



თქვენთვის და გარეუცხების ინტერესები

# RACIAL INTOLERANCE AND XENOPHOBIA RIGHTS OF FOREIGN NATIONALS IN GEORGIA





**RACIAL INTOLERANCE AND XENOPHOBIA**  
**RIGHTS OF FOREIGN NATIONALS IN GEORGIA**

Tolerance and Diversity Institute

2019



TOLERANCE & DIVERSITY INSTITUTE

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# INTRODUCTION

The period from 2016 to 2018 saw a drastic increase in violence, aggression and xenophobic sentiments targeting foreign nationals (especially those from Asian and African countries) in Georgia. Neo-fascist and ultranationalist groups now with greater visibility in public space<sup>1</sup> have been assaulting individuals with certain national backgrounds or identity.<sup>2</sup> These groups have grown particularly active since a July 2017 rally organized by the Georgian March on Aghmashenebeli Avenue.<sup>3</sup> At the onset members of the xenophobic rally called on expelling illegal migrants from the country. However, individuals and groups that are members of the movement have been notoriously vocal about their nativist sentiments, racist expressions and do not shy away from participating in violent rallies either.

On 10 December 2018 Georgian March and the Alliance of Patriots of Georgia, a political party together with various xenophobic groups gathered their supporters in a rally in front of the Public Service Hall with the purpose of barring entrance for foreign nationals to the Hall and preventing them from receiving services. Participants of the rally made their decisions as to who would be foreigners based on appearance and skin color.<sup>4</sup> These xenophobic groups were protesting against a decision by the Georgian Constitutional Court which lifted off restrictions over foreigners' right to purchase agricultural land in the Georgian territory even though abolishing such restrictions was subject to a limited period of time. According to information provided by the Ministry of Internal Affairs<sup>5</sup> an investigation has been launched under Article 142. A group of organizers has been interviewed.

On 17 May 2018 members of the Georgian National Unity, a fascist organization, gathered supporters for a demonstration in celebration of the Family Holiness Day with fascist symbols in full view of public.<sup>6</sup> Shortly before, on 12-13 May 2018 neo-fascist groups joined by two political parties – Democratic Movement – United Georgia and the Alliance of Patriots of Georgia confronted participants of a peaceful rally against the State's repressive drug policy. In parallel to organizing the counter-rally, leaders of the ultranationalist groups released statements containing threats and intimidating messages.<sup>7</sup> During the demonstration there had been several backlashes between participants of the counter-rally and the police. The former had attempted to break through police cordon as a result of which some of the leaders and participants were apprehended by the police<sup>8</sup>.

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1 Transparency International – Georgia (2018). *Anatomy of Georgian Neo-Nazism*. Available at: <http://www.transparency.ge/ge/blog/kartuli-neonacizmis-anatomia> [Last accessed: 4 February 2019]

2 TDI's statement to the Ministry of Internal Affairs of *Georgia's Guards* issued on 14 September 2018. Available in Georgian at: <http://tdi.ge/ge/statement/tdi-mimartva-shinagan-sakmeta-saministros> [Last accessed: 04 February 2019]

3 Georgian March rally on the Aghmashenebeli Avenue, the Public Broadcaster, 14 July 2017. Available at: <https://www.youtube.com/watch?v=w9wEiWLzj2c> [Last accessed: 04 February 2019]

4 On.ge: *Rally participants prevent foreign nationals from entering the Public Service Hall*, 10 December 2018. Available in Georgian at: <https://bit.ly/2GqBbdw>

5 Imedinews.ge: *Participants of a rally in front of the Public Service Hall brought in for an interview in the Ministry of Internal Affairs*, 11 December 2018. Available in Georgian at: <https://imedinews.ge/ge/dzalovnebi/89077/shssshi-iustitsiis-sakhltn-mimdinare-aqtsiis-ramdenime-monatsile-gamok-itkhvaze-daibares>

6 Kavkasia TV: *Demonstration of a fascist organization in Tbilisi*, 17 May 2018. Available at: <https://www.youtube.com/watch?v=6ebxDVqB6lw> [Last accessed: 04 February 2019]

7 Rustavi 2: *Neo-fascist groups against the White Noise*, 13 May 2018. Available at: <http://rustavi2.ge/en/news/103883>

8 Rustavi 2: *Two protest rallies in the vicinity of the Parliament*, 13 May 2018. Available in Georgian at: <http://rustavi2.ge/ka/news/103901>, *Confrontation at the counter rally*, 13 May 2018. Available at: <http://rustavi2.ge/en/news/103892>

In April 2018 a group of migrants were physically abused and forced out of a football stadium located at Beliashvili street, Tbilisi, by Georgians. Later that year, in September the first murder allegedly on the ground of racial intolerance took place in Georgia.

In addition to intimidation and abuse by organized groups, foreign nationals are also affected by the State's policy. For instance, citizens of certain countries experience a wide range of problems as they attempt to obtain Georgian residence permit. The State's refusal to issue such permits is often unjustified and possibly based on discriminatory grounds.

Ultrnationalist groups have grown active not only in physical venues but in social networks as well.<sup>9</sup> Findings of public opinion polls and analysis of social media activities suggest that cultural diversity and immigration are perceived as a threat in Georgia. A survey administered by the Caucasus Resource Research Centers (CRRC) in Georgia<sup>10</sup> has found that public attitudes towards a wide scale hate crimes are ambivalent. For instance, 48 per cent of the surveyed respondents do not consider Beliashvili street incident a hate crime.

During interviews with TDI representatives, citizens of African and Asian countries talked about racial discrimination as well as aggression, physical and verbal assault that they experience in public places, transport, educational and other private institutions. Color, ethnic background and nationality often serve as grounds for cultural and sometimes for biological racism. Analysis of multimedia content carried out by TDI suggests that representatives of cultural, ethnic, and religious majority perceive citizens of specific countries as threats to national traditions and demographic resilience and do not treat them as equal individuals.

Populist statements and hate speech that politicians often resort to further aggravates negative and xenophobic sentiments in the public.<sup>11</sup>

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9 Foreign Policy Center (2018). Public Space: the Battleground in the Revanchist City. Available at: <https://fpc.org.uk/public-space-the-battle-ground-in-the-revanchist-city/> [Last accessed: 04 February 2019]

10 CRRC (2018). *Hate Crime, Hate Speech, and Discrimination in Georgia: attitudes and awareness*. Available at: <https://rm.coe.int/hate-crime-hate-speech-and-discrimination-in-attitudes-and-awareness-e/16808ef62a> [Last accessed: 04 February 2019]

11 TDI on Mikheil Saakashvili's xenophobic statements issued 14 September 2018. Available at: <http://tdi.ge/en/statement/tdi-mikheil-saakashvili-xenophobic-statements> [Last accessed: 05 February 2019]

## METHODOLOGY

The present report provides an overview and analysis of legal and political aspects related to racism, xenophobia and rights of foreign nationals in Georgia.

The report highlights crimes of racial discrimination and intolerance in the period from 2014 to 2018 in order to look into quantitative and qualitative data related to the violation of rights vis-à-vis certain political developments and changes in the state policies. The state policy for foreign nationals is analysed through statistical data which allows tracking of changes within the State's attitudes to and regulations towards nationals of certain countries and tracing potential signs of discriminatory policies. For this very purpose, the team of researchers has examined and analysed official statistical data pertaining to granting residence permit to nationals of Asian and African countries, as well as data related to denied crossing of the state border.

Some of the issues highlighted in this report concern challenges faced by foreign nationals and representatives of certain races/ethnic groups due to the inconsistent state policies, artificially constructed barriers, classified conclusions by the State Security Service, growing presence and visibility of xenophobic groups and public attitudes. Therefore, there is no specific timeline applied to the process of documenting and analysing of aforementioned issues.

The researchers have used various research instruments for data collection and processing including a method of content analysis covering the Georgian legislation, policies, respective documents, reports developed by international and local organizations, as well as information retrieved from executive and judicial agencies. In addition, the researchers also analyzed outcomes of legal proceedings carried out by TDI, interviews with foreign nationals and those with diverse ethnic background, and findings of fieldwork carried out in Tbilisi and Georgia's regions.

The state policies and practice with respect to racism, xenophobia and rights of foreign nationals have been analysed vis-à-vis constitutional provisions and international human rights standards.

# KEY FINDINGS

## Cases of racial discrimination and intolerance in Georgia

- ▶ The period from 2015 to 2018 was marked by growing violence, aggression and xenophobic sentiments towards foreign nationals (especially from Asian and African countries) and migrants.
- ▶ Representatives of African and Asian countries have shared their experience on being verbally and physically abused and subjected to discrimination in public places, transport, educational and other institutions.
- ▶ Findings of public attitudes surveys and the analysis of social media postings suggest that cultural diversity and immigration are perceived as threat in Georgia. Representatives of cultural, ethnic and religious majority fear that nationals of certain countries may threaten national traditions and trigger demographic decline in the country and do not consider the latter as equals.
- ▶ Verbal and physical assaults by persons with hostile attitudes have become a frequent occurrence. At the same time, neo-fascist and ultranationalist groups have increased their visibility by attacking individuals with certain ethnic background or identities. These groups have also become active in social networks.
- ▶ Growing xenophobic and negative sentiments that members of public demonstrate against foreigners and migrants have been further exacerbated by populist and hate rhetoric that politicians often resort to.
- ▶ 2018 saw several widely covered cases of racial discrimination involving physical and verbal abuse against individuals with different ethnic and national background. In September 2018 a Georgian national, human rights activist Vitaly Safarov, was killed on the alleged ground of racial discrimination. On 29 November 2018 in a public transport in Rustavi, a Georgian citizen attacked a Cameroon national because of the latter's color of skin. On 8 April 2018, in one of Tbilisi's districts local community members physically assaulted foreign nationals and forced them out of a municipal stadium.
- ▶ According to information provided by the Prosecutor's Office of Georgia criminal proceedings were launched against 18 individuals on charges of racial discrimination between 2014 and 2018, while six cases were referred to courts of the first instance in 2015-2017.
- ▶ Scarce statistical data related to cases of racial discrimination reviewed by courts may be a result of the situation whereby criminal investigations are not launched, or are terminated, or they are launched under those articles of the Criminal Code which do not stipulate crimes on the grounds of racial intolerance.
- ▶ Crimes against foreign nationals have also been underreported and mistrust, fear, poor knowledge of available legal mechanisms and often linguistic barriers are likely to account for the underreporting.

## Discriminatory treatment of foreign nationals by commercial banks

- ▶ Race-based discrimination does not occur only in public institutions. Private sector, including banking, often resorts to discriminatory treatment. For instance, in April 2016 JSC Bank of Georgia restricted the right of nationals of Nigeria residing in Georgia to use debit and transportation cards.
- ▶ In a general proposal of 11 April 2018 the Public Defender of Georgia highlighted that commercial banks inappropriately undertook a legitimate procedure of the client's background check which resulted in an alleged breach of the rights of the conscientious consumer, qualifying such case as differential treatment.

## The State's policy towards foreign nationals Issues and challenges of obtaining a residence permit in Georgia

- ▶ Nationals of African and Asian countries reportedly experience problems in their attempts to obtain residence permit in Georgia as they face numerous impediments and barriers. A high rate of unjustified refusals to issuing residence permits by the Public Service Development Agency may suggest a discriminatory nature of the State's policy towards foreign nationals.
- ▶ Refusals issued by the Public Service Development Agency to seekers of residence permits do not normally provide justification and therefore fail to meet a requirement that administrative decree must be reasoned. Decisions of the Agencies whether or not to grant residence permits are guided by conclusions provided by the State Security Service on the propriety of issuing a residence permit. When it comes to applications filed by nationals of Asian and African countries, the State Security Service mostly advises against issuing permits on the ground of state and public security. In many cases the Agency uses a negative conclusion issued by the State Security Service as an excuse to justify its decision as 'legitimate'.
- ▶ Lack of justification in the Agency's decision is also determined by the fact that during administrative proceedings the Agency does not appropriately examine the applicant's private interest which may be related to his/her legal stay and/or work in Georgia
- ▶ Occasionally the State also denies applications of those foreign nationals who try to reunite with their families residing in Georgia. However, when a dispute arises with respect to a temporary study or work permit, court in almost all cases upholds decisions made by the Public Service Development Agency and the State Security Service and rules against the claimant. Even those who have a student's status in Georgia's education institutions are often denied a request for a study permit. These students are often forced to quit studying and leave the country as they fail to obtain a residence permit to pursue their education or have no other means to legally stay in the country.
- ▶ Evidence obtained by the State Security Service as a proof that the applicant may pose a threat to the national and/or public security, is classified. At no stage of proceedings either at an administrative body or court can the applicant access the classified evidence in order to present counter justification.
- ▶ In many cases claims for eliminating consequences of discrimination and moral compensation are ignored without proper examination and assessment when courts are in the process of reviewing cases related to

residence permits. In majority of cases when facts of discriminations are not established courts' rulings provide only legal grounds and citations from court practices rather than appropriate justifications.

- ▶ Extending a period of legal stay in Georgia seems to be problematic for many nationals of African and Asian countries. While in the recent past citizens of these countries could extend their stay for a reasonable period of time, nowadays this period only allows them to stay for another 10 or 20 days. This circumstance creates additional financial burden for those foreign nationals whose cases are being reviewed by courts as they have to apply to the Public Service Development Agency for having their stay extended in every 10 to 20 days and pay respective service fees. In addition, they are deprived of the possibility to re-apply for a residence permit. This practice suggests that the State's policy is discriminatory towards foreign citizens, especially nationals of Asian and African countries.
- ▶ Issues related to issuing residence permits to nationals of Asian and African countries and the latter's activities have been commonly misused by populist groups and political parties as an instrument for manipulation with public sentiments. Programs offered by such groups and parties are often built on ethnic, religious and racist stereotypes. In addition to making political statements, populist groups active in Georgia resort to legal leverages against migrants and nationals of certain countries. A recent period of time has seen numerous legislative initiatives developed for the purpose of harshening rules for residence permits, visas or citizenship.

### **The State's policy towards asylum seekers**

- ▶ Similar to obtaining residence permit, a road to a refugee status for asylum seekers is not an easy one. Granting refugee and/or humanitarian status largely depends on recommendations by the State Security Service.
- ▶ Importantly, a common practice of denying a refugee status for national security reasons has been highlighted by the European Commission in its official report for 2017 on Georgia's progress in the implementation of obligations that the country pledged to fulfil as an exchange for visa liberalisation.

### **Issues related to crossing the state border by foreign nationals**

- ▶ The last year has seen the harshening of the state policy for the crossing of the state border by foreign nationals. In many instances the State denies the entry without providing reasonable justification.
- ▶ According to the data of Ministry of Internal Affairs (MIA) most persons who were denied the entry to the country in 2018 were from Iran and India (3224 and 2254 respectively). MIA does not segregate statistical data based on grounds for refusal.

### **Restrictions of land purchasing for foreign nationals**

- ▶ Issues related to selling of agricultural land have become of the most debated and sensitive issues for the past few years with political groups promoting the idea to ban the selling of land to foreigners during election run-ups. Norms regulating selling and buying of agricultural land have undergone several series of changes since 2011. On 16 December 2018 a new constitutional amendment took effect restricting property rights of foreign nationals over agricultural land declared as a 'significant resource' by the same amendment.

# BRIEF REVIEW OF INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS FOR THE PROHIBITION OF RACIAL DISCRIMINATION

Pursuant to the European Convention on Human Rights the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground including race.<sup>12</sup>

The European Court has defined the concepts of 'race' and 'ethnicity' and further clarified that language, religion, ethnicity and culture are integral part of race.<sup>13</sup> More specifically:

*"Ethnicity and race are related and overlapping concepts. Whereas the notion of race is rooted in the idea of biological classification of human beings into subspecies according to morphological features such as skin colour or facial characteristics, ethnicity has its origin in the idea of societal groups marked by common nationality, tribal affiliation, religious faith, shared language, or cultural and traditional origins and background."*<sup>14</sup>

European Commission Against Racism and Intolerance (ECRI) has also adopted a broad approach to defining 'racial discrimination', which includes the grounds of 'race, colour, language, religion, nationality or national or ethnic origin.'<sup>15</sup>

International Convention for the Elimination of all Forms of Racial Discrimination of 1966<sup>16</sup> defines racial discrimination as the one based on 'race, color, descent, or national or ethnic origin'. At the same time, the Committee on the Elimination of Racial Discrimination, a body responsible for providing explanation of terms of the Convention and overseeing the monitoring of its implementation, stresses that membership to any racial or ethnic group must be a matter of the person's self-determination, unless verification proves otherwise.<sup>17</sup>

Similar to the European Convention, equality before the law is enshrined in the Constitution of Georgia according to which there shall be no discrimination including on the grounds of race, color, national or ethnic belonging.<sup>18</sup>

In addition to the Constitution, anti-discrimination norms are also cemented by the Law of Georgia on the Elimination of All Forms of Discrimination, which also defines legal mechanisms for the protection of rights of victims of discrimination. Importantly, discrimination at work place is also prohibited by the Labour Code of Georgia.<sup>19</sup>

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12 The European Convention on Human Rights of 4 November 1950, Article 14. 4 November 1950

13 *Ibid*

14 Decision of the European Court of Human Rights on the case of Timishev v. Russia of 13 December 2005, para 55

15 European Court of Human Rights (2011). *Handbook on European non-discrimination law*. ISBN 978-92-871-9995-9 (CoE) P.104

16 Georgia ratified this convention on 2 June 1999

17 The Committee on the Elimination of the Racial Discrimination – CERD. General recommendation XXIX on Article 1(1) and 4 of the Convention of 2002. Available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FGEC%2F7480&Lang=en&fbclid=IwAR3h0QBBAfpAJT-IRvVCWeqTzr-eviGYiMYSmlS8sgDpEuGK5OQ2g9v7dHk](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FGEC%2F7480&Lang=en&fbclid=IwAR3h0QBBAfpAJT-IRvVCWeqTzr-eviGYiMYSmlS8sgDpEuGK5OQ2g9v7dHk) [Last accessed: 04 February 2019]

18 Constitution of Georgia [amendment of 13 October 2017]

19 Georgian Labor Code, Article 2

The right to equality before the law is also protected by criminal legislation in Georgia. Respectively, the violation of human equality, which leads to a substantial breach of any human rights, shall be subject to criminal liability and punishment as stipulated by the Criminal Code.<sup>20</sup> Notably, 'racial discrimination' is considered as a standalone crime by the Criminal Code of Georgia,<sup>21</sup> while pursuant to an amendment of 2012 to the aforementioned Code, the crime on the ground of intolerance, including racial intolerance, constitutes an aggravating circumstance for all the relevant crimes provided for by the Criminal Code.<sup>22</sup>

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20 Georgian Criminal Code, Article 142

21 Georgian Criminal Code, Article 142<sup>1</sup>

22 Georgian Criminal Code, Article 53<sup>1</sup>

# CASES OF RACIAL DISCRIMINATION AND INTOLERANCE IN GEORGIA

2018 was marked by some of the most publicized cases involving intolerance on the ground of race and including physical and verbal assault against persons of different ethnic and national background. In 2018 a human rights activist Vitaly Safarov (citizen of Georgia) was murdered allegedly on the ground of racial intolerance.

Sections below provide an overview of specific cases of race-based abuse and discrimination.

## *The Murder of Vitaly Safarov*

On 30 September 2018, a 25-year-old citizen of Georgia, Vitaly Safarov was murdered during a fight that fuelled up in one of bars at Freedom Square, Tbilisi. Safarov was pronounced dead at the crime scene with multiple stab wounds inflicted by a non-firearm weapon.<sup>23</sup>

Law enforcement authorities apprehended two young persons (25 and 23 respectively) in Tbilisi and charged them with premeditated murder of Vitaly Safarov and failure to report a crime.<sup>24</sup> According to reports both detainees are members of a neo-fascist group.<sup>25</sup> People working in the vicinity of the crime scene told the police that the conflict evolved around linguistic and ethnic issues. They also reported that before the conflict, they chose to distance themselves from instigators of the conflict because of the latter's simmering aggression.<sup>26</sup>

The Ministry of Internal Affairs apprehended two individuals in relation with the crime. One of them has been charged with premeditated murder while the other has been accused of failing to report the crime committed under an aggravating circumstance. According to an official letter from the MIA on 30 September 2018 an investigation concerning Safarov's murder was launched under Article 108 of the Criminal Code. However, the article was later changed.

As of February 2019 an investigation is ongoing under Article 109(2) para D of the Criminal Code – premeditated murder due to racial, religious, national or ethnic intolerance. The other accused has been charged with the failure to report a crime under Article 376 of the Criminal Code of Georgia. Safarov's attorneys and non-governmental organizations have demanded that charges be requalified based on body of evidence and the investigation be proceeded with the charge of an organized crime against both accused.<sup>27</sup>

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23 ImediNews: *Young man, 25 murdered in Tbilisi*, 30 September 2018. Available in Georgian at: <https://imedinews.ge/ge/dzalovnebi/79388/tbilis-shi-25-tslis-bichi-mokles> [Last accessed: 04 February 2019]

24 Rustavi 2: *Two persons apprehended by the law enforcement for the murder of Vitali Safarov*, 25 October 2018. Available in Georgian at: <http://rustavi2.ge/ka/news/114930> [Last accessed: 4 February 2019]

25 Tabula.ge: *HRIDC and CDP: Vitali Safarov's murder is an alleged act of hate crime*, 11 October 2018. Available in Georgian at: <http://www.tabula.ge/ge/story/137970-hridc-da-cdp-vitali-safarovi-savaraudod-qsenofobiur-niadagze-mokles> [Last accessed: 4 February 2019]

26 Tabula.ge: *TDI: Vitali Safarov's murder is an alleged xenophobic crime, charges need to be requalified*, 12 October 2018. Available in Georgian at: <http://www.tabula.ge/ge/story/138030-tdi-safarovi-savaraudod-qsenofobiur-niadagze-mokles-saqme-unda-gadakvalificirdes> [Last accessed: 4 February 2019]

27 No to Phobia! *Requests to qualify murder of Vitaly Safarov as organized crime*, 1 February 2019. Available at: <http://tdi.ge/en/statement/no-phobia-requests-qualify-murder-vitaly-safarov-organized-crime> [Last accessed: 4 February 2019]

## ***Race-based violence in Rustavi***

On 29 November 2018 in one of Rustavi's public transports a citizen of Georgia assaulted a citizen of Cameroon because of the latter's color. The attacker verbally and physically abused the national of Cameroon by hitting in the head several times. Verbal and physical assault continued after the victim got off the mini-bus.

The victim recorded the incident on his mobile phone. The video was also released through media.<sup>28</sup>

Rustavi city department of MIA's Kvemo Kartli regional police launched an investigation under Article 126(1).<sup>29</sup> However, eventually charges were requalified under Article 142<sup>1</sup>(2) para A (racial discrimination committed with life or health threatening violence or with a threat of such violence).<sup>30</sup> On 7 December 2018 the police detained and charged one person with the crime above.

On 31 January 2019 Rustavi City Court plead the accused guilty and sentenced him to three years of probation as stipulated by Article 142<sup>1</sup>(2) Para A of the Criminal Code of Georgia.<sup>31</sup>

## ***Alleged race-based violence against students in Tbilisi***

On 8 April 2018 local community members (citizens of Georgia) physically assaulted black students (foreign nationals) and demanded that the latter leave the stadium.<sup>32</sup>

The foreign students reported that attackers used hate speech stressing on their color and origin. According to one of the victims one of the attackers was holding a non-firearm weapon during the assault. As a result of the incident two students sustained minor physical injuries.

The students were given medical examination within few days after the incident and therefore, the examination failed to yield a full picture of the sustained injuries. Nor did the investigation confirm the possession of a non-firearm weapon by the attacker during the assault.

During interviews with the victims, investigators of the MIA tried not to assert the presence of racist terminology so that there would be no attention paid to the possible racial bias in the crime and therefore the occurrence of racial discrimination would be concealed.

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28 InfoRustavi: *A man of color battered in Rustavi*, 1 December 2018. Available in Georgian at: [https://inforustavi.ge/?m=31&news\\_id=7901&fbclid=IwAR2RT72Vrqz1JLO1sz4uSqkLbgYeWhjN-RAYZfhRZAB7ELzUGXurSakyb5E](https://inforustavi.ge/?m=31&news_id=7901&fbclid=IwAR2RT72Vrqz1JLO1sz4uSqkLbgYeWhjN-RAYZfhRZAB7ELzUGXurSakyb5E)

29 The claimant is represented by TDI

30 TDI: *Police arrested the person on racial discrimination charges*, 8 December 2018. Available at: <http://tdi.ge/en/news/644-police-arrested-person-racial-discrimination-charges> [Last accessed: 4 February 2019]

31 TDI: *Court found a person guilty in racial discrimination case*, 1 February 2019. Available at: <http://tdi.ge/en/news/659-court-found-person-guilty-racial-discrimination-case>

32 A statement of *No to Phobia!* Platform on the investigation of an attack on African students issued on 17 June 2018. Available at: <http://tdi.ge/en/news/589-statement-no-phobia-platform-investigation-attack-african-students> [Last accessed: 4 February 2019]

Shortly after the incident, on 10 April 2018 Mayor of Tbilisi Kakha Kaladze proposed the perpetrators and the victims to participate in a friendly match to be held on the same stadium.<sup>33</sup> 'Such attitudes and approaches are not typical to us, Georgians... it would be best to forget the bad stuff that has happened,' said Kaladze.

He also stressed that certain NGOs had been blackmailing the students to not take part in the proposed friendly soccer game.<sup>34</sup>

NGOs asserted that 'such statements and initiatives at this stage were damaging for the investigation purposes. It emphasizes the intent of forgetting the alleged offense and not the necessity of effective investigation.'<sup>35</sup>

Investigation was launched under Article 126(1) of the Criminal Code.<sup>36</sup> The students were brought in by the police to provide statements several times. Later on, some of them additionally pointed out that they no longer had any claims against the Georgian citizens and wanted to terminate the investigation.

On 30 July 2018 the Prosecutor's office qualified two Nigerian students who sustained physical injuries in the course of the incident, as victims. One of the attackers also confirmed that he was the one who had physically assaulted the students.

The Prosecutor's Office held a consultation session with the victims and offered the latter to resort to an aversion mechanism against the attacker which implied the termination of the criminal prosecution. Subsequently, the citizen of Georgia who admitted the beating of the black students paid 500 GEL as a penalty.<sup>37</sup> In the course of this investigation no other person or persons had been accused of assaulting the students.

It is noteworthy that aversion, from a perspective of a legal outcome, does not entail a criminal record. According to the case materials of the investigation there was no racial bias established in the crime committed against the black students and therefore, the investigation found no signs of racial intolerance. Nor did the investigation establish the fact of carrying a non-firearm weapon by one of the attackers.

Eventually the criminal case was divided in two parts and the proceedings continued in the part whereby one of the Georgian citizens involved complains about physical abuse that he allegedly sustained as a result of actions of one of the black students. As of February 2019 the investigation is yet to establish his identity.

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33 Radiotavisupleba: *Attorney of the Nigerian students on 'friendly' initiative*, 10 April 2018. Available in Georgian at: <https://www.radiotavisupleba.ge/a/29156267.html> [Last accessed: 4 February 2019]

34 On.ge: A statement made by the Mayor of Tbilisi, Kakha Kaladze issued on 14 April 2018. Available in Georgian at: <https://bit.ly/2Bivr22> [Last accessed: 4 February 2019]

35 TDI responds to Kakha Kaladze's Initiative and Statements, 14 April 2018. Available at: <http://tdi.ge/en/statement/tdi-responds-kakha-kaladzes-initiative-and-statements> [Last accessed: 4 February 2019] and a statement of No to Phobia! Platform. Available at: <http://tdi.ge/en/news/589-statement-no-phobia-platform-investigation-attack-african-students>

36 Battering or other forms of abuse that caused the victim physical pain but without inducing an outcome punishable by Article 120 of the Criminal Code

37 Didube-Chugureti District Prosecutor's Office, letter N13/04-74522, 1 October 2018.

## ***Intimidation of foreign nationals on Aghmashenebeli Avenue by the Georgian Guard***

A footage depicting Georgian citizens intimidating foreign nationals in Tbilisi were released through social networks, Facebook and YouTube in August 2018.

The footage showed Georgians at Aghmashenebeli Square approaching foreign nationals and demanding that the latter present documents for the purpose of 'protecting the country from illegal persons'.<sup>38</sup> These individuals were shooting videos of xenophobic nature calling themselves 'Georgian Guards'.<sup>39</sup>

According to an official letter from the MIA<sup>40</sup> investigation was launched under Article 223(1) of the Criminal Code of Georgia<sup>41</sup> concerning establishment of illegal formation. Even though various investigatory actions were undertaken, as of December 2018 there were no arrests or decisions made with respect to this incident.

## ***Physical abuse against the citizen of Nigeria***

On 17 October 2016 in one of Tbilisi's shops two Georgian citizens verbally assaulted a citizen of Nigeria.<sup>42</sup> They demanded a shop manager that s/he not let 'N-word' go before them in a line. The manager let the Nigerian citizen through the line and tried to avert the conflict. The attackers ran after the Nigerian national in the street, knocked him down and beat him with their feet while one of the attackers hit the victim in the face with the brick. During the beating the attackers called the victim 'N-word' and demanded that he leave the country.

The Georgian citizens involved in this accident were charged with committing the crime of racial discrimination (as per Article 142<sup>1</sup>(3) para A). Taking into account the fact that the accused admitted the crime, a plea bargain was concluded between the latter and the Prosecutor's Office.

Court sentenced both persons to three years in prison (pursuant to Article 55 of the Criminal Code of Georgia). The sentence was qualified as probational during the same period of time in accordance with Articles 63 and 64 of the Criminal Code. The court plead both accused guilty and sentenced to three years on a probation.

## ***March of ultra-nationalist movements on the Aghmashenebeli Avenue***

The year of 2016 was marked by growing presence and visibility of neo-fascist groups. On 27 September 2016 members of Georgian Force, Bergman, Dinamo Ultra, Edelweiss movements held a march on Rustaveli and Aghmashenebeli avenues.

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38 Tabula.ge: A 'Georgian Guard' intimidating foreign nationals on the Aghmashenebeli Avenue, 13 Septebmer 2018. Available in Georgian at: <http://www.tabula.ge/ge/story/136822-rogor-avitsroebes-saqartvelos-daraji-ucxoelebs-aghmasheneblis-gamzirze> [Last accessed: 4 February 2019]

39 Netgazeti: A 'Georgian Guard' against foreign nationals, 13 September 2018. Available in Georgian at: <http://netgazeti.ge/news/304123/> [Last accessed: 4 February 2019]

40 Ministry of Internal Affairs of Georgia, letter N MIA 2 18 02560285, 19 October 2018.

41 Establishment and management of an illegal group (gang), membership to such groups (gangs), participation and/or implementation of other activities in favor of an illegal groups (gangs).

42 Ruling by Judge Ekaterine Gabrichidze, Tbilisi City Court, on 16 November 2016 (retrieved by TDI in a barcoded form)

Demonstrators chanted discriminatory and xenophobic slogans and messages (including 'Georgia for Georgians') and demanded that they leave the country.

Participants of the protest march damaged facades of several Turkish restaurants located at Agmashenebeli Avenue and threw a Molotov cocktail in a restaurant with customers inside.

In spite of illegal acts, police mobilized at the scene did little to respond to these violations. The restaurant where the participants had thrown a Molotov cocktail was practically left unprotected by the police.

Participants of the rally eventually stopped opposite the Marjanishvili subway where police called on them to calm down. That is when physical confrontation ensued between rally members and the police.<sup>43</sup>

MIA apprehended 12 participants including 7 minors<sup>44</sup> and charged them with hooliganism as stipulated by the Criminal Code.<sup>45</sup>

According to information requested from the Prosecutor's Office<sup>46</sup> on 29 September 2016, 12 persons including 7 minors were charged with racial discrimination and hooliganism.<sup>47</sup> Five of them were sentenced to paying a bail in the amount of 10 000 GEL while seven minors were put under surveillance.

On 20 December 2016 the criminal case was transferred to Tbilisi City Court for reviewing the case on merits. Criminal case related to juveniles was separated for independent review. The court took the due course of reviewing the case.

On 12 February 2018 on a motion filed by the prosecution bail imposed on one of the persons was replaced with an imprisonment as the latter was enlisted as wanted due to his failure to appear in court.

### ***Race-based violence by the Bergman members***

On 9 September 2015 on Rustaveli Avenue, Tbilisi, members of Bergman verbally and physically assaulted a citizen of Georgia and two accompanying Nigerian nationals.

Shortly after this incident, on 21 September, a video recording of the assault by Bergman members was uploaded to the Georgian Ultra's Facebook page.<sup>48</sup>

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43 Negtazeti: *Police arrest members of neo-nationalist group rally*, 27 September 2018. Available in Georgian at: <http://netgazeti.ge/news/143740/> [Last accessed: 4 February 2019]

44 Liberali: *Georgian Force members facing racial discrimination charges*, 30 September 2018. Available in Georgian at: <http://liberali.ge/news/view/24891/qartuli-dzalis-tsevrebs-rasobrivi-diskriminatsiis-braldeba-aqvt-tsayenebuli> [Last accessed: 4 February 2019]  
Ministry of Internal Affairs: *MIA detained 11 persons for hooliganism*, 27 September 2018. Available at: <https://police.ge/en/shss-m-khuligno-bis-braldebit-11-piri-daakava/10030> [Last accessed: 4 February 2019]

45 Georgian Criminal Code, Article 239, parts II and III (hooliganism)

46 Prosecutor's Office of Georgia, letter N13/68380, 7 September 2018

47 Pursuant to Article 142<sup>1</sup> (2) para A, Article 142<sup>1</sup> (3) para A, (racial discrimination), and Article 239 (hooliganism) of the Georgian Criminal Code

48 Fascist group Bergman assaulting non-Georgian nationals., 21 September 2015. Available at: <https://www.youtube.com/watch?v=ti-2g2ACP4TE>

A criminal investigation into an alleged racial discrimination was launched under Article 142<sup>1</sup>(3) para (racial discrimination committed by a group of persons).<sup>49</sup>

According to official information obtained from the Prosecutor's Office <sup>50</sup> on 27 September 2015 three persons (including a minor) were charged with racial discrimination committed by a group of persons (as stipulated by Article 142<sup>1</sup>(3) para 3) with respect to the incident taking place on 19 September 2015. Two of these persons were detained while the minor was released upon the payment of a bail in the amount of 2000 GEL.

On 20 April 2018 two persons were plead guilty. As for the minor involved in the incident, further to the Prosecutor's decision the criminal prosecution was terminated.<sup>51</sup> Based on the information provided by the Prosecutor's Office, the identity of yet another person involved in the crime could not be established. Therefore, a respective criminal case was separated with respect to the unidentified person<sup>52</sup> who remains wanted to this day.<sup>53</sup>

### ***Race-based violence against the UK citizen***

A UK citizen currently residing in Georgia has fallen victim to racist attacks on several occasions because of his color. The first incident took place on 18 June 2014 when he was verbally abused because of his skin color in Smart supermarket in Tbilisi. The victim reported that security staff present at the scene had not undertaken any measures in response to the abuse.

The second incident took place on 28 June 2014 in McDonalds nearby Marjanishvili subway where the foreign national was threatened with beating because of his color. Information on this occurrence was released through Facebook and media outlets. The Police arriving at the scene demonstrated discriminatory treatment towards the victim asking him questions about his nationality and origin which had no substantial importance to the matter of justice.

In both cases the victim chose not to bring the incidents to the law enforcement authorities. MIA reported that there were no reports submitted to the police with respect to these incidents.<sup>54</sup> However, media covered both cases. On 14 July 2014 TDI released a statement and called on the law enforcement authorities to react upon the cases of alleged racial discrimination in a timely and effective manner.<sup>55</sup> Therefore, law enforcement agencies were obliged to express interest in alleged cases of racial discrimination and launch respective investigation pursuant to requirements set forth in the criminal procedural legislation.<sup>56</sup>

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49 Tabula.ge: *Court convicts two persons for racial discrimination and sentences to four years in prison*, 31 January 2018. Available in Georgian at: <http://www.tabula.ge/ge/story/129183-sasamartlom-rasobrivi-diskriminaciis-gamo-2-adamians-4-4-tslit-patimroba-miusaja> [Last accessed: 4 February 2019]

50 Prosecutor's Office of Georgia, letter N13/68380, 7 September 2018

51 Pursuant to Article 38(2) – diversion of the Juvenile Justice Code, Article 33(6), para G - competences of the Prosecutor, and Article 105(1) para I of the Criminal Procedure Code

52 By applying to Article 110 of the Georgian Criminal Procedure Code (Separation of the criminal case)

53 Prosecutor's Office of Georgia, letter N13/68380, 7 September 2018

54 Tabula.ge: *Aaron Charles talks about his experience of discriminatory treatment*, 30 June 2014. Available in Georgian at: <http://www.tabula.ge/ge/story/85185-aaron-charlzi-mis-mimart-ganxorcielebul-diskriminaciaze-saubrobs> [Last accessed: 4 February 2019]

55 TDI on the case of racial discrimination, 1 July 2014. Available at: <http://tdi.ge/en/statement/tdi-case-racial-discrimination>

56 Article 101 of the Criminal Procedure Code: the grounds for initiating an investigation shall be information provided or a prosecutor, or information revealed during criminal proceedings, or information published in the mass media

According to official information obtained from the Prosecutor's Office, there is no investigation going on with respect to this incident because 'there was no notification or report filed to prosecuting authorities.'<sup>57</sup>

### ***Alleged discrimination against a student in public school***

In 2015 a student at public school 130, Tbilisi became a victim of an alleged racial discrimination.<sup>58</sup>

An alleged victim of discrimination, a black student had been targeted and intimidated by fellow students because of his/her color on numerous occasions.

During one of these incidents his/her classmate called him/her 'a nigger'. The classmate also told him to 'Go back to your Africa. There is no place for you in the civilization'. A teacher witnessing this incident did not do anything to diffuse the tension. Instead, s/he told both students off and dismissed them from the classroom.

Nor did the school administration take any measures in response to the incident of alleged race-based intimidation while the victim had to change school.

On 8 February 2016 the victim (through his/her legal representative) went to court on account of race-based discrimination against him/her to demand the elimination of discriminatory action and compensation for moral damage.

The claimant believed that s/he had fallen a victim of discrimination because of his/her color. The claim stressed on the severity of living in environment conducive to discrimination for a minor.<sup>59</sup>

In a judgement of 20 December 2016 Tbilisi City Court denied the claim of the alleged victim for race-based discrimination.

The victim filed an appeal to the Court of Appeal. The Appeal Chamber abolished the judgment of the court of the first instance. In a judgement of 14 June 2018 the Court of Appeal upheld the claim, established the fact of discrimination and ordered the defendant to compensate against the moral damage sustained by the claimant.

### **Statistical Data on Race-Based Crimes**

In order to look into the patterns of the State's responses to race-based crimes, Tolerance and Diversity Institute requested public information from respective agencies.

Obtained information offers numbers of investigations launched by the relevant state body and persons being prosecuted from 2014 to 2018, as well as number of cases of race-based crimes heard by courts.

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57 Prosecutor's Office of Georgia, letter N13/68380, 7 September 2018

58 NGO Sapari was a lead in the proceedings

59 Report on activities of the Coalition for Equality 2016-2017. Available at: [http://women.ge/data/docs/publications/CE\\_report\\_eng.pdf](http://women.ge/data/docs/publications/CE_report_eng.pdf) [Last accessed: 4 February 2019]

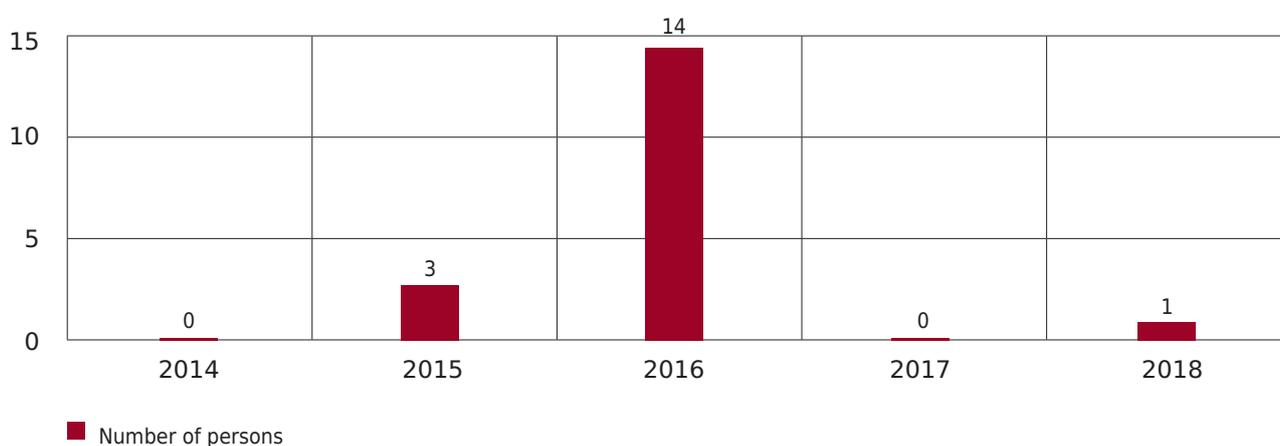
## Prosecutor's Office

Based on the information provided by the Prosecutor's Office <sup>60</sup> 18 individuals were subject to criminal prosecution for the commission of racial discrimination from 2014 to 2018.

**Article 142 of the Criminal Code** renders violation of human equality sanctionable by the Criminal Code. Protected grounds include citizenship and/or nationality. According to the information provided by the Prosecutor's Office, no criminal prosecution was launched under Article 142 of the Criminal Code between 2014 and 2018.

**Article 142<sup>1</sup> of the Criminal Code** defines racial discrimination as a sanctionable act.<sup>61</sup> In the period from 2014 to 2018 criminal prosecution was launched against 18 individuals.

**Diagram 1. Statistics on criminal prosecution under Article 142<sup>1</sup>**



**Pursuant to Article 53<sup>1</sup> of the Criminal Code**<sup>62</sup> the commission of the crime on the grounds of discrimination/intolerance constitutes an aggravating circumstance. Even though it is court's prerogative to sentence the convict, investigators are best positioned to identify the motive of committing crimes under the aforementioned clause. It should be noted that both in the course of investigation and afterwards, and at a sentencing stage by a court, the statistical data on application of this clause is extremely low .

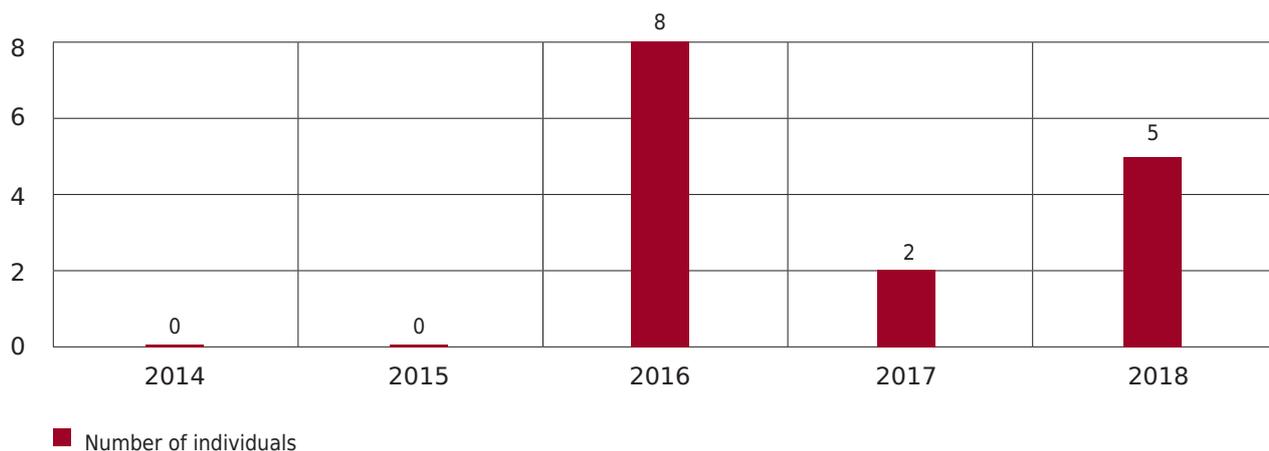
Based on the information provided by the Prosecutor's Office, during 2014-2018 Article 53<sup>1</sup> was applied in 15 cases involving national, ethnic and/or racial intolerance as a motive. Among them, in 2018, 1 case based on race/color and 4 on the ground of national/ethnic origin.

60 Prosecutor's Office of Georgia, letter N13/65109, 23 August 2018 and letter N13/9215, 8 February 2019

61 'Racial discrimination, i.e. an act committed to incite national or racial rivalry or discord in order to degrade national honor and dignity, as well as direct or indirect restriction of human rights or giving advantage to the person based on race, color, national or ethnic belonging, which has substantially breached his/her rights'.

62 Commission of a crime on the grounds of race, color, language, sex, sexual orientation, gender identity, age, religion, political or other beliefs, disability, citizenship, national, ethnic or social origin, material status or rank, place of residence or other discriminatory grounds shall constitute an aggravating circumstance for all the relevant crimes provided for by this Code.

**Diagram 2. Rate of the application of Article 53<sup>1</sup> by the Prosecutor's Office**



### Court

The rate of reviewing crimes committed on the ground of racial intolerance is also quite low largely due to the fact that investigation is not launched, or terminated or carried out under those clauses of the Criminal Code whereby the motive of racial bias cannot be determined. In addition, foreign nationals often refrain from going to law enforcement authorities when they fall victim to offences due to mistrust, fear, lack of knowledge of legal mechanisms or in many instances on account of linguistic barriers.

According to an official letter from the Supreme Court of Georgia<sup>63</sup> in the period from 1 January 2014 to 1 July 2018:

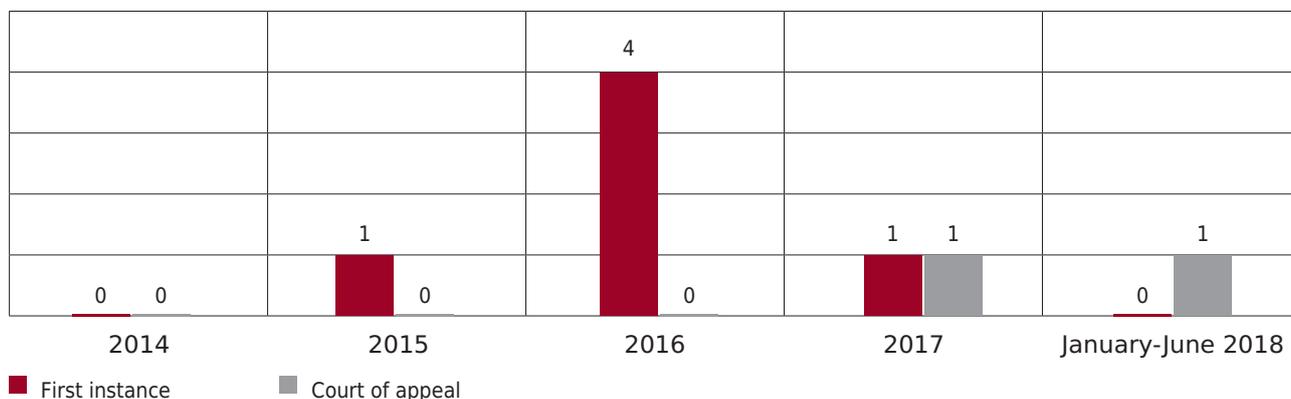
Under Article 142<sup>1</sup> of the Criminal Code of Georgia (racial discrimination): **Courts of the first instance** received 6 cases in total (1 in 2015, 4 in 2016 and 1 in 2017).

**Courts of Appeal** received 2 cases in total (1 in 2017 and 1 within the first six months of 2018).

**Courts of Cassation** received no cases under the aforementioned clause.

As for crimes stipulated by Articles 142 and 53<sup>1</sup> (as aggravating circumstances) no cases were received by city, appeals and cassation courts in the same period.

**Diagram 3. Number of cases reviewed under Article 142<sup>1</sup> (racial discrimination)**



<sup>63</sup> Supreme Court of Georgia, letter N ՝-405-18, 10 August 2018

# DISCRIMINATORY TREATMENT OF FOREIGN NATIONALS BY COMMERCIAL BANKS

Discriminatory treatment on the ground of race has been observed not only in actions and decisions undertaken by state agencies, but also in private sector including banking service.

In April 2016 TDI's team was approached by a citizen of Nigeria reporting an alleged race-based discrimination against him/her. The student told TDI that JSC Bank of Georgia had restricted the right of citizens of Nigeria residing in Georgia to use bank and travel cards. Because of such restriction the latter had not been able to manage their financial resources through a bank account, commute freely and effectively exercise other rights provided by the law.

It should be noted that JSC Bank of Georgia issues a card which can be used both as a debit and travel card. Students who possess such cards can enjoy travel discount introduced by the State. Importantly, no other administrative body or private entity is entitled to issuing such cards except for Bank of Georgia.

Pursuant to an ordinance of the Tbilisi City Municipal Assembly students who have no bank account and a student's card linked to such account, cannot not enjoy benefits provided by the legislation.

In February 2016 the Nigerian citizen tried to open an account in JSC Bank of Georgia on several occasions. However, in order to open an account, the bank required the applicant to produce a recommendation from either US, Australian, Canadian and/or EU banking institutions, a requirement that the applicant failed to comply to as s/he had nothing to do with commercial banks in above listed countries.

TDI took over examining the case of immediately after the alleged victim of discrimination approach the team. On 8 April 2016 TDI sent a letter to the Public Defender of Georgia and National Bank of Georgia providing factual and legal circumstances of the case.

Further to this communication, the National Bank of Georgia recommended the Bank of Georgia to eliminate alleged discriminatory treatment and find a systemic solution to the problem.

In May 2016 the Bank of Georgia notified TDI that the Nigerian citizen could now open a bank account and obtain a student travel card.

On 5 May 2016 TDI sent an official correspondence with the Bank of Georgia requesting the justification for discriminatory treatment and information on next steps that the Bank intended to undertake in order to resolve the problem in a systemic way and prevent the occurrence of similar incidents.

In a letter dated 18 May 2016 the Bank of Georgia explained that 'citizens of Nigeria are considered high risk clients [...] In Georgia there have been cases whereby Nigerian physical persons were detained for smuggling and selling of drugs in the country'. Therefore, obligatory criteria for opening a bank account include the submission of recommendations from commercial banks registered in the US, European countries, Canada or Australia.

Based on the above mentioned, it can be assumed that a requirement of the Bank of Georgia to produce recommendations from foreign commercial banks for opening an account in the Bank of Georgia, is directly linked to an alleged discriminatory motive and national/citizenship belonging of citizens of Nigeria.

Under no circumstances shall an alleged crime committed by an individual serves as the ground for restricting certain rights for all those who represent the same national or ethnic group. In this specific case, a legitimate aim of differential treatment was not duly justified. Nor was the means used by bank proportionate of achieving legitimate aim. . Even though it is the bank's prerogative to ascertain risks related to its own clients, differential treatment on the grounds of citizenship and/or ethnic origin should not be unjustified and violating rights of representatives of specific groups without due justification.

With a letter of 26 November 2016, the Bank of Georgia notified TDI that the Bank had introduced a new product to enable non-resident clients to open accounts in the Georgian national currency and access students travel discounts. Therefore, the problem was resolved through a systemic solution, however, the problem has not been eradicated completely. Currently, students who are nationals of Nigeria can use debit and travel card. However, they cannot open accounts in other currencies as they are subject to conditions other than those of other citizens.'

In a general proposal of 11 April 2018 the Public Defender of Georgia argued that the requirement of a bank to its customers to provide recommendations from certain countries affecting members of a particular group sharing certain common characteristics and with no ability to produce such a recommendation, qualifies as a differential treatment and fits within the scope of regulation of the anti-discrimination legislation.

**The Public Defender believes that commercial banks misused a legitimate procedure applied to customers' background check, which led to possible breach of the rights of conscientious clients.**

Therefore, the Public Defender issued the following general proposal<sup>64</sup> to the National Bank of Georgia: [National Bank of Georgia to]

- ▶ Require JSC Bank of Georgia, along with ensuring preventive measures against money laundry and financial support to terrorism, to allow foreign students to open bank accounts in order to receive and/or send money.
- ▶ Require commercial banks to accept alternative documentation and additional information in order to avoid a blueprint approach and ensure that background check of the client is not limited to the submission of a single document.
- ▶ Develop easily foreseeable regulations to ensure that foreign nationals can access commercial bank services without discrimination on any ground.

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<sup>64</sup> Public Defender of Georgia, General Proposal N 13-4/5189, 4 April 2018

# STATE POLICY TOWARDS FOREIGNERS

## Issues and Challenges of Obtaining a Residence Permit in Georgia

Citizens of certain countries struggle to obtain Georgian residence permit. Citizens of African and Asian countries often face problems.

TDI's study of the issue has identified certain negative tendencies within the work of state entities responsible for issuing residence permits, specifically towards citizens of the above countries.

High rates of ungrounded rejections from the side of the state to issue residence permits, also indicates possibility for discriminatory policy towards citizens of the countries that share country of origin, region, skin color and/or racial belonging.

Law of Georgia on Legal Status of Aliens and Stateless Persons provides exhaustive list of grounds for refusing residence permit to seekers<sup>65</sup>.

It should be noted that most frequent rejections are associated with appropriateness of the foreigner living in Georgia due to state or public security interests.

Relevant authorized body – State Security Service – prepares a conclusion which is used by State Service Development Agency – legal entity of public law under the Ministry of Justice – while making a decision on issuing a residence permit.

It should be noted that conclusion of the intelligence division of State Security Service is not an administrative decree. In the process of making a decision on granting residence permit, the State Services Development Agency operates within its discretion. It may or may not consider conclusion of intelligence department of Security Service. However, refusal of the Agency, as it was mentioned above, often does not contain justification, and therefore, fails to meet the requirement for the decree to contain justification. Therefore, decisions and actions of appropriate state agencies leave grounds for assuming that there may be a policy of discrimination based on race, nationality or citizenship, while conclusion of the State Security Service is often used to legitimize unjustified rejections.

During administrative proceedings, Service Development Agency does not duly study private interests of residence permit-seeker, which, for example, may be associated with living legally with the family or working in Georgia.

During 2016-2018 TDI conducted 13 court proceedings due to unjustified refusals on residence permits and its alleged discriminatory nature. Number of systemic problems were identified while studying and conducting cases. More specifically:

Evidence gathered by State Security Service, which are to prove that residence permit-seeker presents threat to state and/or public interests of Georgia, is secret.

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<sup>65</sup> Law of Georgia on Legal Status of Foreigners and Stateless Persons, Article 18.

At no stage of case proceedings is the permit-seeker allowed to get acquainted with the evidence gathered against him/her. Therefore, during such case proceedings, it is extremely difficult to prepare appropriate position and utilize the right to fair trial. At the same time, the volume of evidence handed to the court is unknown to parties, which, raises relevant suspicions on justification of court decisions.

It is also noticeable that each of the individual cases of posing a threat to state and/or public order is a crime regulated under the Criminal Code of Georgia. In case of indication information on such criminal activity in the conclusion of the authorized agency, law enforcement agencies are to start appropriate investigation. However, this is not happening. Therefore, suspicion on selective approach is even stronger.

TDI believes this could also mean violation of right for fair trial: the court does not or cannot investigate preconditions of recommendations issued by State Security Service, while the residence permit-seeker, due to state secret status of the conclusion issued by Security Service, does not have the opportunity to know the grounds of such recommendation. The permit-seeker is completely deprived of the possibility to submit argument-driven counter-position.

During court cases with the request of issuing residence permit, none of the requests of TDI, to eliminate discriminatory treatment are satisfied. Often, claims of discrimination, elimination of its results and compensation for moral damage are left without further study or analysis by the court. The court has a crucial role to study in-depth whether refusal to residence permit is part or result of discriminatory policy of the state. Analysis of the cases conducted also raise the questions on arguments on lack of discrimination provided as part of justification in court decisions, which mainly cites legal basis and court practices. It can be said that neither court, nor executive government considers identification of discrimination cases or pursuing anti-discriminatory policy towards foreigners as a priority.

In parallel to court proceedings, on February 23, 2017, TDI also applied to Public Defender of Georgia on 6 cases, which indicated state or public security interests as reasons for refusing residence permits. The purpose of the appeal was to study legitimacy of refusal to residence permits, as the Public Defender has the authority of requesting information from the State Security Service and assessing its legitimacy.

On May 3, 2018, the Public Defender notified TDI in writing that full information and documents were requested from the State Security Service. The Service refused to issue requested information to the Public Defender on three cases, due to state secrecy. Public Defender did not receive response on 2 cases, while information of secret status was provided for one case. According to the letter of Public Defender dated by January 30, 2019, Public Defender is yet to receive appropriate documentation, or has yet to complete case proceedings.

### ***Residence permit for family reunification purposes***

**On April 24, 2018, State Services Development Agency, based on the conclusion of the Intelligence Department of State Security Service, refused a residence permit to the citizen of Nigeria, whose spouse and child are citizens of Georgia.**

On May 22, 2018, the citizen of Nigeria filed a claim<sup>66</sup> to Tbilisi City Court requesting annulment of individual administrative decree on refusal to grant residence permit, and elimination of racial/ethnic discrimination. State Services Development Agency and State Security Service are respondents to the case.

Information and evidence serving as the basis of the conclusion of the State Security Service on inappropriateness of Nigerian citizen living in Georgia are not accessible to the claimant, as they are labelled as state secret. Also, since the conclusion of the State Security Service is not an administrative decree, it is beyond regulation of General Administrative Code.

With its decision on July 3, 2018, Administrative Panel of Tbilisi City Court did not satisfy the claim. In its decision the Panel indicated that the fact of LEPL Services Development Agency exceeding its discretion power was not established, which means its action regarding refusal of the residence permit was rendered legal. It should be noted that the court did not discuss the principle of family unity or competing private and public interests in its decision at all. Decision of the court of the first instance was appealed to the Court of Appeals on July 31, 2018.

**Another citizen of Nigeria faced the same issue. Spouse and minor child are citizens of Georgia. He's been trying to obtain residence permit since 2016.**

On December 19, Tbilisi City Court satisfied his claim and instructed Service Development Agency to issue a new administrative decree on residence permit. The Agency appealed the decision to higher court. Tbilisi Court of Appeals left the decision of Tbilisi City Court in force, and the decision of Court of Appeals entered its legal force.<sup>67</sup>

In its decision, Tbilisi Court of Appeals noted that at any stage of making a decision on issuing residence permit by the administrative entity, the principle of family unity should be protected. Separation of a family member should only take place in exceptional cases. The Court noted that this particular case had no such special grounds to separate the claimant from a family through refusing residence permit<sup>68</sup>.

Above examples indicated that in some cases, the State refuses residence permit to foreigners even if they request permits for family reunification purposes. However, when the dispute is about study or work residence permit, the court, almost always shares the position of Service Development Agency and State Security Service and does not satisfy the claim.

### **Short-term residence permit**

On September 20, 2017, citizen of Iran, owner of fixed assets, addressed State Service Development Agency of the Ministry of Justice of Georgia with the request for short-term residence permit.

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66 The interests of the claimant in court were represented by TDI.

67 The interests of the claimant in court were represented by TDI.

68 Decision of Administrative Panel of Tbilisi City Court of December 19, 2016, on case №3/7115-16, motivation section, para 6.3, p. 9.

In response to the request, State Service Development Agency, with its decision of October 2, 2017, refused short-term residence permit based on the conclusion of intelligence department of State Security Service, stating that the person is engaged in activities posing danger to public security and state order of Georgia.<sup>69</sup>

On October 20, 2017, the citizen of Iran appealed the decision of the Service to Administrative Panel of Tbilisi Court of Appeals, requesting annulment of the decision due to lack of justification, issuing short-term residence permit, and elimination of possible discrimination based on ethnic origin. According to the claimant, given decision could be discriminatory due to his national and/or religious belonging. With February 28, 2018 court decision the claim was not satisfied. Therefore, decision was appealed on May 15, 2018<sup>70</sup>.

Due to various barriers created as a result of refusal of residence permits (gaining right for legal stay in Georgia, issue regarding frequent and short term extensions of legal stay in Georgia, the citizen of Iran was forced to leave Georgia. On December 18, 2018, the court ruled to discontinue case proceedings.

### **Work residence permit**

Citizen of Nigeria, living in Georgia since May 20, 2012, addressed the Service Development Agency on September 27, 2017, with the request to grant work residence permit. On October 9, 2017 he was refused the permit on the grounds of his activities posing threat to public order and security of the country. These arguments were provided in the conclusion of State Security Agency.

Citizen of Nigeria successfully graduated from one of the universities of Georgia in 2017. Between 2012-2017 he received work permit four times, without any problems. He is also engaged in religious activities in Georgia, as a clergyman.

On October 30, 2017 citizen of Nigeria appealed to Tbilisi City Court.<sup>71</sup>

Similar to other cases, information and evidence on inappropriateness of the citizen of Nigeria to reside in Georgia that served as the basis for negative conclusion of the State Security Service, was unavailable to the parties due to state secret status of these materials.

Based on April 23, 2018 decision, Administrative Panel of Tbilisi City Court did not satisfy the claim. The decision was appealed to Tbilisi Court of Appeals on June 7, 2018. Based on November 29, 2018 decision, Tbilisi Court of Appeals did not satisfy the claim and left the decision of City Court on refusal to work residence permit in force<sup>72</sup>.

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69 According to Article 18a of the Law of Georgia on Legal Status of Foreigners and Stateless Persons, grounds for rejection of permission is the conclusion of authorized entity on inappropriateness of the applicant's stay in Georgia "for the reasons of protection of state and/or public security interests", while according to article 18c, "he/she is engaged in activities that pose a threat to state security and/or state order of Georgia".

70 The interests of the claimant in court were represented by TDI.

71 The interests of the claimant in court were represented by TDI.

72 As of February 2019, the party has not received justified decision. Therefore, decision of the Court of Appeals is not appealed to the court of higher instance.

## Study residence permit

Foreign students, mainly those from African countries often come to TDI for legal advice on study residence permits. To be noted, students with active student status are also often refused study residence permit. They also often face the obstacle of not being given enough days (less than 40 days) for extending legal stay in Georgia which, based on law requirements, serves as a ground for them not being able to file a new application on residence permit. Therefore, they often are not able to reach the stage when Service Development Agency reviews the application on study residence permit. Such students are often obliged to stop their studies and leave Georgia, since they cannot obtain study residence permit and therefore, legal grounds for being in Georgia.

## Other Procedural Barriers Related to Obtaining a Residence Permit

Lately foreigners, who have ongoing dispute in the court, or wish to re-apply to LEPL State Service Development Agency for residence permit or citizenship, face barriers related to unjustifiably short period for extension of legal stay in Georgia (postponement of requirement to leave Georgia).

Foreigners that have exhausted the period of legal stay in Georgia, apply to LEPL State Service Development Agency with request to prolong time period for leaving Georgia. Application has to be submitted 7 calendar days prior to expiration of the deadline for leaving Georgia, while application for obtaining residence permit has to be submitted 40 calendar days before expiration of legal stay in Georgia.<sup>73</sup>

Previously, deadline for legal stay in Georgia was extended to the period of up to 3 months<sup>74</sup> for foreigners; however, lately, this time period is only 10-20 days. This deprives foreigners of possibility to once again apply for residence permit. The situation creates additional financial burden for foreigners engaged in court proceedings. They have to get a certification from the court once every 10-20 days and re-apply to State Service Development Agency, which is a paid service.<sup>75</sup> Such practice shows discriminatory policy towards foreigners, especially citizens of Asian and African countries.

## Legal Initiatives and Amendments with Respect to Rules for Granting Georgian Citizenship, Visas and Residence Permits

Obtaining legal permits and activities of citizens of Asian and African countries is a tool for manipulating public opinion, used by populist groups and parties. Their programs are often based on ethnic, religious and racist stereotypes. To strengthen and prove their positions, they bring social-economic and cultural arguments. In Georgian context, populist groups, alongside with political statements, use legal leverages towards migrants and representatives of certain countries. Lately, number of legal initiatives were prepared with suggestions for toughening regulations for residence permits, visa, and citizenship.

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73 Article 3(4) of Resolution 520 of the Government of Georgia on Approval of Regulations on Revision of and Resolution Issuing of Residence Permit of Georgia.

74 Article 47(2) of the Law of Georgia on Legal Status of Foreigners and Stateless Persons as well as Articles 48(1) para A, 48(3) and 48(4)

75 Resolution 508 of the Government of Georgia on Approval of Regulations for Determining Timeframes for Provision of Services by the Counsel within the Framework of Authority and Delegated Authority of LEPL Civil Registry Agency of the Ministry of Justice, and Payment of Such Fees, Paragraph 2.27. Payment.

## Residence permits

On May 10, 2018 official web-page of the Ministry of Justice published information<sup>76</sup> on planned legal amendments to regulations on residence permits. The author of the amendments is the Ministry of Justice, while Ministry of Foreign Affairs, Ministry of Internal Affairs, and then Ministry of Refugees and Accommodation of Georgia as well as State Security Service also participated in the process.

According to public information the following will be amended:

**Permanent Residence Permit:** Current legislation allows permanent residence permit under the precondition of 6 years of legal residence on the territory of Georgia (for example, using other residence permits). Ministry of Justice proposes to increase this period to 10 years.

**Temporary residence permit** would be granted to a foreigner for maximum cumulative of 12 years (such residence permits are issued for short period of time – 1 or 2 years). According to current legislation a foreigner may obtain temporary residence permit several times, but no longer than cumulative 6 years.

According to the proposal, work, study, family reunification, Georgian citizenship, stateless person, permanent residence and short-term residence permits will no longer be issued based on category C ordinary visas.<sup>77</sup>

Ministry of Justice is willing to share the initiative of the Ministry of Economy on increased fee for the short-term residence permit.<sup>78</sup>

**As of January 2019, the web-page of the Parliament of Georgia does not report the package as having been initiated.**

On November 6, 2018, Legal Issues Committee of the Parliament of Georgia conducted a second hearing of legislative initiative regarding Law of Georgia on Legal Status of Aliens and Stateless Persons. The hearing was for the draft bill, which introduces more difficult conditions for obtaining work, short-term investment and permanent permits as well as category D5 visas.<sup>79</sup> The parliament is also reviewing two additional draft bills, which also offer more difficult conditions to foreigners to obtain various residence permits. All three legal initiatives emphasize economic income of foreigners, and one of the goals is to reduce migration of foreigners with low income.

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76 [http://www.justice.gov.ge/News/Detail?newsId=7681&fbclid=IwAR2CDZwNEbxs4vgudT\\_hee3IKzzmR8mFKYlggJVBV4XLSdkuxzN8jjsJc0g](http://www.justice.gov.ge/News/Detail?newsId=7681&fbclid=IwAR2CDZwNEbxs4vgudT_hee3IKzzmR8mFKYlggJVBV4XLSdkuxzN8jjsJc0g) [Last accessed: 6 February /2019].

77 Ordinary visa can be of: (a) Category C1 – persons coming to Georgia for tourism; (b) Category C2 – persons coming to Georgia to visit friends and relatives; (c) Category C3 – persons coming to Georgia for business meetings and negotiations, participants of scientific seminars, conferences and other scientific-research, teaching, cultural or sports events; (d) Category C4 – provision of humanitarian assistance in case of threat to life and health, persons coming to Georgia with charity purposes, guardian of caregiver of the citizen of Georgia. Resolution 524 of the Government of Georgia on Approval of Regulations for Issuing Visa of Georgia, Its Extension and Suspension. Article 5.

78 Issuing short-term residence permit to a foreigner who has ownership of fixed assets on the territory of Georgia (apart from agricultural lands), the market value of which is above 35,000 USD equivalent in GEL. Short-term residence permit may be issued to a foreigner for the period of up to 1 year. The permit is suspended if the ownership of the foreigner on the given fixed asset is suspended. Law of Georgia on Legal Status of Foreigners and Stateless Persons, Articles 15.1, 16.3.1, March 5, 2015.

79 Category D5 is issued to a person and his/her family members that own fixed assets in Georgia (apart from agricultural lands), the market value of which is above 35,000 USD equivalent in GEL. Law of Georgia on Legal Status of Foreigners and Stateless Persons, Article 7.2.d.e, March 5, 2015.

According to the draft bill <sup>80</sup> initiated<sup>81</sup> by the **members of the Parliament, Gocha Enukidze and Ivliane Tsulaia**, in order to obtain work residence permit, the foreigner has to meet the following criteria:

- ▶ Along with document certifying employment or entrepreneurial activities, the amount of salary must be indicated, which should not be less than five times the subsistence minimum (current legislation requires only documents certifying work or entrepreneurial activity);
- ▶ Residence permit-seeker is limited in the choice of employer: employer/enterprise turnover should be above 50,000 GEL (this criterion did not exist before);
- ▶ Issuing work residence permit would be impossible for a freelance person.<sup>82</sup>

In order to obtain permanent residence permit,<sup>83</sup> up to now 5-year investment permit was sufficient. The new draft bill introduces additional requirement of investor submitting certification for annual 120,000 USD turnover. Initial 300,000 GEL investment amount increases to 300,000 USD.

Short-term residence permit and D5 category visa now increases minimum market value for the assets from 35,000 USD to 100,000 USD.

Initiators of the draft bill have the following arguments for proposed changes: *current legislation requires quite low amounts for residence permit, which, in current reality and considering current migration level, is below rational minimal threshold. This, instead of attracting investments and supporting economic advancement of the country, supports "massive migration of foreign citizens (mainly, financially challenged)".*

As of February 2019, remaining two draft bills have not yet been reviewed by the Parliament.

**On November 15, 2018, legislative initiative of Zviad Tomaradze and 30,000 citizens was registered.<sup>84</sup>** According to the proposed draft bill:

Currently, a foreign citizen is entitled to permanent residence permit in two cases: residing in Georgia using temporary permit for the past 6 years, or having Georgian citizen spouse, child, or parent. According to the proposed draft bill, a foreigner may only obtain residence permit in case of meeting second criteria only.

**Short-term residence permit<sup>85</sup>** category is annulled.

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80 Bill of Law on Changes and Amendments to the Law of Georgia on Legal Status of Foreigners and Stateless Persons. Available in Georgian at: <https://info.parliament.ge/#law-drafting/15819>

81 On 6 November 2018, the Parliament of Georgia supported proposed changes and amendments to the Law of Georgia on Legal Status of Foreigners and Stateless Persons through second hearing.

82 Freelance person – person of certain occupation, which, for benefit of persons or social interests conducts professional activities independently, under own supervision. Law of Georgia on Legal Status of Foreigners and Stateless Persons, Article 2.2.I. 5 March 2015.

83 Second hearing of the bill of law; files linked to the package; notes; formulation of Ivliane Tsulaia: Available in Georgian at: <https://info.parliament.ge/file/1/BillPackageContent/13885> [Last accessed: 6 February 2019, 18:13].

84 Bill of Law on Changes and Amendments to the Law of Georgia on Legal Status of Foreigners and Stateless Persons. Available in Georgian at: .

85 Issuing short-term residence permit to a foreigner who has ownership of fixed assets on the territory of Georgia (apart from agricultural lands), the market value of which is above 35,000 USD equivalent in GEL. Short-term residence permit may be issued to a foreigner for the period of up to 1 year. The permit is suspended if the ownership of the foreigner on the given fixed asset is suspended. Law of Georgia on Legal Status of Foreigners and Stateless Persons, Articles 15.I, 16.3.1, March 5, 2015.

**Investment residence permit** now requires a foreigner to raise minimum investment amount of 500,000 USD instead of 30,000 GEL. In addition, investor will be obliged to employ 50 Georgian citizens. However, investment permit should not be permanent, and should be issued for maximum 6 years.

*According to the explanatory note, initiators believe that current law is “also dangerous in terms of security of the country [...] Considering difficult demographic situation and scale of migration, existing approach to migration will definitely alter ethno-cultural balance against the interest of aborigine population” [...] “for the past few years Georgia has become an attractive country for Asian and African migrants.”*

**On September 20, 2018, Nationalist Movement** also addressed the Parliament with legislative initiative,<sup>86</sup> which mainly covers changes to regulations of permanent residence, investment, short-term and work residence permits.

Suggested draft bill limits foreign citizens in choice of desired profession and occupation. According to initiators, the Parliament has to approve the list of professions/occupations that would allow employment of foreigners.

Similar to the draft bill proposed by 30,000 citizens, draft bill of Nationalist Movement also abolishes short-term residence permits.

For **investment residence permit**, the investor should meet one of the two criteria: purchase 400,000 USD worth of treasury stock for the period of 5 years or invest 300,000 USD (as a change from current legislation, currency of investment amount is changed and purchase of stock from the state is added). At the same time, the investor is to employ 8 citizens of Georgia.

The new draft bill imposes additional requirements to the employer before issuing **work residence permit**. The employer is to seek Georgian citizen for the job in the first place and only then sign agreement with the foreigner.

In order to obtain **permanent residence permit**, 6 years of legally residing in Georgia using temporary residence permits is not enough. Knowledge of state language will be compulsory together with two alternative conditions: at least 300,000 USD investment, or purchase of 200,000 USD-worth of real assets.

*According to explanatory note of the draft bill, “maintenance of the same migrating policy will soon create a threat to social stability and cause radicalization of political space of Georgia. Current policy allows migration of foreign citizens with financial problems, and it does not serve the purpose of improving economic and social environment of the country. Migration tempo is quite high in Georgia.”*

## Citizenship

On July 21, 2018 organic Law of Georgia on Citizenship was amended to make regulations for obtaining Georgian citizenship stricter.

According to the version of the law before amendment, Georgian citizenship was accessible to any full-aged person meeting requirement of 5-year uninterrupted residency in Georgia. According to the new amendments, Georgian citizenship is granted only after 10 years of uninterrupted residency in the country.<sup>87</sup>

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<sup>86</sup> Bill of Law on Changes and Amendments to the Law of Georgia on Legal Status of Foreigners and Stateless Persons. Available in Georgian at: <https://info.parliament.ge/#law-drafting/16397>

<sup>87</sup> Article 12(1) para A of the Law of Georgia on Citizenship

The law imposes additional requirements to persons married to Georgian citizens. According to the version of the law before amendment, simplified procedure for citizenship envisaged 2 years of uninterrupted residence, which is now increased to 5 years.<sup>88</sup>

Amendments were made to the exceptional cases of granting Georgian citizenship. According to the previous version, in exceptional cases, President of Georgia granted citizenship to foreigners who had a special achievement for Georgia, or granting citizenship served the purpose of state interests. New amendments, while assessing state interests while granting citizenship, envisages number of conditions, which were not in place before.<sup>89</sup>

## Statistical Data Related to Refusals and Grounds of Residence Permits by the State

Public information requested by TDI from LEPL State Service Development Agency<sup>90</sup> shows that during the period of January 1, 2012 to October 27, 2017,<sup>91</sup> 12,168 residence permit-seekers were refused the permit with an argument of sufficient grounds for presuming that applicant would pose a threat to state security, territorial unity and public order. Out of this number of rejected applicants, 10,050 (82.6%) were from African or Asian countries.

According to official statistical data, persons of Nigerian, Cameroon, Egyptian, Indian, Bangladesh and Pakistan origin are most frequently refused residence permits. Refusal, in most cases, is based on the negative conclusion of the State Security Service. As a comparison, we analyzed data for residence permits for persons of Russian origin. For example, State Service Development Agency refused 26% of Nigerian applicants, 37% in case of Egyptians, and 6.2% of Russians<sup>92</sup> (2012-2017). In cases of persons of European or American origin, refusal rates are much lower. For example, during 2012-2017 (27.10), refusal statistics is as follows: France – none, Netherlands – 1.9%, Poland – 0.5%, Lithuania and Estonia – none, USA – 0.01%.

Diagrams below show refusals to representatives of different countries. To illustrate tendencies of the state policy towards foreigners, 2012-2017 data was processed and analyzed. It also shows number of cases when rejection is based on the recommendation of authorized entity (State Security Service).

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88 Article 14(1) of the Law of Georgia on Citizenship

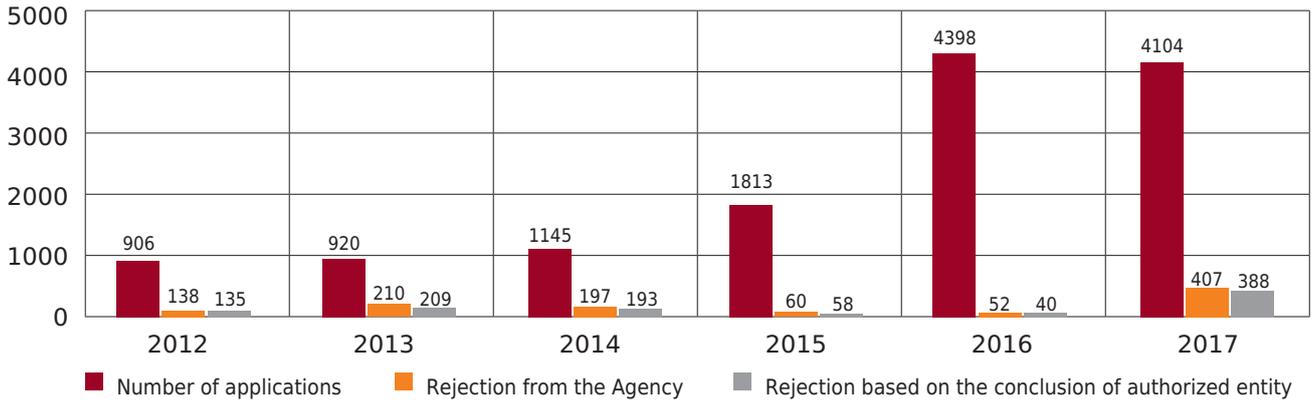
89 Article 17(2) of the Law of Georgia on Citizenship

90 State Service Development Agency, letter №01/341004, 9 December 2017

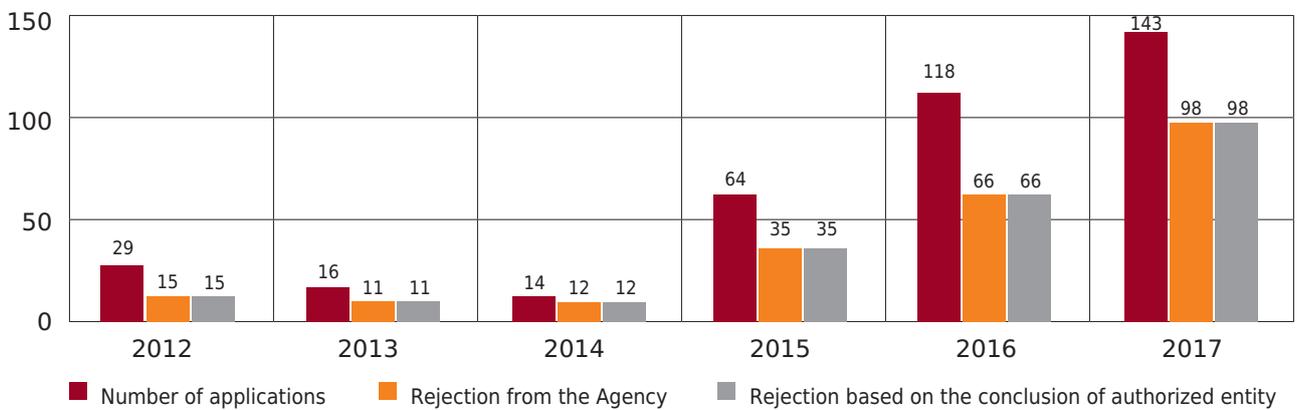
91 With the purpose of retrieving statistical data for 2017-2018, TDI addressed State Services development Agency several times. As of February 2019, the Agency has not provided any statistics.

92 6.2% includes former citizens of Georgia. Refusals excluding the latter is 5.8%.

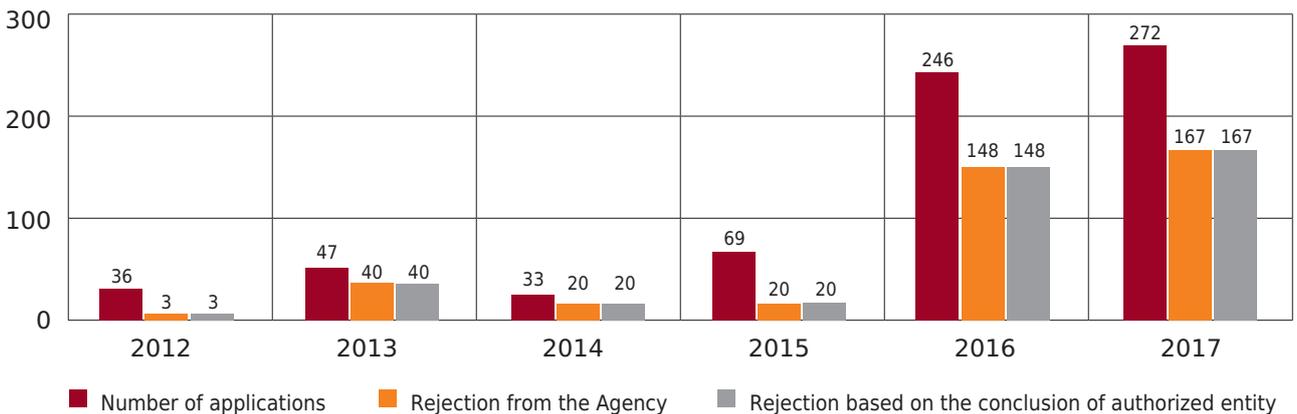
**Diagram 4. India**



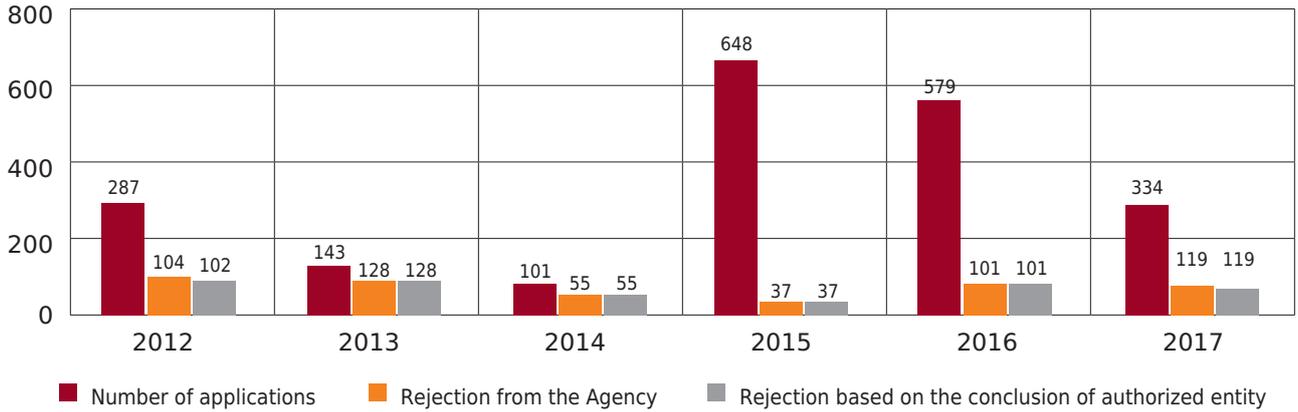
**Diagram 5. Bangladesh**



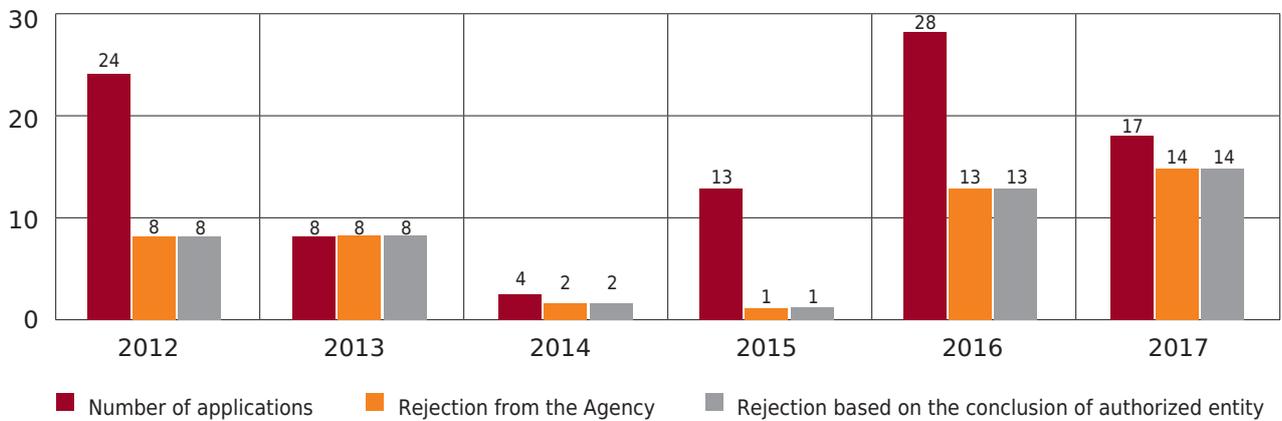
**Diagram 6. Pakistan**



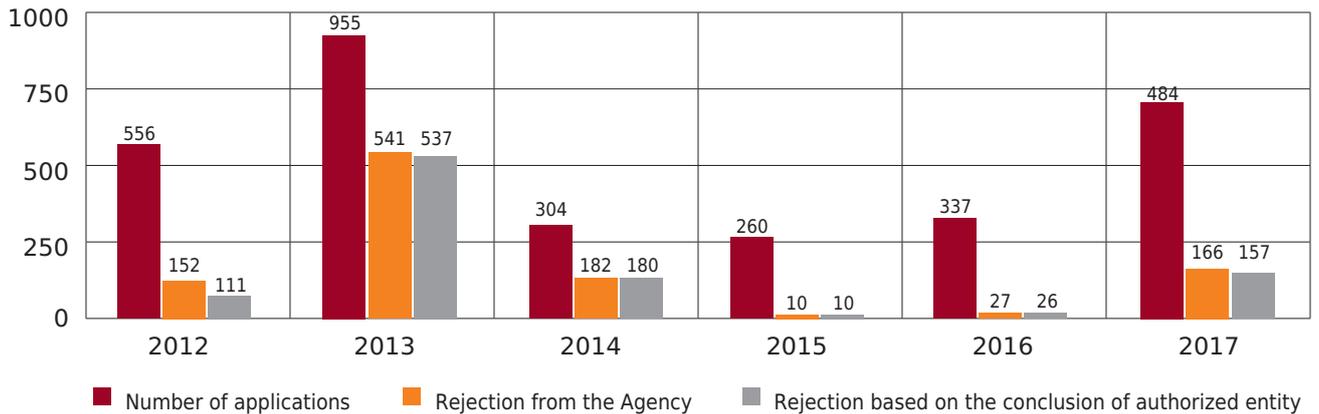
**Diagram 7. Nigeria**



**Diagram 8. Cameroon**



**Diagram 9. Egypt**



## State Policy Towards Asylum-Seekers in Georgia

The issue of granting refugee or humanitarian status to asylum-seekers is problematic, similar to residence permits. On July 5, 2018<sup>93</sup> the Ministry of Internally Displaced Persons from Occupied Territories, Refugees and Accommodation was annulled. Its functions and authority on migration and international protection were transferred to Migration Department of the Ministry of Internal Affairs. Therefore, the status of a refugee or a humanitarian status is now granted by Migration Department of the Ministry of Foreign Affairs of Georgia. According to general practice, in most cases, such status is granted based on recommendation of the State Security Service. According to the Law of Georgia on International Protection, if needed, the Ministry addresses the State Security Service to receive recommendations on asylum-seeker entering Georgia illegally, refugee or person with humanitarian status about creating potential threat to state security of Georgia.<sup>94</sup>

TDI assisted two citizens, of Egypt and Iran with cases of asylum-seeking and granting refugee status. One of the cases was about a person converting from Islam to Christianity, who was prosecuted in the country of origin.<sup>95</sup> Another case was of a family, also converted to Christianity from Islam, who were also prosecuted in their country of origin.<sup>96</sup> In both cases, refusal to grant refugee or humanitarian status was based on the argument of having sufficient reasons to assume that their residence in Georgia would pose a threat to state security, territorial unity, or public order of Georgia. While making its decision, the Ministry relied on and shared recommendation of the State Security Service. It should be noted that European Commission – one of the main institutes of EU – responded to the fact of refusing refugee or humanitarian status to asylum-seekers on the grounds of state security. In its 2017 report on implementation of visa liberalization requirements by Georgia, the Commission raises a concern that majority of refusals to asylum-seekers are rejected with the reason of state security. The report emphasizes increased tendency of such rejections during first half of 2017, as compared to 2016 and 2015. More specifically, rejections on the grounds of state security were 4-5% during 2015-2016, while the figure increased to 26% during the first half of 2017.<sup>97</sup>

According to official statistics,<sup>98</sup> majority of cumulative cases on rejection to asylum fall on Iraq, Egypt, Turkey, Bangladesh.

## Issues Related to the Crossing of the Georgian State Border by Foreign Nationals

Over the past few years, the policy towards foreigners crossing the state border of Georgia has become stricter. The state often rejects entry to representatives of specific countries on the grounds of justified refusal.

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93 Law of Georgia on Amendments to Law on Regulation of the Structure of the Government, Authority, and Rules of Activities, July 5, 2018 №3024-RS.

94 Law of Georgia on International Protection, Article 67(2) para B

95 TDI's information: The Court Annulled Rejection to Asylum to the Citizen of Egypt, 21 December 2017. Available in Georgian at: <http://tdi.ge/ge/news/491-egvptis-mokalakistvis-tavshesapris-micemaze-uari-sasamartlom-batilad-cno>

96 See TDI's information: The Court Assigned the Ministry to Grant Refugee Status to the Citizens of Iraq, 17 January 2018. Available in Georgian at: <http://tdi.ge/ge/news/510-sasamartlom-saministros-eraqis-mokalakeebistvis-itolvilis-statusis-minicheba-daavala>

97 Report: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/20171220\\_first\\_report\\_under\\_suspension\\_mechanism\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/20171220_first_report_under_suspension_mechanism_en.pdf) p. 10 [Last accessed: 4 February 2019].

98 Statistics: <http://mra.gov.ge/res/docs/2018030216100235786.pdf?fbclid=IwAR3v1AKPcKsiqLKNilwnWrgCHnpujPgiQNzP3JN4y9BmrVanMWiz-K46tDdo>

According to the Ministry of Internal Affairs, during 2018 majority of rejections to cross the border falls on citizens of Iran and India (Iran – 3224m India – 2254). There is no statistics maintained on the grounds for such rejections<sup>99</sup> (See Diagram #11 for full statistics for 2018).

**Citizen of India** that came to Georgia as a tourist, was not allowed into the country on June 29, 2017. According to the person,<sup>100</sup> Georgian border security insulted him, made him wait at Tbilisi International Airport, and deported back to India after 9 hours. As the citizen of India states, he had all required documents with him: Visa, letter from employer certifying he was on holiday and would return after the trip, bank statement certifying his financial stability, hotel booking and health and travel insurance.

**Citizen of Iran**, with stage name DJ Ahu was not allowed in Georgia on November 30, 2018. According to Mtkvari Club, the musician had to participate in a show on December 1. The Club published rejection document, which indicated reason for refusal as “musician did not give sufficient information or gave fake information on own identity and purpose of visit.”

On December 10 Speaker of Ministry of Iran responded to increased tendency of limiting entry to the citizens of Iran to Georgia and called its citizens to refrain from traveling to this country. He responded to the same issue on December 3 as well, stating that up to 200 citizens of Iran were refused entry to Georgia within previous month.

### ***Unjustified rejection to the citizen of Azerbaijan on crossing the border***

One of the beneficiaries of TDI faced a problem while crossing the Georgian border. Spouse of the citizen of Georgia, citizen of Azerbaijan was unable to cross the border in spite of trying twice.

On February 22, 2018, during his second attempt to enter Georgia through Georgia-Azerbaijan border immigration checkpoint by the Red Bridge, during the passport control the border guards asked him to wait. After waiting for about an hour with a minor child, she was refused to enter Georgia. According to the written document produced by Kvemo Kartli Main Agency of Patrol Police Department officers, reason for refusal of entry was that she “does not meet other conditions stipulated by the law” – the only ground and the most general legislative norm.<sup>101</sup>

On March 23, 2018, action of Kvemo Kartli Main Agency of Patrol Police Department officers was appealed to the Border Police of the Ministry of Internal Affairs of Georgia, according to Administrative regulations.<sup>102</sup> Administrative claim was not satisfied. On March 27, 2018, such decision of the Border Police was appealed to the court.

It should be noted that administrative decree, limiting entry of Azerbaijani citizen to Georgia does not meet the criteria for justification. Neither Patrol Police Department, nor above administrative body met legal requirements of providing justification to the decision.

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99 <https://info.police.ge/uploads/5c499dc17ae74.pdf>

100 Citizen of India posted about this on his Facebook page, and wrote a letter to the Ambassador of India to Georgia.

101 Article 11(1) para I of the Law of Georgia on Legal Status of Foreigners and Stateless Persons, according to which a foreigner may be refused a Georgian visa or entry to Georgia: [...] in other cases stipulated by Georgian legislation.

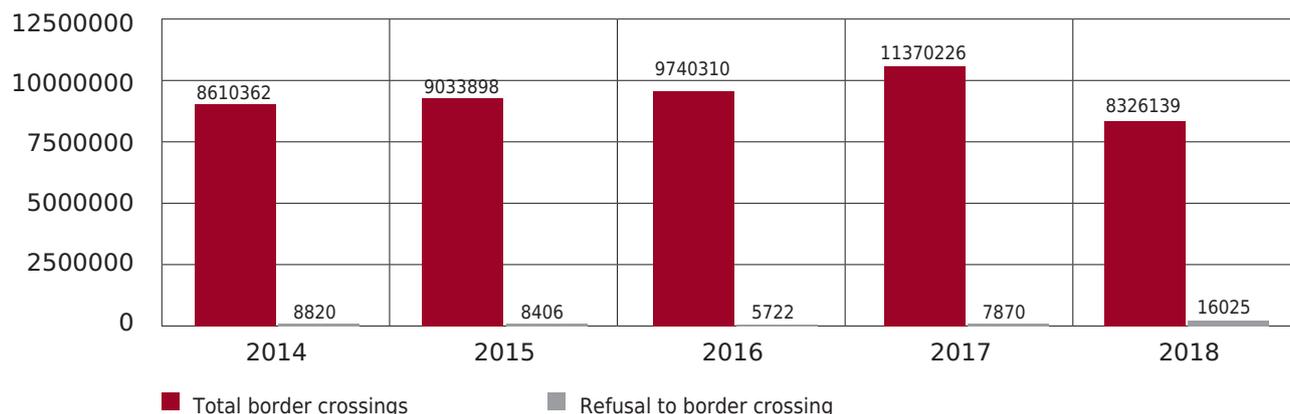
102 TDI defends interests of citizen of Azerbaijan.

Principle of family unity was also violated in the given case. The claimant is deprived of the opportunity to live in Georgia together with family, especially that there are no grounds to limitation of such rights.

Court Sessions were held on September 24 and October 2018, while Court decision of October 18 did not satisfy the claim. Decision of Rustavi City Court was appealed to Tbilisi Court of Appeals.<sup>103</sup>

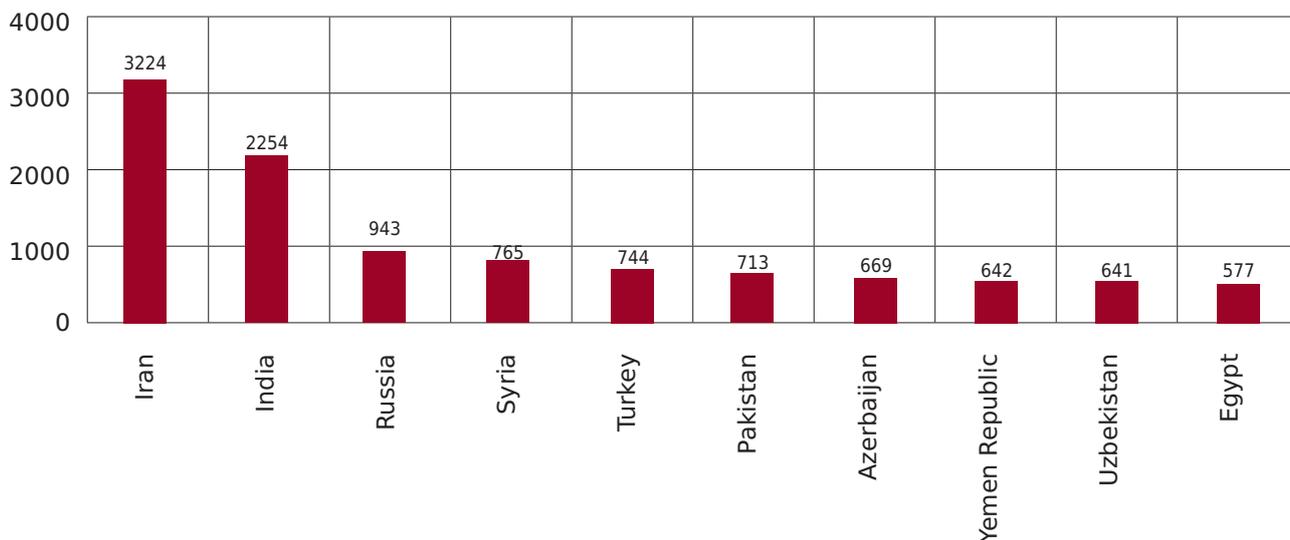
## Statistics of Border Crossing

**Diagram 10. Border crossing statistics**



According to statistics, refusal to foreigners crossing Georgia border is highest for 2018 and 2014 (percentage compared to total number of foreigners crossing the border).

**Diagram 11. 10 countries with most rejections to cross Georgian border**



The diagram indicates statistical information of 10 countries that had most rejections to crossing the border to Georgia in 2018:<sup>104</sup>

<sup>103</sup> As of February 2019, appellation case consideration has not commenced.

<sup>104</sup> Official statistics of the Ministry of Internal Affairs. Available at: <https://info.police.ge/uploads/5c499dc17ae74.pdf>

Based on the information provided by the Ministry of Internal Affairs of Georgia,<sup>105</sup> TDI processed data for 2014-2018 regarding foreigners crossing Georgian border through border-immigration checkpoints.

Statistics show that for the past three years (2016-2018) citizens of **India** (4817), **Iran** (3555) and **Azerbaijan** (2367) were most frequently refused entry to Georgia. For the past five years (2014-2018), citizens of **Iran** (5652), **Turkey** (5421) and **India** (5276) were rejected most.

Looking at yearly dynamics and comparison of foreigners wishing to cross Georgian border during 2014-2017 and cumulative percentage of persons rejected entry into Georgia shows that citizens of Iraq and India are most frequently refused entry to Georgia.

Ministry of Internal Affairs does not maintain registry of grounds for refusal of entry to foreign citizens.

## Restrictions Related to Purchasing Land by Foreign Nationals

The issue of selling agricultural lands has caused intensive debates within political and social groups. During pre-election period, different groups used the issue of selling land to foreigners for their political purposes. Regulations on acquisition-sales of agricultural lands changed several times since 2011.

As of February 2019, if a foreign citizen decides to purchase agricultural land, he/she should apply to the National Agency of Public Registry of Ministry of Justice, although the application will be stopped until the adoption of the organic law.

On December 16, 2018 new amendments to the Constitution of Georgia came into force,<sup>106</sup> according to which agricultural lands were labeled as “resource of special importance”. Ownership over agricultural lands rests exclusively with the state only, self-governing unit, citizen of Georgia, or union of citizens of Georgia.

The Constitution allows an exception, which should be regulated by the organic law. Adoption of organic law requires same parliamentary quorum as constitutional law on making changes and amendments to the Constitution (majority of the total members of the parliament, no less than 2/3).

The Parliament started working on the draft bill of organic law before the new Constitutional changes entered legal force. Agrarian Issues Committee of the Parliament held working meetings with the council of investors, bank associations, business associations and American Chamber of Commerce. The Parliament plans consultations with the Patriarchy of Georgia as well.<sup>107</sup>

On December 10-11, 2018, protests were held in front of the Public Service Hall, where participants (representatives of Georgian March, Patriot Alliance Party and other groups) blocked the entrance of the Hall, not to enable

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<sup>105</sup> Ministry of Internal Affairs, letters #71802577507 (22/10/2018); #61802761547, 12 November 2018

<sup>106</sup> <https://matsne.gov.ge/ka/document/view/30346?publication=35> Constitution of Georgia. Document type: 786, Constitutional Law of Republic of Georgia, 23 March 2018.

<sup>107</sup> <http://www.parliament.ge/ge/saparlamento-saqmianoba/komitetebi/agrarul-sakitxta-komiteti/axali-ambebi-agraruli/otar-danelia-saso-flo-sameurneo-danishnulebis-miwis-shesaxebs-organuli-kanonis-proeqtis-taobaze-konsultaciebs-agrdzelebs.page> [Last accessed: 7 February 2018, 13:36].

foreign citizens register land. Participants of the demonstration protested to the decision of the Constitutional Court of Georgia.

On December 7, 2018 the Constitutional Court of Georgia annulled article 22.3<sup>3</sup> of the Law of Georgia on Ownership of Agricultural Lands<sup>108</sup> and thus annulled prohibition sales of agricultural lands to foreigners.<sup>109</sup>

Before the Constitutional Law came into force, the norm enabling foreign citizens, companies registered in foreign countries and companies registered in Georgia by foreign citizens to own agricultural lands (including inheritance) was suspended. Claimants, citizens of Greece – Prokophy Savvid and Diana Shamanidi indicated that the norm of the law was in conflict with requirements of article 21 of the Constitution (right to ownership) in force for that moment.<sup>110</sup>

Before 2018 the Constitutional Court considered two other claims related to foreigners right of ownership of agricultural land.

Initially, in 2012 the Constitutional Court decided<sup>111</sup> that the limitation<sup>112</sup> prohibiting foreigners to purchase agricultural lands and obliging to sell inherited land, was against requirements of the Constitution, as sensible balance between private and public interests was violated and that the limitation was disproportional. During Spring 2013, Gigla Agulashvili, Chair of Agrarian Committee and Zurab Tkemaladze, Chair of Economic Policy Committee developed a draft bill for immediately prohibiting acquisition and inheritance of agricultural lands by foreigners.<sup>113</sup> After this, since July 2013, temporary moratorium was introduced on selling land to foreigners.

On September 17, 2013, citizen of Austria appealed to the Constitutional Court on temporary moratorium on land acquisition.<sup>114</sup> The claimant argued that prohibition of agricultural land acquisition and inheritance was in conflict with ownership and equality rights guaranteed by the Constitution of Georgia.

Based on decision of 2014,<sup>115</sup> the Constitutional Court, without case consideration on merits, annulled disputable norms, the content of which was already reviewed by the Court.

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108 Before the Constitutional Law of Georgia enters its legal force, implementation of Article 4(b) of this law should be stopped. Law of Georgia on Agricultural Lands, article 22(3)<sup>3</sup>

109 See Decision of the Constitutional Court of Georgia, №3/10/1267,1268, 7 December 2018.

110 „1. The property and the right to inherit shall be recognized and guaranteed. The abrogation of the universal right to property, of the right to acquire, alienate and inherit property shall be impermissible. 2. The restriction of the rights referred to in the first paragraph shall be permissible for the purpose of the pressing social need in the cases determined by law and in accordance with a procedure established by law.” Article 21, Constitutional Law of Georgia of October 15, 2010 №3710.

111 Decision of the Constitutional Court of Georgia, 26 June 2012 №3/1/512.

112 “In cases described under sections 1<sup>1</sup>, 1<sup>2</sup> and 1<sup>3</sup> of this law, “foreigner and” which continues with words “legal entity registered abroad have ownership rights only to those agricultural lands...” “while foreigner – also for agricultural lands that he/she legitimately possessed as a citizen of Georgia, words “foreigner and” of article 4.1<sup>1</sup> and “foreigner and” of Article 4 .1<sup>2</sup> and Article 4. 1<sup>3</sup>. Law of Georgia on Possession of Agricultural Lands, Article 4.1.

113 Law of Georgia on Possession of Agricultural Land, Article 22(3): “Article 4(b) should be suspended until December 31, 2014.”

114 Mathias Hutter, citizen of Austria against the Parliament of Georgia, 14 June .2013, claim №-556.

115 Decision of the Constitutional Court of Georgia, 24 June 2014, №1/2/563.

## RECOMMENDATIONS

### *Legislative and Executive branches of the government should:*

- ▶ Pursue anti-discriminatory policy towards foreign citizens;
- ▶ Ensure combating racism, protect foreign citizens from discrimination, ensure their rights and freedoms by developing a policy, strategy and action plan, which will also shall be reflected under governmental human rights action plan.

### *Political parties and their representatives should:*

- ▶ Refrain from populist statements and those containing hate language which foster negative and xenophobic attitudes towards foreigners and migrants;
- ▶ Develop anti-discriminatory policy, action plan and declaration for inadmissibility of hate language.

### *LEPL State Service Development Agency should*

- ▶ Ensure appropriate justification of the negative decision while resolving the issue of granting residence permit to foreigners;
- ▶ Provide justification for the discretion used while resolving each of the cases;
- ▶ Not allow discrimination based on race/ethnic origin or other grounds during administrative proceedings.
- ▶ Regardless of negative conclusion of the State Security Service to each case of residence permit , appropriately study private interests of the permit-seeker during administrative proceedings, discuss conflict of private and public interests and justify discretion used while making decision in favor of one of the parties; with regard to residence permit for family reunification, pay particular attention to principle of family unity;
- ▶ Give extension for legal stay in Georgia for a reasonable period (up to 3 months) to foreigners that have on-going case trial in the Court on residence permit.

### *Ministry of Internal Affairs of Georgia should*

- ▶ Ensure immediate response to each of the cases of racial/ethnic intolerance, containing elements of crime;
- ▶ Quickly, effectively and genuinely investigate each of the crimes committed on the alleged grounds of racial/ethnic intolerance;

- ▶ While examining victims of violence committed on the basis of race/ethnic intolerance, identify and reflect in the examination records possible motives of racial/ethnic intolerance;
- ▶ Indicate possibility of intolerance motives and specific forms of intolerance into electronic case maintenance system;
- ▶ Develop policy and strategy on combating and prevention of hate crimes motivated by racial/ethnic intolerance;
- ▶ In each case provide justification to the administrative decree refusing entry to foreign citizens to Georgia;
- ▶ Improve data collection and tracking system for crimes committed on the grounds of intolerance.

### ***Prosecutor's Office of Georgia should***

- ▶ Ensure appropriate supervision of investigation of crimes committed on the grounds of racial/ethnic intolerance to conduct prompt, effective and objective investigation;
- ▶ Pay appropriate attention to the motives of racial/ethnic intolerance in alleged crimes and in case of sufficient grounds, identify such matter in the case at the investigation stage, while, if appropriate, the crime to be re-qualified;
- ▶ In case of sufficient grounds, ensure granting the status of the victim of crime committed on the grounds of racial/ethnic intolerance;
- ▶ Ensure that the decision on granting status of the victim describes the motive of racial/ethnic intolerance;
- ▶ At the time of criminal prosecution, identify the motive of possible racial/ethnic intolerance, including in the decision of accusing the suspect;
- ▶ Develop policy and strategy on combating and prevention of crimes committed on the grounds of racial/ethnic intolerance;
- ▶ Improve data collection and tracking system for crimes committed on the grounds of intolerance.

### ***State Security Service should:***

- ▶ Base its negative conclusions on inappropriateness of granting residence permits to foreigners on realistic and authentic evidence on a specific person posing threat to state and public interests;
- ▶ Ensure provision of state secret information and documentation to the Public Defender of Georgia under its authority to request and study documents of such state secret status, to study their legitimacy.

### ***Common Courts should:***

- ▶ Ensure in-depth study of the grounds of rejection of State Service Development Agency for each case of residence permit;
- ▶ Ensure in-depth study of claims on identifying discrimination, elimination of its results, and moral damage, and provide appropriate justification in case of refusing to satisfy such claims;
- ▶ Investigate preconditions of recommendations of the State Security Service on inappropriateness of issuing residence permits;
- ▶ In its reasoned decision for each case of residence permit discuss conflict of private and public interests, and with regard to residence permit for family reunification, Discuss the principle of family unity while issuing justified decision..

### ***Commercial banks and National Bank of Georgia should:***

- ▶ Not allow any discrimination towards foreigners, especially those from Asian and African countries on the basis of racial/ethnic or other grounds while providing banking services;
- ▶ Allow foreign students to open bank accounts, which would enable sending or receiving funds;
- ▶ National Bank of Georgia should follow instructions outlined in 04/04/2018 №13-4/5189 general proposal of Public Defender of Georgia.