

THE LEGAL STATUS OF FOREIGNERS AND RACISM IN GEORGIA

2023

REPORT



TOLERANCE AND DIVERSITY INSTITUTE (TDI)

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Introduction

This report analyzes the main trends and state policies regarding the rights of foreign nationals in Georgia in 2023. The results show that the main problems described by the TDI in previous reports have remained unresolved, and the state often applies a discriminatory approach to migrants of different origins, particularly those from Africa and Asia.

Nationals from African and Asian countries living in Georgia again speak of being treated differently and of the practice of discriminatory treatment in public or private relations. Their applications for residence permits continue to be met with discriminatory, unjustified refusals; the problem of unjustified denial to cross the border persists, as do cases of racial discrimination. Migrants encounter racist attitudes in various public and private places, such as renting an apartment, using public transport or stores, walking on the streets, and in other everyday situations.

The main obstacle to collecting and processing information for the report was government agencies' lack of transparency and accountability. As in the previous year, the agencies demonstrated low levels of accountability and generally failed to provide public information adequately. The most important source of information for the purposes of this report is relevant statistical data on the issuance of residence permits and border crossings in Georgia, which would include information on the citizenship of applicants, grounds for refusal, and some other criteria. Despite the TDI's repeated efforts, the organization has not been able to obtain complete information from the relevant government agencies, resulting in significant limitations to the report's final findings.

1. The state border crossing policy

The availability of comprehensive statistics is of crucial importance for assessing the legitimacy of the management practices of the state border crossing policy. Official statistics on persons crossing the state border of Georgia are not comprehensive. The Public Defender of Georgia also sees the absence of comprehensive databases on border crossing as a problem.¹

The TDI inquired as to how many foreign nationals and citizens of which countries had been denied entry into Georgia and on what grounds. However, the Ministry of Internal Affairs refused to provide such information. In its response, the Ministry said that “the statistical information on persons traveling across the state border of Georgia, which have been recorded and processed within the competence of the Ministry of Internal Affairs, is available on the Ministry’s official website,² where the aforementioned data is published with regular periodicity.” However, the data published on this website does not contain information about the number of foreign nationals who are not allowed to enter Georgia, their citizenships, and legal grounds for refusing entry.³

According to information provided by the Ministry of Internal Affairs to the Public Defender, as many as 4,138,882 foreign nationals entered Georgia in 2023, whereas 22,904 were refused entry. However, the Ministry does not publish information about the specific legal grounds for the refusal.⁴

As a common practice, the Interior Ministry, without further explanations and clarifications, refers to subparagraph “1” of paragraph 1 of Article 11 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons, according to which, in addition to the grounds listed in the same paragraph, a foreigner may be denied entry into Georgia in other cases provided for by the legislation of Georgia. The use of this norm shows the lack of transparency in the state’s practice, both in terms of interpretation of the law and in terms of justification of the decision taken.⁵

1 Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia, 2023, <https://ombudsman.ge/res/docs/2024052911382931838.pdf> pg.263

2 Statistical data of persons and transport crossing the state border of Georgia <https://info.police.ge/page?id=94>

3 Letter MIA 4 24 00237353 from the Ministry of Internal Affairs of Georgia, January 26, 2024.

4 Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia, 2023, <https://ombudsman.ge/res/docs/2024052911382931838.pdf> pg.263

5 Read more in the TDI’s report, “Legal Status of Foreigners and Racism in Georgia 2022.” Pg. 13-14. https://tdi.ge/sites/default/files/tdi_legal_status_of_foreigners_and_racism_in_georgia_2022_report.pdf

For the purpose of comparison, see also the Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia, 2023, <https://ombudsman.ge/res/docs/2024052911382931838.pdf> pg. 263

2. The problem of obtaining a residence permit

Assessing the tendencies in the issuance of residence permits has become significantly difficult because the Public Service Development Agency (hereinafter, the “Agency”) did not provide TDI with complete information. Therefore, the present report relies on focus groups, individual interviews conducted by TDI, and cases provided in the document. Based on the analysis of the above, it has been revealed that the practice of unjustified refusal to issue a residence permit remains a significant challenge, which, in almost all cases, is based on a negative opinion prepared by the State Security Service.

During 2023, the TDI applied to the Agency for statistical information on the applications for and issuance of residence permits.⁶ In particular, the TDI requested information on the number of applications for residence permits, permits issued, and the state’s refusals to issue them, indicating the relevant nationality; also, by country, how many refusals to grant residence permits were based on a negative opinion/recommendation of the State Security Service (based on subparagraphs “A” and/or “C” of paragraph 1 of Article 18 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons). The agency provided the TDI with incomplete information.⁷ In particular, the information provided by the Agency did not include the following:

- How many nationals and of which countries applied to the state for a residence permit;
- How many applications were approved in the case of each country;
- For each country, how many applicants were refused residence permits? Among them, in the case of each country, how many refusals were based on the negative opinion prepared by the State Security Service of Georgia (based on subparagraphs “A” and/or “C” of paragraph 1 of Article 18 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons);
- Despite the negative opinion prepared by the State Security Service (based on subparagraphs “A” and/or “C” of paragraph 1 of Article 18 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons), how many foreign citizens were issued residence permits;

⁶ Letter N898/01/2024 of the Tolerance and Diversity Institute (TDI) of January 22, 2024.

⁷ Letter N 01/35393 of the Public Service Development Agency of February 15, 2024.

In addition, the agency's letter did not explain why it provided only part of the requested information.

Due to the abovementioned, TDI additionally⁸ applied to the Agency and requested the indicated information, however, TDI did not receive any response from the Agency.

The TDI has been studying state policy towards migrants, especially those from African and Asian countries, for many years. The analysis of state policy shows that the state, particularly since 2015, has adopted a selective and discriminatory attitude towards issuing residence permits to nationals of these countries, which may be indicative of systemic racism.⁹

Official statistics for 2012–2017 showed that residence permits were most frequently denied to applicants from Nigeria, Cameroon, Egypt, India, Bangladesh, and Pakistan. In most cases, the refusal was based on a negative opinion from the State Security Service. For comparison, over the same period, 26% of Nigerians, 37% of Egyptians, and 6.2% of Russians had their applications for residence permits rejected.

Despite repeated attempts, as noted above, the TDI has not received the 2023 data from the Public Service Development Agency on the number of applications for residence permits, refusals to issue permits, and the grounds for the refusals by countries (including African and Asian countries) of applicants. Consequently, as obtaining public information has become significantly difficult, the TDI cannot fully evaluate the state policy towards foreign nationals and, among other things, the dynamics of systemic racism.

Nevertheless, the TDI regularly studies and observes the rights of migrants living in Georgia and provides them with legal support. To research racial discrimination, TDI conducted two focus group meetings and individual interviews with up to 20 foreign nationals during January–March 2024. During these focus groups and interviews, representatives of African and Asian countries noted that the state policy towards them is still discriminatory, and they often receive unjustified refusals on residence permits, where the state repeatedly names national security interests as a reason. Among them are international students who face obstacles in continuing their studies. In 2023, an Indian citizen was refused a residence permit on the same grounds (see below for details). TDI provides legal support in this case. All of the abovementioned gives us the basis to claim that the practice of unjust refusals to issue a residence permit, which, in almost all cases, is based on a negative opinion of the State Security Service, remains a significant challenge. The incomplete provision of public information by the Public Service Development Agency further strengthens this opinion.

⁸ Letter N980/02/2024 of the Tolerance and Diversity Institute (TDI) of February 28, 2024.

⁹ The Tolerance and Diversity Institute (TDI). 2019. "Racial Intolerance and Xenophobia. Rights of Foreign Nationals in Georgia." http://tdi.ge/sites/default/files/tdi_report_on_racial_discrimination_and_rights_of_foreigners.pdf

The case of an Indian citizen obtaining a residence permit

For example, during the reporting period, the TDI provided legal assistance to a citizen of India who was in the final stage of medical education and was going to obtain a license (to pass a licensing exam) to practice medicine independently. This applicant has lived in Georgia since 2008 and had a permanent residence permit since 2015. In 2023, the state canceled the applicant's permanent residence permit and also refused to issue a new work residence permit. The reason for the refusal was a traditionally cited negative conclusion of the State Security Service (according to which the person's residence in Georgia threatened state security interests).

The unexpected cancellation of the residence permit would have caused irreparable damage to the person, as they could not have completed medical education and passed the licensing examination to practice medicine. Therefore, the TDI appealed the refusal to issue the work residence permit as well as the decision to cancel the applicant's permanent residence permit and, as an interim measure pending the court's decision, demanded that the contested decision be temporarily suspended and the permanent residence permit reinstated. The court granted the said demand, after which the plaintiff successfully passed the exam and obtained a medical license.

Residence permit obstacles for Fereydan Georgians

In 2023, Fereydan Georgians¹⁰ also encountered a problem of obtaining residence permits and compatriot status.¹¹ The Public Service Development Agency of the Ministry of Justice began to refuse on a massive scale to grant the status to those Fereydan Georgians who wanted to return and live in their historical homeland.

According to available information, several dozen such people have been left without the status. In this case, the state also refers to Article 18 of the Law on the Legal Status of Aliens and Stateless Persons, according to which an individual's residence in Georgia is not considered appropriate for the interests of state security and/or public safety.

On October 30, the Fereydan Georgians organized a protest in front of the building of the Public Service Hall of the Ministry of Justice and demanded that the state grant them the status of compatriot and residence permits.¹²

¹⁰ Fereydan is a region of Isfahan Province in Iran, where descendants of Georgians, who were forcefully resettled there in XVI-XVII centuries, live today.

¹¹ A status of compatriot residing abroad is granted to a citizen of Georgia who resides in another country for a long period of time, or a citizen of any other country who is of Georgian descent and/or whose native language belongs to the Kartvelian/Caucasian languages. https://migration.commission.ge/index.php?article_id=162&clang=1

¹² Read more about obstacles created to Fereydan Georgians in the following articles [Available in Georgian]: “We are 200 individuals in total, nice and quiet people’ – Fereydan Georgians are denied residence permits,” Radio Liberty, 7.11.2023; <https://www.radiotavisupleba.ge/a/ფერეიდნელებს-საქართველო-ბინადრობის-ნებართვაზე-უარი-ისტუმრებს/32674712.html> “Did we move to Iran on our will?’ – Fereydan Georgians waiting for residence permits,” Netgazeti, 30.11.2023; <https://netgazeti.ge/opinion/699410/> “We no longer have the right to live in Georgia... We do not know what a threat we pose; the story of a couple from Fereydan,” Netgazeti, 12.12.2023; <https://netgazeti.ge/life/700998/>

3. Access to medical services

According to the legislation regulating healthcare, only persons with a document confirming the citizenship of Georgia, a neutral identification card, a neutral travel document, as well as stateless persons with relevant status in Georgia, persons seeking asylum in Georgia, and persons with refugee or humanitarian status can receive state funding for emergency outpatient and inpatient medical care. Thus, this list does not include foreign nationals who have residence permits in Georgia and pay all taxes stipulated by the law.

Consequently, a foreign national with a residence permit who needs emergency medical assistance will have to fully cover the cost of services on their own, which may amount to tens of thousands of lari (particularly in the case of long-term treatment).

The need for emergency medical assistance arises when, without the provision of medical care, a patient's death, disability, or severe deterioration of health condition is inevitable.¹³ Given that the state does not finance the costs of emergency medical care for foreign nationals with residence permits in Georgia, it becomes virtually impossible for them to receive adequate treatment if they do not have sufficient funds to finance the costs of medical care on their own. This, in turn, significantly increases the risk of the above-mentioned irreparable results – a patient's death, disability, or severe deterioration of their health condition.

The problem described above is illustrated in the case of a Thai victim of violence residing in Georgia. In 2023, a Thai national living in Georgia, based on a permanent residence permit, became a victim of a physical assault that caused severe harm to his health (*see section 4.1 of this report*). As a result of this assault, he required expensive emergency medical care and prolonged intensive treatment. Even though the victim was permanently residing and operating in Georgia based on a residence permit and, like Georgian citizens, paying all taxes, he could not benefit from even minimal state funding for emergency medical services.

■ 13 Law of Georgia on Health Care, paragraph "S1" of Article 3.

4. Racial discrimination

4.1. STATISTICS ON CRIMES COMMITTED ON THE GROUNDS OF RACIAL INTOLERANCE

To examine statistics on crimes committed on the grounds of racial intolerance, the TDI analyzed the data published in open sources and the letters from various government agencies received in response to the requests for public information.

During the reporting period, the notion of “race” remained problematic in the unified report “Statistics of Crimes Committed on the Grounds of Intolerance Based on Discrimination,” prepared by the Ministry of Internal Affairs, the Special Investigation Service, the Prosecutor’s Office, and the Supreme Court. By “race,” the agencies mentioned above mean race, skin color, language, citizenship, national or ethnic belonging, and origin,¹⁴ which makes it impossible to accurately record whether, for example, a crime was committed on the grounds of intolerance of skin color, or, xenophobia towards an ethnic group historically residing in Georgia. In this respect, the statistics maintained by the state authorities are imperfect and need to be improved.

According to the unified report on the statistics of crimes committed on the grounds of intolerance for the year 2023,¹⁵ during the reporting period:

- **The Ministry of Internal Affairs** launched investigations into 44 criminal cases involving elements of racial discrimination. Forty of these cases concerned discrimination on the grounds of race alone; three cases combined racial and gender discrimination, and one case combined intolerance on the grounds of race and sexual orientation.
- According to the data of **the Prosecutor’s Office**, in 2023, criminal proceedings for crimes committed on the grounds of racial intolerance were initiated against 11 persons (one of them had elements of gender discrimination in addition to racial discrimination).¹⁶ The criminal prosecution was discontinued against one person.¹⁷ In addition, in this category of crimes, a total of 16 people were recognized as victims.¹⁸

¹⁴ Ibid., pg.1.

¹⁵ Ministry of Internal Affairs of Georgia, Special Investigation Service, Prosecutor’s Office of Georgia, Supreme Court of Georgia, “Joint Report of Data on Crimes Committed on Grounds of Intolerance with Discrimination Basis”, 2023. See at: https://www.geostat.ge/media/60698/Hate_2023.pdf pg.1.

¹⁶ Ibid., pg. 9.

¹⁷ Ibid., pg. 22.

¹⁸ Ibid., pg. 13.

- During the reporting period, **courts** convicted ten persons for crimes committed on the grounds of racial intolerance (of which investigations into six cases were initiated during the reporting period).

According to the information¹⁹ provided by the **State Security Service** (which is responsible for investigating crimes committed on the grounds of racial discrimination²⁰), during the reporting period, it did not initiate any investigation under Article 142 (Violation of human equality) and Article 142¹ (Racial discrimination) of the Criminal Code of Georgia.

It should be noted here that subordinating the investigation of crimes committed on the grounds of discrimination to the State Security Service is fundamentally unjustified due to the incompatibility of the primary mission of the State Security Service and the specific approaches needed to investigate crimes committed with a discriminatory motive effectively. Crimes committed with a discriminatory motive belong to a category of cases that require an extraordinary and sensitive approach, the competence which can only be held by the specialized unit. On the other hand, the work of the State Security Service is the most closed, nontransparent, and secretive due to its specifics. Therefore, this does not correspond to the specifics of the investigation of crimes committed with a discriminatory motive since crimes of this category must be investigated from the perspective of human rights, which, along with the special competence of the investigative body, requires special monitoring. In contrast, the investigation of such crimes by the State Security Service could be aimed at viewing minority groups or regions from a security perspective and attempting to control them.²¹

During the reporting period, the TDI provided legal assistance to a citizen of Thailand and his family. This individual was the victim of physical violence that caused severe harm to his health. One of the motives for this crime could have been alleged racial intolerance, but the investigating authorities did not pursue this line of inquiry. Consequently, this motive was also not taken into account when determining the category of the crime.

4.2. THE MURDER CASE OF VITALY SAFAROV

The decision of the Tbilisi Court of Appeals on February 16, 2023, did not contribute to the resolution of the problem concerning the qualification of the crime in the case of the murder of Vitaly Safarov, committed on the grounds of ethnic intolerance and anti-Semitism.

Vitaly Safarov, a 25-year-old citizen of Georgia and human rights defender, was murdered on September 30, 2018. According to the factual and legal circumstances of the case, two individuals were involved in the murder, and the anti-Semitic and xenophobic statements made by the perpetrators

¹⁹ Letter SSG 0 24 00018729 from the State Security Service of January 29, 2024.

²⁰ See the Order of the Prosecutor General of Georgia of 23 August 2019 on the Investigative and Territorial Investigative Subordination of Criminal Law Cases, paragraph 4.

²¹ Read more on this in the report *The Legal Status of Migrants in Georgia (amid and beyond the COVID pandemic), 2020-2021* (June), Tolerance and Diversity Institute (TDI), 2021, pg. 22-25. https://tdi.ge/sites/default/files/migrants_rights_2020-2021-eng.pdf

indicated that the crime was committed on the grounds of intolerance. It was also clear that the perpetrators had links to neo-Nazi groups.²²

Nevertheless, by its decision of June 22, 2019, the Tbilisi City Court acquitted the defendants of the charge of racial, religious, national, or ethnic intolerance and found them guilty only of murder committed by a group of persons, sentencing them to 15 years in prison. On February 16, 2023, the Tbilisi Court of Appeals issued a judgment upholding the lower court's decision. On September 21, 2023, the Supreme Court declared the cassation appeal inadmissible, thereby upholding the decisions of the lower courts that had acquitted the defendants of the charge of killing Vitaly Safarov on the grounds of racial, religious, national, and ethnic intolerance.²³

4.3. OTHER INSTANCES OF RACIAL DISCRIMINATION

International students, in their interviews with the TDI, describe other instances of discrimination that they and their friends encountered in various private or public settings.²⁴ According to them, in Georgia, they are more likely to experience racist attitudes from the older generation, which manifest in aggressive attitudes, stares, and racial comments.

It is difficult for international students to rent an apartment in Georgia because some landlords, in their rental advertisements, warn people of certain origins not to approach them, while other landlords charge higher, sometimes double prices, because of these students' country of origin.

Students also speak about discriminatory practices when shop assistants follow them in shops to ensure that they do not steal anything and do not resort to the same practice with other customers. According to students, it is not uncommon for public minibusses with vacant seats not to stop for them at bus stops.

Nigerian students also speak of alleged racial profiling when police officers stop them on the streets and demand that they show documents. According to international students, this practice has led to a lack of trust in state agencies, and they prefer not to report to the police when necessary. According to one of the students, he and his partner did not report to the police even after they became victims of harassment and threats of violence on the street.

²² Human Rights.ge. 2019. "Murder of human rights defender, Vitali Safarov. Case details and legal assessment," humanrights.ge, September 5, 2019; available at: <http://www.humanrights.ge/index.php?a=main&pid=19945&lang=eng>

²³ Decision of the Supreme Court of Georgia on the case №259ap-23 Tbilisi k.a. 259ap-23, September 21, 2023; <https://bit.ly/4aRbHBs>

²⁴ To study racial discrimination, in January-March 2024, the TDI conducted two focus-groups and up to 20 individual interviews with foreign nationals.

