

# CASE OF AFGAN MUKHTARLI

## Facts and Evaluation



Tbilisi, May  
2018



## ABOUT HRHT

Human Rights House Tbilisi (HRHT) is a membership based organization, that unites five Georgian civil society organizations, working in different fields of Human Rights. Based in Tbilisi, it was registered in July 2010 as a non-governmental organization with the support of Human Rights House Foundation. HRHT became a member of the network of Human Rights House in the same year. Human Rights House Foundation protects, empowers and supports human rights defenders and their organisations. Today, independent human rights organizations work together in 16 Human Rights Houses in 11 countries. The member organizations of HRHT are: the Human Rights Center (HRDC), Article 42 of the Constitution, Georgian Center for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT), Sapari and Media Institute. In accordance to the concept of Human Rights House, in order to enhance co-operation and joint activities, to advocate for better protection of human rights, all member organizations of HRHT share physical space and work on the following directions: providing legal and psychological service, improvement of legislation, advocacy, human rights education and protection of human rights defenders, activist and journalists at risk. Within the protection program, HRHT supports human rights defenders, activists and journalists fleeing persecution in Azerbaijan and being in exile in Georgia.



## CONTACT INFORMATION:

Address: Gakhokidze Akaki 11a  
0179, Tbilisi, Georgia.  
Phone: +995 32 2 38 20 18  
E-mail: [Tbilisi@humanrighthouse.org](mailto:Tbilisi@humanrighthouse.org)  
Web: <http://humanrightshouse.org/Members/Georgia/index.html>

Responsible for the publication:

Natia Katsitadze – Chairperson of HRHT Board  
Natia Tavberidze – Coordinator of HRHT

## DISCLAIMER:

This document was prepared by Human Rights House Tbilisi in partnership with its member organizations „Article 42 of the Constitution“ and „Human Rights Center“, with financial support of Human Rights House Foundation. The views expressed in this publication are those of Human Rights House Tbilisi and do not necessarily express the views of Human Rights House Foundation.

## EXECUTIVE SUMMARY

The present document contains the facts and evaluation on the case of Afgan Mukhtarli. Afgan Mukhtarli, an Azerbaijani journalist and activist who found shelter in Georgia as the result of persecution in Azerbaijan, was allegedly abducted in Georgia on May 29, 2017, and forcibly taken to Azerbaijan where he was detained in custody. On January 12, 2018, Belakani District Court, Azerbaijan, sentenced Afgan Mukhtarli to a prison term of six years. He is charged with resisting the police, illegally crossing the Georgia-Azerbaijan border and smuggling 10,000 Euro across the border.<sup>1</sup> On April 24, 2018 the Sheki Appeals Court, Azerbaijan, upheld the decision of the First Instance Court and left Afgan Mukhtarli in prison. According to the defense, the charges against Afgan Mukhtarli were fabricated; besides, court trials were held with violation of fair trial principles, equality of arms and adversarial court proceedings.

The new wave of persecution of Azerbaijani journalists and activists in 2017 was extensive and involved the arrests, detentions and even abduction of the journalist in Georgia. After the „renewed“ crackdown in Azerbaijan, „Courts sentenced at least 25 journalists and political and youth activists to long prison terms in politically motivated, unfair trials. Dozens more were detained or are under criminal investigation, face harassment and travel bans, or have fled“.<sup>2</sup> On March 7, 2017, at the UN Human Rights Council, „Azerbaijani human rights defenders gave accounts of the worrying situation in the country and the need of international community to respond.“<sup>3</sup>

The document at hand presents facts about the disappearance and alleged abduction of Afgan in Tbilisi, capital of Georgia and analyzes criminal investigation launched by Georgian investigation authorities over this fact, trial hearings of Afgan in Azerbaijan and litigation before the European Court of Human Rights. The main findings of the report refer to ineffectiveness of pending criminal investigation in Georgia, particularly, problems of institutional independence of the criminal investigation; failure to gather important evidence on the case; legal qualification and status of Mr. Mukhtarli in the criminal case, as well as alleged unlawful surveillance and chasing.

To date, criminal investigation in Georgia over the fact of alleged abduction of the Azerbaijani journalist is pending. Georgian Parliament rejected a request from Georgian

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1. The trials of Afgan Mukhtarli in Azerbaijan have been monitored by the representative of the Human Rights House Tbilisi, lawyer of member organization “Article 42 of the constitution”.

2. See: Human Rights World Report 2018, Human Rights Watch, [https://www.hrw.org/sites/default/files/world\\_report\\_download/201801world\\_report\\_web.pdf](https://www.hrw.org/sites/default/files/world_report_download/201801world_report_web.pdf)

3. See at: <http://humanrightshouse.org/Articles/22297.html>

civil society organization to create temporary investigation commission into the alleged fact of abduction of Mr. Mukhtarli.<sup>4</sup>

The below document presents the facts and circumstances, which were identified and observed by HRHT and its member organization, Article 42 of the constitution, during the work on Afgan Mukhtarli's case.

## BACKGROUND INFORMATION



Afgan Mukhtarli

The Azerbaijani journalist and activist, Afgan Mukhtarli, has been carrying out investigative reporting in Azerbaijan since 1999. He used to work for several independent media outlets, such as Meydan TV and Institute for War and Peace Reporting (IWPR). The investigative stories reported by Afgan were mainly connected to the Azerbaijani government corruption and human rights violations in Azerbaijan. A series of articles published in 2014 were related to corruption in the Azerbaijani military.<sup>5</sup> Despite the challenges related to investigative journalism in

Azerbaijan, the country where the freedom of press is continually violated and government systematically punishes independent voices,<sup>6</sup> which includes among many, threats to physical well-being and personal safety, Afgan was continuing his work as a journalist and civic activist. Because of his professional activism, Mr. Mukhtarli endured intimidation many times, was detained and physically assaulted by Azerbaijani Government representatives.<sup>7</sup> Together with Afgan, his wife, Leyla Mustafayeva<sup>8</sup> (independent journalist) was also under risk. Following the persecution, Afgan and Leyla had to flee Azerbaijan and arrived in Georgia in January 2015.<sup>9</sup>

After his arrival in Georgia, Afgan continued his work as an investigative journalist and published articles about businesses owned by the President of Azerbaijan, Ilham Aliyev and his family.<sup>10</sup>

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4. Civil society and media organizations address the Parliament and Chief Prosecutor's Office of Georgia with regard to Afgan Mukhtarli's case, 19.02.2017, available at: <https://article42.ge/en/news/announcements/article/51623-civil-society-and-media-organizations-address-the-parliament-and-chief-prosecutors-office-of-georgia-with-regard-to-afgan-mukhtarlis-case>

5. See at: <https://www.meydan.tv/en/site/politics/3402/>  
<https://www.meydan.tv/en/site/politics/3403/>  
<https://www.meydan.tv/en/site/politics/3583/>  
<https://www.meydan.tv/en/site/politics/3584/>  
<https://www.meydan.tv/en/site/politics/3626/>  
<https://www.meydan.tv/en/site/society/23404/>

6. See Freedom House, "Freedom of the press 2017", country reports: Azerbaijan. Available at: <https://freedomhouse.org/report/freedom-press/2017/azerbaijan>

7. The information is based on the interview given by Afgan Mukhtarli to HRHT representatives when he arrived in Georgia in January 2015.

8. Leyla Mustafayeva is a freelance journalist and has been working for "Yeni Musavat", IWPR and Meydan TV as an investigative journalist.

9. Afgan Mukhtarli and his wife, Leyla Mustafayeva, were beneficiaries of the protection program implemented by HRHT, which supports Azerbaijani human rights defenders, activists and journalists in exile in Georgia.

10. See at: <https://www.meydan.tv/en/site/politics/8759/>

## AFGAN'S DISAPPEARANCE IN TBILISI



Press-conference at HRHT office about the disappearance of Afgan Mukhtarli in Tbilisi. May 30, 2017. @Copyright HRHT

According to Ms. Leyla Mustafayeva, on May 29, 2017, around 5:00 pm Afgan left their home and told her that he was going to meet friends in a café in Tbilisi. He met his friend, Mr. Dashgin Aghararli<sup>11</sup> in a café at Baratashvili Street, Tbilisi. At around 7:00 pm he called his wife informing her that he will be home soon and asked if he should buy some products on his way home. Afgan told Leyla that he was calling from a friend's phone as the battery was low on his mobile phone. However, Afgan never returned home. Next morning Leyla found out that Afgan did not come home. She called their friend Dasghin Aghararli, who told her that he had not seen him since Afgan left him around 7:00 pm near Baratashvili Street in Tbilisi.<sup>12</sup> Leyla went to the police to file a missing person's report, where she was accompanied by

HRHT representatives and its member organization, Article 42, lawyer (see details about investigation in Georgia in a section below, page 6). On the same day, with Leyla's consent, a press conference<sup>13</sup> was organized at HRHT about the disappearance of the Azerbaijani Journalist in Tbilisi.

In the evening of May 30, 2017, Mr. Mukhtarli was found in detention in Baku, Azerbaijan.

## DETAILS ABOUT AFGAN'S ALLEGED ABDUCTION

According to Mr. Mukhtarli,<sup>14</sup> in the evening of May 29, 2017, at about 5:40 pm, he took the mini-bus # 4 at Baratashvili Bridge in Tbilisi to go to his house at Niagvari Street, located in Mtatsminda district of Tbilisi.<sup>15</sup>

As Afgan recalls,<sup>16</sup> he was abducted by 4 persons (one person was driving) in Tbilisi around his house at Niagvari Street #4 A. He was pushed into the car. According to Afgan, the kidnappers wore uniforms of Georgian criminal police. Afterwards, the

11. Azerbaijani political activist, at that time living in Georgia, member of the opposition political party Mustafa, friend of Afgan Mukhtarli

12. Information is based on the interview with Leyla Mustafayeva, dated May 30, 2017, and Dashgin Aghararli, dated May 30, 2017.

13. See at [https://www.facebook.com/pg/humanrightshouseinbilisi/photos/?tab=album&album\\_id=1559159897441086](https://www.facebook.com/pg/humanrightshouseinbilisi/photos/?tab=album&album_id=1559159897441086)

14. Testimony of Afgan Mukhtarli before the Azerbaijani investigation authorities, dated May 31, 2017.

15. This fact (taking the bus by Afgan) was later also confirmed by the video-recordings from the street cameras, which were shown to the HRHT lawyer and Leyla Mustafayeva within investigation case in Georgia

16. Testimony of Afgan Mukhtarli before the Azerbaijani investigation authorities, dated May 31, 2017.

car stopped near Niagvari Street, where Afgan was handcuffed and beaten by the abductors, resulting in injuries on his body. According to Afgan, he had bruises on his hands, left temple, forehead, nose and right eye and also referred to pain to the lower chest.<sup>17</sup> After he was pushed back into the car, Afgan recognized the route they took to be the one to Tbilisi airport: having passed through Freedom Square, Avlabari Metro station, Kakheti Highway. After that, a sack was put on his head and Afgan could not see where the car was going. In the car, the kidnappers were speaking the Georgian language. The kidnappers did not introduce themselves to Afgan nor did they clarify anything. Later, because of the fact that Afgan complained that he could not breathe (he spoke with them in Russian), the kidnappers removed the sack and another material was put on his head. When the car stopped, Afgan believes it was in the Sagarejo region (town in Khakheti region, Eastern Georgia), considering the time that he spent in the car, while driving. The car was changed and he thinks he was with the same abductors in a different car. Afterwards, the car stopped again and Afgan was handed to a different man in a different car, where the abductors were speaking the Azerbaijani language. Later, Afgan was brought to a building, which he was told was a border checkpoint building. According to Afgan (he could already see as the material was removed from his head) it was a military point/building. He could see some employees who wore uniforms. One of the abductors from the last car announced to Afgan he had illegally crossed the state border. He was searched and 10,000 Euro was found on him. Afgan claims this money was planted on him by the kidnappers. According to Afgan, at about 5 am on May 30, 2017, he was taken to a nearby river, which he believes was the Balakan district, where allegedly, border building employees took his photos. Afterwards, at around 12 pm, he was taken to the main building of the border service in Baku. At about 9:00 pm on May 30, 2017, he was taken to the Khatai district police station.

On May 31, 2017, the charge for illegal crossing of the border, smuggling and for the disobedience to custom officers was imposed on Afghan Mukhtarli. On the same day, the Baku City Sabail District Court sentenced Mr. Mukhtarli to 3-month pre-trial detention. It was appealed to the Baku Appeal Court which left Afghan in detention.

## CRIMINAL INVESTIGATION PENDING IN GEORGIA OVER AFGAN'S DISAPPEARANCE

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After the disappearance of Afgan Mukhtarli on May 29, 2017, based on the information of his wife, Leyla Mustafayeva and Dashgin Aghararli, on May 30, 2017, a complaint was filed to Old Tbilisi police unit and the criminal case was launched under Article 143 para. 1 of the Criminal Code of Georgia, which applies to unlawful deprivation of liberty.<sup>18</sup>

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17. Ibid.

18. The Human Rights House Tbilisi and its member organization, Article 42 of the Constitution work on the case of Afgan Mukhtarli in Georgia and the European Court of Human Rights.





Protest demonstration in solidarity with Afgan. May 30 2017. @Copyright HRHT.

The criminal case launched on May 30, 2017, over the fact of the disappearance of Mr. Mukhtarli is pending to date. Investigation tends to be ineffective based on the case materials and lack of progress in investigation results. There are several directions that show gaps and failures of investigation authorities and render the investigation ineffective and biased. In particular:

- **INVESTIGATION WAS LAUNCHED BY THE BODY, WHICH COULD NOT GUARANTEE INDEPENDENCE AND IMPARTIALITY OF THE CRIMINAL INVESTIGATION.**



Protest demonstration in solidarity with Afgan. May 30 2017. @Copyright HRHT

Afgan Mukhtarli and his wife, from the very beginning declared that his alleged abduction was facilitated by the men dressed in Georgian police uniforms and speaking Georgian.<sup>19</sup> An interview with the deputy chairperson of the Human Rights Parliamentary Committee of Azerbaijan, Elman Nasirov, given to Radio Liberty on June 9, 2017, reinforced this assumption; he stated<sup>20</sup> that Afgan Mukhtarli was arrested as a result of joint effort of Azerbaijani and Georgian special services (later, he denied his statement).

19. Statement of Afgan Mukhtarli provided to the Azerbaijani investigation authorities, dated May 31, 2017.

20. See at: <http://netgazeti.ge/news/200204/>

Neglecting this information, criminal investigation on the alleged abduction of Mr. Mukhtarli was initiated by the Ministry of Internal Affairs of Georgia, whose employees could be the ones involved in the alleged crime. Irrespective of motion<sup>21</sup> of the victim's lawyer about potential conflict of interests and danger to the institutional independence of the investigation, the very first and important investigative measures were conducted by the investigators of the Ministry of Internal Affairs (MIA). Only on July 20, 2017, almost two months after Afgan's alleged abduction, the Office of Prosecutor of Georgia announced that the investigation would be pursued by them.<sup>22</sup>

### ● **FAILURE TO GATHER IMPORTANT EVIDENCE ON THE CASE**

The investigation, for various reasons, failed to gather the most objective evidence on the case, i.e. the video recordings along the route from Niagvara Street, Tbilisi to the Georgia-Azerbaijan border check point in Lagodekhi, as described by Afgan to be the route of his abduction,<sup>23</sup> neither from the video cameras belonging to the MIA and from private companies. According to the statement of an employee of the Joint Operations Center of the MIA, who was questioned as a witness, dozens of the video cameras of the MIA were out of order on the date of the abduction alongside the road through which the alleged kidnappers traveled. Only direct monitoring cameras (live cameras) were functioning. The investigator did not ask the witness any question about the reasons for the cameras being out of order.

According to the case file, border officers of the Georgian-Azerbaijani border reported that no incident had happened in the territory of Georgia during the period of interest for the investigation. The case materials included the notification, dated June 16, 2017, stating that video cameras installed outside the customs office, were out of order, however, later on, the State Security Service provided those video recordings, but with no important information on it.

The investigation questioned up to 200 persons, most of them having no relation to the crime committed, but failed to identify a suspicious man seen in the video retrieved from the CCTV camera at a bus stop in Baratashvili Street, Tbilisi. The man watched Afgan when he was getting into the mini bus #4 in Baratashvili Street, Tbilisi. This is the last time Mr. Mukhtarli was seen in Tbilisi. It has been requested by Afgan's lawyer for a number of times to identify the person visible in the video, but there has not been any progress on that. Besides, later on, the same video file from the case was damaged and is impossible to open. It is now up to expertise to find out the reason for the damaging of the video file.

Yet, the investigation could not identify the car, by which Afgan Mukhtarli was kidnapped (although he stated that it was Opel) and could not restore its itinerary including crossing the border.

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21. Motion of the lawyer, dated June 19, 2017.

22. Statement of the Office of Prosecutor of Georgia, available at [http://pog.gov.ge/geo/news?info\\_id=1295](http://pog.gov.ge/geo/news?info_id=1295), 20.07.2017 [last accessed on 03.05.2018].

23. Afgan's lawyer applied to the investigation authorities of Georgia for a number of times since opening the investigation to retrieve video recordings from the CCTV cameras along the road from Tbilisi to Lagodekhi, motions dated June 1, 13, 19 and 29, 2017.



Failure of the MIA to obtain essential and direct evidence of the alleged crime reinforces doubts about objectivity and effectiveness of the investigation.

### ● **LEGAL QUALIFICATION AND THE STATUS OF MR. MUKHTARLI AND MS. MUSTAFAYEVA IN THE CRIMINAL CASE**

As it has been mentioned above, on May 30, 2017, the criminal investigation was launched under Article 143 para. 1 of the Criminal Code of Georgia (the CCG), which envisages criminal responsibility for unlawful deprivation of liberty. However, the statements of Mr. Mukhtarli and Ms. Mustafayeva suggest that unlawful deprivation of liberty was committed in aggravated circumstances – by an organized group of people and with the cross-border transfer of an unlawfully detained person, crime envisaged under Art. 143 paras. 2, 3 and 4; the facts of the case also suggest alleged commitment of crime envisaged under Art. 154 of the CCG - unlawful interference in the professional activities of journalist, taking into account the fact that both Mr. Mukhtarli and his wife were chased by the Azerbaijani Government because of their professional activities.

Irrespective of the motion submitted by the lawyer to different investigation authorities with the request to amend the qualification of the case, to date the investigation is pending only under Art. 43 para. 1 – unlawful deprivation of liberty.<sup>24</sup>

Legal qualification of the criminal case also affects rights of the victims. Neither Mr. Mukhtarli nor his wife have victim status in the above mentioned criminal case. The motions<sup>25</sup> of the lawyer to grant victim status to Afgan and his wife were neglected by the police and by the prosecutor's office. Their inactions were appealed to the Tbilisi City Court claiming that the grave crimes were allegedly committed against Mr. Mukhtarli and Ms. Mustafayeva and they should be granted victim status in the criminal case. However, making reference to the criminal case file and the fact that the criminal investigation is pending under Art. 143 para. 1, which under the Georgian legislation is a minor crime, the Tbilisi City Court<sup>26</sup> rejected the complaint having no authority to review the complaint.<sup>27</sup>

It is worth to note that the Tbilisi City Court's decision was the first official document received by Ms. Mustafayeva and her lawyer in Tbilisi since launching the criminal investigation on May 30, 2017.

24. Motions of the lawyer, dated June 7, 19 and 29, 2017

25. Motions of the lawyer, dated June 7, 2017 and June 9, 2017

26. Complaint dated 13.06.2017.

27. Decision of Tbilisi City Court, dated 28.06.2017; Under Article 56 of the Criminal Procedure Code of Georgia refusal from the investigation authorities to have the victim status in the criminal case can be appealed to the supervisor prosecutor and later to the Court of general jurisdiction only if an especially grave crime is committed.

## ALLEGED UNLAWFUL SURVEILLANCE AND CHASING

According to the testimonies of his wife and friends, Afgan Mukhtarli was under surveillance before the abduction. Several days earlier to his abduction, on May 16, 2017, Afgan wrote on his personal Facebook page that he was under surveillance. On July 14, 2017, Ms. Mustafayeva handed over the photos of three persons to the police who allegedly chased her husband before the abduction. Leyla Mustafayeva and Dashgin Aghararli were interviewed by police on July 16, 2017, regarding the photos, but this did not lead to any results.

Surveillance and chasing were reported by Afgan's wife and friend too. They believe that they were chased because of their journalistic and opposition activities which irritated the Government of Azerbaijan and it was connected to the fact of the kidnapping of Mr. Mukhtarli. On May 31, 2017, during an interview, Mr. Dashgin Aghararli declared to the Georgian police that he was under surveillance and that he could even identify one of the persons who watched him.

Ms. Mustafayeva also reported several incidents of her being allegedly chased by unidentified persons in Tbilisi since Afgan's abduction. She stated that one of the incidents took place when she met the leader of the Azerbaijani opposition political party Musavat. She declared the fact to the police on June 29, 2017, but she never got any response.

According to Ms. Mustafayeva, another suspicious incident happened on July 29, 2017, in a Tbilisi based café. She was about to leave the café, when she noticed an unattended bag on a chair. When she asked who the owner of the bag was, a middle aged man rushed to her and seized the bag from her; he ran out of the café. Leyla Mustafayeva and Dashgin Aghararli followed the stranger to find out the reason of his behavior but two other men were waiting for him outside the café and they all together left the area in a hurry. Leyla Mustafayeva and Dashgin Aghararli reported this incident in detail to the police. Later on, according to the information of the Prosecutor's Office, a fact of surveillance was not estimated.

Mustafayeva and Aghararli also reported that four men were chasing them on August 4, 2017, when the Azerbaijani Minister of Internal Affairs visited Georgia. They managed to secretly video-record the men and on August 7, 2017, handed the video and photo materials to the Georgian Prosecutor's Office. Like in all previous incidents, the investigation did not consider the provided materials as valuable and reporting did not lead to any results.

The incidents mentioned by Ms. Mustafayeva contained signs of criminal offence prescribed under Articles 151<sup>1</sup> (stalking) and 154 (unlawful interference into professional activities of journalist), as well as Article 158 (violation of privacy of personal communication) of the CCG but the investigation of these actions did not lead to any results to date.

After inactivity of the Georgian Prosecutor's Office to the reported incidents, on September 19, 2017, the photos and video-recordings of the persons chasing Ms. Mustafayeva were published.

Because of contradictory and inadequate statements and activities of Georgian senior officials (see below, page 10), ineffective investigation, frequent surveillance

facts, which were not adequately investigated, Ms. Mustafayeva and other refugees from Azerbaijan, had feared that they might also get subjected to a similar crime as was committed against Mukhtarli.

Because of the circumstances mentioned above, in October 2017, Leyla Mustafayeva had to seek shelter in a third safe country together with her underage daughter Nuray Mukhtarli. At the beginning of 2018, Mr. Aghararli also left Georgia to seek shelter in another country.

## REACTION OF GEORGIAN AUTHORITIES AND INTERNATIONAL DIMENSION OF THE CASE

Assessments by the international organizations about Afgan Mukhtarli's case were extremely critical and called on the Government of Georgia to ensure a timely and effective investigation. On June 3, 2017, the US State Department<sup>28</sup> expressed concern about the fact and called on Georgia to ensure a full, transparent and timely investigation. On June 15, 2017, a resolution<sup>29</sup> adopted by the European Parliament stressed out the importance of a transparent and effective investigation. On January 12, 2018, the US State Department<sup>30</sup> stated that they will continue to closely follow the Georgian investigation into the reported abduction, and reiterated their call that it be full, transparent, and timely. All these statements indicate that it is inadmissible to leave the questions and doubts about the alleged abduction unaddressed. The dragged out investigation seriously harms the state of human rights in Georgia and international reputation of the country.

One day after the alleged abduction, on May 30, 2017, the President of Georgia, Giorgi Margvelashvili stated,<sup>31</sup> that the disappearance of a person in Georgia is a challenge for the country and that the government has to protect its reputation and ensure the safety of citizens, especially because Georgia is considered to be the leader in the region for protecting human rights and freedom of media.<sup>32</sup>

The alleged abduction of Afgan Mukhtarli became an important topic of various addresses of Georgian government officials, yet excluding any involvement of Georgian police officers or any other affiliation with the alleged criminal activities.

The Minister of Justice of Georgia, Tea Tsulukiani also responded<sup>33</sup> to the alleged abduction of Afgan Mukhtarli on June 01, 2017, and excluded the participation of Georgian law enforcement officials in this incident. She also emphasized, that the

28. available at: <https://www.state.gov/r/pa/prs/ps/2017/06/271551.htm>

29. available at: <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1494406&t=d&l=en>

30. available at: <https://www.state.gov/r/pa/prs/ps/2018/01/277441.htm>

31. available at:  
<http://www.tabula.ge/ge/story/120636-prezidenti-muxtarize-adamianis-gaqroba-chveni-saxelmtsifoebriobist-vis-gamotsvevaa>

32. Available at:  
<http://www.tabula.ge/ge/story/120636-prezidenti-muxtarize-adamianis-gaqroba-chveni-saxelmtsifoebriobist-vis-gamotsvevaa>

33. Available at: <http://www.tabula.ge/ge/story/120661-tsulukiani-muxtarize-gamoricxulia-chveni-samartaldamcave-bis-monatsileoba>

investigation in Georgia might be derailed because Afgan is in Baku and only he has the necessary information needed for the investigation.<sup>34</sup>

The Chairman of Parliament, Irakli Kobakhidze has also addressed<sup>35</sup> the fact of alleged abduction on June 01, 2017. He underlined, that the Parliament will be actively involved in the process and in particular, will communicate with the Executive. The Chairmen stated that he hoped the process will soon be over and that all the questions will be answered.<sup>36</sup>

The Prime Minister of Georgia addressed<sup>37</sup> this fact on June 03, 2017, and stated that Georgia will not give up its achievements in protecting democracy and rule of law in the country. He indicated that the government will do everything in its power to fully protect human rights of any person, regardless of his/her citizenship and political affiliation. The Prime Minister of Georgia expressed full readiness of the Government of Georgia and Ministry of Justice to assist Afgan Mukhtarli's spouse and children in resolving any legal procedures.<sup>38</sup>

On July 10, 2017, the statement<sup>39</sup> of the Minister of Internal Affairs of Georgia, Giorgi Mghebrishvili was disseminated in media under the headline: „We cannot artificially stage the abduction of Afgan Mukhtarli.“ The Minister stated: „All videos indicated by the lawyer of the Azerbaijani journalist were retrieved from the cameras. He received the copies of videos but did not like them as they do not show the abduction scene. We cannot artificially stage the abduction scenes to please him. We follow the objective situation that we are having.“<sup>40</sup>

On July 20, 2017, the Minister of Internal Affairs of Georgia, Giorgi Mghebrishvili informed<sup>41</sup> journalists that heads of the border security service and counter-intelligence service were stepping down because of the case of Afgan Mukhtarli and that the investigation could not exclude any versions.<sup>42</sup>

On July 20, 2017, the Chief Prosecutor's Office of Georgia reported<sup>43</sup> that the criminal investigation over Mukhtarli's case would be pursued by the Prosecutor's Office.<sup>44</sup>

A self-critical statement<sup>45</sup> of the Prime Minister of Georgia about the alleged abduction and the decision<sup>46</sup> of the Minister of Internal Affairs of Georgia to dismiss heads of

34. Available at: <http://www.tabula.ge/ge/story/120661-tsulukiani-muxtarize-gamoricxulia-chveni-samartaldamcave-bis-monatsileoba>

35. <http://netgazeti.ge/news/198878/>

36. Available at: <http://netgazeti.ge/news/198574/>

37. <http://netgazeti.ge/news/198878/>

38. Available at: <http://netgazeti.ge/news/198878/>

39. Available at: <http://www.interpressnews.ge/ge/samartali/442270-giorgi-mghebrishvili-chven-khelovnurad-ver-davdgamth-afgan-mukhtarlis-gatacebis-scenebs.html?ar=A>

40. Available at: <http://www.interpressnews.ge/ge/samartali/442270-giorgi-mghebrishvili-chven-khelovnurad-ver-davdgamth-afgan-mukhtarlis-gatacebis-scenebs.html?ar=A>

41. Available at: <https://jam-news.net/?p=50104&lang=ka>

42. Available at: <https://jam-news.net/?p=50104&lang=ka> 20.07.2017

43. Available at: [http://pog.gov.ge/geo/news?info\\_id=1295](http://pog.gov.ge/geo/news?info_id=1295)

44. Statement of the Office of Prosecutor of Georgia. Available at [http://pog.gov.ge/geo/news?info\\_id=1295](http://pog.gov.ge/geo/news?info_id=1295) , 20.07.2017

45. Available at: <https://1tv.ge/news/giorgi-kvirikashvili-afgan-mukhtarlis-shemtkhveva-seriozuli-chavardna-iyol>

46. Available at: <http://reginfo.ge/politics/item/1624-apgan-muxtarlis-saqmis-gamo-kontrdazvervis-da-sasazgvro-poliizis-uprosebi-gaatavisuples>

the border and counter-intelligence departments, shall not be evaluated as sufficient reaction from the authorities.

Besides, on June 18, 2018, the Head of the State Security Service of Georgia, Vakhtang Gomelauri delivered his report before the Parliament of Georgia about the 2017 activities of his Office. With regard to the case of Afgan Mukhtarli, he stated<sup>47</sup> that the incident is not included in the report, because the criminal investigation is still pending. However, there are criminal cases that are under pending investigation for 5 years and there are some that remain uninvestigated. This is nothing new, such [uninvestigated] cases exist all the time.<sup>48</sup>

## TRIAL OF AFGAN MUKHTARLI IN AZERBAIJAN<sup>49</sup>

In Azerbaijan, Afgan Mukhtarli was charged under Article 318 (1) (illegal crossing of the state border) and Article 206 (1) (smuggling)<sup>50</sup> of the Criminal Code of Azerbaijan. On June 1, 2017, he was additionally charged under Article 315 (6) (disobedience to the police officers) of the Criminal Code of Azerbaijan.

Mr. Mukhtarli's Azerbaijani lawyers complained about violation of Afgan's rights during his pre-trial detention. Afgan claimed that since he was handed over to the Azerbaijani authorities, he was not allowed to contact his lawyer for 20 hours. He was also restricted access to his lawyers on June 5, 2017, by the prison administration while being in pre-trial detention. He complained about the physical assault after detention, which intentionally was not documented by the doctor at the Khatai police department; besides, he was compelled due to verbal coercion to sign the document stating that he did not have any bodily injuries. Furthermore, on June 8, 2017, lawyers motioned before the prison administration to examine Afgan's state of health and document physical injuries on the body, but were refused.<sup>51</sup> Only a month later the doctor was allowed to visit Afgan in detention, but by that time physical injuries could not be detected.

47. Available at: <https://1tv.ge/news/vakhtang-gomelauri-afgan-mukhtarlis-tema-sus-angarishshi-ar-mokhvda-radgan-gamodzieba-mimdinareobs/>

48. Available at: <https://1tv.ge/news/vakhtang-gomelauri-afgan-mukhtarlis-tema-sus-angarishshi-ar-mokhvda-radgan-gamodzieba-mimdinareobs/>

49. Trials of Afgan Mukhtarli have been monitored by the representatives of the HRHT

50. In particular, smuggling of 10,000 Euro in cash across the Azerbaijani-Georgian border.

51. Afgan suffers from type two diabetes.





Protest demonstration in solidarity with Afgan, Embassy of Azerbaijan in Georgia. @copyright HRHT



Leyla Mustafayeva, Embassy of Baku, Tbilisi. @copyright HRHT.

Afgan and his lawyers raised the issue of unlawful interference in his private and professional life before the judge, namely, withdrawal of all the information from his cell phone including the contact information of his respondents without Court order. However, the complaint was disregarded by the Court.

Irrespective of the motions of Afgan's lawyers, during pending investigation to use pre-trial measures other than detention against Mr. Mukhtarli, Azerbaijani Courts ordered his detention. Afgan spent more than 7 months in pre-trial detention. The lawyers also complained about his unlawful detention during two days, between abduction in Tbilisi on May 29, 2017, until being brought to the Baku Sabayl District Court on May 31, 2017, but the complaints were not taken into account by the judge when adjudicating on lawfulness of Afgan's detention.

Afgan and his Azerbaijani lawyers reported to the Belakani District Court, that criminal charges brought against Mr. Mukhtarli are fabricated and that in fact he was kidnapped in Tbilisi, Georgia and taken to Azerbaijan to face criminal responsibility because of his journalistic activities and criticism towards the Azerbaijani Government; thus, the defense claimed Afgan's innocence and requested his acquittal from all the charges brought against him. However, Belakani District Court of Azerbaijan on January 12, 2018, while rejecting the arguments of the defense, upheld all the charges brought against Mr. Mukhtarli and sentenced him to a prison term of six years. The sentence was upheld by the Court of Appeals on April 24, 2018.

Monitoring of the trials by the HRHT representatives identified number of procedural violations which could amount to the infringement of Afgan's fair trial rights, particularly, violation of principle of equality of arms, restriction on public hearing and the right to be represented by a counsel of his choice.

The Judge of the Belakani District Court rejected all the motions posed by the defense lawyers, including interrogation of defense witnesses and medical expert without any reasoning, while upholding all the requests of the prosecution. It was also rejected to include documents on the ongoing investigation in Georgia (alleged abduction) and statements of Georgian High Officials presented by the defense lawyers to the criminal case file.

At one of the hearings, the Judge of the First Instance Court did not allow journalists to enter the courtroom, referring to various irrelevant arguments (security guards asked the media representatives to leave all the equipment outside the court room, etc.).

Besides, the judge of the Belakani District Court rejected the motion of the defense counsels to release Afgan from the metal cage during the hearing and to give him a seat next to his lawyers<sup>52</sup>.

On April 23, 2018, based on the complaint of the First Deputy Prosecutor General of Azerbaijan, the Azerbaijani Bar Association suspended the license of Mr. Nemat Karimli, the main defense counsel of Mr. Mukhtarli one day prior to the hearing in the Court of Appeals<sup>53</sup>.

All the facts enlisted above clarify that Afgan Mukhtarli did not have the possibility to equally present his case before the Court and was deprived of the right to a public hearing and the right to be represented by a lawyer of his choice.

## LITIGATION BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

On June 2, 2017, an interim measure request was lodged with the European Court of Human Rights (hereinafter the ECtHR) under Article 39 of the European Convention on Human Rights (hereinafter the ECHR) on behalf of Afgan Mukhtarli<sup>54</sup>. It was requested to suspend the execution of the judgment of Baku Sabayl District Court, dated May 31, 2017, about pre-trial detention of Mr. Mukhtarli, to release him from detention and to allow him to join his family in Tbilisi, Georgia. The ECtHR may, under Rule 39 of the Rules of Court, indicate interim measure to any State party to the ECHR. Interim measure is an urgent measure which, according to the Court's well-established practice applies only where there is an imminent risk of irreparable harm to the applicant. Such measures are decided in connection with proceedings before the Court without prejudging any subsequent decisions on the admissibility or merits of the case in question<sup>55</sup>.

52. Case of Ramishvili and Kokhraidze v. Georgia, application no. 1704/06, judgment dated Jan 27 2009.

53. The Deputy Prosecutor General clarified that the suspension to practice law resulted from the fact that „in his interviews with the media, Afgan Mukhtarli's lawyer tried to politicize the criminal case and to mislead the society in order to influence witnesses through violating the legislation.“ The Azerbaijan Bar Association studied the two interviews of Nemat Karimli with media. In his first interview (Available at: <https://www.amerikaninsesi.org/a/hebs/3877444.html>), the lawyer spoke about the kidnapping of Afgan Mukhtarli on May 30, 2017, and underlined that in Azerbaijan, the journalist's life was under risk and consequently, the Government of Georgia should not have transferred him to the Azerbaijani side. In his second interview (Available at: <http://bastainfo.com/az/2017/10/01/v%C9%99kil-nem%C9%99t-k%C9%99rimli-t%C9%99cridxanada-qanunsuzluqla-uzl%C9%99sib/>), the lawyer spoke about the surveillance during his meeting with Afgan in the detention facility and he protested against it by saying that „even the most authoritarian regimes could not implement surveillance of the lawyer so obviously when he was communicating with his client.“ These interviews became the reasons for suspending the license of Nemat Karimli.

54. Representatives of the HRHT member organization „Article 42 of the Constitution“ represent the interests of Afgan Mukhtarli and his wife Leyla Mustafayeva before the ECtHR.

55. See the information: [https://www.echr.coe.int/Documents/FS\\_Interim\\_measures\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Interim_measures_ENG.pdf)

On June 8, 2017, the ECtHR posed five questions to the Government of Azerbaijan with regard to the case. The applicant was also requested to submit substantial application to the Court. On June 19, 2017, the Government of Azerbaijan submitted answers to the questions asked by the Court, while the applicant's representative responded on the Government's observation on June 26, 2017. On July 8, 2017, the ECtHR did not uphold interim measure request but recommended the parties to repeatedly appeal to the Court in case of additional threats to the applicant. The Government of Azerbaijan was held responsible to ensure safety of the applicant (The Government of Azerbaijan is obliged to ensure that the detainee receives „relevant medical assistance“).

In June 2017, a full application was lodged with the ECtHR on behalf of Mr. Mukhtarli and Ms. Mustafayeva. With regard to Mr. Mukhtarli, alleged violation of the Articles 1 (guarantees respect of human rights by all parties), 3 (no one shall be subjected to torture or to inhuman or degrading treatment or punishment), 5 (The right to personal freedom and security), 6 (The right to a fair trial), 8 (Right to respect for private and family life), 10 (Freedom of expression), 13 (Right to an effective remedy), Article 14 (Prohibition of discrimination) and 18 (Limitation on use of restriction on rights) of the ECHR, as well as the Articles 4 (Freedom of movement), 7 (procedural safeguards relating to expulsion of aliens) and 12 (general prohibition of discrimination) of the Additional Protocols of the Convention has been claimed in the application. As for Ms. Mustafayeva, alleged violation of the Articles 8 (Right to respect for private and family life), 10 (Freedom of expression), 13 (Right to an effective remedy) and 18 (Limitation on use of restriction on rights) of the ECHR have been claimed. Respondent Governments in the case are Azerbaijan as well as Georgia.

On August 30, 2017, the ECtHR notified the applicants' representatives that the application<sup>56</sup> was received and that the case was granted priority status<sup>57</sup>.

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56. Mukhtarli and Mustafayeva v. Azerbaijan and Georgia, application no. 39503/17.

57. The ECtHR uses priority system with a view to speeding up the processing and adjudication of the most important, serious and urgent human rights violations, which are discussed within the period of 1 and 2 years.

## CONTACT INFORMATION:

Address: Gakhokidze Akaki 11a  
0179, Tbilisi, Georgia.  
Phone: +995 32 2 38 20 18  
E-mail: [Tbilisi@humanrighthouse.org](mailto:Tbilisi@humanrighthouse.org)  
Web: <http://humanrightshouse.org/Members/Georgia/index.html>