk: Stowarzyszenie Naukowe Instytut Badań nad Polityka Europejska.
- Folk, György. 2017. "Hungary and Slovakia Lose Migrant Quota Case Against the EU." *Liberties.eu*, September 7, 2017. https://www.liberties.eu/en/stories/ejc-migrant-quota-ruling-hungary-slovakia-eu/12853.
- Francelová Hrabovská, Nina. 2022. "Solutions to Tackle Brain Drain Planned as Part of Slovakia's Recovery Plan." *The Slovak Spectator*, May 17, 2022. https://spectator.sme.sk/business/c/solutions-to-tackle-brain-drain-planned-as-part-of-slovakias-recovery-plan.
- Geddes, Andrew, and Peter Scholten. 2016. *The Politics of Migration and Immigration in Europe*. London: Sage Publications.
- Gruszczynski, Lukasz, and Réka Friedery. 2022. "The Populist Challenge of Common EU Policies: The Case of (Im)migration (2015–2018)." *Polish Yearbook of International Law* 42: 221–44.
- Kahanec, Martin, and Lucia Mýtna Kureková. 2014. "Did Post-Enlargement Labor Mobility Help the EU to Adjust During the Great Recession? The Case of Slovakia." Institute for the Study of Labor (IZA), Bonn. https://www.econstor.eu/handle/10419/98974.
- Karolewski, Ireneusz Pawel, and Roland Benedikter. 2018. "Europe's Refugee and Migrant Crisis: Political Responses to Asymmetrical Pressures." *Politique européenne* 60 (2): 98–132. https://doi.org/10.3917/poeu.060.0098.

- Komendantova, Nadejda, Dmitry Erokhin, and Teresa Albano. 2023. "Misinformation and Its Impact on Contested Policy Issues: The Example of Migration Discourses." *Societies* 13 (7): 168. https://doi.org/10.3390/soc13070168.
- Kriglerová Gallo, Elena, Jana Kadlečíková, Alena Holka Chudžíková, and Michaela Píšová. 2021. *Slovensko a migrácia. Hľadanie ciest k spolužitiu*. Bratislava: CVEK.
- Kuchumov, Vesal, and Gabriela Šujanská. 2024. "Cash Assistance for Refugees with Non-Communicable Diseases in Slovakia. Lessons Learnt Report." https://communityengagementhub.org/wp-content/uploads/sites/2/2024/09/SVK_RC-lessons_learnt_report-NEW2-web.pdf.
- Kulakova, Maryna. 2025. "Ukrainian Refugees Contribute Twice as Much to Slovakia's Budget as Aid Costs." *United-24Media*. https://united24media.com/latest-news/ukrainian-refugees-contribute-twice-as-much-to-slovakias-budget-as-aid-costs-8259.
- Mesežnikov, Grigorij. 2000. "Vnútropolitické determinanty zahraničnej politiky SR: Integračná dimenzia." In *Ročenka zahraničnej politiky Slovenskej republiky 1999*, edited by Alena Kotvanová, 55–60. Bratislava: Slovenský inštitút medzinárodných štúdií.
- Mesežnikov, Grigorij. 2016. "Migration, Elections and Extremism: The Case of Slovak Politics." Heinrich Böll Stiftung, Brussels Office – European Union, May 26, 2016. https://eu.boell.org/en/2016/05/26/migration-elections-and-extremism-case-slovak-politics.
- Mihálik, Jaroslav, and Michal Garaj. 2025. "Slovakia. Forced Migration of Ukrainians – Comparative Strategies in Visegrád, WB and EaP Countries." https://www.sabauni.edu.ge/img/file/1739526460--COUNTRY%20REPORT%20SLOVAKIA.pdf.

- Mihálik, Jaroslav, and Matúš Jankoľa. 2016. "European Migration Crisis: Positions, Polarization and Conflict Management of Slovak Political Parties." *Baltic Journal of Law & Politics* 9 (1): 1–25. https://doi.org/10.1515/bjlp-2016-0001.
- Nemec, Juraj, Filip Flaška, Stanislav Kološta, Darina Malová, and Petra Guasti. 2024. "Slovakia Report. Sustainable Governance Indicators 2024." Gütersloh: Bertelsmann Stiftung. https://www.sgi-network.org/docs/2024/country/SGI2024_Slovakia.pdf.
- Ogrodnik, Łukasz. 2022. "Slovakia's Response to the Russian Invasion of Ukraine." *Spotlight*, 48/2022. https://pism.pl/publications/slovakias-response-to-the-russian-invasion-of-ukraine.
- Práznovská, Monika. 2019. "Europeanization of Migration Policy in Slovakia." In *Proceeding of 6th ACADEMOS Conference 2019*, 211–19. Bologna: Filodiritto Publisher.
- Práznovská, Monika. 2023. "Aktuálne výzvy azylovej a migračnej politiky Slovenska." *Politické Vedy* 26 (1): 95–117. https://doi.org/10.24040/politickevedy.2023.26.1.95-117.
- Přívarová, Magdaléna. 2023. "A Brief Overview of the Migration Policy Development in the Slovak Republic." *Migration Letters* 20 (7): 1084–93. https://doi.org/10.59670/ml.v20i7.4864.
- Přívarová, Magdaléna, Eva Rievajová, Ani Galstyan, and Beáta Gavurová. 2022. "Migration Processes and Determinants: The Case of the Slovak Republic." *Social Policy Issues* 59 (4): 305–22. https://doi.org/10.31971/pps/158578.
- Scissa, Chiara, and Susan F. Martin. 2024. "Migration in the Context of Climate and Environmental Changes within Central Asia and to the European Union and the Russian Federation." Geneva: International Organization for Migration.
- Seberíni, Andrea, Žaneta Lacová, Jolana Gubalová, and Mária Murray Svidroňová. 2024. "The Challenges of Ukrainian Ref-

ugees in Slovakia – Labour Market Integration Aspects with the Help of NGOs." In *Non-Governmental Organizations – Role and Performance in Turbulent Times*, edited by Mária Murray Svidroňová. IntechOpen. https://doi.org/10.5772/intechopen.1004918.

- Stojarová, Věra. 2019. "Migration Policies of the Czech and Slovak Republics since 1989 – Restrictive, Liberal, Integrative or Circular?" *Transylvanian Review of Administrative Sciences*, no. 56: 97–114.
- Szakács, Judit, and Éva Bognár. 2021. "The Impact of Disinformation Campaigns About Migrants and Minority Groups in the EU." Brussels: EU.
- Štefančík, Radoslav, Eva Stradiotová, and Terézia Seresová. 2022. «A Missing Piece: The Absence of Discussion About Integration Policy in the Slovak Migration Discourse.» *Migration Letters* 19 (6): 965–81. https://doi.org/10.59670/ml.v19i6.2780.
- Zachová, Aneta, Edit Zgut, Zuzana Gabrižová, Karolina Zbytniewska, and Michał Strzałkowski. 2018. "V4 United Against Mandatory Relocation Quotas." July 13, 2018. https://visegradinfo.eu/index.php/archive/80-articles/566-v4-united-against-mandatory-relocation-quotas.

DIVERSITY MANAGEMENT IN THE CZECH REPUBLIC: THE FOCUS ON UKRAINIAN REFUGEES

Nikola Medová
Lucie Macková

I. Introduction

Diversity management has been resonating among the Czech society now more than before. With the influx of Ukrainian refugees, the country had to adopt many new measures and policies in order to manage the situation that emerged almost immediately after the Russian invasion in Ukraine in February 2022. Having Ukrainian children enrolled into Czech schools has been one of many issues related to this topic, which has been brought into the public discussion. Yet, the case of the Czech Republic and its experience is important as it shows the engagement of actors at the governmental, regional and municipal levels.

The main source of understanding the status and rights of Ukrainians within the Czech Republic can be found in the law. So-called "Lex Ukraine" was the first established law at the institutional level that became effective on 21st March 2022. It is important because it sets conditions for the temporary protection of the refugee (in accordance with the EU law) and also divides competencies among three levels of the state actors when it comes to the accommodation and access to health care.[1] On June 12, 2024, the government approved the amendment to the law Lex Ukraine 7, which was prepared by the Ministry of the Interior. The amendment will enable Ukrainian refugees who

[1] Filipec, Macková, Medová, 1–24.

are economically self-sufficient and independent of the benefit system to obtain regular residence status. Instead of temporary protection, they will now be able to obtain long-term residence under the Act on Residence of Foreigners. This will enable the Ukrainians who are economically independent, do not receive any benefits and who want to live in the Czech Republic for a long time, to stay and get a long-term residence.[2] However, the income threshold is limited to a majority of refugees and many of them will continue to stay in the Czech Republic under the framework of temporary protection.

The temporary protection enables Ukrainians to participate in the labour market and while its application varies across EU countries, it is an important tool which gives certain benefits to its holders. However, all EU states set their own rules about application of the directive. Temporary protection is a legal mechanism designed to offer immediate and short-term refuge to individuals fleeing conflict, generalized violence, or humanitarian crises.[3] Unlike refugee status determined under the 1951 Refugee Convention, temporary protection is typically granted on a group basis and often involves fewer procedural safeguards.[4] It is characterized by expedited access to shelter, residency rights, and often basic social services, while remaining limited in duration and scope.

The European Union activated its Temporary Protection Directive in 2022 (after having been first drafted in 2001) to respond to the large-scale displacement caused by the war in Ukraine, granting displaced persons immediate access to residence, education, and employ-

---

[2] Ministry of the Interior of the Czech Republic. (2024). Vláda schválila Lex Ukrajina 7. Ekonomicky soběstační uprchlíci z Ukrajiny budou moci získat dlouhodobý pobyt. [The government approved Lex Ukraine 7. Economically self-sufficient refugees from Ukraine will be able to obtain long-term residence.] https://www.mvcr.cz/clanek/vlada-schvalila-lex-ukrajina-7-ekonomicky-sobestacni-uprchlici-z-ukrajiny-budou-moci-ziskat-dlouhodoby-pobyt.aspx

[3] UNHCR. (2014). Guidelines on Temporary Protection or Stay Arrangements.

[4] Foster, Lambert.

ment without the need for individual asylum claims.[5] Similarly to the EU, temporary protection works in other geographical contexts such as in the United States or Latin American countries. While temporary protection schemes provide urgent humanitarian relief, scholars have raised concerns over their ambiguity and the potential for extended temporariness without durable solutions.[6]

This study aims to explore the evolving perception of Ukrainian migration to the Czech Republic and the corresponding institutional and societal responses, with particular emphasis on the role of education in the integration of Ukrainian students. This chapter will now turn to discussing the concept of diversity management and the background of migration policies in the Czech Republic. It will then delve into the methodology of this study and its findings. Finally, conclusion and policy implications follow.

II. Understanding the concept of diversity management

Before diving into the specifics of the Czech Republic, it is important to clarify how to define and explain diversity management and other related terms. The first among them is *diversity,* which is a noticeable heterogeneity referring to identities among people existing in social surroundings. *Heterogeneity* is the quality of being diverse and not comparable in kind. Another term worth explaining is a *diversity of workplace* that includes the differences relating to human beings such as ethnic heritage, race, sexual orientation, mental/physical abilities and characteristics, age and gender that are not changeable within the company staff.[7] *Diversity management*, originated in the US, was later introduced to Europe in the 1990s. Although, in practice, this type

[5] European Commission. (2022). EU Temporary Protection Directive: Ukraine crisis response.

[6] Gammeltoft-Hansen, Tan, 28–56.

[7] Danullis, Dehling, Pralica.

of management has started to develop and to be implemented just recently within the European companies.[8] The basis of diversity management concept can be seen in the natural substance of diversity existing in the human society.[9] It refers to organizational strategies and practices aimed at creating a more inclusive work environment where differences such as ethnicity, gender, age, religion, and other aspects are valued and respected.

It is also important to emphasize why diversity management is crucial for business success, innovation, and social cohesion. It often includes fight against stereotypes, prejudice and all kind of discrimination due to the individual perceptions and assumptions. The aim of diversity management is to focus on the benefits and avoid different approaches from people within a company.[10] Within the concept of diversity management, there are many components that should be considered (e.g., ethnicity, nationality, cultures, demography, competencies, organizational functions and processes, network…). These can be seen as a limitation.

European diversity management reflects a more complex context shaped by multiple countries with different histories of immigration, minority relations, and legal frameworks.[11] While anti-discrimination laws exist broadly across the EU,[12] many European countries emphasize integration and social cohesion over explicit affirmative action.[13] The focus is often on managing diversity related to nationality, ethnicity, religion, and recently migration status, with particular sensitivity to historical memories of conflict, nationalism, and social welfare con-

8 Ivancevich, Gilbert, 75–92.

9 Eger et al.

10 Danullis, Dehling, Pralica.

11 Eger et al.

12 European Commission. (2024). Governance of migrant integration in Czechia. https://migrant-integration.ec.europa.eu/country-governance/governance-migrant-integration-czechia_en

13 Schmid et al., 149–164.

siderations.[14] European diversity management practices frequently prioritize intercultural dialogue, inclusion policies embedded within broader social policies, and legal protections without necessarily using explicit quotas.[15]

Another difference lies in its scope: The US primarily uses the term *diversity management* with a strong HR focus, whereas Europe often refers to intercultural management or integration policies involving public institutions and social actors rather than the workplace.[16] Additionally, the European approach tends to balance individual rights with group rights and collective integration, while the US model emphasizes individual identity and empowerment.[17]

In the Czech Republic, the concept of diversity management has become important especially after the country joined European Union in 2004 as it opened up and had easier and better access to international workers.[18] The period after 2000 has also led to the implementation of more restrictive migration policies in the Czech Republic, reflecting broader regional trends in securitizing migration and prioritizing state control. After the EU accession in 2004 and increasing integration into the Schengen Area, the Czech Republic restructured its migration governance framework to align with EU standards, but this alignment was accompanied by tighter visa regimes, stricter border controls, and more selective admission criteria.[19] These changes were particularly evident in the treatment of non-EU migrants and asylum seekers, with policy shifts emphasizing temporary labour migration over long-term integration.[20]

---

14 Vertovec, Wessendorf.

15 Eger et al.

16 Ibid.

17 Kymlicka.

18 Eger et al.

19 Drbohlav, 389–409.

20 Baršová, Barša.

III. Historical and socio-political background of the Czech Republic

Until the 1990s, the Czech Republic primarily served as a transit country for migrants. According to the European Commission, the number of migrants residing in the Czech Republic today is fourteen times higher than in 1989. Historically there has always been a large number of ex-Soviet citizens seeking international protection as well as increased labour migration due to a significant economic growth the country experienced in the late 2000s.[21] While transit migration had existed earlier, it became significantly more prominent during the 2015–2016 European refugee crisis. Following the 2015–2016 European refugee crisis, Czech migration policy became more restrictive, emphasizing border security and limiting refugee intake, reflecting widespread public scepticism towards large-scale asylum migration. At the same time, policies supporting integration – particularly in education, labour market access, and social services – were developed but often remained fragmented. Recent years have seen legislative adjustments, such as the Lex Ukraine acts, aimed at providing temporary protection and facilitating the integration of Ukrainian refugees following the 2022 Russian invasion.

The Russian invasion of Ukraine in February 2022 triggered unprecedented migration flows, when its neighbouring countries, regions and cities were significantly affected. The Czech Republic has been a country hosting the largest number of Ukrainian refugees per capita among the EU countries.[22] In total, over 530,000 Ukrainians were granted Temporary Protection status in the country. Currently, there are around 360,000 refugees with an active status.[23] Since the people

[21] European Commission. (2024). Governance of migrant integration in Czechia. https://migrant-integration.ec.europa.eu/country-governance/governance-migrant-integration-czechia_en

[22] Klimešová, Šatava, Ondruška.

[23] Eurostat. (2024). Temporary protection for persons fleeing Ukraine – monthly

fled their country of origin in a relatively short time, authorities in other states did not have enough time to prepare all necessary tools to receive such numbers of refugees. Also, the reactions of the locals have been changing over time.

With all these changes – including the shift from being a transit country to a destination country and the impact of broader migration trends – the total number of foreigners residing in the Czech Republic has risen sharply. Between 2010 and 2022, the foreign population increased by nearly 70%, surpassing one million in 2022.[24] This growth reflects not only the position of the Czech Republic but also broader EU mobility patterns that have made the Czech Republic an increasingly attractive destination. As a result, various types of migration – including labour, family, and humanitarian – are now present in the country.

IV. Methodology

This study employs a document analysis to examine the situation of Ukrainian refugees in the Czech Republic between 2022 and 2024. Document analysis was chosen as the primary method due to its suitability for exploring public attitudes and institutional responses over time. This approach allows for a systematic review and interpretation of texts to identify themes relevant to the experiences of displaced Ukrainians in the Czech Republic.

The paper has focused on the surveys of public opinions to illustrate the shifts in public perceptions of Ukrainian refugees. We have also included further publicly available documents produced between February 2022 and April 2024. Sources are comprised mainly of surveys of the Center for Public Opinion Research, which document the chang-

statistics. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Temporary_protection_for_persons_fleeing_Ukraine_-_monthly_statistics

[24] European Commission. (2024). Governance of migrant integration in Czechia. https://migrant-integration.ec.europa.eu/country-governance/governance-migrant-integration-czechia_en

es in the public perception towards Ukrainian refugees. Government reports and legislative documents from the Ministry of the Interior of the Czech Republic and other relevant state agencies were used as supporting sources. This research also draws on other documents from international organizations (e.g., UNHCR and the European Commission) and reports from Czech NGOs involved in refugee support.

Documents were retrieved through official websites. Inclusion criteria focused on relevance to Ukrainian refugee arrivals, public perception of refugee integration measures, and inclusion of Ukrainian students in the school system.

Documents were analysed thematically using an inductive approach. Special attention was given to attitude shifts over time, particularly comparing early responses in 2022 with developments in 2023–2024, allowing for an assessment of societal changes. The analysis was also sensitive to the ways different types of documents (e.g., official vs. civil society) presented and framed refugee-related issues.

V. Changing perspectives

During the period prior to the main refugee influx in 2022, Czech people looked at Ukrainians from different perspectives. Some saw them as immigrants who take jobs meant for Czechs, others perceived them as hard workers improving their life thanks to difficult jobs in construction companies. The fact that prevails even until nowadays is that Ukrainians accept jobs that local people are unwilling to take anymore. Unlike around 2018–2019, when most of the Czechs were indifferent towards Ukrainians, current surveys show different and changing results.[25]

In a survey conducted from late May to mid-July 2023, the Centre for Public Opinion Research explored the attitudes of the Czech society towards accepting Ukrainian refugees. Respondents shared their views

[25] Kobzová.

on allowing refugees to settle permanently in the Czech Republic and whether they believe Ukrainian refugees are successfully integrating into society. The survey also examined public interest in the ongoing developments related to the refugee situation. Over two-fifths (43%) of Czech citizens expressed an interest in the state of Ukrainian refugees; 9% of respondents were in favour of the possibility of Ukrainian refugees' permanent residency and around 64% preferred their temporary stay and return to their home country. Almost half of the citizens (43%) think that Ukrainian refugees were integrated into a Czech society and approximately the same number thought the opposite.[26]

About half a year later, between late January and early March 2024, the Centre for Public Opinion Research conducted another survey on the attitudes of Czech citizens toward Ukrainian refugees. The survey also assessed public interest in current issues related to the refugee situation. The results were as follows: around 40% of Czech citizens showed interest in the situation of the refugees from Ukraine. Approximately 11% of citizens were in favour of the possibility of permanent residency of Ukrainian refugees, while another 60% of people preferred only temporary stay followed by return to Ukraine. Another opinion of 59% of the respondents is that the Czech Republic has accepted more refugees than the country is able to handle.[27]

When comparing the results from both surveys, the proportion of people opining that the Czech Republic is doing well in integrating the refugees increased to 55%. The vast majority of Czechs (87%) stated that they most often encounter refugees from Ukraine in public places. Around a fifth of the population have refugees among their

[26] Červenka (2023). Attitude of Czech Public to Accepting of Refugees from Ukraine – June/July 2023. Centrum pro výzkum veřejného mínění. https://cvvm.soc.cas.cz/en/press-releases/political/international-relations/5715-attitude-of-czech-public-to-accepting-of-refugees-from-ukraine-summer-2023

[27] Kyselá (2024). Attitude of Czech Public to Accepting of Refugees from Ukraine – February 2024. Centrum pro výzkum veřejného mínění. https://cvvm.soc.cas.cz/en/press-releases/political/international-relations/5818-attitude-of-czech-public-to-accepting-of-refugees-from-ukraine-february-2024

colleagues, friends or children's classmates. Around half of the citizens (52%) view refugees from Ukraine as a problem in the context of the country as a whole. But if focusing on the place of residence alone, only a quarter (24%) of the population considers refugees problematic there.[28] This shows the discrepancy between the discursive sphere and the lived experience of people in the Czech Republic.

Another survey was conducted from the end of January to the beginning of March 2024. This one focused on the public opinion about the conflict in Ukraine and support to refugees. The research sought to determine whether people are interested in the development of the situation in Ukraine and whether they consider Ukrainians to be a security threat to the Czech Republic, Europe and world peace, how citizens feel about the government's actions in support of Ukraine and how they assess possible measures by the international community. More than two-fifths of the citizens (43%) agree with the government's actions to support Ukraine, the overwhelming majority (54%) disagree with them. Two fifths (40%) of Czech citizens think that the Czech government supports Ukraine adequately, and only a small portion of the respondents stated that there is a lack of support (3%); more than half (54%) think they support Ukraine too much.[29] When compared with the last comparable survey from June and July 2023, it is possible to see that interest in the situation in Ukraine has not changed significantly.

While there was strong initial support for Ukrainian refugees, public sentiment has gradually declined, leading to increased polarization within Czech society. This shift indicates that while there is broad backing for temporary protection, there remains notable reluctance toward permanent settlement. As a result, the prevailing focus is on short-term, return-oriented solutions. At the same time, the Czech economy bene-

[28] Ibidem.

[29] Čadová, Červenka (2024). Citizens on the situation in Ukraine – February 2024. Centrum pro výzkum veřejného mínění. https://cvvm.soc.cas.cz/en/press-releases/political/international-relations/5816-citizens-on-the-situation-in-ukraine-february-2024

fits significantly from the contributions of Ukrainian workers, creating a tension between economic reliance and societal hesitation. Integration efforts appear to function effectively at the local level; however, at the national level, concerns over housing, education, and resource allocation continue to fuel uncertainty. In the following section, the paper will examine the role of education as a key area of diversity management in the Czech Republic.

VI. Inclusion of Ukrainian students in the school system

The Czech education system – across all levels – has faced considerable pressure in response to the influx of Ukrainian refugees, particularly in certain regions. The number of Ukrainian children fleeing the war and entering Czech schools rose sharply in the spring of 2022 and has continued to fluctuate since. According to the Czech School Inspectorate, although the overall number of nursery schools is gradually increasing, approximately one-fifth still experienced capacity issues when enrolling Ukrainian children. The refugee wave has significantly impacted school capacities, resulting in regional disparities – some areas, especially large urban centres, face shortages in nursery school placements, while others report a surplus.[30]

Since 2010, the number of children in elementary schools has generally been rising, with the influx of around 68,983 Ukrainian children, aged 6–14, further increasing pressure on Czech primary schools by May 2022. Over 28,000 of these children enrolled in primary schools, especially in large cities like Prague (also Brno, Ostrava and others). Czech upper secondary education has also faced capacity issues, with a 13% rise in applicants in 2023, partly due to Ukrainian pupils. Tertiary education saw a decline since 2010 but has slightly increased recently.

[30] European Commission. (2023). Czechia. Eurydice. https://eurydice.eacea.ec.europa.eu/national-education-systems/czechia/population-demographic-situation-languages-and-religions

In response to the Ukraine conflict, the Czech Ministry of Education has implemented legislative changes, financial support, and guidelines to help schools include Ukrainian students, as detailed on their website. By March 2023, schools reported having 51,281 Ukrainian refugee children enrolled, with a rise of nearly 1,000 since September 2022, and 2,090 Ukrainian staff members on board. Ukrainian pupils are concentrated in preparatory and basic schools, with a slight decrease in upper secondary school.[31]

However, there are differences in the school attendance among Ukrainian children. Ukrainian refugee children currently make up 4% of all pupils in Czech primary schools, forming the largest group of foreign nationals in the Czech education system. There is strong interest in education among Ukrainian refugees, particularly at the primary level. Data from 2023 show that 66% of Ukrainian children aged 3–5 are enrolled in Czech nursery schools, 92% of those aged 6–14 attend Czech primary schools, and 43% of Ukrainian adolescents aged 15–17 are enrolled in Czech secondary schools. Some students also continue their Ukrainian education in parallel, typically through online schooling: up to one-third of Ukrainian primary-age children and about one-tenth of adolescents follow both the Czech and Ukrainian curricula simultaneously.[32]

Many NGOs were of help to Ukrainian families, trying to work with the directors of individual schools. There were voices saying that acceptance of a Ukrainian child to the educational system does not depend only on the capacity of the school but also on a pro-active approach of individual directors or teachers. Also, some websites for support of Ukrainian children in the Czech educational system were made (for example: https://www.edu.cz/ukrajina/).

---

[31] Ibid.

[32] Kavanová, Ostrý, Prokop, (2023). Hlas Ukrajinců, Vzdělávání dětí uprchlíků v Česku [Voice of Ukrainians, Education of refugee children in the Czech Republic]. https://www.paqresearch.cz/content/files/2023/07/PAQ_HlasUkrajincu_Vzdelavani_2023.pdf

Recent reports highlight both significant efforts and notable challenges in educating Ukrainian refugee children in the Czech Republic. UNICEF, in partnership with Czech NGOs such as META and the Consortium of Migrants Assisting NGOs, has launched campaigns like *Starting Together at School* to promote inclusion, establish Ukrainian teaching assistant positions, and foster interschool collaboration to support language and social integration.[33] However, UNICEF also cautions against segregated enrolment practices introduced under the Lex Ukraine VII legislation, arguing that separate intake systems could stigmatize refugee children and negatively affect their right to education.[34] Moreover, a study involving peer-network analysis found that Ukrainian students frequently form separate friendship circles, suggesting social segregation that hinders wider social integration.[35] In response, NGOs and UNICEF have pushed for increased placement of teaching assistants, psychologists, and intercultural workers in schools, as well as accessible multilingual support systems to better facilitate full inclusion for Ukrainian pupils.[36]

Despite the Czech Republic's prompt institutional response to the arrival of Ukrainian refugee children, several systemic gaps still persist. Regional disparities in school capacity remain pronounced, particularly in urban areas where demand for nursery and primary education outpaces availability. While primary school enrolment rates among Ukrainian children are high, attendance declines notably at the secondary level, indicating challenges in sustaining educational participation as children age. The dual enrolment of many students in both

[33] Consortium of Migrants Assisting NGOs. (2023). Starting together at school: Supporting the inclusion of Ukrainian children in Czech education. https://www.migracnikonsorcium.cz

[34] UNICEF. (2023). UNICEF in Czech Republic: Response to Ukrainian refugee children's needs. https://www.unicef.org/eca/reports/unicef-czech-republic-ukrainian-refugee-response

[35] SYRI (2024). Peer-network analysis of Ukrainian students in Czech schools. [Report].

[36] Consortium of Migrants Assisting NGOs. (2023).

Czech and Ukrainian systems suggests uncertainty around long-term settlement and poses integration barriers. This is also one of the key barriers of diversity management in the Czech Republic. Social integration is further hindered by limited peer interaction between Ukrainian and Czech students, pointing to the need for more comprehensive and inclusive education policies. The role of the Czech language remains key to successful integration.

VII. Policy implications and conclusions

Migration to the Czech Republic has significantly increased since the 1990s, when the country transitioned from being a transit zone to becoming a destination for migrants. In 2024, the number of migrants was fourteen times higher than in 1989, largely driven by labour migration and the influx of people fleeing the Russian invasion of Ukraine in 2022. Currently, the Czech Republic hosts around 360,000 Ukrainian refugees, making it the EU country with the highest number of Ukrainian refugees per capita. This situation has contributed to a 70% rise in the foreign population, which surpassed one million in 2022. The Czech society's opinion on Ukrainian refugees has evolved over time, with mixed perspectives emerging about their integration and the level of support they should receive. Surveys from 2023 and 2024 indicate that many Czechs support temporary stays rather than permanent settlement, expressing concerns about the country's capacity to manage the refugee influx. One of the most visible areas of pressure has been the education system, where many schools have struggled with overcrowding due to the arrival of Ukrainian students. Nevertheless, various forms of legislative and financial assistance have been introduced to support their inclusion, complemented by initiatives from NGOs and school leaders.

To address current challenges associated with the migration, a range of measures could be considered. First, expanding school capacity is essential. The significant strain on the Czech education sys-

tem – especially in major cities like Prague, Brno, and Ostrava – requires long-term investment in infrastructure. This could involve constructing new schools, enlarging existing classes, or using modular classrooms as a temporary solution. Second, it is important to provide more support for teachers and the educational staff. Additional training to prepare Czech teachers for working with Ukrainian students, along with the hiring of Ukrainian professionals with educational backgrounds, could help overcome language and cultural barriers. Increased funding for professional development would also empower teachers to better manage diverse classrooms.

Another important step is to enhance integration programs tailored to the needs of Ukrainian refugees. These programs might include Czech language courses, cultural orientation, and employment assistance not only for students but also for their parents. Speeding up the recognition of Ukrainian qualifications would further facilitate access to the labour market for adults. Public awareness campaigns could also play a role in reshaping attitudes. By highlighting the contributions of refugees and promoting empathy, such campaigns could address public concerns and help mitigate rising polarization. Emphasizing the positive economic and social impact of migration might help shift public sentiment.

Moreover, decentralizing refugee settlements could ease the burden on overcrowded urban areas. By encouraging resettlement in less populated regions – where school capacity and job opportunities may be more available – migration could be distributed more evenly. However, this approach comes with challenges, as refugees often prefer larger cities due to better access to jobs, housing, healthcare, language courses, and other essential services. Finally, given that most Czechs support the temporary protection of Ukrainian refugees, a long-term strategy that prepares for the potential return of refugees while ensuring their meaningful integration in the meantime could help balance

societal expectations with humanitarian obligations. This intention is reflected in the evolution of relevant legislation, such as the most recent version of Lex Ukraine, which came into effect in July 2024.

By addressing both the educational and broader societal challenges through these interlinked measures, the Czech Republic could establish a more inclusive migration response system grounded in effective diversity management. Strengthening school infrastructure and teacher support not only ensures access to quality education for refugee children but also creates opportunities for intercultural learning and inclusive classroom practices. This supports broader efforts to manage diversity constructively within public institutions. At the same time, public engagement strategies and tailored integration programs can help dispel misconceptions among the host population, fostering mutual understanding and reducing social tensions. A strong commitment to diversity management requires continued collaboration between governmental bodies, local authorities, and NGOs to provide culturally sensitive and equitable support services. Strategic regional planning and a realistic approach to both long-term settlement and potential return pathways can further align humanitarian efforts with public expectations. Collectively, these actions strengthen national capacity to manage migration in a way that upholds social cohesion, promotes the well-being of those seeking refuge, and embraces the opportunities that diversity can bring to Czech society.

REFERENCES

- Baršová, Alena, and Pavel Barša. 2005. *Česká imigrační politika: liberalizace, restrikce a klientelismus*. Brno: Masarykova univerzita.
- Čadová, Naděžda, and Jan Červenka. 2024. «Citizens on the Situation in Ukraine – February 2024.» Centrum pro výzkum veřejného mínění. https://cvvm.soc.cas.cz/en/press-releases/

political/international-relations/5816-citizens-on-the-situation-in-ukraine-february-2024.

- Červenka, Jan. 2023. «Attitude of Czech Public to Accepting of Refugees from Ukraine – June/July 2023.» Centrum pro výzkum veřejného mínění. https://cvvm.soc.cas.cz/en/press-releases/political/international-relations/5715-attitude-of-czech-public-to-accepting-of-refugees-from-ukraine-summer-2023.
- Drbohlav, Dušan. 2012. "Patterns of Immigration in the Czech Republic, Hungary and Poland: A Comparative Perspective." *Geografie* 117 (4): 389–409.
- Eger, Ludmila, and Zuzana Indruchová, et al. 2009. *Diversity Management*. Plzeň: Educa Service.
- Filipec, Ondřej, Lenka Macková, and Nikola Medová. 2024. "The Role of the Regional Administration in Helping Ukrainian Refugees in the Czech Republic." *Scienze Regionali* 2: 1–24. https://doi.org/10.14650/112973.
- Foster, Michelle, and Hélène Lambert. 2019. *International Refugee Law and the Protection of Stateless Persons*. Oxford: Oxford University Press.
- Gammeltoft-Hansen, Thomas, and Nikolas F. Tan. 2017. "The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy." *Journal on Migration and Human Security* 5 (1): 28–56.
- Ivancevich, John M., and Alexander J. Gilbert. 2000. "Diversity Management: Time for a New Approach." *Public Personnel Management* 25 (1): 75–92.
- Kavanová, Markéta, Martin Ostrý, and Daniel Prokop. 2023. *Hlas Ukrajinců, Vzdělávání dětí uprchlíků v Česku*. PAQ Research. https://www.paqresearch.cz/content/files/2023/07/PAQ_HlasUkrajincu_Vzdelavani_2023.pdf.
- Klimešová, Martina, Jan Šatava, and Michal Ondruška. 2022. *Situation of Ukrainian Refugees*.

- Kobzová, Petra. 2024. *Vzdělání jako hodnota u žáků z Ukrajiny navštěvujících školy v České republice*. Doctoral diss., Palacký University Olomouc.
- Kymlicka, Will. 2012. *Multicultural Citizenship: A Liberal Theory of Minority Rights*. 2nd ed. Oxford: Oxford University Press.
- Kyselá, Magdaléna. 2024. "Attitude of Czech Public to Accepting of Refugees from Ukraine – February 2024." Centrum pro výzkum veřejného mínění. https://cvvm.soc.cas.cz/en/press-releases/political/international-relations/5818-attitude-of-czech-public-to-accepting-of-refugees-from-ukraine-february-2024.
- Noon, Mike. 2018. "Pointless Diversity Training: Unconscious Bias, New Racism and Agency." *Work, Employment and Society* 32 (1): 198–209. https://doi.org/10.1177/0950017017719841.
- Schmid, Josef, et al. 2012. "Integration and Diversity Policies in Europe: Perspectives and Challenges." *European Journal of Social Work* 15 (2): 149–164. https://doi.org/10.1080/13691457.2011.623146.
- Vertovec, Steven, and Susanne Wessendorf, eds. 2010. *The Multiculturalism Backlash: European Debates, Policies and Practices*. London: Routledge.

PUBLIC NARRATIVES AND ATTITUDES TOWARDS REFUGEES AND OTHER MIGRANTS: A CASE STUDY OF THE REPUBLIC OF NORTH MACEDONIA

Ivona Shushak Lozanovska
Larisa Vasileska

I. Introduction

Migration is as old as human existence itself, and is seen as one of the biggest moving forces of human development and progress.[1] Throughout history, people have always migrated, as individuals, either in larger or smaller groups, to escape various conflicts and wars, hunger and poverty, religious or political repression and intolerance, or simply to find new economic opportunities and even to trade and travel to new places.[2] Around the world, migration patterns fluctuate due to these changing conditions.

Planned or forced, migration drastically affects not only migrants, but also the countries where migrants permanently or temporarily settle, changing numerous social characteristics such as labor markets and labor prices, demographics, and even crime. This is primarily a result of the fact that migrants are often ethnically, culturally, and even religiously different from the domestic population, and also differ among themselves. The recent migrant crisis in Europe has brought to light the conflicts that exist between accepting refugees and dealing with such serious issues as economic stability, cultural integration and national security.

1 Stanojoska, Shushak, 2.

2 Anitha, Pearson.

The Balkan Peninsula has been a crossroads of migration movements of refugees and migrants for centuries.[3] North Macedonia, located in the heart of the Balkans, is strategically placed to be a frequent migration crossing point. Since its independence, it has become the destination of refugees from the Yugoslav wars of the 1990s fleeing conflict or persecution. The Kosovo conflict has brought many changes to the country, and the ongoing migration flows from 2015 to the present, continue to bring serious challenges along with continuous international pressure for North Macedonia to deal with all migrant problems, while balancing humanitarian obligations with security concerns.

The dynamics of migrations in Northern Macedonia over the years, but also all historically unfulfilled promises in each subsequent migration wave, have intensified the concerns of Macedonian citizens related to their security, national identity, and economic stability and have created a negative climate and poor public perception of refugees and migrants. Through data elaboration and discussion, this paper will show how these migration narratives are constructed in North Macedonia and which factors predominantly generate acceptance or resistance. By analyzing the role of political discourse, social networks, as well as the historical context itself, the study aims to determine the situation in order to make recommendations for fostering more inclusive attitudes towards migrants and refugees in the future.

II. Migration Waves and its Implications in Post-Independence North Macedonia

As a country located in the heart of the Balkan Peninsula, the Republic of North Macedonia has historically been a crossroads of numerous migration movements, whether driven by war, economic reasons, or political instability.

[3] Samardic, Djordjevic, 7.

Immigration flows in the Republic of North Macedonia since its independence in 1991 can be divided into several distinct periods, each triggered by different regional and global events. These periods reflect changing political, economic, military and social circumstances both within the country and in the wider Balkans, Europe and the world, but as we will analyze later, they are an important reason for the changing perceptions towards migrants.

The Bosnian Crisis (1992–1995)

Often labeled as the deadliest crisis in Europe since World War II, the Yugoslav Wars were a series of ethnic conflicts that facilitated the breakup of the Soviet-style Yugoslav federation created in 1946. During one of these conflicts, the Bosnian War (1992–1995), around two million people were forced to leave their homes, and more than one million people left Bosnia and Herzegovina altogether.[4] Bosnia, as the most affected country, became home to more than 70% of all refugees and internally displaced persons from the former Yugoslavia.

The largest part of these migration flows moved towards Serbia and Croatia. According to UNHCR data, the number of Bosnian refugees in Croatia reached its maximum in 1993 with 287,000 persons, and in Serbia, it was in 1992 with 349,000 displaced persons.[5]

The Republic of Macedonia was also among the first countries to accept the wave of refugees fleeing these wars, taking in around 35,000 refugees. The refugees were housed in seven shelters and in households. They were cared for by authorized institutions in Macedonia until 1997, when, following the stabilization of Bosnia and Herzegovina, they returned to their homes.[6]

---

4 Franz, 4.

5 Bonifazi, 16.

6 Biljana Apostolovska Toshevska et al., 63.

The Kosovo Crisis (1999)

The Kosovo War was also a military conflict with intricate and longstanding roots, involving ethnic tensions as well as political maneuvers by major powers. The conflict was between the troops of the Federal Republic of Yugoslavia (FRY) holding power over Kosovo prior to the war, and the separatist group referred to as the Kosovo Liberation Army (KLA). The conflict was concluded when NATO troops intervened by initiating air strikes in March 1999, leading to the withdrawal of Yugoslav forces from Kosovo.[7]

This situation again led to a phase of mass emigration. Between March and June 1999, an estimated 850,000 Kosovo refugees fled to neighboring countries, threatening wider regional instability. Some 200,000 people were internally displaced or left homeless inside Kosovo itself. The majority of refugees remained in Albania, Macedonia, Montenegro, while approximately 90,000 of them – by total – moved to over 25 countries around the world through legal arrangements.[8]

As a result of the Kosovo crisis, in the spring of 1999, the Republic of Macedonia experienced a massive influx of migrants, mainly ethnic Albanians, seeking international protection. According to UNHCR and the Red Cross, the number of migrants who entered the Republic of Macedonia is estimated at around 360,000 people. Around 170,000 people were accommodated with host families, while the rest were accommodated in one of the 11 refugee camps.[9] Albania, hosting around 435,000 refugees on its territory, was the only one that faced similar burden to Macedonia's in this crisis.[10]

It is estimated that this wave, an influx of refugees into the Republic of Macedonia, expressed as a percentage, amounts to almost 18 per-

---

7 Quackenbush, 202.

8 Gollopeni, 296.

9 (MCIC) Macedonian Center for International Cooperation, "*Annual report '99",* (1999): 10.

10 Bonifazi, 16.

cent out of the total population. According to some analysts, the massive influx of refugees at some point even changed the demographic structure of the population in the country. Even developed countries would have struggled with such a burden, not knowing how to avoid it.[11] Humanitarian aid arrived much slower than the military troops, while the Macedonian state and Army were facing bankruptcy. Refugees spent huge amounts of the country's funds; plus, the Yugoslav market (including Kosovo) was closed for the Macedonian companies. Economic indicators noted the fast-moving downward trends – the Macedonian economy was facing a complete collapse.[12]

Out of all misfortunes, the biggest problem caused by this refugee crisis was the deterioration of the already tense relations in Macedonia between the country's ethnic Macedonian majority and the significant ethnic Albanian minority.[13] This tension would escalate in 2001, when the NLA (National Liberation Army),[14] whose members were also former members of the paramilitaries who participated in the conflict in Kosovo, started a war conflict in the Republic of Macedonia with the aim of 'fighting for human rights of the Albanians in Macedonia and constitutional reforms.'[15]

Resulting in more than 200 casualties, approximately 90 civilian victims, and 170,000 internally displaced persons and refugees, the sev-

---

[11] Vankovska, 84.

[12] Nenovski, Smilkovski, 419.

[13] At the end of 1999, Macedonia hosted about 17,000 refugees, including about 10,000 ethnic Albanians from Kosovo, 4,000 Roma from Kosovo, 3,000 ethnic Albanians from southern Serbia, and 400 refugees from Bosnia. (United States Committee for Refugees and Immigrants, *U.S. Committee for Refugees World Refugee Survey 2000 – Macedonia*, (2000)). Over the past years, the number of Kosovo refugees in the Republic of North Macedonia has significantly decreased. According to official statistics, by the end of 2023, the number of Kosovo refugees remaining in the country had been reduced to 302 individuals. See: Kostadinovska, 23.

[14] NLA, in English; ONA, in Macedonian; and UCK, in Albanian.

[15] Zhidas Daskalovski, *"The Right to Rebel: the National Liberation Army and the 'Macedonian Crisis' of 2001"*, Romanian Journal of Political Science, Vol.3 No.2., (2003): 52

en months of hostilities brought the state to the verge of a full-fledged civil war. The armed exchanges were eventually settled with the Ohrid Framework Agreement (OFA) on 13 August 2001.[16] Brokered by foreign diplomats and signed by representatives of the largest political parties in the state, this agreement gave greater rights and autonomy to ethnic Albanians, ensured the disarmament of rebel forces, and helped achieve at least formal peace in the region.

The European Refugee Crisis and The Balkan Route (2015)

The European Migrant Crisis, also known as the Refugee Crisis, refers to the mass influx of refugees and migrants into Europe, particularly from 2015 onwards, when over a million refugees and migrants arrived in Europe from the Middle East, South Asia, East and West Africa to escape conflict, violence, economic upheaval, lack of opportunities and increasing negative effects of climate change.[17]

Migrants and refugees try to reach Europe mainly via two main migratory routes: 'Central Mediterranean Route' and the 'Eastern Mediterranean Route.' During the summer 2015, all eyes turned to the Western Balkans route, as the main track shifted from the dangerous Mediterranean crossing from Libya to Italy, towards the east, from Turkey to Greece, through the Balkans to Central Europe. This route was mainly used by Syrians and Afghanis, and comparably smaller were the applicants from Iraq.[18]

North Macedonia has played a significant role in the Balkan Route. The geographical location, situated between Greece and Serbia, rendered it a crucial segment of the transit route for approximately 800,000 to 1,000,000 individuals.[19] At the peak of the crisis, 13,000 people en-

[16] Trajanovski, Georgieva, 15.

[17] (UNICEF) United Nations Children's Fund, *"Refugee and migrant crisis in Europe – Consolidated Emergency Report 2018"*, (2018): 7.

[18] Wagner, 2.

[19] Ilievski, Bozhinovski, Popchev, 61.

tered the country per day.[20] Registration, recording and control of refugees has become almost impossible. The predominant demographic among migrants was male, with a lesser representation of women, alongside both accompanied and unaccompanied children. This refugee crisis was very different from those remembered in the 1990s. This time, a great many people came from completely different corners of the world to a completely unknown territory.[21] In terms of nationality, the largest group consisted of Syrian citizens, followed by individuals from Afghanistan, Iraq, Pakistan, Palestine, Somalia, Bangladesh, Congo, Iran, Nigeria, Cameroon, Eritrea, Ethiopia, and Sudan – although these latter nationalities were represented in smaller numbers.[22]

Macedonia's approach to refugees varied according to the policies of the major players who were points of destination; however, since March 2016, the Balkan route has been effectively closed to people who lack legal entry documents, leaving thousands of people stranded along the route, and push-backs, or the informal returning of refugees by the state from their territory to another country, has become more common practice.[23]

This may have emerged as a result of the lack of a functional system for dealing with the migrant crisis; as a result, the countries focused on reassessing their hospitality and reacting in the direction of protecting national interests. It is evident that the countries of the Western Balkans were caught off guard and unprepared to deal with the wave of migrants and refugees on their own, but the refugee crisis also brought to the surface the EU's unpreparedness to deal with such challenges and the lack of leadership capacity in coordinating and managing current problems. The crisis also showed the EU's cynical and unprincipled

---

20 Natasa Jancic, "There are fears of a new wave", MRT, *(2017), https://mrt.com.mk/node/39404*

21 Zendeli, Shabani, 1.

22 Mitko Chavkov, *"The reasons for declaring a state of crisis continue to exist",* Ministry of Interior Affairs, (2015), https://mvr.gov.mk/vest/392

23 Eleni Takou, et al., 19.

attitude towards the countries of the Western Balkans, especially since they were required to build reception camps and receive migrants and refugees while some EU countries were reluctant to receive refugees and others were waiting for the selection of refugees that was taking place at the southern borders.[24] Moreover, they didn't make a difference between the humanitarian and the security aspect of the crisis. Everybody was preoccupied with the humanitarian flow of the crisis. Republic of Macedonia supported this aspect and provided the opportunity to the humanitarian organizations to give the necessary assistance to the migrants and refugees. However, in September 2015, we witnessed numerous anomalies. Most of the refugees and migrants were 18 to 30-year-old men. Part of the migrants coming from Greece had burns and wounds on their right arm, and a dozen of persons had IDs with the same identity, and most of the Frontex documents showed that the people had been born on January 1 or May 5.[25]

Contemporary Trends

Despite the closure of the Balkan route, irregular movements along the route continued, undoubtedly with less intensity, but the smuggling networks adapted to the new situation and adjusted the routes of movement. The Republic of North Macedonia has remained one of the central points for transit through the Balkan route to the final desired destinations all these years. The state of emergency on part of the territory of the Republic of Macedonia declared on 19 August 2015 is still in force. In accordance with it, two temporary transit centers were established in the immediate vicinity of the southern and northern borders and they are still in operation. Perceiving the Republic of Macedonia as a country of transit, and not a final destina-

[24] According to the 17-point Action plan for cooperation in dealing with the wave of refugees and migrants passing through the Balkans which was adopted after a meeting in Brussels on 25 October 2015.

[25] Ivanov, 13.

tion; the average time of detention of refugees in the transit center is several days.[26]

If we talk about numbers, according to the Ministry of Interior of the Republic of North Macedonia, the number of people whose attempt to illegally enter the Republic of North Macedonia has been prevented is around 20,000 people annually, and the number of people caught and returned to one of the neighboring countries is higher, ranging from 11,332 in 2023, to a maximum of 29,706 in 2020.[27]

In February 2022, the Russian Federation's full-scale invasion of Ukraine created new displacement crisis. In the early days of the war, more than 200,000 refugees per day sought safety across borders, initially in countries neighbouring Ukraine. At the end of 2022, 11.6 million Ukrainians remained displaced, including 5.9 million within their country, and 5.7 million in neighbouring countries and beyond.[28]

From 24 February to 15 August 2022, it is estimated that around 182,000 Ukrainians entered the Western Balkans (WB), and nearly 16,000 Ukrainians entered North Macedonia, of whom nearly 13,000 left the country. Most of the ones who stayed in North Macedonia, reside in Skopje, staying with friends or relatives or renting houses/apartments.[29] According to UNHCR, by September 2023, 67.151 Ukrainians have arrived in North Macedonia; while many left shortly afterwards, the number of refugees from Ukraine residing in North Macedonia reached 19,187 in 2024.[30]

According to reports and statistics received by UNHCR from the Ministry of Internal Affairs, currently, around 1071 persons from Ukraine

---

[26] Kostadinovska, 4.

[27] Ibidem, 7.

[28] (UNHCR) United Nations High Commissioner for Refugees, *"Global trends forced displacement in 2022",* (2023): 8.

[29] (IOM) The International Organization for Migration, *"Ukraine response 2022- Rapid impact assessment refugees from Ukraine – North Macedonia"*, (2022): 1.

[30] (UNHCR) United Nations High Commissioner for Refugees, *Refugee Data Finder*, (2024).

reside in the Republic of North Macedonia and have a regulated status on various grounds. The largest group so far includes 685 persons who have temporary residence on humanitarian grounds in accordance with the Law on Foreigners. This status provides the right to reside in the country, but the persons do not have access to other rights. This is followed by a group that includes 351 persons who have regulated their residence on various grounds such as marriage, work, etc.[31]

On 08 August 2023, the Government of the Republic of North Macedonia activated temporary protection for persons from Ukraine for a period of one year and on 30 July 2024 extended its validity for another year, i.e., until 09 August 2025.[32] Currently, a total of 35 persons have been granted temporary protection in the country.[33]

III. Macedonian Citizens' Attitudes towards Migrants

Macedonia has historically been a crossroads of nations, civilizations, information, languages, and religions, and Macedonians have also been known for their ability to accept and integrate diversity for centuries. However, a historical struggle for recognition of the state, as well as serious challenges after its independence, with an emphasis on current sensitivities about national identity and continuing internal ethnic dynamics, contributed to Macedonia appearing on the Gallup International list as a country with one of the lowest indexes for acceptance of migrants.[34]

The fears of Macedonians, as reflected in the opinions shared on social media, generally focus on the following four main issues:

---

[31] The data was obtained in response to a public information request submitted to UNHCR Skopje.

[32] The Official Gazette of the Republic of North Macedonia, No. 161 (5 August 2024).

[33] The data was obtained in response to a public information request submitted to UNHCR Skopje.

[34] Martinovski et al., 12.

Economic reasons

Many people on social networks express concern that migrants could create additional pressure on the already difficult economic situation that has prevailed in our country and region for years. According to the World Population Review, the countries of the Western Balkans are on the list of the ten poorest countries in Europe. With 5,888 USD per capita, North Macedonia is ranked 6th, with about 450,000 of the population of North Macedonia (21.5%) suffering from some form of poverty.[35] A few years ago, more precisely in 2019, around 56,000 people in the RSM were living in extreme poverty, with less than one dollar per day, and the results show that in 2022, the number increased dramatically, by 24%.[36] This situation is one of the main reasons why 600,000 citizens emigrated from the country.

Under these circumstances, the rhetoric on social media sounds like the following:

"We can barely survive in this poor country, and they expect us to take in refugees? Do they even know how many people here can't afford even a loaf of bread?"[37]

"We don't have a war, but there is more poverty than in Ukraine, tell the people just this year how many homeless people you have in this country"[38]

"Our poverty is on the rise, and we will still import... Is there a captain on the ship?"[39]

---

[35] Tuna, Simonovska, Petrovska, 52.

[36] Jovanovic, 13, 15.

[37] The comments are available on the post from the following link: https://www.facebook.com/watch/?v=378531710485759&rdid=YF9LgEsL6ezyTYeh

[38] The comments are available on the post from the following link: https://www.facebook.com/story.php?story_fbid=5914552275227982&id=111709452178989&rdid=tFRKXAwf6rw5TFiQ#

[39] The comments are available on the post from the following link: https://www.facebook.com/story.php?story_fbid=5914552275227982&id=111709452178989&rdid=tFRKXAwf6rw5TFiQ#

"When they realize where they've ended up, when they start running in panic – who will be able to stop them?"[40]

"Macedonians collect food in containers, Afghans in hotels, Ukrainians to be cared for with food... heavy clouds hang over sad Macedonia."[41]

Ethnic (demographic) changes

During the second half of the 20th and the beginning of the 21st century, Macedonia's demographic composition shifted notably, particularly regarding its ethnic aspects. These changes are the result of both natural population growth and the political and migration trends that have occurred in the country. According to data from previous censuses, the number of Albanians has grown constantly since 1953, in comparison with the other inhabitants of Macedonia. They comprised 13% in 1961, 17% in 1971, 19.7% in 1981, and 21% in 1991.[42] Albanians accounted for 25% of the total population of North Macedonia in 2002; according to the 2021 census, of the total population, 54.21% declared themselves as Macedonians, 29.52% as Albanians, and a small percentage as Turks, Roma, Serbs, Bosnians, and Vlachs.[43]

Macedonians frequently link this shift in ethnic composition to the policies implemented by the state in recent years, along with the refugees and migrants received from the region. This may be a valid explanation for the noticeable level of xenophobia and islamophobia

---

[40] The comments are available on the post from the following link: https://www.facebook.com/RSEMK/posts/pfbid0GfKXV8HkCZnVR8ZeiCS5tZ52YdgwwPeiAVyMrYpA2GjMgZw25zfEBSTQ2w4BdDeAl

[41] The comments are available on the post from the following link: https://www.facebook.com/story.php?story_fbid=5668032066576620&id=401640679882478&rdid=aQ01sxYMleXvwrlu#

[42] Ortakovski, 26.

[43] State Statistical Office in Republic of North Macedonia, "*Population, households, and housing units census in the Republic of North Macedonia 2021 – first dataset*", (2022)

towards refugees and migrants who have passed through or are currently passing through RNM on social networks.

This is how separate narratives on social media sound:

"Why don't they take them to Saudi Arabia, the United Arab Emirates and Qatar, aren't they rich countries and plus Muslim, they can't help them??? So, someone is deliberately taking them to Europe, so that they can Islamize and destroy Europe on a demographic, financial, cultural and religious level!"[44]

"What if someone told us that this would change the demographic structure? Our people are going abroad to live, and other nationalities are continuously settling in our country."[45]

"What do I know? We received 300,000 refugees from Kosovo, took them in, opened camps for them, cared for them, and kept them safe... we know what happened to us. Now, we must not allow other refugees to just pass through Macedonia. No, we must not allow it!!"[46]

"I remember well when there was a conflict in Kosovo in 1999, and Macedonia received Albanian refugees in the Stenkovec refugee camp. Now, they are tearing down the flag of the same country that provided them with shelter and humanity."[47]

"Let's take in another 360,000, so that like those ten years ago, they too can return to us with guns in their hands and Islamize our country."[48]

---

[44] The comments are available on the post from the following link: https://www.facebook.com/stop.za.migrantskite.kampovi.vo.mk/photos/a.372918163639088/543590203238549/?type=3&rdid=wudUPwwGaCtw9XUk&share_url=https%3A%2F%2Fwww.facebook.com%2Fshare%2F18E9FLFxXY%2F#

[45] Post available at: https://www.facebook.com/1788325667/posts/10212313429429376/?rdid=rRNerinp4puqM5k0#

[46] Post available at: https://www.facebook.com/story.php?story_fbid=247139558951113&id=100009652126038&rdid=3mgBf5mzTyU1wpyW#

[47] Post available at: https://www.facebook.com/story.php?story_fbid=10234053462015482&id=1154644523&rdid=nyFHjcWNeaO3bpGH#

[48] The comments are available on the post from the following link: https://www.

The comments may not be great, but the rhetoric is completely different when it comes to Ukrainian refugees. While they are still considered undesirable for economic reasons, invitations to accommodate them in private homes were circulating on social networks as they are seen as a "Fraternal Slavic Orthodox people." This unequal treatment was also criticized in comments such as this one: "That's all well and good, but why, when there were refugees from Syria, Afghanistan, and other Muslim countries, did no one show kindness towards them? They are people too, and yet you called them terrorists."[49]

Security issues

Migrants in many countries, are often perceived with prejudice and fear, and are linked to crime and terrorism.

Throughout the refugee crisis, as migrants from Muslim countries gravitated towards Europe, there was a fear that the refugee waves were a Trojan horse through which Muslims would carry out an organized invasion of Europe. This rhetoric was intensified by reports that young, unmarried, unaccompanied males were dominant at the borders, and the situation culminated when the person responsible for the November 18 terrorist attack in Paris was identified as someone who had reached Europe via the Balkan route.[50]

In addition, many countries have raised concerns about rising crime rates, particularly violent crimes, due to the presence of migrants. For example, in 2023, according to data from the German Interior Ministry, Germany saw a total of 3,175,282 solved criminal cases, with 2,017,552 suspects investigated. Non-Germans accounted for 34.4 percent of all offenses, excluding immigration violations, which is a notable increase

facebook.com/search/top/?q=360.000%20%D0%B1%D0%B5%D0%B3%D0%B0%D0%BB%D1%86%D0%B8

[49] The comments are available on the post from the following link: https://www.facebook.com/watch/?v=1118510168963094

[50] Etemi, Dalipi, Muaremoska, 237, 238.

from the previous year.[51] It is data like this that can fan the flames of fear and mistrust towards migrant populations.

Such narratives, fueled by the fresh wounds left by the 2001 conflict in the collective memory of the Macedonian people, have led to social networks being once again filled with comments labeling migrants as "something we don't need in our country".

Below are some of them:

"As if we don't already have enough problems of our own – now we need the Taliban to blow us up in some shopping mall!"[52]

"Do we need them? Are we going to import terrorists again!!! What are they looking for in Macedonia??? Let them catch a plane and make their way to Europe!"[53]

"You will feel it later, there are many of them in Europe, they attack the elderly, rape young girls, steal, they are raised "beyond the law," the female gender is exposed to danger, think before you accept them..."[54]

"You offer us everything wrapped in a wafer, like everything else – refugees, it's sad, we have to accept them, it's inhumane to chase them away, etc. Women, children, old people in pictures and videos, and the truth is that they are young, militarily capable men..."[55]

"We have plenty of them in our country, we don't need that kind."[56]

---

[51] Natasha Mellersh, N., *"Behind the statistics: Crime, migration and labor shortages in Germany"*, InfoMigrant, (2024), https://www.infomigrants.net/fr/post/60311/behind-the-statistics-crime-migration-and-labor-shortages-in-germany

[52] Marija Tumanovska, "The Macedonians are "loud" about the arrival of the Afghans", Radio Free Europe, (2021), https://shorturl.at/eHWn7

[53] The comments are available on the post from the following link: https://www.facebook.com/stop.za.migrantskite.kampovi.vo.mk/photos/a.372918163639088/543590203238549/?type=3&rdid=wudUPwwGaCtw9XUk&share_url=https%3A%2F%2Fwww.facebook.com%2Fshare%2F18E9FLFxXY%2F#

[54] The comments are available on the post from the following link: https://www.facebook.com/100028975346241/posts/10158653138298353/?rdid=m0mDJqZbTyihqba0

[55] The comments are available on the post from the following link: https://www.facebook.com/RSEMK/posts/pfbid0GfKXV8HkCZnVR8ZeiCS5tZ52YdgwwPeiAVyMrYpA2GjMgZw25zfEBSTQ2w4BdDeAl

[56] The comments are available on the post from the following link: https://www.

Apart from the above, there are also comments that promote extreme hate speech, as well as discriminatory and humiliating practices. For Muslim refugees, there are comments such as: "Where is Hitler, to welcome them with dignity?"[57], "They're just for soap"[58] or "Fire to burn them. Europe is for Christians."[59] And when it comes to Ukrainian refugees there are comments like "I will only feed them with Russian salad"[60] or "If there are Ukrainian women, I would take two, only on the condition that they walk around the house naked. To see some benefit at least."[61]

Frustrations from the international community and politicians

The non-acceptance of refugees in North Macedonia is also due to frustrations towards the international community, which continuously demands from the country, in times of deep crises, to act as economically developed countries, while remaining silent in situations in which the progress of Northern Macedonia is met with vetoes and conditions from several sides.

---

facebook.com/stop.za.migrantskite.kampovi.vo.mk/photos/a.372918163639088/381796572751247/?type=3&rdid=IT7DROxaXkL9CzsM&share_url=https%3A%2F%2Fwww.facebook.com%2Fshare%2F19jmLq5pW5%2F#

[57] The comments are available on the post from the following link: https://www.facebook.com/stop.za.migrantskite.kampovi.vo.mk/photos/a.372918163639088/543590203238549/?type=3&rdid=wudUPwwGaCtw9XUk&share_url=https%3A%2F%2Fwww.facebook.com%2Fshare%2F18E9FLFxXY%2F#

[58] The comments are available on the post from the following link: https://www.facebook.com/watch/?v=206773004022454&rdid=OGc9pzY3rm8SNFJf

[59] The comments are available on the post from the following link: https://www.facebook.com/stop.za.migrantskite.kampovi.vo.mk/photos/a.372918163639088/543590203238549/?type=3&rdid=wudUPwwGaCtw9XUk&share_url=https%3A%2F%2Fwww.facebook.com%2Fshare%2F18E9FLFxXY%2F#

[60] The comments are available on the post from the following link: https://www.facebook.com/story.php?story_fbid=10165601266915212&id=114648395211&rdid=aBB6INlPkZJcou7t#

[61] Ibid

In addition, there is a deep outrage directed at Macedonian politicians, who are often perceived as supporters of foreign interests, and not as carriers of an independent policy that will reflect the needs and interests of the Macedonian people. This creates a feeling of powerlessness and disappointment among citizens, who feel like they are victims of global political dynamics, and migrants and anger towards them is perhaps only a by-product of all those processes.

Below are some of those comments:

"They'll do whatever it takes to stay in their post. This is no longer normal."[62]

"I am afraid that Macedonia will remain short-sleeved again this time and will not see a coin from the Americans, as with the Kosovo crisis, and for the refugees...as all the Kosovars have not left, the Afghans will not leave either."

"Wouldn't it be 190? How did we end up taking in 450 refugees now? Take it easy... are we going to reach 4,000?!"[63]

"The EU has recommended that its member states take in 500 citizens from Afghanistan (translators, collaborators, and their family members). Croatia, as a member state, will accept 20 people. North Macedonia, as a candidate country – much poorer than Croatia, not to mention the rest of the EU – will take in 450 refugees?! Who are you trying to fool – the people, or yourselves?"[64]

"That's what they told you from 'the Fortress' (U.S. Embassy), and you will just listen!"[65]

---

[62] The comments are available on the post from the following link: https://www.facebook.com/RSEMK/posts/pfbid0GfKXV8HkCZnVR8ZeiCS5tZ52YdgwwPeiAVyMrYpA2GjMgZw25zfEBSTQ2w4BdDeAl

[63] The comments are available on the post from the following link: https://www.facebook.com/100028975346241/posts/10158653138298353/?rdid=m0mDJqZbTyihqba0

[64] The comments are available on the post from the following link: https://www.facebook.com/story.php?story_fbid=10161070720269115&id=215687669114&rdid=yxL3X2ahYWxRPGC4#

[65] The comments are available on the post from the following link: https://www.facebook.com/watch/?v=378531710485759&rdid=YF9LgEsL6ezyTYeh

IV. Conclusion

For long historical periods of human and societal development, migration was considered a phenomenon that was desirable, natural, sometimes even inevitable for the realization of ideas such as globalization and the so-called "borderless world." These were concepts that were supposed to be the triggers of economic development and facilitate the free movement of goods, services and people. However, the new winds of civilizational development have significantly shifted the discourse, moving migration into phenomena that are not perceived as an opportunity, but on the contrary, are a threat to national security, public safety, cultural identity or economic stability. This transformation in perception has caused profound challenges in contemporary societies, revealing the growing tension between the ideals of openness and the impulse towards protectionism and exclusion, and these processes as such have not bypassed the Republic of North Macedonia.

In the paper, the analysis of migration processes after independence clearly indicated that the topic is not new for Macedonian society, but that the contemporary attitude towards migrants is shaped by new, complex factors such as political, economic, and even media influences. The analysis of comments on social networks indicated the dominant negative discourse towards refugees, an attitude based on fears of additional economic burden, fear of ethnic and demographic changes, and even fear of renewed destabilization of the state through migration policies. Particularly worrying is the perception that both domestic and international actors do not act in the interests of citizens when it comes to these issues, which further fuels distrust and resistance.

The results of this survey, while worrying, are not surprising. Macedonian citizens often perceive themselves as "second-class" citizens – marginalized and undervalued, both domestically and internationally. They feel like the people who have made significant sacrifices over the years for goals such as NATO and EU membership, but have received

nothing more in return than empty promises, pressures, and symbolic recognition. In this context, refugees and migrants easily become symbols of all social problems, and are rarely considered as individuals with specific human destinies.

The narratives will change as individuals' trust in the concept of change shifts. And change needs to come, first and foremost, from the top – from policymakers at the international and national levels, who will demonstrate that words carry weight and responsibility. Then, through changing public discourse, quality media reporting, and systematic investment in quality education, a different social climate can be built – one in which fear is replaced by understanding, and resistance by cooperation.

We are convinced that taking a joint effort and cooperation at all levels of society will change perceptions towards migrants and contribute to inclusive and cohesive societies shaped by trust, mutual understanding, and respect for diversity.

REFERENCES

- Anitha, Sundari, and Ruth Pearson. 2013. *A History of Migration. Striking Women*. Lincoln: University of Lincoln.
- Apostolovska Toshevska, Biljana, et al. 2018. "Republic of Macedonia – A Timeless Migration Mosaic." *Migration and Ethnic Themes* 34 (1).
- Bonifazi, Corrado. 2011. "Međunarodne migracije na Balkanu od kraja Hladnog rata: Opšti pregled." In *Migracije, krize i ratni sukobi na Balkanu s kraja 20 veka*, edited by Goran Penev. Belgrade: Društvo demografa Srbije – DémoBalk.
- Franz, Barbara. 2010. "Returnees, Remittances, and Reconstruction: International Politics and Local Consequences in Bosnia." *Whitehead Journal of Diplomacy & International Relations*, Winter/Spring.

- Georgieva, Lidija, and Naum Trajanovski. 2023. "Introduction." In *Conflicting Remembrance: The Memory of the Macedonian 2001 in Context*, edited by Naum Trajanovski and Lidija Georgieva. Skopje: Friedrich-Ebert-Stiftung – Office Skopje.
- Gollopeni, Besim. 2016. "Kosovar Emigration: Causes, Losses and Benefits." *Sociologija i prostor: časopis za istraživanje prostornoga i sociokulturnog razvoja* 54 (3 [206]): 296.
- Ilievski, Zoran, Vladimir Bozhinovski, and Ivana Popchev. 2018. "The Path of Mixed Migration Flows in the Western Balkans (2015–2016) and Its Impact on Macedonian Politics." *Political Thought* 56.
- Ivanov, Gjorge. 2016. "Geostrategic and Political Position of the Republic of Macedonia During the Migrant and Refugee Crisis." *Contemporary Macedonian Defence* 16 (31).
- Jovanovic, Branimir. 2024. "Inflation and the Poor: The Case of North Macedonia." In *WiiW Monthly Report* 2024/03. Vienna: The Vienna Institute for International Economic Studies.
- Kjoseva Kostadinovska, Teodora. 2025. *The State of Asylum in the Republic of North Macedonia in 2023*. Skopje: Macedonian Young Lawyers Association.
- Martinovski, Martin, Mite Kuzevski, Goran Igikj, Merita Zulfiu Alili, Veli Kreci, Afrim Tresi, Agim Poshka, Sead Dzigal, Kristina Lelovac, Dijana Naseva, and Igor Stojanov. 2023. *North Macedonia, Contextual Analysis – 2023*. Geneva: International Labour Organization.
- Nenovski, Tome, and Ivica Smilkovski. 2012. "Macedonian Economy Before and After the Global Financial and Economic Crises." *Procedia – Social and Behavioral Sciences* 44.
- Ortakovski, Vladimir. 2001. "Interethnic Relations and Minorities in the Republic of Macedonia." *Southeast European Politics* 2 (1).
- Quackenbush, Steven L. 2015. *International Conflict: Logic and Evidence*. Thousand Oaks, CA: SAGE Publications.

- Samardic, Radovan, and Dimitrije Djordjevic. 1989. "Preface." In *Migrations in Balkan History*, edited by Ivan Ninic. Belgrade: Serbian Academy of Sciences and Arts.
- Stanojoska, Angelina, and Ivona Shushak. 2015. "Life in a Backpack: The EU's Asylum Policies and Its Impact on the Macedonian Asylum Legislation." *Journal of Liberty and International Affairs* 1 (2).
- Takou, Eleni, et al. 2018. *2017 CSOs Report on Irregular Migration for South-Eastern Europe*. Skopje: Macedonian Young Lawyers Association.
- Trajanovski, Naum, and Lidija Georgieva, eds. 2023. *Conflicting Remembrance: The Memory of the Macedonian 2001 in Context*. Skopje: Friedrich-Ebert-Stiftung – Office Skopje.
- Tuna, Emelj, Ana Simonovska, and Biljana Petrovska Mitrevska. 2022. "Multidimensional Analysis of Rural Poverty in North Macedonia." *Journal of Agricultural, Food and Environmental Sciences* 76 (8).
- Vankovska, Biljana. 2000. "The Impact of the Kosovo Conflict on Macedonia: Between the Hammer and the Anvil." In *Information Management in the Field of Security Policy in the Southeast European Region*, edited by Gustav Gustenau. Vienna: National Defence Academy.
- Wagner, Martin. 2021. *2015 in Review: How Europe Reacted to the Refugee Crisis?* Vienna: International Centre for Migration Policy Development.
- Zendeli, Fadil, and Arafat Shabani. 2025. "The Challenges of the Refugee Crisis in the Republic of North Macedonia." In *Fostering Refugee Resilience*, edited by Basma El Zein and Ahmed Al Jarwan. Bingley: Emerald Publishing Limited.

MIGRATION AS A POLITICAL TOOL: A STUDY OF SLOVAK PARTY MANIFESTOS

Jakub Bardovič

I. Introduction

Migration is an essential principle underlying the functioning of any society. It is by no means exclusive to humans – it affects virtually all living organisms within the animal kingdom. Its character has continuously evolved throughout the development of human civilization and technological advancement. In the present day, it is common for a portion of the population to change their place of residence during their lifetime. The reasons for such movements may take various forms and are often classified into so-called pull factors and push factors. As the terminology suggests, pull factors attract potential migrants, whereas push factors compel individuals to leave their place of origin for another destination.[1] The typology of migration is highly dependent on the perspective of the author and the theoretical framework adopted. Some typologies strive for comprehensiveness by incorporating multiple indicators. For instance, scholars Mathias Czaika and Constantin Reinprecht base their typology on nine "driver dimensions" and 24 "driving factors."[2]

Alexander Onufrák notes that, when comparing the present century with the past ones, two distinct migration-related phenomena can be identified in the European context. While previous centuries were often characterised by significant emigration from Europe, the

[1] Walter, 35–49.

[2] Czaika, Reinprecht, 49–82.

continent has recently become a primary destination for migratory flows.[3] This shift also affects Slovakia, which historically experienced emigration rather than immigration. In fact, historical context may shape public attitudes toward migration in specific regions, including Slovakia. Karen Henderson points out this connection by highlighting several potential reasons for the negative perception of migration within the Visegrad Group region. Among other factors, she emphasizes the legacy of communism, which continues to influence public perception.[4]

In Slovakia, migration has been a recurring topic in political discourse. Its prominence has fluctuated over time and has undergone subtle transformations. It can also be observed that at certain times, migration has emerged as a significant factor influencing voter behaviour. As such, it serves as a tool for political differentiation and positioning among political rivals.

The aim of this article is to explore to what extent and in what form the selected Slovak parties communicate the issue of migration in their manifestos for the 2023 elections. The following two research questions are formulated in this context: 1) to what extent do the selected political parties deal with the issue of migration in their election manifestos? and 2) what issues do these actors address in this field?

According to the stated aim of the article, the identification of a separate chapter/subchapter and its scope is examined. The next step is to identify the specific content focus of the political party in this area. Four thematic categories are created to cover this area. Each category is explained in the table below.

[3] Onufrák, 32–79.

[4] Henderson, 47–60.

TABLE 1: Categories created for the monitoring of the content of the manifestos of selected political parties

Description / Category	Description
Category 1	It includes the question of dealing with incoming migration itself, how to deal with it, the question of cooperation, etc. This category is mostly associated with negative connotations and with the form of migration that is undesirable or problematic for political parties and society.
Category 2	It covers potential migration in a more positive way. It refers to desirable migration that is necessary for society and its future. It is about the arrival of foreigners to work in specific professions, or the arrival of students. It also includes the creation of conditions for their arrival.
Category 3	It includes the area of dealing with migration already in the case of presence in Slovakia / in their daily life. This means, for example, creating conditions for their life, integration into society, etc.
Category 4	It covers the topic of Slovaks living abroad and their potential return, as well as the issue of emigration from Slovakia.

In the case of the political parties of the government coalition, the mutual programmatic coherence is also reflected, as well as how the priorities of the election manifestos have been translated into the government's programme statement. Based on the focus of the text, the main source of data are the manifestos of the selected political parties for the early elections to the National Assembly of the Slovak Republic in 2023, which reflect all key attributes related to the migration issue. The key elements of the analysis are the words migration, foreigner, foreign / abroad, including their linguistic equivalents in Slovak. Based on the results of the 2023 elections, the group of monitored political parties includes those that fulfilled the conditions for entering the parliament. The monitored group of political parties includes SMER-SD, Hlas-SD, SNS, Progressive Slovakia (PS), Freedom and Solidarity (SaS), Ordinary people and independent personalities and friends (OĽaNO a friends), and The Christian Democratic Movement (KDH).

The article is divided into two main chapters. Chapter II provides an overview of researchers' current findings on the nature of political discourse relating to the topic of migration in Slovakia. Chapter III analyses the relevant election manifestos and the government's programme statement.

II. The topic of migration in the political discourse in Slovakia

Shortly after the formation of the party system, the development of political parties in Slovakia began to diverge from the classical cleavages conceptualised by Seymour Martin Lipset and Stein Rokkan.[5] Since the 1990s, Slovak society has been consistently shaped by one dominant cleavage, accompanied by various secondary cleavages. This primary cleavage has significantly influenced the configuration of the party system and, to a certain extent, has fostered the creation of two opposing political camps. In several periods, these camps have also been personalized, for example, during the 1990s, as Mečiar vs. Anti-Mečiar,[6] and later as Fico vs. Anti-Fico. Amidst these cleavages, the issue of migration has also gradually entered political discourse.

In the Slovak context, the topic of migration has become a key area of interest across various academic disciplines. A prominent role is played by research into political discourse, whether through the analysis of political communication by individual actors across different platforms and communication channels or through the examination of party manifestos.[7] Slovakia and its representatives have been studied within comparative frameworks, for instance, alongside Hungary,[8] the Czech Republic,[9] and other countries,[10] as well as inde-

5 Lipse, Rokkan.

6 See more on cleavages in the early years of the Slovak Republic: Krno, 61–71.

7 E.g.: Futák-Campbell, 541–561; Zvada, 216–235; Mihálik, Jankoľa, 1–25.

8 Futák-Campbell, 541–561.

9 Navrátil, Kluknavská, 250–268.

10 Henderson.

pendently as a standalone case.[11] These studies frequently adopt an individualized approach, focusing on key leaders and public figures such as the prime ministers of Slovakia and Hungary,[12] or on political parties -although even in the latter case, individual politicians often remain central to the analysis.[13] In examining political discourse, traditional media such as print media,[14] television, and radio[15] are not overlooked. Research also does not overlook another significant actor in political discourse in recent years – namely, the alternative media.[16]

The Slovak political discourse on migration is characterised by negative emotions and connotations. In the Slovak context, migration is often associated with potential security threats.[17] Research often concludes that securitization dominates in the context of migration, meaning that it is primarily viewed through a security lens, while other significant aspects are overlooked.[18] The nature of political discourse on migration in the past has contributed to the emergence of anti-migration sentiment in society, often pragmatically employed for electoral gain. As noted by Viera Žúborová and Ingrid Borárosová, an indicator of this is the noticeable decline in negative rhetoric by political representatives in the media after elections.[19] It is also important to emphasize that Slovak political figures – such as Prime Minister Robert Fico – have repeatedly linked migrants with terrorism.[20] Anti-Muslim and anti-Islam rhetoric is also present in the political discourse.[21] Additionally, Christianity is often instrumentalized as a means of draw-

11 Mihálik, Jankoľa, 1–25; Zvada, 216–235; Grančayová, Kazharski, 259–277.

12 Futák-Campbell, 541–561.

13 Mihálik, Jankoľa, 1–25.

14 Žúborová, Borárosová, 1–19.

15 Kissová, 743–766.

16 Ižak, 53–57.

17 Futák-Campbell, 541–561.

18 Androvičová, 319–339; Androvičová, Bolečeková, 7–27.

19 Žúborová, Borárosová, 1–19.

20 Futák-Campbell, 541–561.

21 Zvada, 216–235.

ing boundaries and emphasizing a distinct collective identity.[22] Research by Michaela Grančayová and Aliaksei Kazharski, which focuses specifically on the portrayal of Muslims in Slovak political discourse, highlights several key findings. Among them is the observation that while direct contact with Muslim communities is often positive or at least neutral, the portrayal in the media – where political messaging dominates – is shaped by factors not grounded in real experience, but rather in constructed narratives.[23] Despite this, it is important to note the presence of a deliberately constructed dichotomy in political discourse: a positive "us" versus a negative "them".[24] This media narrative inevitably filters into public opinion. Existing surveys, including research conducted among residents of the Nitra region, demonstrate that respondents frequently associate migrants with predominantly negative perceptions.[25]

Several scholars[26] agree that the topic of migration is often employed in a pragmatic manner, as previously mentioned, with the aim of increasing electoral support. It can also be argued that multiple political parties have adopted rhetorical narratives traditionally associated with the far right.[27] Some scholars go even further, claiming that migration has become one of the core electoral issues in selected elections,[28] or that it has significantly shaped pre-election discourse.[29] The issue of migration gained greater prominence in Slovak political discourse following the major migration crisis between 2015 and 2016.[30]

---

22 Kissová, 743–766; Walter, 2016, 39–60.

23 Grančayová, Kazharski, 259–277.

24 Kissová, 743–766.

25 Filipec, Vargová, 165–175.

26 E.g.: Futák-Campbell, 541–561.

27 Androvičová, 2016, 39–64.

28 Zvada, 216–235.

29 Walter, 2016, 39–60.

30 Androvičová, 319–339; Androvičová, 2016, 39–64; Štefančík, Biliková, Goloshchuk, 173–185.

In effect, one can identify two distinct thematic waves related to migration in the Slovak political discourse in recent years. The first one began in 2015 and 2016, while the latter is associated with the war in Ukraine.[31] It is also important to note that the nature of the discourse and the perceived threats communicated in the context of migration have evolved over time. As the findings of Radoslav Štefančík and his colleagues indicate, while the discourse around 2015 predominantly emphasized cultural differences, in the case of refugees from Ukraine, this aspect has been relatively marginalized. Instead, economic concerns – such as the idea that support for refugees might come at the expense of domestic citizens – have come to the forefront, along with discussions about threats to personal safety. The authors also emphasize that the construction of a negative image and perception of threat is not always directly initiated by politicians. Social media users, particularly those operating anonymous accounts, play an important role by extending or amplifying the critical remarks made by politicians with their own highly negative commentary in online discussion threads.[32]

III. Migration issues and political party manifestos

In the election manifestos of the monitored political parties, the issue of migration was reflected in different ways. First of all, it is worth noting that the Slovak political parties in general take a different approach in their manifestos. Basically, there are two heterogeneous groups. The first group has a more elaborate document. It covers several sectors and tries to be more detailed. The SaS party, for example, has long been profiled according to the scope and quality of the content elaborated in the manifesto. On the other hand, there are parties that offer only short manifestos, often expressed in just a few points. For ex-

[31] Práznovská, 95–117.

[32] Štefančík, Biliková, Goloshchuk, 173–185.

ample, in 2016, the most successful political party in modern Slovak history, the SMER-SD, offered a five-point manifesto with priorities in the areas of economy, state security, public services, raising living standards and strengthening the rule of law.[33] The 15-point electoral manifesto of the SNS for the 2023 elections, presented in a three-page document, is also a good example that falls into this category.[34] With this in mind, it is appropriate to consider the following table and the possibilities for addressing the issue. The opposite approach is taken in the case of the SaS or the OĽaNO and friends. For the elections they have prepared election manifestos of more than 200 pages, the OĽaNO and friends 241 pages[35] and the SaS 260 pages.[36]

The focus of this chapter is therefore on the issue of migration in the context of the treatment of the issue by selected political parties. The first step is an examination of the extent to which the issue is addressed in each party's manifesto. This is followed by an examination of the content itself. Four thematic categories are created to cover this area.

As can be seen in Table 2, only two political parties devoted a separate, comprehensive section of their manifestos to the issue of migration. This is the case of the Hlas-SD and the KDH. In the case of the Hlas-SD, the relevant part of the manifesto is 401 words long and is located in the sub-chapter entitled Borders and Migration under the broader theme of Security and Defence. A second example of a separate section can be found in the KDH manifesto. It is 166 words long and entitled 'Migration'. It is included in the section on 'Slovakia's Position in the International Community'.

---

[33] SMER-SD, *Priority programu strany SMER – SD pre roky 2016 – 2020* (2016), https://stwebsmer.strana-smer.sk/priority-programu-strany-smer-sd-pre-roky-2016-2020-0.

[34] SNS, 15 programových priorít Slovenskej národnej strany pre Slovensko (2023), https://www.sns.sk/wp-content/uploads/2023/09/VP_Web.pdf.

[35] OĽANO a priatelia, *Vyhrá mafia alebo ľudia. Ty rozhodneš* (2023), https://www.obycajniludia.sk/volebny-program-2023/.

[36] Sloboda a Solidarita, *Program ekonomického rastu* (Bratislava: Sloboda a Solidarita, 2023), https://drive.google.com/file/d/1LtK9nyf9Rl1KKWEbGn3ro3I0zAqbavwk/view.

As can be seen from the above, the other party manifestos did not have a separate chapter on migration. In several cases, the issues related to migration were presented in several parts, depending on the issue. For example, in the case of the OĽaNO and friends, migration issues can be found in the section on research and innovation, people in material need and at risk, or security. At the same time, there is also a situation where, despite the absence of a separate chapter/subchapter dedicated to this topic, the issue of migration is concentrated in the specific section/sections. The very short SNS manifesto is such an example; this topic is concentrated in a section entitled "The Rule of Law and the Secure State."

The government's manifesto reflects the approach of two of the three ruling parties. There is no separate chapter on migration, although the issue is addressed in several parts.

TABLE 2: Election manifestos of political parties – basic characteristics

Political Party	Separate chapter / subchapter	Extent of a separate chapter	Title	PDF / docx File
SMER-SD	no	401	-	yes
Hlas-SD	yes	0	Security and defence → Borders and migration	yes
SNS	no	0	Part of item: Rule of law and security	yes
Government's programme statement	no	0	-	yes
KDH	yes	166 words	Slovakia's position in the international community – Migration	yes
SaS	no	0	-	yes
PS	no	0	-	no
OĽaNO and friends	no	0	-	yes

Source: Author based on the manifestos of political parties

This chapter also includes an analysis of the content of political parties' manifestos. As mentioned above, different political parties approach the issue of migration in different ways. The table below summarises the coverage of the four categories created. The SMER-SD party covers the fewest categories. In fact, in its manifesto, it deals almost exclusively with the issue that falls under category 1. The SNS, despite its rather sparse manifesto, was able to cover two categories with its issues. The election manifesto of the SaS is similar. It also covers two defined categories. The PS manifesto does not include the solution of migration problems related to the presence of migrants on the territory of Slovakia and their potential life, and therefore, the topics falling under category 3. The other political parties, namely the Hlas-SD, the OĽaNO and friends and the KDH, covered all the established categories in their electoral programme documents. It should also be noted that there are also political parties that, paradoxically, do not have the most thematically covered category 1, but develop another one of the created categories to a greater extent. It is positive that practically all other political parties, with the exception of the two governing parties, reflect the needs of the Slovak market and that the arrival of either workers or students from abroad can be important for Slovakia as such.

TABLE 3: Coverage of migration issues in the manifestos of selected political parties in the 2023 elections

Political Party	**Category 1: Migration from the perspective of incoming migrants (rather negative)**	**Category 2: Migration as a need for Slovakia (rather positive)**	**Category 3: Solving the problem of migrants, on the territory of Slovakia**	**Category 4: Foreign Slovaks; emigration**
SMER-SD	covered	uncovered	uncovered	uncovered
Hlas-SD	covered	covered	covered	covered

SNS	covered	uncovered	uncovered	covered
Government's programme statement	covered	covered	covered	covered
PS	covered	covered	uncovered	covered
SaS	covered	covered	uncovered	uncovered
OĽaNO and friends	covered	covered	covered	covered
KDH	covered	covered	covered	covered

Source: *Author based on the manifestos of political parties*

The analysis of election manifestos reveals several rather paradoxical situations. Although the topic of migration was one of the key themes for several political parties during the election campaign – frequently communicated to voters and often used as a tool to evoke negative emotions – it is not strongly reflected in their official manifestos. One of the more prominent examples of this is the political party, SMER-SD, which mentions the topic of migration in only a single instance. It states that any solution to European migration policy must reflect the interests of Slovakia.[37] This point can be interpreted as a negative stance in this area, as the party has long positioned itself in opposition to migration itself, as well as to European migration policy. This statement only fulfils the first of the monitored categories related to this issue. A similarly sparse treatment of the topic is found in the election manifesto of the SNS. There are two points that fall under category 1: the rejection of mandatory quotas and of the Marrakesh Pact on migration.[38] In both cases, the issue is addressed through a negative stance. However, the SNS also addresses a topic falling under category 4 in its manifesto: it expresses an ambition to create conditions to limit the brain drain abroad – thus touching upon a certain form of emi-

[37] SMER-SD, *Volebný program strany SMER – slovenská sociálna demokracia* (2023), https://www.strana-smer.sk/aktuality/blogy/post/volby-2023.

[38] SNS, *15 programových priorít*, 2023.

gration. As can be seen, two of the three political parties forming the governing coalition based on the 2023 election results addressed this issue in only a very limited way.

In stark contrast stands the third governing party, the Hlas-SD. It belongs to the smaller group of parties that address the issue of migration in greater detail. The drafters of its manifesto even dedicated an entire chapter or subchapter specifically to this topic. Despite this deeper focus, certain commonalities with its coalition partners can still be found. Similar to the SNS, the Hlas-SD program rejects mandatory quotas and emphasizes the principle of voluntariness – stating that the scope of solidarity among states should remain fully within their national competence. Like the SMER-SD, it declares that Slovakia should be an active contributor to developing solutions in this area (both of which fall under category 1). Like the SNS, the Hlas-SD also highlights the need to prevent the emigration of Slovak citizens (category 4).[39]

The Hlas-SD party addresses all four defined categories in its manifesto. In addition to the points already categorized, it also emphasizes the necessity of European cooperation in solving issues related to migration. It calls for the joint protection of external borders and supports return policies that would increase the rate of return of illegal migrants. The manifesto reiterates a long-standing idea present in Slovak political discourse: the need to address the root causes of migration in the countries of origin. The program also contains a negative observation that uncontrolled migration poses a potential threat. Nevertheless, in some instances, the Hlas-SD manifesto treats migration as a positive phenomenon. According to the party, state-regulated and controlled migration can contribute to economic growth, particularly by addressing labour shortages in key professions.[40] Given the current demographic trends – for example, the year 2024 marked a historically

[39] Based on: Hlas-SD, *Rezortný program* (2023), https://strana-hlas.sk/wp-content/uploads/2023/09/Rezortny-program-HLAS.pdf.

[40] Based on: Hlas-SD, *Rezortný program*, 2023.

low number of births[41] – this may represent one of the viable solutions to stabilize the population outlook. This ambition falls under category 2. Additionally, the manifesto includes proposals to simplify or revise the conditions for foreign labour and potentially to recruit international students in the critical fields of study.[42]

Category 3 is represented in several areas within the Hlas-SD election manifesto. Notably, the party expresses the ambition to create conditions for the integration of migrants and aims to reform the current system of recognizing migrant qualifications. The manifest also reflects the party's self-identification as a "party of the regions," as it acknowledges the role of self-governing regions in this area. These regional authorities are expected to act as relevant stakeholders in migration matters, and they should receive the necessary support.[43]

The Hlas-SD also addresses category 4 in its manifesto. Specifically, it declares an interest in creating conditions that would encourage current students to remain in Slovakia and promote the return of Slovaks living abroad. The party aims to increase support for expatriate Slovaks, establish a dedicated centre for this purpose, and direct attention toward them via public television and radio broadcasting.[44]

To some extent, the 2023–2027 Government's programme statement is shaped by the extent to which the governing parties have elaborated on their respective election manifestos. That said, a more detailed examination of the government document reveals that a significant portion of its content related to migration policy is indeed grounded in the election manifestos of these parties, predominantly the Hlas-SD.

---

41 It is also worth noting that fewer than 50,000 live births were recorded in both 2023 and 2024. See more: STATdat. *Narodení podľa pohlavia, hmotnosti, legitimity a vitality – SR, oblasti, kraje, okresy, mesto, vidiek*. (2025). accessed April 21, 2025. https://lnk.sk/foys.

42 Based on: Hlas-SD, *Rezortný program*, 2023.

43 Based on: Hlas-SD, *Rezortný program*, 2023.

44 Based on: Hlas-SD, *Rezortný program*, 2023.

The most significant overlap between the manifestos of the governing political parties and the Government's programme statement is found in the rejection of mandatory quotas. This element is repeatedly emphasized in the government document. Additionally, it explicitly rejects punitive financial mechanisms related to the redistribution of migrants. Similarly, the document reflects the ambition for the EU migration policies to align with Slovakia's national interests. Additionally, the long-standing emphasis by the SMER-SD on a sovereign foreign policy – extended to include migration, particularly illegal migration – is also present. However, the rejection of the Marrakesh Pact on Migration, a point included in the SNS manifesto, is not reflected in the Government's programme statement.[45]

Given the limited elaboration of the SNS and the SMER-SD election manifestos, the Government's programme statement shows the greatest degree of alignment with the Hlas-SD election manifesto. The manifesto explicitly addresses the need for regulated migration –migration that reflects the needs of the labour market while not compromising national security. It also raises the issue of the recognition of foreign qualifications. Illegal migration is characterized as a negative phenomenon and a security threat, with the protection against this form of migration defined as a strategic goal. To this end, the Government's programme statement emphasizes the need to establish a repatriation system in cooperation with other countries. The Hlas-SD manifesto is also reflected in the document's assertion that migration challenges should be addressed at their point of origin. The manifesto underscores the importance of securing the integrity of the EU's external borders and calls for decisive EU action against illegal migration. At the same time, it expresses the ambition to prevent the migration agenda from being used as a tool for political pressure against individ-

[45] Based on: Vláda Slovenskej republiky, *Programové vyhlásenie vlády Slovenskej republiky* 2023), Accessed April 21, 2025. https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=535376.

ual states. The broader thematic framework of the manifesto builds upon these foundational points. In terms of short-term priorities, in addition to the development of a repatriation system and the inclusion of illegal migration as a key element in national defence strategy (including the strengthening of relevant armed forces), the document also stresses the need to allocate sufficient resources to combat illegal migration. The medium-term priorities outlined in the Government's programme statement are, to a large extent, a direct reflection of the governing parties' election manifestos – especially of the Hlas-SD.[46]

Beyond these aspects, the Government's programme statement identifies the need to develop legislation aimed at preventing the exploitation of migrants. It also highlights the migratory flow from Asia and Africa to Europe, as well as, to a lesser extent, issues related to Ukraine, framing them as major challenges. In response, it calls for enhanced cooperation with international partners to monitor risks and the adoption of necessary legislation in the field. Finally, the manifesto includes objectives such as attracting Slovaks living abroad back to the country, preventing their potential emigration, and encouraging foreign nationals to come to Slovakia to study or work in professions where there are labour shortages.[47]

As it can be seen, the Government's programme statement in many respects mirrors the election manifestos of the governing political parties. It draws most heavily from the manifesto of the Hlas-SD, which addressed the topic of migration in the greatest depth. However, it is important to note that, under the terms of the coalition agreement, the ministry responsible for foreign affairs was allocated to the SMER-SD party. From the perspective of the predefined analytical categories, topics categorised as category 1 clearly dominate the Government's programme statement's overall thematic orientation.

---

[46] Based on: Vláda Slovenskej republiky, *Programové vyhlásenie*, 2023.

[47] Based on: Vláda Slovenskej republiky, *Programové vyhlásenie*, 2023.

The election manifestos of the political parties that remained in opposition, similar to those of the governing parties, differ in the extent to which they address the issue of migration. For example, the currently strongest opposition party, the PS, addresses this topic in only a few points. Its focus falls within category 1, category 2, and category 4. Within category 1, they propose certain changes or reforms in policies or even institutions. As a result, they aim to adjust migration policy and the Dublin system, reform Frontex, implement an effective return policy, and provide financial assistance to third countries. They also advocate for closer cooperation in asylum policy at the EU level. Like the previously mentioned parties, they consider illegal migration a problem that needs to be actively addressed. Under category 2, they emphasize the need to attract professionals in specific fields such as science and healthcare. Regarding category 4, they propose measures to prevent the emigration of students and workers abroad. The program also mentions the importance of communication with Slovaks living abroad.[48]

In its manifesto, a long-standing critic of European migration policy, the political party SaS presents both certain criticisms and constructive proposals in this area. First and foremost, it highlights failures in both legal and illegal migration. The performance of the immigration police and cross-border cooperation should be improved. The relevant ministry is expected to play an active role in addressing problems in this field. The political party also proposes the development of contingency plans for potential migration waves and cooperation with diplomatic missions of non-European countries. These topics fall under category 1. However, SaS also views migration from the perspective of labour market needs, thereby addressing category 2 as well. In this context, it proposes the introduction of a points-based system to de-

[48] Based on: Progresívne Slovensko, *Plán pre budúcnosť* (2023), https://progresivne.sk/program/.

termine the necessity of foreign workers for the labour market and calls for the reduction of existing bureaucracy related to the employment of foreigners. The party also expresses an ambition to improve conditions for the arrival of international students to Slovakia.[49]

The election manifesto of the political party OĽaNO and friends can be considered relatively comprehensive in the area of migration, covering all four established categories. In category 1, the party rejects mandatory quotas (similarly to Hlas-SD and the SNS) and proposes a reform of the EU asylum system. It also emphasizes the need to protect Schengen borders, combat smugglers, ensure thorough registration of migrants, and improve return policies. Topics falling under category 2 reflect the needs of the Slovak labour market. The party calls for an identification of market needs and the establishment of principles for recruiting workers from outside Slovakia, thus creating conditions for immigration in specific sectors such as science and education. They also aim to attract foreign students, including postdoctoral researchers. In relation to category 3, the program outlines measures to be taken once a foreigner or migrant is already in Slovakia. It stresses the need to develop a long-term integration policy and views migrants as partners in addressing their challenges within Slovak conditions. Additionally, there is an ambition to collect, analyze, and evaluate data on migrants. Topics under the final category, category 4, are particularly well-developed in the OĽaNO's manifesto. The party focuses on attracting foreign Slovaks and their children, with the ambition to develop relationships with Slovak communities abroad and to involve them in state governance. It also seeks ways to reduce emigration from Slovakia.[50]

One of the oldest political parties within the Slovak party system belongs to the group of those with a more comprehensively elaborated electoral manifesto. This is reflected in the fact that its proposals

[49] Based o: Sloboda a Solidarita, *Program ekonomického rastu*, 2023.

[50] Based on: OĽANO a priatelia, *Vyhrá mafia alebo ľudia*, 2023.

address all four designated categories relating to migration. The KDH has extensively developed positions particularly within category 1. In several respects, it aligns with other relevant political actors operating within the Slovak political system. First and foremost, the KDH declares that Slovakia should be a reliable partner. The program expresses support for maintaining the status quo in a strict asylum policy, emphasizes the protection of the Schengen borders, supports investments in border protection, and aims to minimize illegal migration by addressing its root causes. The KDH advocates for solving problems in regions of origin (including the concept of migrant zones in third countries) and strengthening participation in development aid. The manifesto also includes a call for an effective return policy. A sense of threat is present regarding illegal migration, yet the approach remains constructive, as the party also emphasizes a moral obligation to help. Simultaneously, it stresses the importance of identifying those who genuinely need assistance while underscoring the necessity for accepted migrants to respect societal norms. The program also outlines potential solutions and necessary steps for managing this issue. Themes falling under category 2 involve support for migration policy in a way that facilitates the gradual filling of labour shortages. Related to this, the program proposes adjustments (or rather simplification) of the process for employing foreigners. The KDH also expresses interest in attracting foreign professionals and encouraging international students to pursue education at Slovak institutions. Category 3 is represented by a single objective – supporting the recognition of qualifications from foreign educational institutions. In the final category 4, the KDH addresses the issue of Slovaks living abroad. The manifesto includes an ambition to support the return of foreign Slovaks to Slovakia. It also includes support for Slovaks who remain abroad.[51]

[51] Based on: KDH, *Lepšie 2023: Volebný program* (2023), https://kdh.sk/wp-content/uploads/2023/07/KDH-program-2023-web.pdf.

IV. Conclusion

An analysis of the content of the election manifestos of the selected political parties with a focus on the issue of migration has revealed several facts. As expected, each political party approached the issue in a different way. Despite the fact that this issue has been a significant part of the Slovak discourse for a long time and that several political parties have tried to address the electorate through this issue, it remains rather marginal in their election manifestos. This creates a paradoxical situation. Some political parties (in particular the SMER-SD and the SNS), which have a rather negative profile in their rhetoric on this issue and which work with the negative emotions of the electorate, are rather strict in their electoral manifestos in this area. The opposite of these two parties is the third governmental party, namely the Hlas-SD. It has been working with negative emotions in this area for a long time, but in its manifesto, it deals with this issue more extensively and even with some positive connotations. There are, therefore, certain differences between the ways in which political parties communicate with their voters and the content of their electoral manifestos.

As the analysis of the content of the election manifestos has shown, practically every political party at least minimally addresses the issue of migration and its possible solutions. There is also a great deal of overlap in the fact that there should be cooperation within the EU. However, Slovak interests should be reflected here. On the positive side, we can point to the fact that several political parties are aware of the need to open up to the outside world and that it is necessary to attract workers or even students to Slovakia in the areas where they are needed. The need to stop the emigration of Slovaks abroad and to attract Slovaks living abroad back to Slovakia is also perceived by several political parties.

REFERENCES

- Androvičová, Jarmila. 2015. "Sekuritizácia migrantov na Slovensku – analýza diskurzu." *Sociológia* 47, no. 4: 319–339.
- Androvičová, Jarmila. 2016. "The Migration and Refugee Crisis in Political Discourse in Slovakia: Institutionalized Securitization and Moral Panic." *Acta Universitatis Carolinae – Studia Territorialia* 2: 39–64. https://doi.org/10.14712/23363231.2017.11.
- Czaika, Mathias, and Constantin Reinprecht. 2022. "Migration Drivers: Why Do People Migrate?" In *Introduction to Migration Studies: An Interactive Guide to the Literatures on Migration and Diversity*, 49–82. Cham: Springer.
- Filipec, Ondřej, and Nina Vargová. 2019. "Perception of Migration from Non-EU Countries in Slovakia: The Case of Nitra Region." *European Journal of Transformation Studies* 7, no. 2: 165–75. https://czasopisma.bg.ug.edu.pl/index.php/journal-transformation/article/view/5017.
- Futák-Campbell, Beatrix. 2022. "Facilitating Crisis: Hungarian and Slovak Securitization of Migrants and Their Implications for EU Politics." *International Politics* 59, no. 3: 541–561. https://doi.org/10.1057/s41311-021-00305-4.
- Grančayová, Michaela, and Aliaksei Kazharski. 2020. "'The Slovakebab': Anti-Islam Agenda in Slovak Parliamentary Elections and Beyond." *Politologický časopis – Czech Journal of Political Science* 27, no. 3: 259–277.
- Henderson, Karen. 2019. "Immigration and Free Movement: Migration Discourses in the UK and the Visegrad Four." In *Migration: The Challenge of European States*, 47–60. Stuttgart: Ibidem.
- Ižak, Štefan. 2019. "(Ab)Using the Topic of Migration by Pro-Kremlin Propaganda: Case Study of Slovakia." *Journal of Comparative Politics* 12, no. 1 (January): 53–70. https://www.proquest.com/docview/2172097477/abstract/2A56B3D-5F3EF4745PQ/1.

- Kissová, Lenka. 2017. "The Production of (Un)deserving and (Un)acceptable: Shifting Representations of Migrants within Political Discourse in Slovakia." *East European Politics and Societies and Cultures* 32, no. 4: 743–766. https://doi.org/10.1177/0888325417745127.
- Krno, Svetozár. 2013. "Štiepne línie na Slovensku a parlamentné voľby v roku 2012." In *Voľby 2012. Kam kráčaš demokracia*, 61–71. Košice: Univerzita Pavla Jozefa Šafárika v Košiciach.
- Lipset, Seymour Martin, and Stein Rokkan, eds. 1967. *Party Systems and Voter Alignments: Cross-National Perspectives.* New York: Free Press.
- Mihálik, Jaroslav, and Matúš Jankoľa. 2016. "European Migration Crisis: Positions, Polarization and Conflict Management of Slovak Political Parties." *Baltic Journal of Law & Politics* 9, no. 1: 1–25. https://doi.org/10.1515/bjlp-2016-0001.
- Navrátil, Jiří, and Alena Kluknavská. 2022. "A Tale of Two Campaigns: Understanding the Role of Short-Term Political Context in Czech and Slovak Counter/Mobilizing on Migration." *Social Movement Studies* 22, no. 2: 250–68. https://doi.org/10.1080/14742837.2022.2031958.
- Onufrák, Alexander. 2017. "Migration Theories: Socio-Economic and Political Science Perspectives." In *Emigration Intentions and Risk Behaviour among University Students*, 32–79. Košice: P. J. Šafárik University in Košice.
- Práznovská, Monika. 2023. "Aktuálne výzvy azylovej a migračnej politiky Slovenska." *Politické vedy – Journal for Political Sciences, Modern History, International Relations, Security Studies* 26, no. 1: 95–117. https://doi.org/10.24040/politickevedy.2023.26.1.95-117.
- Štefančík, Radoslav, Beáta Biliková, and Svitlana Goloshchuk. 2023. "Securitization of Migration after Russia's Military Invasion of Ukraine." *Medzinárodné vzťahy – Slovak Journal*

of International Relations 21, no. 2: 173–185. https://doi.org/10.53465/SJIR.1339-2751.2023.2.173-185.

- Walter, Aaron Thomas. 2016. "Slovakia: The Politics of Hate: Islamophobia and Christianity in the 2016 Parliamentary Elections." *Religiski-filozofiski raksti* 1: 39–60.
- Walter, Aaron Thomas. 2018. "Push and Pull Factors of the New Migration." In *Europe and the Migration Crisis: The Response of the EU Member States*, 35–49. Gdańsk: Stowarzyszenie Naukowe Instytut Badań nad Polityką Europejską.
- Zvada, Ľubomír. 2018. "Securitization of the Migration Crisis and Islamophobic Rhetoric: The 2016 Slovak Parliamentary Elections as a Case Study." *Journal of Nationalism, Memory & Language Politics* 12, no. 2: 216–235. https://doi.org/10.2478/jnmlp-2018-0010.
- Žúborová, Viera, and Ingrid Borárosová. 2017. "Migration Discourse in Slovak Politics: Context and Content of Migration in Political Discourse: European Values versus Campaign Rhetoric." *Journal of Nationalism, Memory & Language Politics* 11, no. 1: 1–19. https://doi.org/10.1515/jnmlp-2017-0005.

LEGAL RECOGNITION OF SAME-SEX COUPLES' FAMILY RELATIONSHIPS IN RESIDENCE PERMIT ISSUANCE

Tsisia Okropiridze
Ketevan Bakhtadze

I. Introduction

Marriage equality for same-sex couples remains a significant challenge in contemporary legal systems.[1] Same-sex partners encounter substantial barriers when seeking residence permits for family reunification purposes.[2] The existence of these barriers is particularly problematic in the context of globalization, when transnational mobility and interaction between different legal systems assumes an increasingly intensive character. Inconsistent state approaches to this issue create risks of fragmentation in legal relationships, which substantially impede the realization of individual rights beyond borders. Georgia's 2024 law "On Family Values and Protection of Minors" not only prohibits the registration of same-sex marriages,[3] but also excludes the possibility of recognizing marriages registered abroad or other alternative unions.[4] This legislative change significantly affects the legal status of

[1] Bell, 614; "Marriage Equality Around the World," Human Rights Campaign, accessed May 15, 2025, https://www.hrc.org/resources/marriage-equality-around-the-world; "Same-Sex Marriage Around the World," Pew Research Center, https://www.pewresearch.org/religion/fact-sheet/gay-marriage-around-the-world/.

[2] Fundamental Rights Agency, Making EU Citizens' Rights a Reality: National Courts Enforcing Freedom of Movement and Related Rights (Luxembourg: Publications Office of the European Union, 2018), 22.

[3] Law of Georgia "On Family Values and Protection of Minors," Art. 4(1).

[4] Ibidem, Art.4(2).

same-sex couples, particularly their ability to obtain residence permits on grounds of family reunification.[5]

The European Court of Human Rights jurisprudence recognizes same-sex couples' right to family life,[6] though, at the national level, the realization of this right encounters significant obstacles.[7] This dualistic approach generates systemic contradiction between international standards and national implementation, resulting in ineffective legal protection mechanisms. National legal systems' resistance to the European Court's progressive interpretations becomes even more acute in those countries where conservative value paradigms dominate socio-political discourse. Migration statistics show a growing trend in migratory flows to Georgia,[8] though specific data on residence permits issued to same-sex couples do not exist and this absence complicates the assessment of the scale of the problem.[9] The deficit of empirical data represents not only a methodological challenge from a research perspective, but reflects a systemic problem – the "invisibility" of same-sex couples in official statistical records, which, in turn, impedes institutional recognition of the problem.

States' refusal to recognize same-sex couples' family relationships, particularly in the context of residence permits, may be considered dis-

---

5 *Pajić v. Croatia*, App. No. 68453/13, European Court of Human Rights, 23 February 2016, para. 72.

6 *Schalk and Kopf v. Austria*, App. No. 30141/04, European Court of Human Rights, 24 June 2010, para. 94; *Oliari and Others v. Italy*, App. Nos. 18766/11 and 36030/11, European Court of Human Rights, July 21, 2015, para. 171; *Orlandi and Others v. Italy*, App. No. 26431/12, European Court of Human Rights, 14 December 2017, para. 210; Hodson, 174–175; Ragone, 452.

7 "Legal Frameworks Same-Sex Marriage and Civil Unions," ILGA World, accessed May 15, 2025, https://database.ilga.org/same-sex-marriage-civil-unions.

8 National Statistics Office of Georgia, "Migration Statistics 2024," https://www.geostat.ge/ka/modules/categories/322/migratsia.

9 Public information was requested within the framework of the research, though the LEPL State Services Development Agency did not respond to the application. Ketevan Bakhtadze's Public information request statement N01/4450, 20 February 2025.

criminatory practice,[10] which violates not only the principle of equality but also the right to respect for private and family life.[11] Such practice is particularly problematic from the perspective of the proportionality principle, since the state's legitimate interest – to protect the traditional family model – cannot justify the extensive restrictions that same-sex couples experience. Moreover, the indirect discriminatory effects of migration regulations transcend the purely legal sphere and penetrate into individuals' economic, social and psychological well-being.

The present research aims to analyze the legal barriers and practical challenges that same-sex couples encounter when obtaining residence permits. The research framework examines both national legislation and practice, as well as international standards and other countries' experiences. Particular attention is devoted to the case law of the European Court of Human Rights and the Court of Justice of the European Union. Additionally, the research seeks to contribute to public discourse in order to promote the depoliticization of the issue and its rational consideration within a human rights-based approach framework.

The research employs normative and comparative legal research methods. Within the normative analysis framework, the paper examines Georgian legislation, its implementation practice, and compliance with international standards. Through the comparative legal method, it also analyzes the approaches of individual European states regarding recognition of same-sex couples' family relationships and issuance of residence permits. The methodological framework also incorporates the elements of legal hermeneutics, which enables analysis of the peculiarities of norm interpretation in different jurisdictions and reveals those implicit value preconditions that determine legislators' and the European courts' positions.

[10] *Pajić v. Croatia*, App. No. 68453/13, European Court of Human Rights, 23 February 2016, para. 70.

[11] Krickova, 10.

The paper is structured into four main parts. The first and last parts are devoted to the introduction and conclusion, respectively. Part two examines procedural issues of residence permit issuance in the context of family reunification; part three analyzes the issues of discriminatory treatment toward same-sex couples when issuing residence permits for family reunification purposes.

II. Residence Permits for Family Reunification Purposes

1. Establishment of Family Relationship by Same-Sex Partner

Same-sex partners, as well as opposite-sex partners, apply to the State Service Development Agency for obtaining residence permits for the purpose of family reunification[12] either personally or through an authorized representative.[13] Along with the application, a person is obligated to submit a whole series of documentation, which is defined by the decree of the Government of Georgia.[14] Among the documents to be submitted, the main evidence confirming family connection is a document confirming kinship.[15] The court practice has established that a document confirming kinship may, in individual cases, be a marriage certificate.[16]

Current legislation, in the case of both same-sex and opposite-sex partners, according to the literal interpretation of the norm, would consider it possible to submit not only a marriage certificate as a document confirming kinship, but also other documents, including a document confirming civil partnership. Kinship is a broad concept and includes, among others, birth records or other relevant documents.[17] This

[12] Law N2045-IIს of Georgia "On Legal Status of Aliens and Stateless Persons", 5 March 2014, Art. 15(„ჹ").

[13] Ibidem, Art. 17(1).

[14] Decree N520 of the Government of Georgia, 1 September 2014, Art. 7.

[15] Ibidem, Art. 7(d).

[16] Decision N3/413–18 of the Tbilisi City Court, 24 April 2018, 5.

[17] Ruling N3ბ/2484–19 of the Tbilisi Court of Appeals, 20 November 2019, 5.

broad legal interpretation, on one hand, enabled administrative bodies to make flexible decisions taking into account the diversity of family units, while on the other hand, ensured legal recognition of actual family connections even in the absence of formal documentation. Such an approach, in turn, reflected the practice established by the European Court, according to which "family life" constitutes an autonomous concept[18] and is not limited to formal legal relationships.[19]

In the case of same-sex couples, it is precisely the civil partnership certificate[20] that may be the only document by which it is possible to confirm the couple's kinship.[21] This reality is conditioned by the lack of alternatives to the civil partnership institution from the perspective of legal regulation of same-sex couples' family life in many jurisdictions. Civil partnership, although not identical to marriage, provides similar legal guarantees in such areas as property rights, inheritance, social security, and immigration status.[22] The refusal to recognize civil partnership for immigration purposes effectively excludes same-sex couples' possibility to maintain family unity in a transnational context.

---

[18] *Marckx v. Belgium*, App. No. 6833/74, European Court of Human Rights, 13 June 1979, para. 31.

[19] In the view of the European Court, "family life" protected by Article 8 is not limited only to families created on the basis of marriage, but may include other factual relationships. *Keegan v. Ireland*, App. No. 16969/90, European Court of Human Rights, 26 May 1994, para. 44; *Kroon and Others v. The Netherlands*, App. No. 18535/91, European Court of Human Rights, 27 October 1994, para. 30; *X, Y and Z v. the United Kingdom*, App. No. 21830/93, European Court of Human Rights, 22 April 1997, para. 36; *Schalk and Kopf v. Austria*, App. No. 30141/04, European Court of Human Rights, 24 June 2010, para. 91; *Paradiso and Campanelli v. Italy*, App. No. 25358/12, European Court of Human Rights, 24 January 2017, para. 140; same-sex couples in stable relationships fall within the scope of conventional "family life." *Vallianatos and Others v. Greece*, App. Nos. 29381/09 and 32684/09, European Court of Human Rights, 7 November 2013, para. 73; *Pajić v. Croatia*, App. No. 68453/13, European Court of Human Rights, 23 February 2016, para. 65; Costello, 215.

[20] "Marriages and Civil Partnerships in England and Wales," GOV.UK, https://www.gov.uk/marriages-civil-partnerships.

[21] Ryan, 214.

[22] Tryfonidou, 102.

Currently, given that marriage equality remains a challenge worldwide, civil union registration is available in considerably more countries.[23] This global trend demonstrates that civil partnership often represents an incremental, intermediate step toward the full legal recognition.[24] The civil partnership institution fulfills a significant function in the process of social and legal transformation, as it ensures legal protection for same-sex couples even when full marriage rights are politically or socially unattainable.[25] In this context, migration law acquires particular importance, as it often represents the sphere where transnational recognition of legal relationships acknowledged in other jurisdictions occurs.[26] Accordingly, when granting residence permits to same-sex couples, this circumstance should be taken into consideration, and in addition to marriage certificates, civil partnership certificates should be accepted for obtaining residence permits.[27] Such an approach corresponds to international legal principles that require respect for family life in its diverse forms.[28] This issue is particularly relevant for transnational families who are compelled to migrate periodically between different legal regimes. It is noteworthy that the European Court of Human Rights has repeatedly established, in relation

[23] "Legal Frameworks Same-Sex Marriage and Civil Unions," ILGA World, https://database.ilga.org/same-sex-marriage-civil-unions.

[24] Scherpe, 86. For example, Kees Waaldijk divided the national-level legal recognition of homosexual couples' relationships into a five-stage process: 1. Legalization of intimate relationships 2. Equalization of age of consent (between heterosexual and homosexual couples), 3. Introduction of anti-discrimination legislation, 4. Legal recognition of partnership, 5. Recognition of parental rights. See: Waaldijk, 51–52.

[25] When equal marriage rights are not available, civil union or registered partnership provides legal recognition for same-sex couples' relationships. For them, civil unions have inherent, essential value. *Oliari and Others v. Italy*, App. Nos. 18766/11 and 36030/11, European Court of Human Rights, 21 July 2015, para. 174.

[26] Wintemute, 767.

[27] Parliamentary Assembly of the Council of Europe, Recommendation No. 1470 (2000), "Situation of Gays and Lesbians and Their Partners in Respect to Asylum and Immigration in the Member States of the Council of Europe" (Council of Europe, 2000), para. 6.

[28] Tryfonidou, 105.

to various countries' legislation, that civil unions provide the possibility to obtain legal status that is in many aspects equal to or similar to marriage.[29] These decisions constitute significant guidance for national legal systems and establish minimum standards for recognizing same-sex couples' right to family life. The European Court practice indicates that despite the broad margin of appreciation that states enjoy in regulating family relationships, this authority is not unlimited and is subject to the principles of proportionality and non-discrimination.[30]

The 2024 law "On Family Values and Protection of Minors" explicitly prohibited the registration of same-sex partnerships as marriage and/or their recognition as marriage through legal acts,[31] as well as the legalization of marriages registered and/or recognized abroad.[32] Simultaneously, the registration and/or legal recognition of alternative partnerships to marriage and the legalization of partnerships registered and/or recognized abroad were declared inadmissible in Georgia.[33] This legislative act represents a significant transformation in the legal system and establishes a specific legal regime that differs from the more flexible approach of the previous period. These provisions of the law created legal barriers not only for local recognition of same-sex couples' legal partnerships, but also for the recognition of transnational legal relationships. Particularly noteworthy is the fact that the law prohibits not only marriage, but also the registration and legalization of "alternative partnerships to marriage," which directly affects the recognition of civil partnerships and similar institutions. According to

[29] *Schalk and Kopf v. Austria*, App. No. 30141/04, European Court of Human Rights, 24 June 2010, para. 109; *Hämäläinen v. Finland, Application No. 37359/09*, European Court of Human Rights, 16 July 2014, para. 83; *Chapin and Charpentier v. France*, Application No. 40183/07, European Court of Human Rights, 9 June 2016, paras. 49 and 51.

[30] Elfving, 174–75.

[31] Law N4437-XVIმს-Xმპ of Georgia "On Family Values and Protection of Minors", 17 September 2024, Art. 4(1).

[32] Ibidem.

[33] Ibidem, Art. 4(2).

this regulation, documents confirming kinship presented by same-sex couples seeking residence permits, such as foreign-registered marriage certificates or civil partnership certificates, do not carry legal force in Georgia. This normative framework creates a complex legal problem, as it generates conflict with fundamental principles of private international law, specifically the principle of recognition of foreign legal acts. Traditionally, despite different domestic legal regulations, countries recognize legal statuses created in other sovereign jurisdictions to avoid duplication of work and reduce administrative burden.[34] The new law represents a significant deviation from this principle and creates a situation where individuals who are fully recognized as a legitimate family unit in one jurisdiction completely lose this status on the Georgian territory.

Georgia's legal regime transformation in the sphere of transnational family relationship regulation is undergoing significant structural change as a result of the 2024 legislative initiative, which establishes a new normative framework and explicitly prohibits the legalization of foreign-registered same-sex marriages and alternative family partnerships in Georgia.

2. Individual Administrative-Legal Act on Granting Residence Permits for Family Reunification Purposes

The agency's decision regarding the issuance of a residence permit for family reunification purposes or the refusal to issue such a permit constitutes an individual administrative-legal act.[35] The administrative

[34] Mattioli, 74.

[35] Decision N3/412-18 of the Tbilisi City Court, 27 April 2018, para. 6.1; Decision N3/788-19 of the Tbilisi City Court, 19 March 2019, para. 6.1; Decision N3/8466-19 of the Tbilisi City Court, 24 January 2020, para. 6.4; Ruling N3ბ-1691-19 of the Tbilisi Court of Appeals, 30 January 2020, para. 1.3.1; Ruling N3ბ/2693-19 of the Tbilisi Court of Appeals, 15 January 2020, 9; Ruling Nბს-1241(კ-22) of the Supreme Court of Georgia, 15 June 2023, 11; Ruling Nბს-799(კ-24) of the Supreme Court of Georgia, 17 September 2024.

body acts within the framework of discretionary authority when making decisions; however, "there is no absolutely discretionary authority, just as there is no absolute legislative determinacy; authority is always connected to the framework of competence defined by legislation."[36] The concept of discretionary authority does not imply the possibility of arbitrariness by the administrative body, but rather requires the resolution of matters based on objective criteria, where every factual circumstance is subject to scrupulous assessment in the light of legal norms and principles. At the same time, when exercising discretionary authority, it is inadmissible to issue an act if the harm inflicted on a person's legally protected rights substantially exceeds the benefit for which it was issued.[37]

When examining lawsuits concerning disputed acts, judicial control is exercised over the administrative body's determination of factual circumstances that served as the basis for a particular decision, and compliance with the requirements of the principles of equality, reasonableness, proportionality between public and private interests, and proportionality.[38] The exercise of judicial control[39] in this context represents a significant legal mechanism that ensures the correspondence of administrative body actions with constitutional and international legal standards. It is particularly noteworthy that the issue of family reunification concerns not only administrative law but also fundamental human rights, specifically the right to respect for family life, which places additional responsibility on the European Court when exercising control.[40]

---

[36] Ruling N3ბ/2454–19 of the Tbilisi Court of Appeals, 20 November 2019, 7.

[37] Ruling Nბს-1136(კ-24) of the Supreme Court of Georgia, 18 February 2025, 10–11; Ruling Nბს-904(კ-21) of the Supreme Court of Georgia, 10 March 2022, 7.

[38] Decision Nბს-815(კ-19) of the Supreme Court of Georgia, 16 April 2020, 5; Ruling Nბს-991(კ-24) of the Supreme Court of Georgia, 26 November 2024, 12; Decision Nბს-997(კ-18) of the Supreme Court of Georgia, 20 June 2019, 28.

[39] Turava, Pirtskhalashvili, Kardava, 80–81.

[40] Kharshiladze, Ghvamichava, 25.

In certain cases, the basis for refusing to issue a residence permit is precisely the incomplete submission of documents as defined by the government decree, which typically constitutes grounds for refusing to satisfy the lawsuit.[41] In turn, the precedence of formal criteria over substantive ones may cause disproportionate results in the context of the legitimate purpose of family reunification. Even in cases where the European Court establishes the invalidity of an individual administrative-legal act issued regarding the refusal to grant a residence permit for family reunification purposes, it only partially satisfies the lawsuit and returns the matter to the administrative body for reconsideration without resolving the disputed issue.[42] This tendency demonstrates the Court's practice of self-restraint in the sphere of discretionary authority, which formally serves the protection of the principle of separation of powers, but substantively often fails to ensure effective legal protection.[43] The Court's avoidance of decision-making capacity through returning cases to administrative bodies primarily prolongs the final resolution of disputes, increases procedural costs, and may cause the initiation of repetitive legal processes on the same issue. Accordingly, this approach by the European Court contradicts the principles of legal stability and efficient justice.[44] Despite this, a tendency is widespread in the practice of general courts where incomplete formal documentation results in negative decisions, and even when the Court establishes the invalidity of such acts, it refrains from substantive resolution of the disputed issue and returns the matter to the administrative body, thereby emphasizing the prerogative of executive power. This ap-

[41] Decision N3/7351-18 of the Tbilisi City Court, 29 January 2019; Decision N3/413-18 of the Tbilisi City Court, 24 April 2018; Ruling N3ბ/2484-19 of the Tbilisi Court of Appeals, 20 November 2019.

[42] Decision N3/9091-19 of the Tbilisi City Court, 24 January 2020; Ruling N3ბ/2454-19 of the Tbilisi Court of Appeals, 20 November 2019.

[43] Kalichava, 14.

[44] Oppermann, Classen, Nettesheim, 424–425.

proach represents a clear demonstration of judicial formalism by the Court that fails to see human rights beyond forms.[45]

Analysis of judicial practice regarding the invalidity of individual administrative-legal acts concerning the issuance of residence permits for family reunification purposes reveals a delicate balance between the discretionary authority of administrative bodies and the legal limitations of this authority. In practice, this balance is often skewed in favor of broad administrative authority, which sometimes fails to ensure adequate protection of the right to family reunification. It is noteworthy that the assessment of the legality of acts is based on a comprehensive approach that encompasses both the establishment of factual circumstances and compliance with the principles of proportionality and equality. In this context, it is crucial that courts focus more attention on substantive aspects and interpret formal criteria in the light of human rights standards and constitutional values.[46] It is recommended that courts themselves resolve disputed issues and instruct administrative bodies to issue corresponding acts in accordance with the requirements of Georgia's General Administrative Code.[47]

III. Qualifying the Refusal to Grant Residence Permits for Family Reunification to Same-Sex Couples as Discrimination

International human rights instruments protect the family[48] as the foundation of society and the state.[49] Nowadays, it is generally acknowledged that the family is one of the main factors influencing the deci-

45 Zoidze, 124.

46 Partsvania, 100.

47 General Administrative Code of Georgia, 25 June 1999, Art. 33(2).

48 Family as a "natural and fundamental group unit" that deserves protection by society and the state. Universal Declaration of Human Rights, 10 December 1948, Art. 16(3); International Covenant on Civil and Political Rights, 16 December 1966, Art. 23(1).

49 Banda, Eekelaar, 835.

sion to change residence.[50] While every person has the right to seek and enjoy asylum in other countries,[51] states retain the authority over migration matters.[52] The European Convention does not confer an absolute right to enter or reside for non-nationals. However, the ECtHR has consistently affirmed that, within the framework of their international obligations, states possess the sovereign power to regulate the entry and residence of non-citizens on their territory.[53] Although the principle is firmly rooted in international law, the Court has explained that such discretion is not without limits.[54] The Court grants contracting states a wide margin of appreciation, often supporting stricter immigration controls.[55] While persons do not ordinarily possess an absolute right to enter a foreign country, a family reunification may be recognized as a limited exception to this principle.[56] It is cumulative interpretation of the ECHR and other international instruments[57] that forms the basis of the common European policy on migrants, which reinforces the obligation of Council of Europe member states to ensure the issuance of residence permits for the purpose of family reunification.

Across the European continent, there is no uniform or consistent approach to the legal protection of same-sex couples and their families.[58] This perhaps comes as no surprise, given the longstanding chal-

---

50 See: Rossi.

51 Universal Declaration of Human Rights, 10 December 1948, Art. 14.

52 *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, App. Nos. 214/80, 9473/81, 9474/81, European Court of Human Rights, 28 May 1985, para. 67.

53 *M.A. v. Denmark*, App. No. 6697/18, European Court of Human Rights, 9 July 2021, para. 131.

54 Klaasen, 158.

55 Elfving, 150.

56 Farcy, 741.

57 Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, 2007/C 306/01, signed at Lisbon, 13 December 2007, Official Journal of the European Union C 306 (December 17, 2007), Art. 63a(2)(a).

58 Willems, 151; for example, as of June 2025, same-sex marriage is legalized in 22 states of CeO https://www.pewresearch.org/religion/fact-sheet/same-sex-marriage-around-the-world/

lenges associated with the recognition of their rights.[59] The Strasbourg Court has progressively interpreted de facto family ties and the right to respect for family life as extending beyond the confines of marriage and biological kinship.[60] This reflects the Court's view that the concept of "family" under the ECHR is an inclusive and evolving concept, grounded not in formal interpretations provided by national legislatures, but in the social and emotional realities of human relationships.[61] While the European Commission of Human Rights extended the concept of "family life" to include relationship between unmarried heterosexual couples[62] – thus moving beyond a strictly traditional concept of marriage[63] – same-sex relationships, for a significant period, remained confined to the realm of private life.[64] Consequently, differential treatment between these two groups (based on sexual orientation) was deemed permissible.[65] A significant shift occurred in 2010 with the case of Schalk and Kopf vs Austria[66], in which the ECtHR, for the very first time, expressly affirmed that two men in stable, de facto relationship may also enjoy protection under the notion of the "family life" within the

[59] Shahid, 399.

[60] *Marckx v. Belgium*, App. No. 6833/74, European Court of Human Rights, 13 June 1979; *Keegan v. Ireland*, App. No. 16969/90, European Court of Human Rights, 26 May 1994; *L. v. the Netherlands*, App. No. 45582/99, European Court of Human Rights, 1 September 2004.

[61] Fawcett, Shuilleabhain, Shah, 583.

[62] *Johnston and Others v. Ireland*, App. No. 9697/82, European Court of Human Rights, 18 December 1986, para. 56.

[63] Keegan v. Ireland, App. No. 16969/90, European Court of Human Rights, 26 May 1994, para. 44; *X, Y and Z v. the United Kingdom*, App. No. 21830/93, European Court of Human Rights, 22 April 1997, para. 36.

[64] *X and Y*, App. No. 9369/81, European Commission of Human Rights, 3 May 1983; *W.J. & D.P. v. The United Kingdom,* App. No. 12513/86, European Commission of Human Rights, 13 July 1987.

[65] *S. v. The United Kingdom*, App. No. 11716/85, European Commission of Human Rights, 14 May 1986, paras. 3–7.

[66] *Schalk and Kopf v. Austria*, App. no. 30141/04, European Court of Human Rights, 24 June 2010.

meaning of Article 8 of the ECHR.[67] As the ECtHR concluded, drawing a distinction between the cohabitation of two men in a committed relationship and that of a heterosexual couple was increasingly artificial and incompatible with the principle of equality.[68] This evolution was influenced partly by the introduction of civil and registered partnerships, as these alternative forms of marriage created a new dimension in the concept of 'family.'[69] Due to the fact that the Strasbourg Court has interpreted the notion of family as a factual, rather than exclusively legal concept, it has linked it to the existence of close personal ties.[70] As a result, it has found it necessary to establish that the absence of the legal recognition does not automatically preclude the existence of family life for purposes of the ECHR. By explicitly recognizing the right to family life for same-sex couples, the Court has once again affirmed that the European convention is a "living Instrument"[71] that must be interpreted in accordance with existing social realities.[72] This conceptual transformation is of great importance for the development of legal pluralism in the European context, as it significantly redefines the normative boundaries of the notion of family.

Although the member states to the ECHR have frequently argued that the term "respect" in Article 8 implies solely a negative obligation, namely a duty to refrain from arbitrary interference, the Court has unequivocally clarified that the convention gives rise to positive obligations, requiring states to adopt measures that ensure the effective realization and protection of conventional rights.[73] This was fur-

[67] Ibidem, para. 94.

[68] Bamforth, 133.

[69] Scherpe, 83.

[70] *K. and T. v. Finland*, App. No. 25702/94, European Court of Human Rights, 12 July 2001, para. 150.

[71] *Tyrer v. The United Kingdom*, App. No. 5856/72, European Court of Human Rights, 25 April 1978, para. 31.

[72] *Schalk and Kopf v. Austria*, App. No. 30141/04, European Court of Human Rights, 24 June 2010, para. 57.

[73] Milios, 412.

ther developed in the case of Vallianatos and Other v. Greece,[74] where the ECtHR examined legislation establishing civil unions exclusively for heterosexual couples. The European Court emphasized that formally recognizing alternative forms of partnership possesses intrinsic importance for same-sex couples, transcending purely legal ramifications.[75] Furthermore, in addressing the right to family life, it was concluded that the absence of de facto cohabitation, when attributed to professional or social circumstances, does not in itself negate the existence of a family life warranting protection under the ECHR.[76] This sort of reasoning culminated in the conclusion that restricting access to such legal frameworks exclusively to opposite sex couples lacked objective and reasonable justification, thereby constituting a violation of Article 8 and Article 14 of the ECHR.[77] In 2015, the ECtHR highlighted the importance of legal recognition of homosexual relationships, affirming that such recognition contributes to reinforcing their sense of legitimacy and social inclusion.[78] Therefore, the ECHR took an additional step in its reasoning and concluded that Italy was under a positive obligation to ensure both legal recognition and protection of same-sex relationships. It observed that, within the Italian legal framework, these couples were unable to establish a legally protected union with meaningful recognition at the national level, thereby failing short of the requirements inherent in the light to respect for family life under Article 8 of the ECHR.[79] Subsequently, the Court extended its interpretation of "family life" to encompass same-sex couples in transnational context. In a case involving a Bosnian national who was denied residence

[74] *Vallianatos and Others v. Greece*, App. nos. 29381/09 and 32684/09, European Court of Human Rights, 7 November 2013.

[75] Ibidem, para. 84.

[76] Ibidem, para. 73.

[77] Schuster, 108.

[78] *Oliari and Others v. Italy*, App. Nos. 18766/11 and 36030/11, European Court of Human Rights, 21 July 2015, para. 174.

[79] Ibidem, para. 169.

in Croatia, where she sought to live with her female partner, it was concluded that stable, de facto same-sex relationships fall within the scope of family life in the same manner as different-sex partnerships in comparable circumstances.[80] The case of Pajić v. Croatia holds particular significance in the context of transnational legal regulation, as it highlights the fundamental tension between the traditional concept of national sovereignty and the universal standards of human rights. In this case, the Court effectively established mechanism for the horizontal harmonization of domestic legal systems – one that transcends the conventional limits of state jurisdiction. This judgment represents an important precedent for the functional compatibility of legal systems among CoE members', contributing to the development of the principle of the extraterritorial application of rights[81] and facilitating the effective realization of the right and freedom of movement. The Court took a further step in the Teddeucci case,[82] departing from its approach in Manenc[83] and Mata Estevez;[84] it concluded that same-sex de facto partners who lack access to marriage are not in a comparable situation to heterosexual de facto partners, who have the legal possibility to marry. Despite the significant difference, Italian law treated

[80] *Pajić v. Croatia*, App. No. 68453/13, European Court of Human Rights, 23 February 2016, para. 72.

[81] Ibidem, para. 79.

[82] *Taddeucci and McCall v. Italy*, App. No. 51362/09, European Court of Human Rights, 30 June 2016.

[83] The court found no violation of article 14 when France denied a s survivor's pension to a homosexual man in a civil partnership (PACS). According to court's reasoning, PACS was legally distinct from marriage and that the applicant's situation was not comparable to that of a surviving spouse. It emphasized that the absence of same-sex marriage in France did not justify equal treatment in this context. *Manenc v. France*, App. No. 66686/09, European Court of Human Rights, 21 September 2010.

[84] According to the court, the respondent state did not violate the ECHR by refusing to grant a survivor's pension to a homosexual man whose de facto partner dad died because benefit in question was limited to married partners. the fact that Same-sex partners did not have access to marriage at the time was not given adequate attention. *Mata Estevez v. Spain*, App. No. 56501/00, European Court of Human Rights, 10 May 2001.

both groups identically by denying family reunification to all de facto partners. According to the Court, this approach is incompatible with the ECHR unless the respondent state provides particularly convincing and weighty justification. Since no such justification was present in this case, the state's discretion to protect traditional family did not satisfy this high threshold.[85] Later in 2017, the European Court adopted a compromise approach, holding that the complete denial of legal recognition of same-sex marriages lawfully conducted abroad violated the Convention, as marital status forms a crucial part of personal identity and psychological integrity.[86] Although states are afforded a margin of discretion to regulate marriage as strictly conjugal union,[87] particularly in the absence of consensus among European states,[88] the ECHR held that the respondent state was nonetheless required to provide some form of legal recognition, such as civil unions since failure to do so created an unjustified legal vacuum that disregarded the applicant's social reality.[89] While in Oliari and Others v. Italy, the Court explicitly imposed obligation on Italy to provide legal recognition for same sex partners, this obligation was initially directed to the national context, and it was not until Fedetova and Others v. Russia[90] that this duty extended to all States Parties to the ECHR.[91] However, unlike Oliari case, the Court failed to establish that only comprehensive recognition would align with the ECHR.[92] The European Court has repeatedly af-

[85] *Taddeucci and McCall v. Italy*, App. No. 51362/09, European Court of Human Rights, June 30, 2016, paras. 92–93.

[86] *Orlandi and Others v. Italy*, App. Nos. 26431/12, 26742/12, 44057/12, and 60088/12, European Court of Human Rights, 14 December 2017, para. 144.

[87] Ibidem, para. 192.

[88] Ibidem, para. 205.

[89] Ibidem, para. 209.

[90] *Fedetova and Others v. Russia*, App. nos. 40792/10, 30538/14, and 43439/14, European Court of Human Rights, 17 January 2023, para. 166.

[91] Gill-Pedro, "No New Rights in Fedetova," Verfassungsblog, 2023 https://verfassungsblog.de/no-new-rights-in-fedotova/

[92] Palazzo, 222.

firmed that differential treatment based on sexual orientation requires particularly weighty justification.[93] For this reason, the protection of the traditional family structure, though recognized as a legitimate aim, has been characterized as an abstract aim.[94] In other words, the preservation of traditional family does not, in itself, justify the exclusion of same-sex couples from legal recognition. In Fedetova, the ECtHR rejected Russia's reliance on protection of traditional family structure[95] and public interest as a justification for its refusal to legally recognize family life of same-sex partners.[96] This judgment establishes valuable precedent that can be invoked by these couples in jurisdictions lacking legal protection as already evident[97] in other cases against Romania[98] and Ukraine.[99]

Unlike the ECtHR, which extends family reunification rights to same-sex de facto couples, the European law provides protection exclusively to married or registered same-sex partners.[100] An individual may obtain a residence permit if they are married to, or in another form of registered partnership with a citizen of member state.[101]According to the Court of Justice of the European Union, the term "spouse" under directive 2004/38 is gender-neutral and thus includes same-sex part-

---

93 *Karner v. Austria*, App. no. 40016/98, European Court of Human Rights, 24 July 2003, para. 37.

94 Ibidem, paras. 40–41.

95 *Fedetova and Others v. Russia*, App. nos. 40792/10, 30538/14, and 43439/14, European Court of Human Rights, 17 January 2023, para. 213.

96 Hodson, 77.

97 Palazzo, 228.

98 *Buhuceanu and Others v. Romania*, App. Nos. 20081/19 and 20 others, European Court of Human Rights, 23 May 2023.

99 *Maymulakhin and Markiv v. Ukraine*, App. No. 75135/14, European Court of Human Rights, 1 June 2023.

100 Willems, 164.; Mukai, 770.

101 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, Official Journal of the European Union L 158 (April 30, 2004): 77, Art. 7(4).

ners.[102] Moreover, domestic authorities of the member states are not allowed to deny a residence permit to a third-country national solely on the basis of national law.[103] The careful analysis of the case demonstrates that the Court confined itself strictly to the issues of residence rights, deliberately avoiding consideration of other important aspects of the marriage institution, including child-rearing, inheritance, property and taxation matters.[104] The Coman judgment affirmed that the competence related to family and marriage issues rests with the member states;[105] however, it required the recognition of rainbow marriages for the limited purpose of granting residence rights to third country spouses.[106] While the ruling does not impose broader obligations, it may, however, lead to gradual expansion of rights.[107] With this decision, the CJEU attempted to struck the balance between the autonomy of member states to regulate family-related issues and the fundamental right of EU citizens to effectively exercise free movement, thereby significantly advancing EU law in the context of residence permits granted for the purpose of family reunification. This form of self-restraint reflects a kind of institutional caution aimed at avoiding political tension within member states on sensitive issues and at ensuring consistent development of legal integration within the EU.

Refusal to grant residence permit for the purposes of family reunification to same-sex partners on the basis that the state does not recognize marriage equality results in unequal treatment of these couples based on sexual orientation, which is a protected ground against discrimination under both the ECHR[108] and the Constitution

[102] *Coman and Others*, Case C-673/16, Court of Justice of the European Union, 5 June 2018, para. 35.

[103] Ibidem, para. 58.

[104] Okropiridze, 140.

[105] Kochenov, Belavusau, 556.

[106] Tryfonidou, 105.

[107] Willems, 164–65.

[108] *Salgueiro da Silva Mouta v. Portugal*, App. No. 33290/96, European Court of Human Rights, 21 December 1999, para. 36; *E. B. v. France*, App. No. 43546/02, European

of Georgia,[109] as well as, Georgia's Law on Elimination of all Forms of Discrimination.[110] In order to make differential treatment on a protected ground a legitimate restriction, it requires an objective and reasonable justification.[111] The absolute prohibition established by Georgian law[112] cannot be deemed legitimate, as it disproportionately restricts the right to family life of same-sex couples while granting the possibility to obtain a residence permit for family reunification exclusively to different-sex couples. Such a restriction constitutes discrimination.[113]

IV. Conclusion

The legal recognition of same-sex partners' family relationships in the context of residence permit issuance is not merely a technical or administrative matter, but a fundamental legal issue that engages the realization of human rights, the principle of non-discrimination, and the transnational compatibility of legal systems.

The main challenge in confirming a familiar relationship for same-sex couples lies in the legal non-recognition of documents proving marriage or civil partnership registration abroad. The 2024 Law "On

Court of Human Rights, 22 January 2008, para. 93; *X and Others v. Austria*, App. No. 19010/07, European Court of Human Rights, 19 February 2013, para. 99.

109 Decision N1/13/878 of the Constitutional Court of Georgia, 13 July 2017, II-15.

110 Law N2391-IIს of Georgia "On the Elimination of All Forms of Discrimination", 2 May 2014, Art. 1.

111 Decision N1/1/493 of the Constitutional Court of Georgia, 27 December 2010, II-2; *Vallianatos and Others v. Greece*, App. Nos. 29381/09 and 32684/09, European Court of Human Rights, 7 November 2013, para. 76; *Molla Sali v. Greece*, App. No. 20452/14, , European Court of Human Rights, 19 December 2018, para. 135; *Fábián v. Hungary*, App. No. 78117/13, European Court of Human Rights, 5 September 2017, para. 113; *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, App. Nos. 214/80, 9473/81, 9474/81, European Court of Human Rights, 28 May 1985, para. 72.

112 Law N4437-XVIმს-Xმპ of Georgia "On Family Values and Protection of Minors", 17 September 2024, Art. 4(1)(2).

113 *Pajić v. Croatia*, App. No. 68453/13, European Court of Human Rights, 23 February 2016, para. 86.

Family Values and Protection of Minors" has created a significant legal obstacle, excluding the possibility of legalizing foreign-registered marriages or other alternative forms of union in Georgia.

In the exercise of discretionary powers by administrative authorities, there is a tendency to prioritize formal criteria over substantive considerations, which often fails to ensure the effective realization of the right to family reunification. When exercising judicial review, courts generally refrain from interfering with the discretionary powers of administrative body, which can decrease the effectiveness of legal protection. As a result, rather than remanding the case to the administrative authority, the Court should address the contested issue itself, relying on the standards established by the ECtHR.

The development of ECtHR's jurisprudence demonstrates that same-sex partners are entitled to the right to family life under Article 8 of the ECHR. The evolving interpretation of the concept of "family life" by the Strasbourg Court represents an essential aspect of the development of legal pluralism. The European Court's case-law establishes a positive obligation on States to ensure some form of legal recognition of same-sex couples' relationship.

Refusal to issue a residence permit to same-sex couples constitute discrimination on the grounds of sexual orientation, which is incompatible with both the ECHR and the Constitution of Georgia. The jurisprudence of CJEU establishes that member states are obliged to recognize the right to residence for same-sex couples, regardless of whether their national legislation recognizes such marriages or alternative type of registered partnerships.

The current legislation of Georgia, especially after the legislative amendments of 2024, fundamentally contradicts the standards established by the European Court of Human Rights. This contradiction becomes particularly pronounced in the context of residence permit issuance, where same-sex couples are systematically subject to unequal treatment.

Addressing this issue requires a comprehensive legal reform aimed at harmonizing domestic legislation with international standards, especially, the abolition of the ban on recognizing foreign-registered marriages and civil partnerships for the purposes of granting residence permits in the context of family reunification. It is important to refine the criteria for exercising discretionary powers of administrative bodies to ensure legal recognition of de facto family ties beyond formal documentation. Georgia's international obligations require this issue to be addressed within the framework of a human rights-based approach, which ensures the right of all persons to respect for family life regardless of their sexual orientation.

REFERENCES

- Bamforth, Nicholas. 2011. "Families but Not (Yet) Marriages? SameSex Partners and the Developing European Convention 'Margin of Appreciation'." *Child and Family Law Quarterly* 23 (1): 128–143.
- Banda, Fareda, and John Eekelaar. 2017. "International Conceptions of the Family." *International and Comparative Law Quarterly* 66 (4): 833–862.
- Bell, Mark. 2004. "Holding Back the Tide? CrossBorder Recognition of SameSex Partnerships within the European Union." *European Review of Private Law* 12 (5): 613–632.
- Costello, Cathryn. 2016. *The Human Rights of Migrants and Refugees in European Law*. Oxford Studies in European Law. Oxford: Oxford University Press.
- Danisi, Carmelo, and Nuno Ferreira. 2022. "Legal Violence and (In)Visible Families: How Law Shapes and Erases Family Life in SOGI Asylum in Europe." *Human Rights Law Review* 22 (1). https://doi.org/10.1093/hrlr/ngab020.

- Elfving, Sanna. 2025. *Gender and the European Court of Human Rights*. London: Routledge.
- Farcy, Jean Baptiste. 2020. "Equality in Immigration Law: An Impossible Quest." *Human Rights Law Review* 20 (4): 725–744.
- Fawcett, James J., Máire Ní Shúilleabháin, and Sangeeta Shah. 2016. *Human Rights and Private International Law*. Oxford: Oxford University Press.
- GillPedro, Eduardo. 2023. "No New Rights in Fedotova." *Verfassungsblog*. Accessed June 23, 2025. https://verfassungsblog.de/no-new-rights-in-fedotova/.
- Hodson, Loveday. 2025. "The European Court of Human Rights and SameSex Marriage: Incompatible Bedfellows?" *Journal of Social Welfare and Family Law* 47 (1): 69–86.
- Kalichava, Koba. 2021. "The Intensity of Administrative Justice – Legislation and Practice in Georgia in Regard with Operational Rule of Law." *Justice and Law* 1 (69): 13–33.
- Kharshiladze, Irakli, and Tamar Gvamichava. 2022. "Perspectives of Judicial Law Development in Georgia, Through Sharing Experience of Common Law and Continental Law Countries." *Comparative Law Journal* 12: 24–33.
- Klaasen, Maarten. 2019. "Between Facts and Norms: Testing Compliance with Article 8 ECHR in Immigration Cases." *Netherlands Quarterly of Human Rights* 37 (2): 157–177.
- Křičková, Lenka. 2023. "SameSex Families' Rights and the European Union: Incompatible or Promising Relationship?" *International Journal of Law, Policy and the Family* 37 (1). https://doi.org/10.1093/lawfam/ebad001.
- Mattioli, Paola. 2025. "Member States' Discretion in Emergency Pesticide Authorisations: The Role of the EU Principles of Good Administration and the Precautionary Principle in Shaping Better National Administrative Practices." *Nordic Journal of European Law* 8 (1): 70–101.

- Milios, Georgios. 2018. "The Immigrants' and Refugees' Rights to 'Family Life': How Relevant are the Principles Applied by the European Court of Human Rights." *International Journal on Minority and Group Rights* 25 (3): 401–430.
- Mukai, Takuya. 2020. "European Court of Justice Says 'I Do' to Expanding the Acquis Communautaire on Free Movement Rights to Include SameSex Marriage." *Georgetown Immigration Law Journal* 34 (3): 733–782.
- Öberg, M. L, and Alina Tryfonidou, eds. 2024. *The Family in EU Law*. Cambridge: Cambridge University Press.
- Okropiridze, Tsisia. 2020. "The Illusion of Equal Marriage Rights: Protection of Fundamental Rights of EU Citizens in the Context of EU Internal Market Development." *Legal Methods* 4: 108–144.
- Oppermann, Thomas, Claus Dieter Classen, and Martin Nettesheim. 2018. *European Law*. Translated by Tamar Erkvania and Irakli Jafarashvili. Tbilisi: [publisher].
- Palazzo, Nicola. 2023. "Fedotova and Others v. Russia: Dawn of a New Era for European LGBTQ Families?" *Maastricht Journal of European and Comparative Law* 30 (2): 216–228.
- Partsvania, Mariam. 2019. "CONTRA LEGEM Interpretation: An Interesting Decision from Administrative Legal Proceedings Practice." *Legal Methods* 3: 75–101.
- Rossi, Peter H. 1995. *Why Families Move: A Study in the Social Psychology of Urban Residential Mobility*. New York: Free Press.
- Ryan, Fergus. 2012. "Out of the Shadow of the Constitution: Civil Partnership, Cohabitation and the Constitutional Family." *Irish Jurist* 48: 201–248.
- Scherpe, Jens M. 2013. "The Legal Recognition of SameSex Couples in Europe and the Role of the European Court of Human Rights." *The Equal Rights Review* 10: 83–96.

- Schuster, Alice. 2020. "LGBTI Migration in Europe." In *Research Handbook on Gender, Sexuality and the Law*, edited by Chris Ashford and Alex Maine. Cheltenham: Edward Elgar Publishing.
- Shahid, Mariyam. 2023. "Equal Marriage Rights and the European Courts." *ERA Forum* 23 (3): 397–411.
- Tryfonidou, Alina. 2020. "Positive State Obligations under European Law: A Tool for Achieving Substantive Equality for Sexual Minorities in Europe." *Erasmus Law Review* 13 (3): 98–112.
- Turava, Paata, Archil Pirtskhalashvili, and Eka Kardava. 2020. *Administrative Proceedings in Public Service*. Tbilisi: [publisher].
- Waaldijk, Kees. 1994. "Standard Sequences in the Legal Recognition of Homosexuality – Europe's Past, Present and Future." *Australasian Gay and Lesbian Law Journal* 4: 50–74.
- Wintemute, Robert, and Mads Andenas, eds. 2001. *Legal Recognition of Same-Sex Partnerships: A Study of National, European and International Law*. Oxford: Hart Publishing.
- Zanoni da Silva, José Luis. 2023. "Interiorization by Family Reunification and by Social Reunion as a Paradigm for Enforcing the Right to Family Reunion of Venezuelan Immigrants and Refugees in Brazil." *Revista de la Facultad de Derecho de México* 73 (287): 343–366.
- Zoidze, Besarion. 2023. "Formalism in Georgian Law – Primarily According to the Practice of the Constitutional Court." *Public Law Journal* 1: 73–124.

RESIDENCE PERMIT, JUDICIAL DISCRETION AND THE GEORGIAN CASE LAW

Dimitry Gegenava
Salome Tsiklauri

I. Introduction

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

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

1 Heater, 1.

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

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

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

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

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

---

4 Rosenbloom, O'Leary, Chanin, 34.

5 De Falco, 171.

6 Rosenbloom, O'Leary, Chanin, 62.

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

8 Alder, 386.

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

II. Residence Permit, State Security and Human Rights

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

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

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

[9] Law N2045-IIს of Georgia on the Legal Status of Aliens and Stateless Persons, 5 March 2014, Art. 18(1)(„გ").

[10] Lomidze, 18–19.

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

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

---

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

[12] Lomidze, 11.

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

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

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

[16] Leyland, Anthony, 317.

[17] Endicott, 235.

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

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

III. Administrative Proceedings: Between Motion and Self-Initiative

1. Requesting Secret Information by the Court

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

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

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

[20] See: European Commission, Georgia 2023 Report, SWD(2023) 697, 8 November 2023, 21–42.

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

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

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

[21] Administrative Procedural Code of Georgia, 23 July 1999, Art 20[1](1).

[22] Decision N3/6427-21 of the Tbilisi City Court, 17 December 2021.

[23] Decision N3/9754-23 of the Tbilisi City Court, 2 May 2024.

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

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

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

[24] See: Cane, 155.

[25] Gegenava, 643.

[26] Decision N3/6056-23 of the Tbilisi City Court, 29 September 2023.

[27] Law N2045-IIს of Georgia on the Legal Status of Aliens and Stateless Persons, 5 March 2014, Art. 48(1)(„გ").

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

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

2. Access to Classified Conclusions Related to Residence Permits

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

[28] See: Gegenava, 636.

substantiated by the evidence obtained by the court,[29] the court will unequivocally reject the claim.[30]

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

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

[29] Ruling N3/5001-21 of the Tbilisi City Court, 27 October 2021.

[30] Decision N3/5001-21 of the Tbilisi City Court, 27 October 2021.

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

[32] Decision N3/8810-23 of the Tbilisi City Court, 20 March 2024.

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

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

3. Evaluation of Evidence

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

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

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

[34] Decision N3/8061-23 of the Tbilisi City Court, 24 April 2024.

[35] Ruling N3ბ/1966-24 of the Tbilisi City Court, 24 March 2025.

[36] See: Gegenava, 641–643.

[37] Nadareishvili, Lomsadze, 118–121.

[38] Kaufman, 495–516.

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

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

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

[39] Decision N3/3923-23 of the Tbilisi City Court, 15 December 2023.

[40] Decision N3/7382-21 of the Tbilisi City Court, 24 March 2022.

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

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

1. Court of Appeals and Administrative Discretion

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

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

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

42 Ruling N3ბ/374-22 of the Tbilisi Court of Appeals, 29 March 2022.

43 Ruling N3ბ/3715-24 of the Tbilisi Court of Appeals, 30 December 2024.

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

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

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

[44] Decision N3/2967-22 of the Tbilisi City Court, 12 July 2022.

[45] Decision N3ბ/453-22 of the Tbilisi Court of Appeals, 16 January 2024.

[46] Ibidem.

[47] Decision N6/5963-22 of the Tbilisi City Court, 2 December 2022.

[48] Decision N3ბ/740-23 of the Tbilisi Court of Appeals, 7 November 2023.

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

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

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

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

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

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

[49] See: Decision N3ბ/1011-22 of the Tbilisi Court of Appeals, 12 July 2022.

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

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

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

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

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

[50] See: Decision Nბს-267(კ-24) of the Supreme Court of Georgia, 28 May 2024; Ruling Nბს-1248(კ-20) of the Supreme Court of Georgia, 30 September 2021.

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

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

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

V. Conclusion

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

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

[51] Decision Nბს-782(კ-23) of the Supreme Court of Georgia, 27 February 2024; Decision Nბს-67(კ-22) of the Supreme Court of Georgia, 5 October 2023.

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

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

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

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

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

REFERENCES

- Alder, John. 2015. *Constitutional and Administrative Law*. 10th ed. London: Palgrave.
- Cane, Peter. 2011. *Administrative Law*. 5th ed. Oxford: Oxford University Press.
- De Falco, Vincenzo. 2018. *Administrative Action and Procedures in Comparative Law*. The Hague: Eleven International Publishing.
- Dereck, Heater. 2004. *A Brief History of Citizenship*. New York: New York University Press.
- Endicott, Timothy. 2011. *Administrative Law*. 2nd ed. Oxford: Oxford University Press.

- Gegenava, Dimitry. 2025. "Judicial Discretion, Hard Cases and Administrative Justice in Georgia." In *In Legibus Fundamentum Rei Publicae*, edited by Marcin Wielec, Paweł Sobczyk, and Bartłomiej Oręziak, 629–683. Warszawa: Wydawnictwo Instytutu Wymiaru Sprawiedliwości.
- Kaufman, I. R. 1973. "Prison: The Judge's Dilemma." *Fordham Law Review* 41 (3): 545–553.
- Leyland, Peter, and Gordon Anthony. 2013. *Textbook on Administrative Law*. 7th ed. Oxford: Oxford University Press.
- Lomize, Liana. 2024. *Uniform Case Law of the Supreme Court of Georgia on Residence Permit Disputes (2021–2024)*. Tbilisi: Analytical Department of the Supreme Court of Georgia.
- Nadareishvili, Irakli, and Jemal Lomsadze. 2020. "Inner Conviction and Key Factors in Its Formation." *Law and World*, no. 14.
- Rosenbloom, David H., Rosemary O'Leary, and Joshua Chanin. 2010. *Public Administrative Law*. 3rd ed. Boca Raton, FL: CRC Press.

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

Nino Tsikhitatrishvili

"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

---

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]

---

[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]

---

[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

---

[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]

---

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

---

[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]

---

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-

---

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-

---

[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.

REFERENCES

- Albrecht, Thomas. 2006. *Request for Advisory Opinion, By Facsimile (212-230-8888) and Overnight Mail*. Geneva: UNHCR.
- Anderson, Adrienne, Michelle Foster, Hélène Lambert, and Jane McAdam. 2020. "A Well-Founded Fear of Being Persecuted … But When?" *Sydney Law Review* 42 (2): 225–254.
- Barcza-Szabó, Zita. 2024. *Legal Template on EU and International Law Regarding Disclosure of Classified Information in Asylum and Return Procedures Based on National Security Grounds*. Budapest: Hungarian Helsinki Committee.
- Çalı, Başak, Cathryn Costello, and Stewart Cunningham. 2020. "Hard Protection Through Soft Courts? Non-Refoulement Before the United Nations Treaty Bodies." *German Law Journal* 21 (3): 355–384.
- Dawody, Hevi. 2024. *Terrorism and Exclusion from Refugee Protection*. Stockholm: Stockholm University.
- den Heijer, Maarten, and Harmen van der Wilt. 2015. "Jus Cogens: Quo Vadis?" *Netherlands Yearbook of International Law* 46: 305–341. https://doi.org/10.1007/978-94-6265-066-4_13
- Gilbert, Geoff. 2001. *Current Issues in the Application of the Exclusion Clauses*. Geneva: UNHCR.
- Goodwin-Gill, Guy S. 1982. "Entry and Exclusion of Refugees: The Obligations of States and the Protection Function of the Office of the United Nations High Commissioner for Refugees." *Michigan Journal of International Law* 3 (1): 29–51.
- Grahl-Madsen, Atle. 1997. *Commentary on the Refugee Convention 1951*. Geneva: Division of International Protection of the United Nations High Commissioner for Refugees.
- Hathaway, James C., and Colin J. Harvey. 2001. "Framing Refugee Protection in the New World Disorder." *Cornell International Law Journal* 34 (2): 257–320.

- Juhász, Katalin. 2024. *The Right to Know in the European Union: Comparative Study on Access to Classified Data in National Security Related Immigration Cases*. Budapest: Hungarian Helsinki Committee.
- Kvachadze, Marine, Natia Jugeli, Elene Ghvinjilia, and Nino Dzidziguri. 2020. *Analysis of Cases Regarding Asylum Seekers in the National Judicial Practice of Georgia (Reflection of International Standards at the National Level)*. Tbilisi.
- Lambert, Hélène. 1999. "Protection Against Refoulement From Europe: Human Rights Law Comes to the Rescue." *International and Comparative Law Quarterly* 48 (3): 515–544. https://doi.org/10.1017/S0020589300063491
- Mathew, Penelope. 2010. "Limiting Good Faith: 'Bootstrapping' Asylum Seekers and Exclusion from Refugee Protection." *Australian Year Book of International Law* 29: 149–180.
- Simentić, Janja. 2019. "To Exclude or Not to Exclude, That Is the Question: Developments Regarding Bases for Exclusion from Refugee Status in the EU." *German Law Journal* 20 (1): 134–150. https://doi.org/10.1017/glj.2019.11
- Walsh, Jeff. 2017. "Exclusion from International Protection for Terrorist Activities under EU Law: From B&D to Lounani." *European Database of Asylum Law*. https://www.asylumlawdatabase.eu/en/journal/exclusion-international-protection-terrorist-activities-under-eu-law-bd-lounani
- Wibisono, Rizky Bangun. 2024. "Migration, Security, and Human Rights: The Struggle for Refugee Protection." *The Sunan Ampel Review of Political and Social Sciences* 4 (1): 33–48.
- Zimmermann, Andreas, Jonas Dörschner, and Felix Machts. 2011. *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol*. 2nd ed. Oxford: Oxford University Press.

THE RIGHT OF AN ASYLUM SEEKER TO QUALIFIED LEGAL AID

Tamar Khubuluri

I. Introduction

Migration policy is one of the most contentious political topics worldwide. Recent developments have sparked heated discussions on this issue at both the national and international levels. Globally, there are 122 million forcibly displaced individuals, encompassing nearly 46 million asylum seekers and recipients of international protection – a figure that is increasing daily.[1] The number of asylum seekers and recipients of international protection in Georgia has also been progressively rising each year, influenced by the unstable circumstances prevailing both globally and regionally.[2] In the light of the surge in migratory movements, it has become imperative, on one hand, to safeguard the rights of migrants and regulate migration processes implemented by states, while, on the other hand, to address concerns related to state sovereignty and national security.[3]

In 2024, the number of asylum applications increased compared to the previous reporting year, with a total of 1,641 individuals requesting international protection.[4] During the same period, the Mi-

[1] UNHCR's Refugee Population Statistics Database, https://www.unhcr.org/refugee-statistics/

[2] Public Defender of Georgia, Special Report on the Human Rights Situation of Asylum Seekers and Persons with International Protection in Georgia, (Tbilisi: Public Defender's Office, [2022]), 4.

[3] Phirtskhalashvili, 11.

[4] Public Defender of Georgia, Report on the Protection of Human Rights and Freedoms in Georgia (Tbilisi: Public Defender's Office, [2024]), 376.

gration Department of the Ministry of Internal Affairs of Georgia adjudicated 1,533 asylum cases. However, the rate of favorable decisions remained notably low. Specifically, international protection was denied to 1,418 applicants among the cases reviewed. The proportion of negative decisions on asylum applications, as a share of the total annual decisions rendered, has shown a continuous upward trend.[5] This development is primarily attributable to the growing number of unsubstantiated applications for international protection submitted by asylum seekers.[6] The increase in asylum applications has also resulted in a corresponding rise in the caseload of the general courts, driven by appeals against decisions issued by the Ministry of Internal Affairs. An analysis of data obtained from the Tbilisi City Court reveals a substantial annual increase in the number of such appeals. Nevertheless, there has been a decline in the proportion of appeals that are granted. In 2024, only 6.5% of the submitted appeals were upheld by the court. Further data obtained from the Tbilisi Court of Appeals also indicate an upward trend in the number of appeals submitted, while the proportion of successful appeals remains low. Specifically, only 8.5% of the appeals adjudicated by the Court of Appeals were granted.[7]

---

[5] According to statistics from the Migration Department of the Ministry of Internal Affairs of Georgia, the number of asylum applications reviewed and the number of positive decisions from 2020 to 2024 were as follows: in 2020 – 377 applications (22 approved); in 2021 – 522 applications (96 approved); in 2022 – 1,323 applications (501 approved); in 2023 – 654 applications (182 approved); and in 2024 – 1,533 applications (115 approved). The primary grounds for rejection were the absence of qualifying reasons, security concerns, or the applicant's recognition as a refugee by another country. Ministry of Internal Affairs of Georgia, Migration Department, Asylum Application Statistics, 2020–2024, https://info.police.ge/page?id=258

[6] State Commission on Migration Issues of Georgia, Migration Profile of Georgia, 2021, 14, https://info.police.ge/page?id=258

[7] The Tbilisi Court of Appeals processes statistical data according to established reporting formats, generally related to cases involving "requests for international protection or the granting of asylum." Between 2020 and March 30, 2025, the Tbilisi Court of Appeals received 1,174 complaints, including 1,076 appellate complaints and 130

The asylum procedure is characterized by an inherent imbalance between the parties involved: state authorities who are routinely engaged in the procedure, and the asylum seeker, who may be going through the procedure for the first time. Asylum seekers are considered clients with special needs, as they may be traumatized or suffer from health problems; in most cases, they do not speak the language of the host country, or are unfamiliar with its legal system, which leads to heightened dependency on lawyers and increases the need for qualified legal aid.[8] This need becomes even more acute under conditions of prolonged proceedings in Georgia. According to statistical data from the Ministry of Internal Affairs of Georgia, there has been a steady increase in the number of asylum cases that require 18–21 months, or even longer to reach a final decision. When these timelines are combined with the duration of case reviews in two judicial instances, it becomes evident that the overall timeframe for obtaining a final asylum decision is often unreasonably delayed. Such delays deprive asylum seekers of the ability to exercise a range of fundamental rights and leave them in prolonged legal uncertainty,[9] at a time when legal representation may be their most reliable safeguard.

The importance of studying the right of an asylum seeker to qualified legal aid is underscored by statistical data obtained from the Legal Aid Service regarding ongoing asylum cases. In the context of

private complaints. During the same period, proceedings were completed for 1,209 cases, specifically: 51 complaints (40 appellate, 11 private) were left unexamined; In 997 cases (895 appellate, 102 private), the original decision was upheld; 2 cases (2 appellate complaints) were returned to the first instance court for reconsideration; Proceedings were terminated in 57 cases (54 appellate, 3 private complaints); In 85 cases (all appellate), a new decision was issued; 17 private complaints were granted. The data is based on official correspondence from the Tbilisi Court of Appeals, Letter No. 320/2025, May 7, 2025.

8 Butter, 108.

9 Public Defender of Georgia, Special Report on the Human Rights Situation of Asylum Seekers and Persons with International Protection in Georgia, (Tbilisi: Public Defender's Office, [2022]), 16.

increasing migration in Georgia, the demand for legal aid, both for consultations and court representation, is growing daily. The highest number of asylum seekers requesting assistance from the Legal Aid Service was recorded in 2024, starting from 2020. Moreover, as of April 30, 2025, there remains a 37% increase in such requests, indicating a sustained demand.[10] The accessibility of legal aid for asylum seekers requires further examination, which adds to the relevance of the topic. Notably, according to the Public Defender's Office of Georgia, previous assessments of the legal status of asylum seekers have not addressed the right to legal aid or access to it.[11] Currently, the Georgian Bar Association does not have any active programs aimed at enhancing the protection of migrants' rights within its professional legal education framework. Since 2012, only three training sessions have been held for lawyers on the topic of migrants' rights – specifically, on the legality of migrant detention and expulsion in the context of human rights law. These trainings were attended by only 0.87% of the Bar Association's members.[12] However, a growing interest in immigration law is evident from a needs assessment survey of 2025, where lawyers identified immigration law as a key area for future training. This indicates potential for professional development initiatives in this field.[13] Nevertheless, the Bar Association is not currently engaged in any work related to

[10] According to official data, the Legal Aid Service handled the following number of asylum-related cases: 229 cases in 2020, 320 cases in 2021, 370 cases in 2022, 260 cases in 2023, 644 cases in 2024, and 233 cases in the first four months of 2025 (January 1 – April 30). Between January 1, 2020, and April 30, 2025, a total of 1,994 asylum cases were handled at the first-instance level, while 62 cases proceeded to the appellate stage. Legal Aid Service of Georgia, letter no. NLA 9 25 00014899, May 6, 2025.

[11] Public Defender of Georgia, letter no. N25/3279, April 24, 2025.

[12] According to official data from the Training Center of the Georgian Bar Association, three immigration law trainings were conducted, with a total of 94 lawyers participating. Legal Education Center of the Georgian Bar Association, letter no. N186/25, April 17, 2025.

[13] These trainings were selected by lawyers within the framework of the Continuing Legal Education Program from migration law: residence permits, refugee status determination, migration, and security. Ibid.

migration law, even though, under the conditions of mandatory membership, it could serve as a vehicle for equipping legal professionals with knowledge on migration-related legal issues.

The Legal Aid Service adopted general rules for quality control of services provided by the legal aid lawyers.[14] In addition to improving the quality of work performed by specialized lawyers who work on asylum cases, criteria for evaluating the quality of legal services in asylum seekers' cases were developed and integrated into the quality assessment system of the Legal Aid Service.[15] According to some of the Legal Aid Service lawyers, the rules for evaluating their quality of legal services, even at the draft stage, violated their rights, particularly the professional independence guaranteed by the Law of Georgia on Advocates.[16] On the one hand, legal aid lawyers enjoy independence and non-interference in their professional activities, in line with the core values of the legal profession; on the other hand, some of the evaluation criteria in the quality control regulations entail a substantive legal assessment of the attorneys' work, which may be perceived as interference in their activities. This approach to overseeing the work of legal aid lawyers contradicts the standard established for professional oversight by the Ethics Commission of the Georgian Bar Association.[17]

Accordingly, the research in this paper aims to assess the qualification and scope of protection of an asylum seeker's right to legal aid to develop recommendations that will contribute to improving access to justice through the provision of qualified legal aid. To achieve these objectives, the research primarily employs a comparative legal meth-

[14] Legal Aid Council of the Legal Aid Service of Georgia, Decision No. N120 of November 24, 2023, "On the Approval of Rules and Criteria for Assessing the Quality of Legal Consultation and Legal Aid Provided by the Legal Aid Service of Georgia."

[15] Legal Aid Service of Georgia, Annual Report on the Activities of the Legal Aid Service*,* 2024*,* 37.

[16] Ethics Commission of the Georgian Bar Association, Recommendation No. N010/15, December 10, 2015.

[17] Khubuluri, 96–97.

odology. The study will examine existing discrepancies in practice with regard to the right to qualified legal aid. It will analyze the approaches of the Legal Aid Service, non-governmental organizations, and the Georgian Bar Association. Through a systematic and logical analysis of these approaches and by examining judgments of the European Court of Human Rights, the study will identify key practical trends. Furthermore, it will analyze recommendations issued by the Council of Bars and Law Societies of Europe (CCBE) aimed at improving legal aid in the fields of migration and international protection. Drawing on this experience, the study will identify best practices, and, through the application of inductive and deductive methods, will present conclusions and corresponding recommendations.

The paper is structured into the following six main sections: the introduction; section two, addressing international and national standards on the right of asylum seekers to qualified legal aid; section three, discussing access to justice for asylum seekers through the right to legal aid; section four, examining the role of legal aid in asylum procedures; section five, focusing on mechanisms for monitoring legal aid providers. Finally, based on the analysis of the issues outlined above, the study will formulate conclusions regarding the standard for qualified protection of the rights of asylum seekers.

II. Legislative Framework – International and National Standards

The right to seek asylum is a right guaranteed under international human rights law. Every individual has the right to seek and enjoy asylum.[18] Under universally recognized norms of international law, the right to be granted asylum to foreign nationals and stateless persons in Georgia is affirmed by Article 33, Paragraph 3 of the Constitution of Georgia, which states the following: "Following universally recognized

[18] Universal Declaration of Human Rights, art. 14, para. 1.

norms of international law and under the procedure established by law, Georgia shall grant asylum to citizens of other countries and stateless persons." By its nature, this constitutional right implies a state's obligation to grant asylum and ensure adequate protection to bona fide individuals under its jurisdiction whose life and liberty are under serious threat.[19]

Individuals who apply to a host country seeking international protection – whether refugee status, humanitarian status, or temporary protection – are considered asylum seekers. According to the UNHCR, "asylum-seekers are individuals who have sought international protection and whose claims for refugee status have not yet been determined."[20] The European Union adopts a similar definition; directive 2003/9/EC, which sets out minimum standards for the reception of asylum seekers, defines an "applicant" or "asylum seeker" as "a third-country national or a stateless person who has made an application for asylum in respect of which a final decision has not yet been taken."[21] This definition is consistently used across all EU directives. Under Georgian legislation as well, two main criteria are established for recognizing a foreign national or stateless person as an asylum seeker: the individual should have an application for international protection submitted to a state authority, and no final decision should be issued by the Ministry or entered into legal force by a court.[22]

The right to seek and be granted asylum is codified in the 1951 United Nations Convention Relating to the Status of Refugees and its

---

[19] Decision of the Constitutional Court of Georgia, July 25, 2023, No. 2/17/1629, Public Defender of Georgia v. Parliament of Georgia, section II–5.

[20] UNHCR, 2009 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons, Division of Programme Support and Management (2010), http://www.unhcr.org/4c11f0be9.html

[21] Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers, art. 2(c), Official Journal of the European Union, L 31/18, 2003.

[22] Law N42-Ის of Georgia "On International Protection", 1 December 2016, Art. 3("ე").

1967 Protocol. Georgia acceded to both instruments in 1999, thereby assuming the international legal obligation to protect asylum seekers, recognized refugees, and individuals who have been granted humanitarian status.[23]

An increase in the number of asylum seekers, along with global and regional challenges related to migration processes, has made it necessary to further refine asylum procedures and legislation, as well as to develop access to appropriate legal guarantees and services.[24] In recent years, significant legislative and institutional changes have been implemented in Georgia to enhance the international protection system, which received a notable boost from the accelerated process of rapprochement with the European Union.[25]

Procedural aspects and guarantees related to asylum are reflected in various forms within the existing legal framework. In Georgian legislation, the 1951 United Nations Convention Relating to the Status of Refugees has been incorporated through the Law of Georgia on International Protection, which broadens the scope of international protection. Following structural changes in governmental institutions, the Ministry of Internal Affairs has been designated as the competent state authority responsible for matters related to international protection. Additionally, Order No. 33 of 6 April 2020 of the Minister of Internal Affairs of Georgia on the Asylum Procedure, as well as Order No. 99 of 21 July 2020, which regulates the identification and referral procedures for asylum requests made at the state border, are of particular significance.

Without qualified legal assistance and representation, asylum seekers face significant risks in fully exercising their rights due to the complexity of procedures, limited knowledge of the legal system, and

[23] Decree No. 1996 of the Parliament of Georgia, 28 May 1999.

[24] Migration Strategy of Georgia 2021–2030, State Commission on Migration Issues (2020), 47.

[25] Ibidem, 47.

lack of understanding of the language and customs of the host country. International law requires all states to respect, protect, and fulfill the human rights of every individual within their territory or jurisdiction, including asylum seekers without discrimination. This obligation can only be fulfilled through the guarantee of access to legal aid, which serves as a cornerstone for the effective realization of fundamental rights.[26]

Universally recognized norms of international law grant states broad discretion in choosing the means by which effective access to asylum is ensured.[27] However, in doing so, based on the right to access to justice, it is important to protect procedural guarantees when determining the status of an asylum seeker, which includes ensuring the right to legal aid. Every asylum seeker must be provided with free legal aid and interpretation services,[28] as well as access to the support of UNHCR and relevant non-governmental organizations at all stages of the asylum procedure.[29]

The right of asylum seekers to access legal assistance was established for EU Member States under Council Directive 2005/85/EC on minimum standards for procedures for granting and withdrawing refugee status.[30] Access to legal aid has been further developed through the conclusions of the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR), the recommendations of the Council of Europe, the case law of the European Court of Human Rights, and the Charter of Fundamental Rights of the European Union.

---

[26] Kocevski, 3.

[27] Decision N2/17/1629 of the Constitutional Court of Georgia, 25 July 2023, II–5.

[28] Law N42-Ib of Georgia "On International Protection", 1 December 2016, Arts. 56(„ტ"), 76.

[29] Council of Europe, Parliamentary Assembly, Report on the Protection and Reinforcement of the Human Rights of Refugees and Asylum-Seekers in Europe, Doc. 7783, March 26, 1997.

[30] Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status, Official Journal of the European Union, L 326, 2005.

According to the Executive Committee's conclusions and UNHCR's procedural guidelines, asylum seekers must be able to receive assistance throughout the asylum procedure, especially when interacting with state authorities. Moreover, they must be granted the opportunity to contact a UNHCR representative.

According to the UNHCR Executive Committee Conclusion[31] and the UNHCR Handbook on Procedure,[32] an asylum seeker should be able to receive assistance in the asylum procedure when interacting with state authorities. Also, an asylum seeker should have the opportunity to contact a UNHCR representative.

UNHCR Conclusion No. 8, which defines the requirements for the asylum procedure, and the Council of Europe has interpreted it as a requirement for a fair hearing, which includes an examination of the asylum application by a specialized state body, a full interview, and appropriate legal aid. The Council of Europe has also established that such hearings should comply with minimum standards, such as allowing the asylum seeker a reasonable time to prepare his/her case, receiving legal advice from a lawyer of his/her choice, or the relevant non-governmental organization, access to all necessary information for the application, and the provision of legal assistance during the procedure.[33]

UNHCR's Global Consultations on International Protection also addressed the critical role of legal assistance. One of the primary objectives of these consultations was to establish clear and straightforward procedures aimed at producing high-quality decisions, supported by appropriate procedural safeguards. In developing the core guiding

---

[31] UNHCR, Executive Committee Conclusion No. 8 (XXVIII) Determination of Refugee Status, 1977.

[32] UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, 1979 (re-edited 1992).

[33] Council of Europe, Parliamentary Assembly, Report on the Protection and Reinforcement of the Human Rights of Refugees and Asylum-Seekers in Europe, Doc. 7783, 26 March 1997.

principles for asylum procedures, principles that are effective, fair, and aligned with the standards of international refugee law, access to legal counsel was identified as a decisive element:

"At all stages of the procedure, including at the admissibility stage, asylum-seekers should receive guidance and advice on the procedure and have access to legal counsel. Where free legal aid is available; asylum-seekers should have access to it in case of need. They should also have access to qualified and impartial interpreters where necessary, and the right to contact UNHCR and recognized NGOs working in cooperation with UNHCR. UNHCR's mandate requires that it have prompt and unhindered access to asylum-seekers and refugees wherever they are."[34]

Access to the right to free legal aid takes on particular importance in the context of accelerated asylum procedures. The Parliamentary Assembly of the Council of Europe has recommended that member states ensure the right to free legal aid, particularly in accelerated procedures. In such contexts, it is of critical importance to uphold every asylum seeker's right to a personal interview in a language he/she understands, combined with the possibility of free legal aid, both at the first-instance level and throughout the appeals process.[35]

Legally binding provisions concerning legal aid for asylum seekers apply to EU member states as a result of the entry into force of the Asylum Procedures Directive. This is the first international legally binding instrument that explicitly establishes the right to legal aid in asylum procedures within the European Union member states. The Directive ensures that asylum seekers have access to free consultations with a le-

[34] UNHCR, Global Consultations on International Protection, Asylum Processes (Fair and Efficient Asylum Procedures), EC/GC/01/12 (2001), para. 50 (g).

[35] Council of Europe, Parliamentary Assembly, Report Committee on Migration, Refugees and Population, Accelerated Asylum Procedures in Council of Europe Member States, Doc. 10655 (2010); see also Council of Europe, Parliamentary Assembly, Resolution 1471 (2005), Accelerated Asylum Procedures in Council of Europe Member States, para. 8.10.2.

gal advisor or other counsellor, at their own expense, on matters relating to their asylum applications.[36] The Directive obliges member states to ensure free legal aid and/or representation upon the request of the asylum seeker, in cases where a negative decision has been issued by the competent authority.[37] Member States retain discretion to impose significant limitations on the provision of free legal assistance and/or representation and to determine at which stage of the proceedings an asylum seeker shall be entitled to such aid.[38]

Legal aid is also addressed by Council Directive 2003/9/EC, which lays down minimum standards for the reception of asylum seekers and obliges Member States to provide asylum seekers with written information in a language they understand about organizations that provide legal assistance to asylum seekers.[39] The Directive further provides for the right to appeal a negative decision concerning the granting of international protection, stipulating that the procedures for accessing legal assistance in such cases must be regulated by national legislation.[40]

The determination of refugee status is accompanied by legal safeguards, notably outlined in Directive 2013/32/EU. This directive explicitly recognizes the right to legal aid, thereby guaranteeing free legal aid and representation in appeal procedures based on the claim, conducted at the first instance. It also provides for the right of applicants to consult with a legal adviser or other types of advisers, at their own expense, regarding issues related to their application for international protection at all stages of the procedure.[41]

---

[36] Asylum Procedures Directive, 2013, Art. 22.

[37] Ibidem, Art. 23.

[38] Handbook on European Law Relating to Asylum, Borders and Immigration, (Strasbourg: Council of Europe, 2020), 164.

[39] Council of Europe, Parliamentary Assembly, Report on the Protection and Reinforcement of the Human Rights of Refugees and Asylum-Seekers in Europe, Doc. 7783 (1997), Art. 5.

[40] Ibidem, Art. 21.

[41] Directive 2013/32/EU of the European Parliament and of the Council on Common Procedures for Granting and Withdrawing International Protection (2013), Arts. 20–23.

III. Access to Justice for Asylum Seekers through the Right to Legal Aid

1. Information on Legal Assistance

According to the recommendation of the European Council on Refugees and Exiles (ECRE), the fundamental principle of asylum procedures in Europe should always include at least the following five guarantees:

- Access to free legal advice;
- Access to the United Nations Refugee Agency (UNHCR) /NGOs;
- Qualified and impartial interpreters;
- Individual interviews;
- Right to appeal.[42]

The role of authorities informing asylum seekers on how to access legal assistance after having received a negative decision is crucial. Information on where to find legal aid should normally be provided at the beginning of the asylum procedure. In addition, as a good practice, negative asylum decisions should include information on where to find legal assistance in a language the asylum seeker understands and, where feasible, have contact details of lawyers providing free legal aid attached to it.

According to a study by the European Union Agency for Fundamental Rights (FRA), asylum seekers identified the lack of information provided by state authorities regarding the ways of obtaining legal assistance as one of the key challenges. FRA emphasizes that information about the availability of legal aid providers should be communicated to asylum seekers from the outset, at the beginning of the asylum procedure. As a matter of good practice, negative decisions regarding asylum applications should include information, presented in a language

[42] Adeline, 41.

understandable to the asylum seeker, on where and how to obtain legal assistance, including contact details for free legal aid services, where available.[43] In the case of Abdolkhani and Karimnia v. Turkey, the European Court of Human Rights clarified that individuals must be provided with adequate information regarding asylum procedures in order to be able to effectively engage with them. This requires the existence of a reliable means of communication between the authorities and asylum seekers. Moreover, individuals need effective access to such procedures, which includes access to legal aid.[44]

A person requesting international protection in Georgia will be informed about the rights and obligations of an asylum seeker and provided with information about the asylum procedure, both orally and in writing, in a language he/she understands, during registration. Also, the decision made against the person includes information on the deadlines for appealing and the possibility of using free legal aid.[45]

2. Information about Legal Aid Providers

2.1. The central role of the lawyer and the requirement of professional competence

Access to justice is a fundamental right, and legal aid is an essential tool in ensuring access to justice.[46] Legal assistance is essential to ensure fair and effective asylum procedures.[47] Legal assistance for people in need of asylum is crucial for them to protect their rights during

[43] EU Fundamental Rights Agency, Access to effective remedies: The asylum-seeker perspective, 2010, 27–29.

[44] *Abdolkhani and Karimnia v. Turkey*, App. No. 30471/08, European Court of Human Rights, 22 September 2009, 114–115.

[45] Ministry of Internal Affairs of Georgia, Migration Department, Letter No. N MIA 6 25 01201127, 22 April 2025.

[46] Council of Bars and Law Societies of Europe (CCBE) Recommendations on Legal Aid, (2018), 1.

[47] UNHCR, Global Consultations on International Protection, Asylum Processes (Fair and Efficient Asylum Procedures), EC/GC/01/12 (2001), para. 50 (g).

the asylum procedure.[48] There is an ever-increasing need for qualified legal services specializing in immigration law.[49] Due to the complexity of immigration law, it is believed that representation by an attorney increases the chances of a positive outcome.[50] Lawyers are seen by asylum seekers as experts. They are considered as essential. It is, therefore, not surprising that the main concern for respondents after receiving a negative decision is to find a competent and reliable lawyer who assists them in lodging an appeal. The involvement of a lawyer in asylum procedures is beneficial not only for the asylum seeker but also for the authorities, as applications will be better prepared, making it easier for administrative bodies and the court to make the right decisions.[51]

According to the case law of the European Court of Human Rights, the European Convention on Human Rights requires the protection of rights to be not merely theoretical or illusory, but practical and effective.[52] The mere appointment of legal counsel does not, in itself, guarantee effective assistance.[53] Therefore, the legal aid system must establish safeguards to prevent arbitrariness and to ensure the provision of meaningful and effective legal support.[54]

The legal profession is self-regulated and linked to mandatory membership in a professional association, which in turn imposes professional responsibility grounded in professional ethics. Members of the legal profession must respond to the challenges currently facing the field, as well as reflect on their professional growth and de-

48 EU Fundamental Rights Agency, Access to effective remedies: The asylum-seeker perspective, 2010, 27.

49 Jordan, 297.

50 Ibidem, 298, 300.

51 Butter, 105.

52 *Sakhnovskiy v Russia*, App. no. 21272/03, European Court of Human Rights, 2 November 2010, 95.

53 *Kamasinski v. Austria*, App. no. 9783/82, European Court of Human Rights, 19 December 1989, 65.

54 *Gnahore v. France*, App. no. 40031/98, European Court of Human Rights, 17 January 2001, 41.

velopment. This ensures that they keep pace harmoniously with the advancement of other branches of the legal profession and that they set high standards within the profession, both in terms of professional qualification as well as in upholding ethical standards.[55]

The right of asylum seekers to state-funded legal assistance, as guaranteed by law, must be qualified.[56] Qualified assistance implies that the lawyer utilizes their knowledge in the best interest of the client and provides representation under the law.[57] Mere formal participation in procedural actions cannot be considered qualified legal representation, as clients rely on legal assistance precisely because lawyers possess the specialized knowledge and skills that the clients themselves lack.[58]

At the same time, professional ethics entitle a lawyer to defend the client diligently and by lawful means.[59] The legal status of the lawyer within legal proceedings entails an obligation to protect the client using all lawful methods and means;[60] the lawyer's actions are constrained by the client's lawful instructions.[61] A lawyer is required to align with the client's position, which constitutes a key component of qualified legal representation.[62]

2.2. Access to the legal aid system

A functional and sustainable legal aid system that allows people to access justice, no matter their socio-economic background, is a bed-

55 Kandashvili, Turazashvili, 7.

56 Law N4955 of Georgia on Legal Aid, 19 June 2007, Art. 1(2).

57 Georgian Bar Association, Ethics Commission Decision No. 122/18, 10 October 2019.

58 Georgian Bar Association, Ethics Commission Decisions No. 096/14, 22 October 2015; No. 035/10, 23 September 2010; No. 096/11, 25 July 2012; No. 024/12, 19 October 2012.

59 Re, 505.

60 Zacharias, 1389.

61 DeMott, 311.

62 Ruling N1ბ/სპ-18-18 of the Tbilisi Court of Appeals, 7 June 2018.

rock of our democracy.[63] It is a vital and cost-effective means of addressing individuals' problems.[64] A well-funded legal aid system saves government resources in the long term by preventing costs that would otherwise be transferred to local authorities, healthcare services, the courts, and other public institutions, precisely because individuals receive qualified legal advice.[65]

A study conducted by the European Union Agency for Fundamental Rights (FRA) showed that a significant number of asylum seeker respondents had access to legal assistance from a lawyer, with a majority receiving services from providers of free legal aid. Two main problems were identified: limited access to free legal aid and insufficient time. Asylum seekers reported that, despite having a lawyer, they often had to prepare their appeals themselves. This may have been due to an insufficient number of lawyers; for instance, in Hungary, only one lawyer was working pro bono in an NGO providing legal services, with approximately 500 cases under their supervision. Moreover, legal aid services were not accessible in all regions of the country. The second major issue identified was the short time limit for filing an appeal. The limited timeframe made it difficult to find a lawyer willing and able to take the case. In Slovakia, asylum seekers reported several cases in which, immediately after receiving a negative decision, applicants were transferred from the asylum reception center to a detention facility for irregular migrants. In these detention centers, access to legal advice and representation was extremely limited, creating an additional barrier to appealing.[66]

---

[63] Securing Access to Justice: The Need for Legal Aid in Immigration, Joint Briefing from 71 organizations (2024), 3, https://www.migrantsorganise.org/joint-briefing-securing-access-to-justice-the-need-for-legal-aid-in-immigration/

[64] Ibidem, 3.

[65] Ibidem, 3.

[66] EU Fundamental Rights Agency, Access to Effective Remedies: The Asylum-seeker Perspective (2010), 29.

Recognizing the diversity of legal aid systems in European countries and the diversity of national legal traditions, the Council of Bars and Law Societies of Europe (CCBE) developed recommendations for improving legal aid, which later became the basis for new recommendations in the field of migration and international protection. The recommendations were based on a survey of the situation in the Member States. It was found that the increase in the number of migrants in Europe, including asylum seekers and refugees, led to a significant rise in the demand for legal assistance and gave rise to new challenges in practice.[67] The recommendations on legal aid identified the following several issues that will impact the qualified services of lawyers:

1. Qualification of legal aid providers

To ensure the quality of legal aid services, all legal aid providers (LAPs) should, as a minimum, have a legal qualification and be able to practice as lawyers in the relevant jurisdiction. The CCBE considers it important that legal aid is provided by lawyers. The core values of the legal profession, such as independence, professional secrecy, and the duty to avoid any conflict of interest, serve as a guarantee that legal aid services are rendered according to the rule of law.

2. Independence of legal aid providers

LAPs should be fully independent in the sense that once appointed, they should not receive instructions or orders, directly or indirectly, from any source other than their clients. The LAP's judgment should not be guided by any consideration other than their client's interest, the LAP's objective assessment of their client's factual and legal situation, and the legal and/or regulatory provisions applicable to the client's particular situation.

[67] EUAA, Asylum Report 2023: 4.10.1. Legal information and access to legal aid as prerequisites of an effective asylum procedure (2023), https://euaa.europa.eu/asylum-report-2023/4101-legal-information-and-access-legal-aid-prerequisites-effective-asylum-procedure

3. Fees of legal aid providers

States should ensure that LAPs receive fair remuneration for their services. States have a legal obligation to ensure the quality of legal aid. LAPs are expected to provide quality services, and the fees available for such a service must be appropriate and adequately reflect the value of the service. Access to justice is undermined not only when an individual is denied legal aid due to a lack of sufficient funding (see Recommendation V.1), but also when the remuneration of lawyers working on legal aid cases is so low that it hinders the possibility of an effective defense and/or legal advice. Therefore, given the different degrees of complexity and nature of cases dealt with, the remuneration of the lawyers, providing legal aid, cannot be standardized; however, these factors should be considered, as is the rule for the remuneration of lawyers providing services outside legal aid.

4. Budgeting of legal aid

Legal aid is a fundamental tool for ensuring access to justice and should be guaranteed by states through the allocation of sufficient funding to ensure that no person entitled to receive legal aid will be left without it. It is evident that legal aid is dependent on the provision of funding. If the budget allocated by the state is not sufficient to cover the needs of all those individuals entitled to receive legal aid, access to justice is undermined and states do not fulfil their obligation to respect and protect fundamental rights. Each state should, in the process of preparing the budget for legal aid, take into account pertinent indicators, such as the legal aid budget and the caseload of the previous year, together with an estimate of the expected number of cases. The expected number of cases can be predicted by considering approximately the number of applications for legal aid pending approval, the stage of the proceedings, the nature of the disputes, the moment in which

the payment of the lawyer's fees will be due and other similar indicators.

5. Administration of legal aid

Each country should have clear legislation about legal aid, including the competent authority/authorities to administer legal aid and rules to guarantee standards for legal aid beneficiaries. Bars or Law Societies are generally the most competent bodies for the administration of legal aid, including the selection/appointment of LAPs.[68]

The CCBE recommendation on legal aid states that "Legal aid systems need to be flexible and regularly evaluated, taking into consideration new developments and needs. Legal aid must be extended to include fields with special needs. (…) Some areas deserve particular attention, such as alternative dispute resolution methods and the requests for assistance, put forward by migrants and refugees. In this respect, it is important to emphasize the need to protect and safeguard the interests of the weaker party." So, the CCBE took recommendations on a framework for legal aid in the field of migration and international protection. The CCBE has conducted some research on access to legal aid in the field of migration and international protection among its members. The data collected has been summarized in the form of recommendations as follows:[69]

1. Procedures for accessing legal aid must be transparent, easily understandable, and accompanied by clear terms and conditions to ensure effective utilization.
2. Enhancing access to justice and fostering trust in institutions requires individuals subject to migration and asylum procedures to be fully informed of their right to legal aid. This in-

[68] Council of Bars and Law Societies of Europe (CCBE) Recommendations on legal aid, 2018, 1–7.

[69] Council of Bars and Law Societies of Europe (CCBE) Recommendations on a framework on legal aid in the field of migration and international protection, 2018, 1–7.

cludes making such information readily available, accessible in multiple languages, and presented in a child-friendly format where necessary. States must intensify efforts to disseminate this information through both traditional and digital means.

3. Migrants and asylum seekers must be afforded the same treatment as nationals in matters relating to legal aid, per the principles of equality and non-discrimination.
4. Free legal assistance should be made available from the earliest possible stage of the migration or asylum procedure, ensuring meaningful participation and protection of rights.
5. Unaccompanied children should always be granted access to legal assistance. Special legal aid schemes should be provided for these children.
6. Bars should consider establishing legal assistance/legal aid protocols for migrants within the Bar.
7. Bars should consider creating a special committee on migration or international protection law. Such bodies would serve as platforms for lawyers engaged in this area to exchange expertise, enhance professional development, and promote consistency in practice.
8. There should be legal information centers for migrants, at least in bigger cities and at the borders, especially in situations of higher numbers of arrivals. The CCBE encourages Bars to become involved in such centers or to create them. The CCBE encourages Bars to provide training to ensure that lawyers providing legal aid are specialized in migration and asylum law.
9. States should collect statistics on legal aid for migrants, which would allow for better assessment of the scale of the needs, adjust budgets and resources, and assess to what extent a specific legal aid scheme would be appropriate.

10. The rates of remuneration for legal aid cases should be adapted to the volume and complexity of work involved in the cases. Proportionate fees will ensure that lawyers with sufficient expertise in the area opt to provide the required services, thereby continuing to develop as experts in the field as well as providing a much-needed service. Economically viable and sustainable work would also attract more young practitioners. All these elements will ultimately improve access to justice and effectiveness of rights.
11. Legal assistance should be provided by qualified practitioners with knowledge of migration and asylum law.
12. The EU could undertake further action to accomplish the following:
    - Make available funds for the training of lawyers specialized in EU migration and asylum law.
    - Make legal aid mandatory in any return procedure.
    - Ensure that every person has the possibility of receiving legal aid as early as possible to access justice – legal aid should be effective and accessible.
    - Ensure adequate remuneration for legal aid cases.
    - Create a common legal aid framework for migration and international protection.

According to UNHCR, adherence to the aforementioned recommendations would enhance both the quality and effectiveness of the registration procedure.[70]

Since 2016, the Legal Aid Service has been providing legal representation to asylum seekers whose disputes concerning the granting, cessation, or revocation of international protection status or matters

[70] EUAA, Asylum Report 2023: 4.10.1. Legal Information and Access to Legal aid as Prerequisites of an Effective asylum Procedure (2023), https://euaa.europa.eu/asylum-report-2023/4101-legal-information-and-access-legal-aid-prerequisites-effective-asylum-procedure

related to the granting of asylum are subject to judicial review.[71] Beginning in 2024, lawyers representing asylum seekers were incorporated into the Tbilisi Legal Aid Bureau for Specialized Cases.[72] Given the complex nature of refugee law, lawyers working on asylum cases must possess expertise in both national and international refugee law, as well as sufficient time and resources to deliver effective legal aid. To support this goal, several targeted initiatives have been undertaken. Since 2023, the Legal Aid Service has been actively cooperating with the Office of the United Nations High Commissioner for Refugees (UNHCR) with the aim of enhancing the quality of legal aid services for asylum seekers in Georgia. With UNHCR's support, the Legal Aid Service established a specialized group of lawyers focused on refugee law. This reform laid the foundation for the institutionalization of narrow specialization within the Service. As part of the project, UNHCR funded the salaries of a project coordinator and a mentor-lawyer for one year, while the Legal Aid Service employed four additional specialized lawyers. As a result, the Service now has a dedicated team of five lawyers providing legal assistance exclusively in asylum-related cases.[73] Moreover, a refugee law consultant joined the Bureau for Specialized Cases and provided ongoing legal consultations to asylum seekers throughout the year.

According to available reports, with the support of UNHCR, training sessions were conducted in 2020 and 2021 for lawyers employed by the Legal Aid Service, further strengthening their capacity in refugee and asylum law.[74]

---

[71] Legal Aid Service of Georgia, Report on the Activities of the Legal Aid Service of Georgia, 2020, 7.

[72] Legal Aid Service of Georgia, Report on the Activities of the Legal Aid Service of Georgia, 2024, 7.

[73] Legal Aid Service of Georgia, Report on the Activities of the Legal Aid Service of Georgia, 2021, 31–32.

[74] Legal Aid Service of Georgia, Report on the Activities of the Legal Aid Service of Georgia, 2020, 36. Legal Aid Service of Georgia, Report on the Activities of the Legal Aid Service of Georgia, 2021, 63.

Since legal aid lawyers cannot decide for themselves the number of cases they have in their caseload, it is important to realize that an unreasonable number of cases can lead to stress and burnout, which may negatively impact both the well-being of legal professionals and the quality of their decision-making – ultimately undermining the efficiency of the system as a whole.[75] Regarding the ability to provide qualified legal assistance, the Ethics Commission has repeatedly emphasized that a lawyer should handle only as many cases as they can manage with due diligence and competence.

During the years 2024–2025, there has been a significant increase in the number of applications submitted to the Legal Aid Service. In 2024 alone, 644 asylum-related cases were registered, and within the first four months of 2025, 233 additional cases were received. Delays in judicial proceedings contribute to the accumulation of cases, as lawyers are unable to close ongoing matters while having to receive new clients. Consequently, due to the limited number of staff, individual lawyers are responsible for hundreds of cases, raising legitimate concerns about the overall quality of legal aid provided. Furthermore, it should be noted that legal aid lawyers are compensated through a fixed salary scheme,[76] which fails to align with the recommendations of the Council of Bars and Law Societies of Europe (CCBE) concerning fair remuneration for legal aid work.

CCBE recommendations emphasize the vital role of national bar associations in fostering the growth of qualified legal services within migration law. However, the situation in Georgia presents ongoing difficulties. The Georgian Bar Association (GBA) reports that its Immigration Law Committee is currently serving its second term.[77] The

[75] United Nations High Commissioner for Refugees, Effective processing of asylum applications: Practical considerations and practices, 2022, https://www.refworld.org/docid/6241b39b4.html

[76] Legal Aid Service of Georgia, Letter No. NLA 9 25 00014899, 6 May 2025.

[77] Georgian Bar Association, Analytics Department, Letter No. N193/25, 22 April 2025.

committee should be dedicated to increasing public knowledge of immigration law and enhancing the influence of lawyers in immigration cases.[78] As part of the committee's activities, informational meetings have addressed various issues related to residence permits. Furthermore, with the dedicated involvement of specific committee members, the GBA initiated a pro bono legal aid program, establishing a hotline to offer legal support to Ukrainian citizens living in Georgia. Through this initiative, numerous Ukrainian individuals have received qualified legal advice and support. But still, the committee has not been active in recent years.

By implementing appropriate policy measures, such as including immigration law subjects in ongoing legal education for GBA members, enhancing the activities of the Immigration Law Committee, and improving the pro bono system, the Georgian Bar Association can significantly contribute to ensuring that asylum seekers have access to competent legal representation.

2.3. Legal advisors and non-governmental organizations

In many countries, the provision of legal aid and representation for asylum seekers before administrative bodies or courts remains the exclusive domain of public or private attorneys. However, non-governmental organizations (NGOs) and legal advisors also play a supplementary but essential role in providing legal support within the asylum system.

Legal advisors are authorized to provide legal assistance in countries such as Belgium, Germany, Denmark, Hungary, France, Lithuania, Italy, the Netherlands, Romania, Slovenia, and Norway. While they are not permitted to act on behalf of asylum seekers or represent them before administrative or appellate bodies, in certain jurisdictions, specialized legal advisors are granted representation rights. Such examples include the United Kingdom, Spain, and Switzerland. In Switzerland,

[78] Georgian Bar Association, Charter of the Immigration Law Committee, art. 3, para. 1.

there is also a distinct role for a neutral observer who may attend the main asylum interview. These observers, affiliated with certified support organizations, may be present during interviews with the consent of the asylum seeker, but only in an observational capacity.[79]

Legal advisors are primarily involved in the initial administrative stages of asylum procedures in countries such as Belgium, the Czech Republic, Denmark, Finland, France, Hungary, Italy, Lithuania, Romania, Spain, the Netherlands, and Norway. Their tasks may include providing information about the asylum procedure, assisting asylum seekers in completing questionnaires, conducting research on the country of origin, and attending the main asylum interview in a supporting role.[80] The extent and quality of legal aid provided by legal advisors and their organizations largely depend on available financial resources, project-based funding, and institutional capacity.

In most countries, the qualification and training requirements for legal advisors are less strictly defined than for private lawyers and differ in terms of the scope of their activities. In the Czech Republic, Romania, Slovenia, and Norway, legal counselling may only be provided by graduates of law faculties. However, despite the requirement of a law degree, Slovenia does not mandate knowledge of refugee law as a prerequisite for providing legal assistance. In the United Kingdom, legal advisors must register with the OISC, complete continuing professional development, and, if they provide legal assistance through paid advice or representation, they must be accredited under the Immigration and Asylum Accreditation Scheme.[81]

Lawyers may be required to hold specific professional qualifications to provide legal assistance to asylum seekers. A good practice has been identified in the Netherlands, where newly qualified lawyers

[79] European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), Survey on Legal Aid for Asylum Seekers in Europe (2010), 21.

[80] Ibidem, 21.

[81] Ibidem, 22.

are initially supervised by more experienced practitioners for at least 12 cases, and undergo an audit by the Bar Association every three years. Additionally, in the United Kingdom, individuals providing legal advice and representation in immigration and asylum law must be registered with the OISC.

In Belgium, Ireland, Romania, Spain, the Netherlands, and Norway, lawyers undergo specialized training in refugee law. In Ireland, lawyers and solicitors who wish to represent asylum seekers before the Refugee Appeals Tribunal in private practice are required to complete training delivered by the Refugee Legal Service and UNHCR. In Spain, in addition to undergoing specific training in asylum law, lawyers must also have five years of professional experience as practicing attorneys, and must be appointed by the Bar Association within the framework of the free legal aid scheme.

In Greece, Italy, Lithuania, and Norway, lawyers are also required to have a certain number of years of professional experience in order to represent asylum seekers under legal aid. This requirement may range from approximately two to eight years, for instance, in the case of legal representatives appearing before the Council of State in Greece. In both the Netherlands and the United Kingdom, lawyers must also undergo continuing professional development, which may include annual training on asylum law.

IV. The Role of Legal Aid in Asylum Procedures

1. Access to Legal Aid

1.1. Means testing

The practice of providing free legal aid to asylum seekers varies from country to country. There are primarily two types of approaches: those based on financial resources and those based on the successful completion of the asylum application. Additionally, asylum seekers may need to follow certain rules to request a lawyer for legal repre-

sentation. Allowing an asylum seeker to access free legal aid based on an assessment of their financial situation is known as a means testing.[82] Asylum Procedures Directive gives Member State's discretion to provide in their national legislation that free legal assistance and/or representation is granted *'only to those who lack sufficient resources'*.[83] There is no further guidance as to what constitutes *'sufficient resources'* and therefore, this has been defined and interpreted in different ways in national state practice.[84] This requirement has become known as the 'sufficient means' test in the provision of legal aid. The practice in the Member States surveyed varies widely regarding when the means test is applied and what level of income of asylum seekers is taken into account.

In Austria, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Slovenia, Spain, the Netherlands, the United Kingdom, and Switzerland, the right to receive legal aid is based on means testing. Approaches differ regarding when the test is applied and how the income of asylum seekers is evaluated. For example, in Finland, the means testing is applied only at the appeal stage of the asylum procedure to access free legal aid. In Hungary, the means testing is applied only to asylum seekers who are not accommodated in state-run reception centers. There is also a general presumption that most asylum seekers are indigent upon arrival and lack the financial capacity to pay for legal services. As a result, despite the existence of means-test-based regulations in Belgium, the Czech Republic, Romania, and the Netherlands, in practice, legal aid remains accessible without financial screening. In Denmark, Greece, and Norway, a means test is not applied at all. Similarly, in Georgia, national legislation guarantees access to legal aid for

82 Flynn, Hodgson, McCulloch, Naylor, 211.

83 Directive 2013/32/EU of the European Parliament and of the Council on Common Procedures for Granting and Withdrawing International Protection, art. 21, para. 2(a) (2013).

84 European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), Survey on Legal Aid for Asylum Seekers in Europe (2010), 27.

asylum seekers regardless of their financial means, unless they have independently chosen legal representation through general procedures.

Means testing is also linked to the possibility of requiring partial or full reimbursement of the cost of legal aid. Member States may request reimbursement if an asylum seeker's financial situation substantially improves or if legal aid was granted based on false or misleading information regarding the asylum seeker's financial status.

In countries where means testing is in place, such as Austria, the Czech Republic, Germany, Hungary, Finland, France, Lithuania, Ireland, Italy, Spain, the United Kingdom, and Switzerland, asylum seekers may be required to reimburse legal aid costs. Practices vary regarding time limits and legal grounds for such reimbursement. For instance, in Austria, reimbursement may be requested within up to three years of a final decision, and in Finland – within fifteen years of using legal aid. In Germany, reimbursement may be claimed within four years, and in the United Kingdom – within six years of the final decision. Asylum seekers who conceal financial resources to obtain free legal aid may be subject to criminal and/or civil penalties.[85] In Georgia, legal aid is also provided to asylum seekers by law, regardless of their ability to pay, if they have not chosen a lawyer under the general rules. In Georgia, since legal aid for asylum seekers is not subject to means testing, reimbursement of legal service costs is not required.[86]

In reality, most asylum seekers will likely meet the requirements under the means test and cannot afford private legal assistance and representation. Asylum seekers often do not have sufficient financial means at their disposal due to the nature of their flight from persecution and the fact that they may have restricted access, if any, to the labor market in the country of refuge. The financial amount constituting 'sufficient resources' in means testing should not lead to the restriction of legal aid.

---

85 Ibidem, 27–28.

86 Law N4955 of Georgia on Legal Aid, 19 June 2007, Art. 5(2^3).

In Member States where reimbursement of legal aid costs is required, such a requirement must be applied objectively, taking into account the asylum seeker's current financial situation. Reimbursement of expenses may be requested within flexible timeframes that also consider the asylum seeker's other financial commitments. Based on an individual assessment of each case, costs may be reimbursed only partially.[87] According to the recommendations of the ECRE/ELENA study, when states apply a means testing, they should operate on the presumption that asylum seekers do not have sufficient financial resources to afford paid legal aid, unless there is clear evidence to the contrary. Furthermore, the rules governing the reimbursement of legal aid costs in cases where asylum seekers have knowingly concealed their financial resources should only include proportionate sanctions corresponding to the violation.[88]

1.2. Merits testing

Asylum Procedures Directive permits Member States to include in their national legislation that free legal assistance and/or representation is granted on some conditions, including subsection (d) "only if the appeal or review is likely to succeed." This is commonly referred to as the 'merits–of–the–claim' test and often it involves an examination of whether there are reasonable grounds for the success of the asylum claim.[89] It involves an assessment of the substance of the asylum claim and an examination of the prospects of success.[90]

The merits testing is applied in Austria, France, Germany, Greece, Ireland, Italy, the Netherlands, the United Kingdom, Switzerland, and

[87] European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), Survey on Legal Aid for Asylum Seekers in Europe (2010), 28.

[88] Ibidem, 29.

[89] Directive 2013/32/EU of the European Parliament and of the Council on Common Procedures for Granting and Withdrawing International Protection, art. 20, para. 3 (2013).

[90] European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), Survey on Legal Aid for Asylum Seekers in Europe (2010), 29.

Norway. Generally, this test determines whether legal aid is granted or refused. However, Norway is an exception, where the test is used not to decide eligibility for legal aid, but rather to determine the number of legal aid hours allocated to the applicant. For example, fewer hours are granted for manifestly unfounded cases. Nonetheless, all asylum seekers in Norway receive some level of legal aid during appeals.

The merits testing is not applied in Belgium, the Czech Republic, Denmark, Finland, Hungary, Lithuania, Romania, Slovenia, or Spain. Practices vary regarding the grounds for refusing legal aid. For example, in Germany and France, the time remaining to submit an appeal is a significant factor in the application of the merits testing. In France, Greece, and Italy, the availability of legal aid depends on a substantive assessment of the merits of the appeal, whereas the test is applied less strictly in Spain and the Netherlands. In Ireland and Italy, the test is applied strictly only at the stage of further appeals.[91] According to the Directive, the use of the merits testing is permitted for both legal advice and document preparation as well as for representation, but in practice, it is primarily used in the context of appealing decisions on asylum applications.

Continuous access to free legal aid is in the interests of both the state and the asylum seeker, as it helps identify individuals in need of protection. Even where applicants are denied representation due to the perceived lack of merit in their claims, it is vital that individuals at risk still receive free legal assistance during the asylum procedure. The merits testing may be justified as a way to reduce costs and use resources efficiently in cases of clearly unfounded appeals, but there is a risk that it may limit access to justice for asylum seekers, especially in contexts where there is no possibility to appeal the refusal of legal aid.

According to ECRE/ELENA recommendations, states should apply the merits test for legal representation only after the full examination of the asylum claim, as required by international human rights law. The

[91] Ibidem, 29–30.

test should not be so strict as to effectively deny access to legal assistance. Moreover, it should not apply to legal aid required before the appeal, such as for legal advice or preparing the appeal documentation.[92]

Georgia does not apply a merit testing. Legal aid, including document preparation and representation, is available regardless of the merits of the appeal.[93]

1.3. Accessibility by stage of proceedings

There are the following five key stages during the processing of an asylum application where legal assistance and/or representation (whether free or paid) is essential:

1. At the time of submitting the asylum application and upon its initial rejection;
2. During the preparation and submission of an appeal;
3. During representation in appeal proceedings, particularly if the procedure includes an oral hearing.
4. Following the outcome of the appeal, when legal consultation may be needed;
5. In connection with any decision by the authorities concerning expulsion.[94]

Across many jurisdictions worldwide, there is ongoing debate about the necessity of legal aid and representation at each of these stages, as well as the specific role of legal professionals. Depending on the procedural context, these arguments may be well-founded or less persuasive, depending on what is at stake at each phase. These considerations are not limited solely to the asylum system; they are complex and multi-layered.

The availability of legal assistance at particular stages of the asylum procedure varies across countries. In Belgium, Finland, Hungary,

92 Ibidem, 30–31.

93 Ibidem.

94 Guild, 262.

Spain, the Netherlands, and the United Kingdom, asylum seekers have the right to legal assistance throughout all stages of the asylum process. Legal aid is likewise available at every stage in Ireland. However, in Ireland, asylum seekers housed in direct provision centers are required to contribute a flat fee of €6 for legal consultation and representation before the appellate body, the Refugee Appeals Tribunal. Accordingly, the Irish model may be characterized as low-cost legal assistance, rather than entirely free. Similarly, in practice, asylum seekers in Germany and France are sometimes required to contribute to the cost of legal aid. In Spain, legal assistance remains available throughout the asylum procedure. Even in cases where access to legal aid is denied, non-governmental organizations (NGOs) can still provide support to asylum seekers. In Lithuania, Slovakia, and Norway, legal assistance is generally available only at the appeal stage. However, exceptions apply – for instance, unaccompanied minors may receive legal aid during the first-instance procedure. This constitutes good practice in terms of ensuring access to legal assistance and representation for asylum seekers. In Austria, the Czech Republic, Denmark, France, Germany, Greece, Italy, Lithuania, Romania, Slovakia, Norway, and Switzerland, legal assistance is generally available only at the appeals stage of the asylum procedure. However, this does not mean that asylum seekers in these countries are entirely deprived of legal aid during the first-instance administrative proceedings. In most of these countries, asylum seekers receive support from legal advisors working with non-governmental organizations during the initial stages of the asylum process.[95]

The situation of free legal aid in Greece warrants particular attention, as it severely limits access to protection mechanisms for asylum seekers. In theory, asylum seekers in Greece are entitled to free legal aid at the appeals stage. However, in practice, there are significant limitations. Representation before the Council of State is permitted

[95] European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), Survey on Legal Aid for Asylum Seekers in Europe (2010), 32.

only by senior lawyers, that is, attorneys with at least eight years of professional experience. Furthermore, under Greek law, each lawyer is permitted to take on only one legal aid case per year under the legal aid scheme. These restrictions substantially hinder access to legal assistance for asylum seekers in Greece. According to recommendations by ECRE/ELENA, legal aid should be available at all stages of the asylum procedure for applicants who lack the financial means to hire private legal counsel, as the right to legal assistance and representation is a fundamental component of a fair and effective asylum process. In countries where legal aid is offered only at the appeal stage, exceptions should be made for vulnerable applicants, including unaccompanied children. Given their specific vulnerability, such asylum seekers should have access to free legal aid throughout the asylum procedure.[96]

Georgia is among the states where access to free legal aid becomes available when appealing a negative decision by the Ministry of Internal Affairs or a decision of the City Court. Under Georgian legislation, the Legal Aid Service provides free legal assistance to asylum seekers or persons with international protection in cases concerning the refusal, cessation, revocation, or withdrawal of their status.[97]

1.4. Access to interpreters and experts

Effective communication is essential for accurately identifying the protection needs of asylum seekers. Qualified legal representation relies on the ability of the lawyer and client to communicate in a language the client understands. This enables the lawyer to coordinate a defense strategy with the client during case proceedings, to continuously obtain relevant information needed for representation, and to consider the client's advice and interests.[98] A key component of effective communication is the provision of high-quality interpretation

[96] Ibidem, 33.

[97] Law N4955 of Georgia on Legal Aid, 19 June 2007, Art. 5(2[3]).

[98] Georgian Bar Association, Ethics Commission Decisions No. 096/11, 25 July 2012

services. The involvement of a professional interpreter is crucial in enabling asylum seekers to access legal assistance, which directly affects the quality of legal representation.

In most countries, the language barrier appears to be a structural problem in communication between asylum seekers and their lawyers. Some countries, such as Finland, provide access to professional interpreters for communication with legal representatives. However, in many cases, lawyers themselves assume the role of an interpreter, a practice found in Denmark, Ireland, the Netherlands, and Sweden. Problems with an interpreter availability have been documented in Belgium, the Czech Republic, and Slovakia. According to a study by the EU Agency for Fundamental Rights (FRA), some asylum seekers reported using body language to communicate with their lawyers. In ten EU member states, 21 asylum seekers interviewed identified the language barrier as one of the main obstacles they face in communicating with their lawyers when preparing appeals. In other EU countries, asylum seekers stated that they either did not receive a copy of their appeal (Belgium, Luxembourg, Sweden) or received it but could not understand it, as it was not systematically translated for them by their lawyer (Austria, Ireland, Lithuania, Luxembourg, Poland, Slovakia).[99] Additionally, consultation with experts, such as medical professionals, may be necessary to adequately assess protection needs.[100]

1.5. Appointment of a legal representative

Ensuring access to qualified legal aid for asylum seekers requires careful attention to who appoints the lawyer or legal representative handling the case, and through what procedure. Appointment systems vary across countries: in some, this function lies with the Bar Association, while in others, it is carried out by the Legal Aid Agency. The

[99] EU Fundamental Rights Agency, Access to effective remedies: The asylum-seeker perspective, 2010, 30.

[100] European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), Survey on Legal Aid for Asylum Seekers in Europe (2010), 34.

structural involvement of an independent professional body, such as a Bar Association or a specialized authority responsible for legal aid, can serve as an additional safeguard to ensure the quality of legal assistance provided to asylum seekers. For example, in Belgium, France, Italy, Romania, and Spain, the Bar Association appoints lawyers from a designated register. In contrast, in Finland, Ireland, Lithuania, Slovenia, the Netherlands, and the United Kingdom, the Legal Aid Agency is responsible for legal aid. In Finland, France, and the Netherlands, asylum seekers are also allowed to choose a lawyer of their preference within the framework of legal aid. However, in Belgium, the Czech Republic, Ireland, and Romania, clients cannot choose their legal representative if they are from the Legal Aid Agency.[101]

In some countries, asylum seekers are required to complete an application form to request legal aid. Such countries include the Czech Republic, Germany, Hungary, Ireland, and Italy. This approach is challenging. Experience in Germany has shown that asylum seekers are not always adequately informed in a language they understand about the procedures for accessing legal aid, and legal assistance may become inaccessible for illiterate asylum seekers.

According to the ECRE/ELENA recommendations, in systems with such appointment procedures, legal aid should be made available to asylum seekers to help them complete application forms, which may be complex and require detailed information. For example, in Italy, lawyers specifically selected by the applicant assist asylum seekers in filling out the necessary legal aid application.[102]

In several countries, the role of non-governmental organizations is crucial to ensure that asylum seekers receive qualified representation and sufficient information about their rights during the asylum procedure. This is especially true for Finland, Italy, Romania, Slovenia, Spain,

[101] Ibidem, 31.

[102] Ibidem.

the Netherlands, the United Kingdom, and Switzerland.[103] ECRE/ELENA recommends that asylum seekers should receive timely information in a language they understand about the system, enabling them to appoint and contact a lawyer. The precondition for appointing a legal representative should not be so restrictive as to impede effective access to justice.

2. Legal Aid in the Asylum Procedure

2.1. The interview stage

A key moment in the asylum procedure is the interview conducted by the first-instance authority. Article 16(4) of the Asylum Procedures Directive allows Member States to ensure the presence of a "legal advisor or other counsellor" during the interview. Although lawyers or legal advisors are permitted to attend the interview, in practice, they are rarely present in several countries, primarily due to the absence of legal aid or insufficient funding or capacity for NGO legal advisors to provide support at interviews. In some cases, lawyers are not informed of the interview date, or the interview is not rescheduled even if the selected date is unsuitable for them. In Finland, if requested by the asylum seeker, the interview is postponed if the lawyer is unable to attend. The scope of participation for lawyers during the interview varies by country. In Austria, Belgium, and Germany, lawyers are permitted to actively participate, including asking additional questions and providing comments. In the Czech Republic and the United Kingdom, they are not allowed to ask additional questions. According to ECRE/ELENA research recommendations, legal aid should include the presence of lawyers or legal advisors during asylum interviews. If the asylum seeker is represented by a lawyer or legal advisor, the interview should be postponed or rescheduled in the event of their inability to attend due to objective circumstances. Lawyers and legal advisors should be al-

[103] Ibidem, 31–32.

lowed to take an active role during the interview, including intervening and providing comments, and additional questions to assist the authorities in identifying the applicant's protection needs. States should ensure that the lawyer or legal advisor representing the asylum seeker has access to all information included in the client's file, to uphold the principle of equality of arms.[104]

2.2. Representation in court

Judicial specialization becomes particularly important during court representation. In Austria, Denmark, France, Ireland, the United Kingdom, and Norway, appeals are heard by specialized state bodies. In Finland, the Netherlands, and Switzerland, there are specialized chambers within the general court system. In Hungary, Italy, Slovakia, and Spain, there are no specialized bodies, and cases are heard under administrative procedural law. The powers of courts to make decisions also vary. In Austria, Denmark, France, Ireland, and Norway, the appeal body has the authority to overturn decisions. In the Czech Republic, Greece, and the Netherlands, courts only have the power to refer cases back for reconsideration. The nature of court proceedings also differs, with some systems allowing cases to be heard without an oral hearing, as in Switzerland. It is essential that legal aid is provided not only for initial appeals but also for any subsequent appeals, and that it includes both preparatory work and representation.[105]

V. Monitoring Mechanisms for Legal Aid Providers

1. Client Satisfaction with Legal Representation

Free legal aid in migration-related matters is typically provided by the Legal Aid Service, specialized non-governmental organizations, or private entities contracted by the state to work on migration issues. Le-

[104] Ibidem, 36–37.

[105] Ibidem, 40–42.

gal representation in the appeals process is typically provided by lawyers who are often selected from a state-funded program designed to support socially vulnerable individuals. However, there is no guarantee that these lawyers have sufficient knowledge or experience in immigration law.

According to research conducted by the European Union Agency for Fundamental Rights (FRA), respondents expressed mixed satisfaction with the legal assistance they received. Some reported a lack of trust in their legal representatives, which was attributed to insufficient qualifications or inattentive service. Lawyers often operated independently, rarely meeting with clients before proceedings, or only making contact during appeal hearings. Additionally, lawyers frequently failed to adopt an individualized approach to each case, relying instead on generic appeal templates where only the applicant's name was changed. Some asylum seekers also questioned the independence of state-funded lawyers, suspecting a conflict of interest due to their government funding. Conversely, others believed that lawyers appointed under state agreements were more likely to be taken seriously by courts and administrative bodies, potentially increasing the likelihood of a favorable outcome.[106]

One of the most frequently cited issues in the FRA study was the lack of communication between lawyers and their clients. Asylum seekers across multiple countries reported that lawyers conducted proceedings autonomously and only contacted applicants when their intervention was required or to communicate the outcome. In Lithuania and Poland, it was noted that some lawyers demanded unconditional trust and even requested clients to pre-sign blank documents.[107]

In Georgia, by order of the Director of the Legal Aid Service titled "On the Study of Services and Activities Provided by Lawyers of

[106] EU Fundamental Rights Agency, Access to Effective Remedies: The Asylum-seeker Perspective, 2010, 29–30.

[107] Ibidem, 27.

the Specialized Cases Bureau of the Tbilisi Legal Aid Office," an assessment was mandated to evaluate the performance of lawyers handling asylum-related cases. One of the designated evaluation criteria was beneficiary satisfaction, with the Department of Analytics and International Relations assigned to carry out the study. Specialists in the department gathered contact information and preferred languages for communication from case files and the national case bank. To conduct interviews, the Legal Aid Service employed interpreters in French, Turkish, Persian, and Urdu, ensuring that the satisfaction survey adhered to a standardized form and pre-determined set of questions. The resulting data was submitted to the Division for the Assessment of Specialized Cases within the Quality Assurance Department.[108] However, since the findings were not made public, the level of client satisfaction remains unknown.[109]

All lawyers working on specialized cases under the Legal Aid Service are members of the Georgian Bar Association and are thus subject to the Code of Professional Ethics for Lawyers, falling within the jurisdiction of the Ethics Commission. In parallel, an inquiry was made to the Ethics Commission regarding the evaluation of client satisfaction with services provided by private attorneys. The Commission, however, was unable to provide information specifically tied to complaints involving asylum seekers, as the existing statistical data is processed solely by general client categories. Consequently, it remains impossible to assess the Commission's experience or responsiveness concerning grievances raised by asylum seekers.

Lawyers handling specialized cases within the Legal Aid Service are members of the Georgian Bar Association and therefore, they are subject to the Code of Professional Ethics for Lawyers, which places them under the jurisdiction of the Ethics Commission. In relation to private lawyers, an official request was submitted to the Ethics Com-

[108] Report on the Activities of the Legal Aid Service of Georgia, 2024, pp. 70–71.

[109] Legal Aid Service of Georgia, Official Letter No. NLA 9 25 00014899, May 6, 2025.

mission to obtain data for evaluating client satisfaction. However, the Commission was unable to provide information specifically based on complaints submitted by asylum seekers, as it was revealed that the statistics are processed solely according to general client identifiers.[110] As a result, it is not possible to assess the Ethics Commission's experience or engagement in handling complaints submitted by asylum seekers.

2. Quality Control of Legal Services

Effective access to justice requires the provision of high-quality legal consultation. It is also essential to have regulatory mechanisms in place to monitor the work of legal aid providers. There are generally two main methods for ensuring the quality of legal assistance: oversight by a monitoring body and accountability based on professional ethics.[111]

The work of Legal Aid lawyers, including specialized lawyers, is subject to review by the Monitoring Unit of the Legal Aid Service, under the decision 'On the Approval of the Rules and Criteria for Evaluating the Quality of Legal Consultation and Legal Assistance Provided by the Legal Aid Service of Georgia (LEPL)'.[112] Also, because they are subject to professional ethics, the activities of public lawyers are also subject to scrutiny by the Ethics Commission.[113] Legal aid lawyers have raised concerns regarding the quality control mechanism for legal services, specifically, the substantive review of legal assistance provided, arguing that it may infringe upon their right to professional independence. During the drafting phase of the regulation, legal aid lawyers

[110] Ethics Commission of the Georgian Bar Association, Official Letter No. N092/25, May 5, 2025.

[111] European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), Survey on Legal Aid for Asylum Seekers in Europe (2010), 65.

[112] Legal Aid Council of the Legal Aid Service of Georgia, Decision No. N120, November 24, 2023.

[113] Law N4955 of Georgia on Legal Aid, 19 June 2007, Art. 16(6).

consulted the Ethics Commission for a professional recommendation, inquiring whether it would be ethically permissible to submit full case files to their employer for monitoring purposes. The Ethics Commission advised attorneys not to disclose case materials related to clients to representatives of the Monitoring Unit. Even if a lawyer were to submit the case materials to the Director of the Legal Aid Service, such review should be limited strictly to administrative aspects, about organizational matters, and should not involve a detailed examination of the lawyer's work and the substantive evaluation of the quality of legal services provided.[114]

According to the Legal Aid Service, it cannot interfere with an attorney's work due to the principle of professional independence, such as by prescribing a specific legal strategy in a case. However, the Service asserts that it has the right to oversee whether the actions necessary for implementing the strategy, selected by the attorney and client, are carried out appropriately, timely, and per procedural or substantive legal standards, or as agreed with the client. These include, for example, the lawyers' timely appearance in court, adequate and timely communication with the client, timely submission of procedural documents, properly drafted claims, and consistent client communication. The Service considers this approach a means of avoiding arbitrary conduct by lawyers.[115]

During the review of the evaluation system, the Ethics Commission of the Georgian Bar Association was consulted again. However, the Commission declined to issue a recommendation and refrained from conducting a substantive assessment of the monitoring procedures.[116]

---

[114] Ethics Commission of the Georgian Bar Association, Recommendation No. N010/15, December 10, 2015.

[115] Legal Aid Council, Decision No. N120, On the Approval of the Rules and Criteria for Assessing the Quality of Legal Consultation and Legal Aid Provided by the Legal Aid Service of Georgia, Chapter III, 2023, p. 6.

[116] Ethics Commission of the Georgian Bar Association, Recommendation No. N001/20, May 6, 2020.

A dissenting opinion regarding the Commission's decision suggests that it should have evaluated the rules on substantive grounds for several reasons: namely, because the quality evaluation process allows third parties to access information about the attorney-client relationship that is protected by professional confidentiality. This raises a risk of breaching attorney-client privilege. Moreover, even obtaining client consent, regardless of the form, to monitor legal services may pose a heightened risk of rights violations and could negatively affect public trust in the Legal Aid Service.

The approach of the Legal Aid Service is inconsistent with the standard for assessing the quality of legal services provided by a lawyer as established by the Ethics Commission. The Ethics Commission refuses to substantively evaluate the procedural actions and strategic decisions undertaken by a lawyer in the course of verifying the quality of legal representation. According to the Commission, this evaluation would contradict the high standard of professional independence inherent in the practice of law.[117]

The Commission has clarified in multiple decisions that professional judgments made by lawyers are linked to the nature of their independent profession, which is based on their professional experience and qualifications. A comprehensive assessment of the legal services provided would require the Commission to evaluate the quality of each action undertaken by lawyers during case management, which, in the Commission's view, would infringe upon the principle of professional independence of the lawyer.[118]

To establish uniform practice, the Ethics Commission has agreed on the scope of assessing the quality of legal services provided by lawyers within disciplinary proceedings. The Commission determined that

[117] Ethics Commission of the Georgian Bar Association, Decision No. N100/17, December 24, 2018.

[118] Ethics Commission of the Georgian Bar Association, Decision No. N083/18, February 28, 2019.

legal services meet the standard of professional competence if the following conditions are fulfilled:

- The lawyer offers services within the scope of their specialization.
- The strategy is agreed upon with the client, and the lawyer acts within the bounds of the client's lawful and ethical instructions.
- The lawyer is focused on protecting the client's best interests by the agreed-upon strategy, and the services provided are not merely formal.
- The lawyer's position gives rise to a reasonable presumption that they have taken prudent steps to understand and handle the client's case.[119]

In this regard, the Commission's approach aligns with the substantive criteria used by the Legal Aid Service when reviewing the quality of legal services.

A formal procedure for reviewing the work of lawyers and other legal aid providers exists in countries such as Ireland, Lithuania, the Netherlands, the United Kingdom, and Switzerland. In some cases, the monitoring body is a committee established within the legal aid service itself, such as in Ireland or the Netherlands, or a professional legal body, such as the Bar Association in Lithuania. In both Ireland and the Netherlands, the monitoring committee operates in connection with the Legal Aid Board. There are also quality control regulations in place, which go beyond the provisions of professional codes of ethics and include additional criteria subject to review. By contrast, mechanisms for assessing the quality of legal services provided by non-governmental organizations are less developed. Given that in some countries NGOs play a decisive role in providing legal assistance to asylum seekers, it is

[119] Ethics Commission of the Georgian Bar Association, Minutes No. N04/19 of the Working Meeting for the Establishment of Uniform Practice, March 4, 2019, p. 5.

essential to establish quality assurance mechanisms, even if these cannot reach the same level of formalization as disciplinary bodies of legal aid services or bar associations.[120]

Monitoring the quality of legal aid is essential, as it involves the assessment of the professional activities of legal aid providers. However, the approach of the Ethics Commission, which refrains from evaluating the substantive quality of legal reasoning, is worth adopting. It is desirable for legal aid service monitoring to be carried out in a manner consistent with the general standards established for assessing the quality of services provided by lawyers.

The recommendation by ECRE/ELENA is also noteworthy: a mechanism for filing complaints regarding unethical conduct by advocates should be accessible to asylum seekers, and they should be adequately informed about this possibility at the outset of the asylum procedure.[121]

VI. Conclusion

Asylum seekers require legal assistance to ensure long-term security and protection against discriminatory treatment. Legal advocacy for asylum seekers serves as a crucial tool enabling their transition from temporary migrants to permanent residents. Lawyers hold a special place in the dialogue with the state, as they help enforce the guarantees established by law. The state must ensure access to legal assistance for asylum seekers that is both qualified and reliable. Empirical research has revealed that, in practice, the legal aid system, which should guarantee a certain quality of legal services at the expense of the qualifications of lawyers, has not yet been ready to respond to the existing demand for legal aid. The lawyer cannot meet the standard of

[120] European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), Survey on Legal Aid for Asylum Seekers in Europe (2010), 65.

[121] Ibidem, 65.

qualified legal services if burdened with hundreds of ongoing cases, creating a threat to formal legal aid.

The Legal Aid Service's objective of ensuring the professional qualification of employed lawyers through the introduction of a quality control mechanism may be assessed positively. However, the decision titled "On the Approval of the Rules and Criteria for Evaluating the Quality of Legal Consultation and Legal Assistance Provided by the Legal Aid Service of Georgia", in its current form, does not comply with the right to a fair trial and poses a threat to the independence of legal counsel. It is recommended to introduce a standard for monitoring the activities of public advocates that will not create a threat of violating the right of lawyers to practice independently.

To enhance asylum seekers' access to justice in practice and to ensure the provision of qualified legal aid, it would be advisable to implement the following recommendations:

1. Ensure access to free legal aid for asylum seekers by increasing the number of specialized lawyers. Given current human resource limitations, the provision of reliable and high-quality legal assistance is unlikely, which may call into question the state's capacity to protect the rights of asylum seekers.
2. Provide periodic training for lawyers in immigration law to improve service quality. Analysis of reports by the Legal Aid Service indicates that lawyer training lacks a systematic approach and is typically attended by managerial staff rather than the lawyers directly handling asylum cases.
3. Change the fixed remuneration system for free legal aid lawyers based on their workload.
4. Make sure that the Georgian Bar Association (LEPL) actively engages through its Immigration Committee. Such involvement would strengthen the role and participation of the legal profession in the ongoing immigration law reform process in the country.

5. In order to improve the qualifications of lawyers in immigration law, provide training to lawyers within the framework of continuing legal education, which will contribute to increasing specialization in this area.
6. In monitoring lawyers employed by the Legal Aid Service, take initiatives that pose minimal risk to lawyers' independence. These may include the review of non-substantive aspects of legal services, the establishment and application of effective mechanisms through a Legal Services Advisory Council for monitoring purposes, and the development of training programs that take into account specific educational needs.

REFERENCES

- Adeline, Trude. 2009. *Cost of Quality Legal Advice: Literature Review*. Undertaken by the Information Centre about Asylum and Refugees on behalf of Refugee and Migrant Justice. London: ICAR.
- Butter, Tamara. 2014. "Providing Legal Aid in Asylum Procedures in the Netherlands: A Challenging Business?" In *Legal Aid in the Low Countries*, edited by Bernard Hubeau and Ashley Terlouw, Chapter 7. Cambridge: Intersentia.
- DeMott, Deborah A. 1998. "The Lawyer as Agent." *Fordham Law Review* 67 (2): 301–319.
- Firtskhalashvili, Ana. 2024. "Migration as a Challenge to Global and Classical Constitutionalism from the Perspective of a 'Third Country.'" *Journal of Constitutional Law*, no. 1: 21–39.
- Flynn, Asher, Jacqueline Hodgson, Jude McCulloch, and Bronwyn Naylor. 2016. "Legal Aid and Access to Legal Representation: Redefining the Right to a Fair Trial." *Melbourne University Law Review* 40 (1): 207–240.
- Guild, Elspeth. 2015. "The Asylum Seeker's Right to Free Legal Assistance and/or Representation in EU Law." In *Issues in Inter-*

national Migration Law, edited by Richard Plender, 217–236. Leiden: Brill Nijhoff.

- Jordan, Elinor B. 2016. "What We Know and Need to Know about Immigrant Access to Justice." *South Carolina Law Review* 67 (2): 295–313.
- Kandashvili, Irakli, and Giorgi Turazashvili. 2018. *The Profession of Lawyer*. Tbilisi.
- Khubuluri, Tamar. 2021. *Uniform Practice of the Ethics Commission of the Georgian Bar Association, 2018–2020*. Tbilisi.
- Re, Edward D. 1985. "Role of the Lawyer in Modern Society." *South Dakota Law Review* 30 (3): 421–432.
- Zacharias, Fred C. 2004. "Lawyers as Gatekeepers." *San Diego Law Review* 41 (3): 1387–1424.

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

Kizeitar Gojaeva

I. Introduction

The protection of refugee rights constitutes one of the major challenges in international law.[1] 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.[2] The number of such individuals has reached 123.2 million.[3] 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.[4] 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.[5] Credibility assessment is a complex and multifacet-

1 Hathaway, 272.

2 Ustun, 363.

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

4 Ministry of internal affairs, Number of citizens registered as asylum seekers 2024 https://info.police.ge/page?id=863&parent_id=258

5 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.[6] 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.[7] 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.[8] For the substantive examination of the case, the submission of adequate evidence by the applicant is of crucial importance.[9] 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.[10] The UNHCR has developed specific criteria for the assessment of credibility.[11]

---

6 McDonald, 118.

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

8 Law N42-Iს of Georgia "On International Protection", 1 December 2016, Art. 13.

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

10 Ibidem.

11 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.[12] 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-

[12] *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.[13] 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.[14] The administrative authority and the court assess the truthfulness and plausibility of the information provided by the applicant.[15]

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.[16] 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.[17] 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.[18] The interview is one of the key procedures through which it is possible to obtain detailed and specific information from the applicant.[19]

---

13 Law N42-Iს of Georgia "On International Protection", 1 December 2016, Art. 15.

14 Kinchin, Mougouei, 1.

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

16 Law N42-Iს of Georgia "On International Protection", 1 December 2016, Art. 27.

17 Ibidem, Art. 35.

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

19 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.[20] 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.[21]

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.[22] Credibility assessment generally involves the examination of three main aspects: internal consistency – whether the applicant's state-

[20] Decision N3/3111-24 of the Tbilisi City Court, 31 July 2024.

[21] Law N42-Iს of Georgia "On International Protection", 1 December 2016, Arts. 27, 35, 53.

[22] 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.[23] 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.[24]

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.[25] The protection of refugees has always had a political dimension;[26] as a result, states have developed their own distinct criteria for assessing credibility.[27] These criteria are shaped by the state's internal policies and its interest in ensuring national security.[28] One of the core principles of immigration policy is the assessment of credibility in relation to asylum seekers.[29] According to the practice developed by UNHCR, five key

[23] Weston, 88.

[24] European Union Agency, Beyond Proof: Credibility Assessment in EU Asylum Systems (Brussels, 2013), 13.

[25] Gyulai, 22.

[26] Goodwin-Gill, 560.

[27] Ustun, 365.

[28] Goodwin-Gill, 560.

[29] 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.[30] In one particular case, the Tbilisi City Court applied credibility assessment criteria recognized in international practice in the reasoning of its decision.[31] 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.[32] 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.[33] 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.[34] 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-

[30] European Asylum Support Office, Practical Guide: Evidence Assessment (Luxembourg: European Asylum Support Office, 2015), 10.

[31] Decision N3/3112-24 of the Tbilisi City Court, 17 July 2024.

[32] Decision N3/3111-24 of the Tbilisi City Court, 31 July 2024.

[33] Ibidem.

[34] Decision N3683-16 of the Tbilisi City Court, 14 September 2016.

cant.[35] 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.[36] 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.[37] 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.[38]

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-

---

[35] Decision N3/3111-24 of the Tbilisi City Court, 31 July 2024.

[36] *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.

[37] N. v. Sweden, App. No. 23505/09, European Court of Human Rights, 20 July 2010, par. 42.

[38] 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.[39] 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.[40] 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.[41] Although the rights of asylum seekers and refugees are protected under both international and domestic law, their practical realization remains limited.[42]

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.[43] The rights set forth in the Universal Declaration of Human Rights have been firmly incorporated into the national legislation of many countries, as well

[39] Convention Relating to the Status of Refugees, 28 July 1951, Art. 1.

[40] European Union Agency for Asylum, Qualification for International Protection (Tbilisi: EUAA, 2022), 3.

[41] Ibidem.

[42] Amit, 560.

[43] Nirmal, 94.

as into international legal instruments.[44] 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-IIs 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. [45] 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.[46] 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 basics benefits.[47]

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.

---

44 Amit, 557.

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

46 Wachenfeld, 183.

47 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.[48] Furthermore, it presents unique challenges in terms of evaluation.[49] 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.[50] Freedom of thought, conscience, and religion includes beliefs that are characterized by sufficient coherence, seriousness, and substantive significance.[51] 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.[52]In each individual case, the authorities examine the sincerity of the foreign national's belief and seek to determine their religious conviction.[53]

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.[54] 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.[55]

---

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

49 Musalo, 218.

50 International Covenant on Civil and Political Rights, 16 December 1966, Art. 18.

51 *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.

52 Musalo, 218.

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

54 Ibidem.

55 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.[56] 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.[57]

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.[58]

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.[59]

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.

---

56 Ibidem.

57 Ibidem.

58 Musalo, 218.

59 *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.[60] Establishing the applicant's membership in the LGBTQ community is closely linked to the assessment of credibility.[61] 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.[62] 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.[63] This is one of the landmark decisions that established the standard for reviewing similar cases.

---

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

[61] UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection (Geneva: UNHCR, 2019), 181.

[62] Ibidem.

[63] *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.[64]

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.[65] There is no single universal formula for obtaining adequate information from the applicant, nor is there a specific list of 'correct' answers.[66] Under such circumstances, decision-makers should, in cases of doubt, give the benefit of the doubt to the applicant's account.[67]

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.

---

64 Ibidem.

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

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

67 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.[68] 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.[69] 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).[70] 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.[71]

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.[72] 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.[73]

---

[68] Convention Relating to the Status of Refugees, 28 July 1951, Art. 1.

[69] UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection (Geneva: UNHCR, 2019), 181, 24.

[70] Ibidem.

[71] Ibidem, 197.

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

[73] Ibidem, para. 110.

4. The Conflict of Fundamental Rights

Everyone has the right to seek asylum in another country and to enjoy asylum there.[74] 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.[75] This right applies regardless of whether the violations in question meet the criteria set out in the Refugee Convention.[76]

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.[77] The underlying purpose of the principle of credibility is grounded in the public interest, particularly in safeguarding national security.[78] 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.[79] 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.[80]

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

---

74 Universal Declaration of Human Rights, 10 December 1948, Art. 14.

75 Ibidem.

76 Amit, 560.

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

78 Decision N3ბ/1076-15 the Tbilisi Court of Appeals, 7 December 2016.

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

80 Decision N3ბ/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.[81] 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.[82]

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.[83] Because the granting of refugee status inherently entails both positive and negative obligations on the part of the state.[84]

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.

---

81 Convention Relating to the Status of Refugees, 28 July 1951, Art. 31.

82 Ibidem.

83 Decision N3ბ/1076-15 the Tbilisi Court of Appeals, 7 December 2016.

84 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.[85] 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.[86]

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.[87] 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.

---

85 Karabulut, 194.

86 Ibidem.

87 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.[88]

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.[89]

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.[90]

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.[91] In the absence of a thorough assessment of factual circumstances, the risk of biased interpretation and erroneous conclusions increases.[92] There are frequent cases in which individuals

88 Ustun, 373.

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

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

91 Kinchin, Mougouei, 7.

92 Ibidem.

are not perceived as genuinely fearful, despite the existence of a real risk of persecution in their country of origin.[93] Accordingly, the existence of a real risk must be assessed thoroughly and in detail.[94] The applicant must demonstrate both a subjective fear – based on personal feelings – and an objective fear, derived from external factors.[95] 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.[96] 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.[97]

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.[98] In order to determine the risk of ill-treatment, the court must assess the impact that applicants' ex-

[93] Ibidem.

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

[95] Ibidem.

[96] Hathaway, Hicks, 534.

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

[98] *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.[99] 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.[100]

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.[101] Specifically, state-provided legal aid includes representation before the court and the preparation of relevant legal documents.[102] 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-

99 Ibidem, para. 130.

100 Ibidem, para. 132.

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

102 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.[103] 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.[104] Although this does not mean that applicants must necessarily possess documentary evidence – the information they provide must be detailed, consistent, and credible.[105]

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-

[103] Gyulai, 22.

[104] McDonald, 115.

[105] 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.[106]

As a general rule, the burden of proof lies with the party asserting a particular fact.[107] 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.[108] 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).[109]

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.[110] The assessment by the administrative authority must be adequate and properly substantiated, relying both on internal materials and on information obtained from other re-

[106] Ibidem.

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

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

[109] Kinchin, Mougouei, 6.

[110] *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.[111]

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.[112] 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.[113] Such a traumatic experience is often accompanied by pain and despair, especially as individuals must cope with these challenges in an unfamiliar environment.[114]

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.[115] 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.[116] 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.[117] 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-

[111] Ibidem.

[112] Herlihy, Turner, 176.

[113] Ibidem.

[114] Ibidem.

[115] 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.

[116] Gyulai, 22.

[117] 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.[118] Within the asylum procedure, both asylum seekers and individuals granted international protection status are entitled to the assistance of an interpreter.[119] 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.[120] 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.[121] 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

[118] Noll, 188.

[119] Order N33 of the Minister of Internal Affairs of Georgia, 6 July 2020, Art. 7.

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

[121] Ibidem.

of the asylum seeker.[122] 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.[123]

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.[124]

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.[125] 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

[122] Decision N3/1752-16 of the Tbilisi City Court, 18 July 2016.

[123] Noll, 188.

[124] Herlihy, Turner, 173.

[125] Ibidem.

the applicant's credibility. However, it must be considered that the applicant provided this information at different times and under varying emotional conditions.[126] 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-

[126] 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.

REFERENCES

- Amit, Roni. 2019. "Reclaiming Refugee Rights as Human Rights." *Pace International Law Review* 31 (2): 270–302.
- Bodström, Elin. 2020. "Asylum Decisions as Performances: Intertextuality in Internal Credibility Assessment." *International Journal of Refugee Law* 32 (4): 552–576. https://doi.org/10.1093/ijrl/eeaa034
- Gyulai, Gábor. 2013. *Credibility Assessment in Asylum Procedures: A Multidisciplinary Training Manual*. Budapest: Hungarian Helsinki Committee.
- Hathaway, James C. 2021. *The Rights of Refugees under International Law*. Ann Arbor: University of Michigan Law School.
- Hathaway, James C., and William S. Hicks. 2005. "Is There a Subjective Element in the Refugee Convention's Requirement of Well-Founded Fear?" *Michigan Journal of International Law* 26 (2): 505–562.
- Karabulut, Ümran. 2022. "İnsan Hakları Perspektifinden Göç ve Mültecilik: 1951 Mültecilerin Hukuki Statüsüne İlişkin Cenevre Sözleşmesi ve Avrupa İnsan Hakları Sözleşmesi Karşılaştırması." *Sakarya Üniversitesi Hukuk Fakültesi Dergisi*10 (2): 903–923. https://doi.org/10.53463/suhfd.1201989
- Kinchin, Natalie, and Danial Mougouei. 2022. "What Can Artificial Intelligence Do for Refugee Status Determination? A Proposal for Removing Subjective Fear." *International Journal of Refugee Law* 34 (1): 47–71. https://doi.org/10.1093/ijrl/eeac001

- McDonald, Danielle. 2024. "Credibility Assessment in Refugee Status Determination." *National Law School of India Review* 26 (2): 145–170.
- Noll, Gregor, ed. 2005. *Proof, Evidentiary Assessment and Credibility in Asylum Procedures*. The Hague: Martinus Nijhoff Publishers.
- Sweeney, James A. 2009. "Credibility, Proof and Refugee Law.» *International Journal of Refugee Law* 21 (4): 700–726. https://doi.org/10.1093/ijrl/eep031
- Ustun, Elif Yildirim. 2024. "Internal Protection Alternative in Refugee Law." *Dicle University Journal of Law Faculty* 29 (1): 115–134. https://doi.org/10.53487/duhfd.1353660