

HUMAN RIGHTS CENTER

# Pankisi Deadlock

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## Plight of Chechen Refugees in Georgia

HRIDC

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The Human Rights Centre (HRIDC) is a non-governmental human rights organization, without any political or religious affiliations. The purpose of HRIDC is to increase respect for human rights and fundamental freedoms in Georgia, as well as to contribute to the democratic development of the country

HRIDC implements projects to ensure compliance with human rights laws and standards. We cooperate with international organizations and local organizations which also share our view that respect for human rights is a precondition for sustaining democracy and peace in Georgia.

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# *Rights of Chechen Refugees*

## **Introduction**

The report covers the conditions of refugees in Georgia in 2006-2007. It is based on information received from governmental bodies as well as domestic and international NGOs.

The Human Rights Centre published its first report on refugee rights in 2006.<sup>1</sup> The report covered the period of 1999 to 2006 and examined the situation of Chechen refugees in Georgia. The report focused on whether the Georgian government met international standards codified in human rights law on refugees, and highlighted examples of abuse of Chechen refugees in Georgia. The report made recommendations to relevant governmental bodies in order to ensure the protection of the rights of Chechen refugees in Georgia.

This report and the previous one give an overview of the situation of refugees residing in Georgia for the governmental bodies and the non-governmental organizations working on the problems and status of refugees. This report of the Human Rights Centre, like the report of 2006, aims to reveal to what extent the Georgian government complies with the requirements of the 1951 Convention relating to the Status of Refugees.

In 1999, Georgia acceded to the Convention relating to the Status of Refugees (Georgian Parliament's Decree # 1996-2S, dated May 28, 1999).

In 1998, the Parliament of Georgia enacted the Law on Refugees.<sup>2</sup> The law regulates the legal status of refugees and those seeking refugee status in Georgia and the grounds and rules for granting, suspending and depriving the refugee status. The law also envisages legal, economic and social guarantees. The law is based on the Georgian Constitution and generally acknowledged principles of the international law.<sup>3</sup>

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<sup>1</sup> Silence Kills: Abuse of Chechen Refugees in Georgia, Human Rights Centre, Tbilisi 2006.

<sup>2</sup> Georgian Law on Refugees, enacted on February 18, 1998 (Article 1236-II).

<sup>3</sup> Georgian Law on Refugees, Introduction.

The law was far from perfect when it was enacted. It required some amendments.

It was impossible to protect the rights of refugees under the Law on Refugees. According to the law the refugees had no right to travel within the territory of the country, had no right to choose a place of residence, no right to have a bank account, to buy real estate, etc. The problem of travel documents for the refugees is still pressing. That is why they cannot leave the country!

The Georgian Constitutional Court made a decision<sup>4</sup> regarding the suit HRIDC brought to the court on July 11, 2006 giving the instruction to the Parliament of Georgia to make amendments to the Law on Refugees to comply with the international Refugee Convention.

***However, the Georgian Government has not introduced amendments to the law yet!  
There is no legal act enabling the refugees residing in Georgia to resettle to a third country.***

Early in 2007 the Department of Migration, Repatriation and Refugees of the Ministry prepared a draft law on the Refugees and People Temporarily Residing in Georgia. The aim of the draft law was to define the legal status of refugees and those who temporarily reside here.<sup>5</sup>

According to the draft law:

- A seeker of refugee status must apply to the Ministry or a Georgian Consulate abroad. He can also apply to regional departments of the Georgian Ministry of Internal Affairs and to the Border Police within 24 hours after crossing the Georgian border. The abovementioned bodies must send the application within 3 days to the Ministry of Refugees and Accommodation.

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<sup>4</sup> On July 11, 2006, HRIDC appealed to the Georgian Constitutional Court and claimed that article 3, paragraph I, paragraph II-a, and paragraph III-b of the Georgian Law on Refugees, enacted on February 18 1998 (number 1236-II), does not comply with article 14; article 22, paragraphs I and II, article 39; and article 47, part I of Chapter II of the Georgian Constitution, enacted on August 24 1995 (amended on May 13 2006) and demanded the court to declare the articles unconstitutional and to annul them. On October 27 2006, the Georgian Constitutional Court passed a verdict on the appeal.

<sup>5</sup> See the report of the Department for Migration, Repatriation and Refugees prepared in January-February 2007 published on the website of the Georgian Ministry of Refugees and Accommodation [www.mra.gov.ge](http://www.mra.gov.ge).

- A special article is dedicated to seekers of refugee status, to the definition of a refugee and to temporary residency documents.

On April 27, 2007 amendments were introduced to the law. On the grounds of these amendments and mutual cooperation between the Ministry of Justice and the Ministry of Refugees and Accommodation in May, 2007 in the village of Duisi, the field office of the Ministry started issuing temporary residency documents.

The temporary residency documents enabled a refugee to open a bank account, conduct business deals, purchase land and other kinds of properties and travel within the Georgian territory. In the past, refugees did not have any residency document and the state was unable to give them allowances. The refugees also were unable to start legal proceedings.

During the distribution of temporary residency documents, some problems arose regarding **deprivation of refugee status:**

The refugees from Chechnya residing in the Pankisi Valley accuse the representatives of the Georgian Ministry of Refugees and Accommodation (MRA) of incompetence. They say that the Ministry illegally suspended the status of approximately 200 refugees. That is why they were unable to receive the temporary residency documents. Consequently, they will not receive a 14 lari allowance and remain without food and medical aid after the suspension of the food program implemented by the UN High Commissioner for Refugees (UNHCR).<sup>6</sup>

According to the notification of the Department of Migration, Repatriation and Refugees of the MRA, a person shall only be deprived of refugee status and the accompanying allowances received based on Article 1, Paragraph 1 of the Georgian Law on Refugees. Article 1, Paragraph 1 of the Law on Refugees reads:

*A refugee is a person who entered the territory of Georgia and for whom Georgia is not his/her country of origin and who, owing to a well-grounded fear to become a*

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<sup>6</sup> See archive on [www.humanrights.ge](http://www.humanrights.ge), article “Chechen Refugees Have Lost Status”, 6 July 2007 .

*victim of persecution for reasons of race, religion, membership of a particular social group or political opinion, left the country of his nationality or permanent residence, entered the territory of Georgia and cannot or, due to this fear, does not want to enjoy protection of his country.*

This part of Georgian law does not correspond with the international Convention relating to the Status of Refugees. The Convention does not impose limits on defining the status of refugee while the Georgian Law on Refugees states that a person cannot be considered a refugee if Georgia is a country of his origin. The status of a refugee was taken away mainly from those people who were born in Georgia. It must be highlighted that these people left Georgia a long time ago and returned as citizens of the Russian Federation because they “were forced to leave the country of citizenship or permanent residence for being persecuted of race, religion, nationality, membership of a particular social group or political opinion” and were “unable or unwilling to avail themselves of the protection of that country for the threat of persecution”. Despite the above-mentioned issues, Georgia grants them Georgian citizenship taking into account the interests of refugees, Georgian Constitution (Article 12) and Georgian Law on Georgian Citizenship (Article 10). According to Georgian legislation “Georgian citizenship shall be acquired by birth and naturalisation”.

1. It is possible that a person was *a born citizen* of Georgia but s/he denounced the citizenship years ago and obtained the citizenship of another country ( the citizenship of the Russian Federation in this case);
2. As for *Naturalization*, it means receiving Georgian citizenship, which requires claiming for citizenship. In our case, the claims do not exist, as the refugees did not express the desire of citizenship.

In Georgia there is a problem regarding one right granted by the Convention:

On April 27, 2007 the Georgian Parliament adopted additional paragraphs (amendment # 4702-1s) to the Georgian Law on Refugees, on the bases of which (Article 2(2)) the Ministries of Refugees and Accommodation and Justice received the instructions to issue a **general decree**

**before July 1, 2007 to endorse a decree on the transportation of refugees beyond Georgian borders.**

The decree has not yet been issued. The Georgian Ministry of Refugees and Accommodation and the Ministry of Justice brutally violate the law. However, according to the Ministry of Refugees and Accommodation,<sup>7</sup> they sent a draft Decree on Registering, Granting and Changing Travel Documents to Parliament in July 2007. The document is being adjudicated.

**According to the information of the Ministry of Justice<sup>8</sup> the draft law on Registering, Granting and Changing Travel Documents sent by the MRA to Parliament is not registered in the Correspondence Department within the Ministry of Justice.**

**It is difficult to ascertain which of these Ministries lie!**

**It is unclear whether the draft law really exists, or if travel documentations are really being worked out?!**

The resettlement of refugees to a third country is possible only with the assistance of the UNHCR. From January 2002 to December 2006, 305 refugees resettled with the assistance of the UNHCR from Georgia to a third country. The majority of them left for Sweden and Canada. UNHCR also spoke with more than 500 refugees but they did not meet the criteria for resettlement and consequently their documents were not submitted for consideration by third countries, states the UNHCR.

Based on the information from Chechen refugees, the UNHCR invites refugees and the members of their families to individual interviews for the resettlement to a third country. After an interview, the UNHCR submits documents of individual applicants to a third country for further discussion if a person has the refugee status and his case meets the criteria of the third country. The UNHCR at its own discretion chooses the country to which it sends the application of the

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<sup>7</sup> see reply #01/01-17/5837, 24.08.07 of the Georgian Ministry of Refugees and Accommodation to petition #OL-315 of the Human Rights Centre, 17 August 2007.

<sup>8</sup> see reply #01/23101-7844, 18.09.07 of the Ministry of Justice to petition # OL-326 of the Human Right Centre, 3 August 2007.

refugee. Of course the organization takes into account the quotas for resettlement of third countries, the criteria for granting the allowances and personal and professional experiences of a refugee.

The UNHCR defines that submitting an application does not mean automatic resettlement of a refugee. Sometimes it requires several months to make a decision. The time depends on the procedures for discussing a case of a third country. Even if the case is discussed and approved by the third country it is possible that several years will pass before a refugee travels to that country. Sometimes medical examination, preparation of further documentation and an interview on security are required.

#### **Case of Taus Erznukaeva**

Taus Erznukaeva has 9 children. She has been on the list of seeking resettlement to Canada, but the Erznukaevas are disappointed. They do not believe that their application is still being considered, but they have not received a refusal on resettlement.<sup>9</sup>

#### **Case of Edris Alkhanashvili**

Edris Alkhanashvili has an 11-month-old child, Gaziev Ilis Khan, who is in need of urgent medical treatment. Approximately two months ago Edris applied to the UNHCR for resettlement, but was rejected notwithstanding that he could produce a recommendation of the TAG and a doctor's note stating that his child needed an urgent operation before he turns one. If not operated on, the child will remain disabled for the rest of his life. The recommendation clarified that it was impossible to operate the child in Georgia. HRIDC has information that the UNHCR sent the documents of this family to the host country without the recommendation and doctor's note.

The doctor is of the opinion that because of seriousness of the health condition, host countries will not believe in the necessity of the resettlement of the family. Therefore, the third country is more likely not to accept the family of Edris Alkhanashvili and consequently, the child will not be receiving the operation he so desperately needs.

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<sup>9</sup> see information on [www.humanrights.ge](http://www.humanrights.ge).

The country that accepts a person and grants him/her refugee status takes the responsibility to protect the rights and basic freedoms of the refugee.<sup>10</sup>

On the grounds of this case, we can say that the rights of refugees are not protected in Georgia.

- *The refugees cannot be resettled to a third country. This problem was pressing in 2006 and maintains its significance up to present time.*
- *Refugees have faced new problems in 2007. One of the biggest problems is mass deprivation of refugee statuses and forcible naturalization in Georgia.*

## **Refugees in Georgia**

Currently, 1096 people with refugee status reside in Georgia.<sup>11</sup>

According to the Penitentiary Department<sup>12</sup> within the Georgian Ministry of Justice, seven refugees serve their terms at Georgian penitentiary establishments. Two of them are placed in the Tbilisi Women and Juvenile Penitentiary Institution #5.

Based on Article 4 of the Resolution on “the Procedure to Grant Refugee Status”, May 29 2003, the Department for Refugee Status and Asylum Seekers within the Ministry carries out the registration of the compulsory registration of refugees every year. According to paragraph IX of the same article the commission of the Ministry discusses the refugee status of a person who does not register during the next compulsory registration.

The Georgian Ministry of Refugees and Accommodation reported<sup>13</sup> that in the period 2003-2006, based on the above-mentioned situation and Article I and Article 10-paragraph I-II of the

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<sup>10</sup> Georgian Law on Legal Status of Foreigners, article 27.

<sup>11</sup> see reply # 01/01-17/5818, 23 August 2007 of the Georgian Ministry of Refugees and Accommodation to petition # OL-322, 22 August 2007 of the Human Rights Centre.

<sup>12</sup> Reply # 01/23/01-7841, 18.09.07, of the Georgian Ministry of Justice, reply #10/6/10-15313, 14 September 2007 of the Penitentiary Department, reply # 10/24/6-2372, 10 September 2007 of the Tbilisi Women and Juvenile Penitentiary Institution #5.

Georgian Law on Refugees Status, the Ministry of Refugees and Accommodation ceased the process of granting refugee status to people fleeing the Chechen Republic of the Russian Federation. Consequently, in 2003, 324 people had their status suspended; in 2004 another 1319 Chechen refugees were deprived of their status; in 2005 their number was 68 and in 2006 there were 1402.

The Ministry of Refugees and Accommodation reported<sup>14</sup> that their office in the village of Duisi in the Akhmeta District still provides the Ministry with photos and necessary documentation of the people who were unable to get a Temporary Registration Cards issued by both the Ministry of Justice and the Ministry of Refugees and Accommodation.

However, the refugees state that some of the refugee men were in the pastures when the procedure was carried out and consequently they could not apply for temporary residency document and they still have not received them.

According to article 3 (1) the Georgian Law on Refugees, a refugee is granted with a temporary residency ID by the relevant office authorized by the Public Registry within the Ministry of Justice. The permit on temporary residence can be issued within ten days after the application. The card on temporary residence confirms the citizenship, identity, permanent residence in Georgia (the refugee indicates the place of his/her residence) and status of the refugee. "Refugee" is mentioned in the ID alongside the citizenship.

The ID is valid during three years throughout the Georgian territory.

In order to receive a temporary residency document, an applicant should submit documents confirming refugee status issued by the Ministry and a photo.

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<sup>13</sup> Reply # 01/01-17/5870, 29 August 2007 of the Georgian Ministry of Refugees and Accommodation to the Human Rights Centre's petition #OL-324. 24 August 2007.

<sup>14</sup> Reply # 01/01-17/4531, 26 June 2007 of the Georgian Ministry of Refugees and Accommodation to the Human Rights Centre's petition # OL-304, 10 June 2007.

However, despite the submitted documents, in most cases, refugees face serious problems - the Georgian Ministry of Refugees and Accommodation refuses them to issue an ID demonstrating refugee status. The reason for refusal is the applicants are also seeking resettlement to a third country (**Case on Taus Erznukaeva**). In doing so the Ministry blatantly breaches the right guaranteed by the Georgian Law on Refugees. More precisely, according to the Georgian Law on Refugees, article 3 (1), “a person bearing the refugee status shall be granted with the document on temporary residency”. The law does not envisage restrictions. In accordance to the Article 5-d, a refugee shall have right to “enjoy the rights as envisaged in the Georgian Law on the Legal Status of Foreigners.” Chapter 5, article 27 of the law states that “Foreigners in Georgia shall be equal before the law irrespective of their origin, social and material status, race, nationality, sex, education, language, religion, political or other beliefs, field of activity, other conditions.”

Regarding the situation two circumstances shall be considered:

- \* With the support of the UNCHR it might take several years for a refugee to resettle to a third country and consequently, the refugee shall not be able to enjoy the rights that are granted to him/her by the Georgian Legislation;
- \* The refugee status is suspended after a person leaves Georgia.<sup>15</sup>

### **Allocation of State Budget of Georgian Ministry of Refugees and Accommodation in 2007**

In accordance to the Georgian Law on “Georgian State Budget of 2007”, Article 51, Paragraph III, allocations for the Georgian Ministry of Refugees and Accommodation in 2007 were estimated 60 862,60 lari (in 2006 the budget of the same Ministry was 56 949,30 lari). In 2007, 33 120 lari out of total budget was dedicated to the allowances for refugees and IDPs (in comparison to the budget of the previous year the allocation for allowance is much less; in 2006 36 754,20 lari was apportioned for allowances and in 2005 the total amount of the allocated sum

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<sup>15</sup> Georgian Law on Refugees, Article 10.

was 37 763,70 lari); 22 120,4 lari was allocated to support refugees and IDPs in densely populated areas, this is much more in comparison to previous years (more precisely, in 2006 15 571, 3 lari was allocated for this purpose and in 2005 it amounted to 16 177,80 lari ); as for other expenses for the assistance of refugees and IDPs; it is demonstrated in the following figures: in 2007 741,60 lari is apportioned for this purpose; in 2006 it was 1 625, 7 lari and in 2005 1 421 lari.

By 2007, an IDP residing in the areas densely populated by refugees, received an allowance of 11 lari; but an IDP and a refugee living in the private sector received an allowance of 14 lari.

In Tbilisi, an IDP and a refugee living in the areas densely populated by refugees received an allowance of 13,48 lari to pay the electricity bills; but in other districts of Georgia similar people received only 12,98 lari.

An IDP and a refugee received an allowance of not more than 4 lari for the expenses of communal and household services, as well as utilities (among them are bills for water supply, cleaning, sewage and disinfection expenses for on-going repair works and service activities). The funds for the above-mentioned purposes are apportioned in accordance to contract responsibilities.

According to Article 10, Paragraph IV of the Georgian Law on State Purchases and Article 51 of the Georgian Law on the Georgian State Budget of 2007, the following contracts are signed between the Ministry of Refugees and Accommodation and the administrations of the residential buildings of refugees and IDPs and communal service organizations: contracts on transporting the garbage, water supply, canalization, sewage, disinfestations and electricity supply.

The Ministry of Refugees and Accommodation reported<sup>16</sup> that the electricity supply is provided to the buildings inhabited by refugees and IDPs without any delay based on the contracts they have signed with the Kakheti Power Distribution Company; JSC EnergoPro-Georgia and JSC

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<sup>16</sup> reply # 02/01-17/5841, 24 August 2007 of the Georgian Ministry of Refugees and Accommodation.

Telasi. Consequently, IDPs residing in similar buildings throughout Georgia receive allowances for their electricity bills; its amount is envisaged by the Georgian legislation.

Contracts on water supply are signed with the following communal organizations: Kuttskalkanali Ltd; Rustav Tskali Ltd; Khashirtskali Ltd; Borjomi Water System Ltd; Abasha Tskalkanali Ltd; JSC Telavtskalkanali; Tsalenjikha Tskalkanali Ltd; and Khobi Tskalkanali Ltd. The above-mentioned organizations supply buildings inhabited by refugees and IDPs with water without any delay and the bills are paid in accordance with the law. Contracts are also signed with the organizations which supply residential areas from their own wells. In total, 34 contracts are signed with communal service organizations.

In parallel, contracts are signed with other communal service organizations. For example: sewage - 6 (for the buildings without canalization system); disinfection - 2; transportation of garbage - 14. These organizations are JSC Resort "Akhtala"; resort-house "Surami"; Residential Exploitation Enterprise, Ltd; "Komunalservisi 2003, Ltd"; Borjomisenaki Amenities Ltd; Abasha Enterprise for Residential Communal Husbandry, Ltd; Union of Communal Husbandry of Zugdidi, Komunremshenservisi 2002 Ltd; Communal Ltd; Nakaduli Ltd; JSC Balneology Resort Samtredia; and Avtomobili 2003 Ltd.

Contracts are being signed with the administrations of the buildings densely populated by IDPs and refugees in order to reimburse administrative expenses. 118 Contracts have been signed so far. The sums envisaged in these contracts are allocated for administrative expenses only and administrations of the compactly inhabited buildings have the right to spend the sums.

### **Basis for Deprivation and Suspension of Refugee Status**

According to article 4 of the resolution on "Granting Refugee Status", dated May 29 2003, the Department for Asylum Seekers within the Ministry of Refugees and Accommodation carries out compulsory registration of refugees every year. According to paragraph 9 of the same article, the commission of the Ministry discusses the refugee status of the people who did not register for inexcusable reasons.

Based on the above-mentioned situation and articles 1 and 10, paragraph I and II of the Georgian Law on Refugees, the Georgian Ministry of Refugees and Accommodation suspended the granting of refugee status to people fleeing the Chechen Republic within the Russian Federation in the period 2003-2006.<sup>17</sup>

While granting the temporary residency documents the Georgian Ministry of Refugees and Accommodation and the Ministry of Justice discovered that certain refugees, more precisely ethnic Kists who had lived in Georgia and resettled to the Chechen Republic within the Russian Federation in 1980-1990, were still registered as Georgian citizens. According to article 1, paragraph I-a of the Georgian Law on Refugees, a Georgian citizen cannot be a refugee in Georgia.<sup>18</sup> The situation of those children who were born in Georgia and whose parents are Georgian citizens, must be discussed separately.

#### **Case of Asmat Machalikashvili**

Family of Asmat Machalikashvili has four children and three of them were born in Georgia. The fourth child was born in Russia; the husband is a Georgian citizen. Consequently, because of the father's citizenship (article 18 of the Georgian Law on Georgian Citizenship states that if at least one parent is Georgian citizen, a child becomes a Georgian citizen), the children who were born in Georgia have no right to refugee status. In this particular family only the mother and the child, who was born in Russia, are considered refugees.

#### **Case of Tamaz Kushanashvili**

Tamaz Kushanashvili has four children. All four were deprived of refugee status; Tamaz is a Georgia-born citizen, later he went to Russia and became a citizen of the Russian Federation. But he is still registered in the database of Georgian citizens of the Georgian Ministry of Justice.<sup>19</sup> Consequently, he is considered to be a citizen of Georgia. However, when Tamaz Kushanashvili addressed the Ministry of Justice to receive a passport, he was rejected, as he did not have

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<sup>17</sup> Reply # 01/01-17/5871, 29 August 2007 of the Georgian Ministry of the Refugees and Accommodation to the Human Rights Centre's petition # OL-324, 24 August 2007.

<sup>18</sup> Reply # 01/01-17/5871, 29 August 2007 to the Human Rights Centre's petition # OL-325, 27 August 2007.

<sup>19</sup> Reply # 01/01-17/5871, 29 August 2007 of the Georgian Ministry of Refugees and Accommodation to the Human Rights Centre's petition # OL-325, 27 August 2007.

necessary documents. It must be indicated that Kushanashvili left the territory of Georgia out of his own free will and became a citizen of the Russian Federation. His act was in accordance with the law (article 31 of the Law on Georgian Citizenship). According to the Law on Georgian Citizenship a person's application on declining Georgian citizenship can be rejected only if the person has the responsibilities towards the country to which he must adhere, military (serving in Georgian army) or property obligations that are tied to the vital interests of the country, public institutions, and the citizens of Georgia.

The law bans the denouncement of Georgian citizenship if a person is charged with a crime or is bound by a court verdict. Kushanashvili neither had any responsibilities to the Georgian state, nor was he charged for a crime.

According to article 32 of the Law on Georgian Citizenship a person is no longer a citizen of Georgia the moment he becomes a citizen of another state. (Officially, Kushanashvili is a citizen of the Russian Federation.) However, the Ministry of Justice did not follow the requirements of Georgian legislation by not annulling Kushanashvili's citizenship.

If a person is still registered in the Ministry of Justice database, despite accepting the citizenship of another state, it is a mistake of the Ministry of Justice. The Ministry thereby breaches the Law on Georgian Citizenship - they do not remove a person, who has accepted a citizenship of another state, from the list of Georgian citizens as is required by the law!

The Ministry of Refugees and Accommodation has the power to revoke refugee status, when a person claiming refugee status forges documents and information (article 10, section II of the Georgian law on Refugees). The Ministry of Refugees and Accommodation states<sup>20</sup> that the majority of refugees lost their refugee status for the breaking the above-mentioned law.

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<sup>20</sup> Reply # 01/01-17/5870, 29 August 2007 of the Georgian Ministry of Refugees and Accommodation to the Human Rights Centre's petition # OL-324, 24 August 2007.

However, it is ambiguous to deprive a refugee his/her status when a criminal investigation has not been launched on him/her.<sup>21</sup> The MRA states that Interpol, the Georgian Ministry of Internal Affairs, the Ministry of Justice, the Ministry of Foreign Affairs and the UNHCR are their source of information regarding refugees and they rely on them.<sup>22</sup>

### **Case of Vahid Borchashvili**

On September 9, 2006 at 6 a.m., representatives of the Duisi Patrol Police Department took Vahid Borchashvili, a Chechen refugee, to the Military Department of the Duisi village council. The Georgian Law on the Legal Status of Foreigners states that citizens of foreign countries do not have the obligation of serving in the Georgian army. Though Borchashvili presented his refugee document, the police took him to the barracks where he had to remain for about one month. He was not allowed to contact his lawyer.

Borchashvili's father asked the Human Rights Centre for help. HRIDC held a press conference on this case and demanded the release of Borchashvili. When the illegal conduct of the law enforcement was publicized, the government made concessions.

The Human Rights Centre and Borchashvili's father addressed the Office of the Prosecutor General and the General Inspection of the Ministry of Internal Affairs with the request to study this case in detail. The organization and Borchashvili's father submitted all necessary documentation. Consequently, a preliminary investigation was conducted and Borchashvili was released from military service. Either way, the Georgian law enforcement was to provide a lawyer for Borchashvili. Representatives of the Military Department should have sent a notification form to Borchashvili before his arrest.

### **Case of Muhamed Mahaev**

Muhamed Mahaev, a citizen of Chechnya, was arrested on December 30, 2005. In 2003, he established the organization Imedi in Pankisi Gorge to provide Chechen refugees with financial support. Imedi was funded by international humanitarian organizations. An investigation into the

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<sup>21</sup> see footnote 14.

<sup>22</sup> Reply # 01/01-17/6475, 02 October 2007 of the Georgian Ministry of Refugees and Accommodation to Human Right Centre's petition # OL-349, 28 September 2007.

organization was launched. The investigation focused on the origins of the organization, how it was funded, and if there were any connections between Imedi, the Taliban or Al-Qaeda. Initially, the investigators thought that two funding organizations of Imedi, Muslime Helfen and Muslim Hands, were somehow connected with money laundering organizations and even terrorist acts. In fact, these organizations cooperate with the Red Cross and Red Crescent.

The investigation did not bother to contact Imedi's donor organizations, which is a requirement according to Georgian legislation.<sup>23</sup> The investigator took all the financial documentation and hard disks from the office of Imedi which made it impossible for the organization to continue working.

After the investigation was terminated, the Prosecutor's Office indicted Mahaev for minor charges - forging documentation and appropriating 137,325 lari of the organization's money together with the accountant of the organization. Mahaev had no access to court records in the Chechen language and he was unable to hear the court decision in the Chechen language.

Article 17.3 of the Criminal Code of Georgia demands all investigative and court documents to be translated into the native language of the accused. The state of Georgia breached the Refugee Convention when it did not provide a translator for the accused.

### **Ethnic Kist Refugees in Georgia and their Rights**

Pankisi Valley is mostly populated by ethnic Kists and most of them are refugees. Both Kists and Chechens speak the Chechen language. However, Kists have been living in the Kakheti region of Georgia (Pankisi Valley) for a long time. Most of the Kist refugees were born in Georgia before the Soviet Union collapsed, then a large number of them resettled to Russia and only in 1999, after the Chechen-Russian conflict flared up again, Kists returned to Georgia.

Kist refugees residing in Georgia enjoy the same rights as Chechen refugees. The Convention relating to the Status of Refugees prohibits their discrimination on the basis of their race, religion

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<sup>23</sup> Articles 18, 58, 131 of the Georgian Criminal Procedural Code.

or country of origin.<sup>24</sup> And Georgia protects the rights and fundamental freedoms of the people who reside in its territory.<sup>25</sup>

Despite all these protective measures, Kists are being discriminated against in Georgia on the grounds of their origin. Kists are delayed at the border and they are arbitrarily detained, which lasts several hours in most cases.

### **Case of Meka Khangoshvili**

On September 8, 2007, frontier officers arrested Meka Khangoshvili, an ethnic Kist and citizen of Georgia, in the neighbourhood of the Lagodekhi district; he was travelling to Azerbaijan. Khangoshvili is a severely disabled person and travels to Azerbaijan each year (for the last nine years) to receive medical treatment there. After a three-hour detention, Khangoshvili was released; however he was not informed of the reasons for his detention.

The Border Police officers reported that they check the passports of all travellers at customs; they check IDs and travelling documents.<sup>26</sup>

**However, according to information of the HRIDC, every ethnic Kist is delayed at customs before crossing the border!**

### **Future Prospects**

In the future, Chechen refugees only have three options in Georgia:

- \* Voluntary repatriation. Refugees should return to the Russian Federation voluntarily;
- \* Naturalization;
- \* Resettlement to a third country. With the support of the UNHCR and third countries refugees should resettle to a third country on a case-by-case basis.

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<sup>24</sup> see Article 3 of the Convention relating to the Status of Refugees.

<sup>25</sup> see Article 27 of the Law on the Legal Status of Foreigners.

<sup>26</sup>Reply # 38-2/1-678, 21.09.2007 of the Press and Public Relations Department of the Georgian Border Police to Human Rights Centre 's petition # OL-330, 11 September 2007.

### **Voluntary Repatriation**

It is still unsafe for Chechen refugees to return to the Russian Federation, and it is not advised by third parties either. The UNHCR does not advocate that refugees return to the Russian Federation. Moreover, it is highly unlikely that the situation in Chechnya will improve in the near future. Therefore, voluntary repatriation is currently not a viable solution for the remaining refugees in Georgia.

### **Naturalization**

Naturalization would be an acceptable long-term solution for those refugees of Kist ethnicity who have close ties to Georgia. Some Kist refugees were actually born in Georgia and now live with family members, who are Georgian citizens, in the Pankisi Valley.

Unfortunately, naturalization is lengthy process in Georgia with many requirements. Because of red tape many refugees we interviewed had already lost interest in becoming Georgian citizens. They told us that when they first arrived, naturalization seemed to be an acceptable solution. However, after years of waiting and poor treatment by officials, they have little hope they will ever become Georgian citizens.

Article 34 of the Convention relating to the Status of Refugees says:

*The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.*

To meet its obligations under article 34 of the Convention and to enable refugees to become citizens of Georgia sometime in the near future, the Georgian Parliament must re-examine its current laws for granting citizenship to refugees.

### **Resettlement to Third Countries**

Resettlement to a third country is generally dependent on a decision which ultimately rests with the host government and not with Georgia or the UNHCR.

Between 2003 and 2005, nearly 300 refugees were resettled to third countries with the help of UNHCR - mainly to Sweden, Canada and elsewhere.

However, since the War on Terror began, there have been few countries eager to accept refugees from Chechnya. In addition to this shift in demand for Chechen refugees, changes in UNHCR policy have placed a greater burden on UNHCR's field offices in identifying countries willing to accept refugees and in facilitating asylum procedures with countries that often do not have embassies in countries such as Georgia. The reluctance of third countries to accept refugees from Chechnya, combined with changes in UNHCR policy on resettlement, suggest that only a small number of refugees will eventually be resettled. Of these, the HRIDC believes the remaining Chechens in Georgia should receive priority, since this group is the least willing to become participating members of Georgian society. Their reluctance might be caused by degrading living conditions in Georgia.

1. Chechen refugees cannot receive social security from the government that might be enough to live on;
2. Several people, bearing the refugee status in Georgia, together receive an allowance and other humanitarian aid that is apportioned for one refugee.
3. Humanitarian assistance for refugees is monthly provided by the Akhmeta Office of the UNHCR on the basis of food stamps. In the framework of the UNHCR humanitarian assistance, refugees also receive food. In most occasions, cans of food, distributed by the UNCHR, are produced in 2003 as it is indicated on the can. Later it was found out that the UNCHR receives the food from the OSCE and they remain edible for twenty years. There are some problems with the provision of food though. The UNHCR provides the refugees with pork, but Muslims are not allowed to eat pork for religious reasons. Moreover, the text on the cans is in English and the refugees do not speak English. Consequently, they were unable to know they received cans of pork.

### **The Kavtarashvili sisters**

Three sisters (Zeinab, Sima and Khatuna) are married and live separately with their children and husbands. They each receive one allowance for refugees that is apportioned for one person only. Consequently, the women have to support themselves and their children with the allowances which are only enough for one person.

However, according to the Georgian Law on Refugees, if a person meets the requirements of the article 1 of the law, s/he is granted refugee status and can enjoy all rights that are guaranteed by the Georgian Law on Refugees.

The Kavtarashvili's are deprived of the above-mentioned rights that are guaranteed by the law. Only after the Human Rights Centre intervened and applied to the relevant governmental bodies was the problem solved.<sup>27</sup>

### **Recommendations**

- \* **The Georgian Parliament should make sure article 1 of the Georgian Law on Refugees corresponds to the Convention relating to the Status of Refugees;**
- \* **The Georgian Parliament should respect any verdict passed by the judiciary and observe the recommendations of the verdict passed by the Constitutional Court on October 27 2006;**
- \* **The Ministry of Refugees and Resettlement and the Ministry of Justice should respect the Georgian Law on Refugees and observe its requirements in accordance with the amendment made to the Georgian Law on Refugees on April 27 2007 (amendment # 4701-Is); the Ministries should immediately issue a joint decree on the “confirmation of the regulation for the travelling of refugees beyond Georgian borders”;**

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<sup>27</sup> Reply # 01/01-17/7543, 26 November 2007 of the Georgian Ministry of Refugee and Accommodation to Human Rights Centre's petition # OL-380, 20 November 2007 and replies of UNHCR to Human Rights Centre's petition # OL-389, 11 December 2007.

- \* **The Ministry of Refugees and Resettlement and the Ministry of Justice should clarify or start working on the draft law on the “regulation of registering, issuing or changing the travelling documents”;**
- \* **The Ministry of Justice should correct its mistakes - people having renounced Georgian citizenship once must be omitted from the list of Georgian citizens;**
- \* **The Ministry of Refugees and Resettlement should start working on re-granting the status of refugees to the people who had been deprived of the status because of a mistake of the Ministry of Justice; as well as granting a residency permit to refugees;**
- \* **The Ministry of Refugees and Resettlement should provide a justification for the deprivation of the status of refugee based on the article 10, paragraph II of the Georgian Law on Refugees;**
- \* **The Ministry of Refugees and Resettlement should make its office in the village of Duisi in the Pankisi Valley more active: the Ministry should employ more qualified lawyers who will provide the refugees with legal aid; and who will provide the Ministry with all the necessary documentation on those refugees who were unable to take part in the process of issuing temporary residency documents;**
- \* **The Ministry of Refugees and Resettlement should control the activities of the UNHCR - the latter should be responsible to the state for the implemented activities with regard to the people who reside in Georgia and have the status of refugee;**
- \* **The UNHCR should make its activities regarding the resettlement to a third country more transparent;**
- \* **The UNHCR should cooperate with the NGOs who monitor human rights violations in Georgia;**

- \* **The UNHCR should be more attentive to the responsibilities they have assumed regarding refugees. The UNHCR should not distribute food products to the refugees before they are checked and should respect the religion of the refugees;**
- \* **The Public Registry, a subordinated legal entity to the Ministry of Justice, should issue the temporary residency documents to those people who have applied for resettlement to a third country;**
- \* **The Human Rights Centre calls upon the personnel of the Georgian judiciary to respect domestic laws as well as the conditions of the Convention relating to the Status of Refugees;**
- \* **The judiciary should support non-Georgian accused individuals in understanding the court hearings properly. The judge is obliged to provide the accused with a translation of all necessary documents and the verdict in his/her mother tongue;**
- \* **The Human Rights Centre calls upon the Prosecutor's Office and investigative bodies to inform accused individuals about all rights guaranteed by Georgian legislation and to support them in contacting an attorney.**