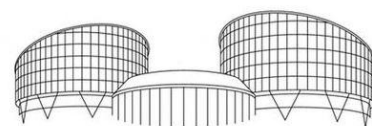


**EXECUTION OF JUDGMENTS OF
THE EUROPEAN COURT OF
HUMAN RIGHTS:**



CHALLENGES AT THE NATIONAL LEVEL

2022

HUMAN RIGHTS CENTER



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1. Introduction

On June 17, 2022, Georgia was faced with a new reality. The European Commission has published opinions on the applications of Georgia, Ukraine, and Moldova to receive the status of the candidate of the EU¹. Based on the recommendation of the European Commission, Ukraine and Moldova have been granted the status of the candidate, while Georgia will have to fulfill 12 preconditions to continue the road.

The recommendations issued to Georgia refer to political polarization, judicial system, freedom of the press, etc. According to recommendation N11, the European Commission called on Georgia to make legislative amendments to ensure that national courts proactively apply the judgments of the European Court of Human Rights² in their deliberations³.

Underlining the role of the ECtHR by the European Commission is quite an important moment, as the Court is one of the most powerful international courts safeguarding the European Convention on Human Rights and Fundamental Freedoms⁴. The ECtHR has contributed greatly to the democratic development of Georgia released from the Soviet paradigm.

The current analytical document aims to review the role and influence of the ECtHR on Georgia. Further, the paper demonstrates to what extent the execution of the judgments rendered against Georgia is important not only for particular individuals but also for the public. The relevance of the topic is prompted by the spirit of recommendations issued by the European Commission and that of the judgments rendered against Georgia in general by the ECtHR.

The document opens with describing the content and importance of recommendation N11 of the European Commission, as well as the current legislative amendments related to it. Secondly, the document focuses on the impact of the ECtHR and on the importance of executing its judgments. Moreover, the paper surveys the judgments rendered against Georgia on the examples of the following cases: *Tsintsabadze v. Georgia*⁵ and *Tkheldize v. Georgia*⁶. The judgments were selected to address the systemic problems that exist in Georgia. The paper analyzes the decisions of the Committee of Ministers of the Council of Europe, as well as the findings and reports of other international and regional organizations, the Government of Georgia, the Public Defender, and civil society. Finally, the analytical document provides conclusions.

¹ Directorate-General for Neighborhood and Enlargement Negotiations, European Commission, [The European Commission recommends to Council confirming Ukraine, Moldova and Georgia's perspective to become members of the EU and provides its opinion on granting them candidate status](#) (17 June 2022).

² Hereinafter the ECtHR.

³ For detailed information, see the [Research](#) of Human Right Center by *Nato Rubanovi*, *EU Membership Perspective and 12 Conditions for Georgia to Receive Candidate Status: What will be next?* (2022).

⁴ Hereinafter the ECHR or the European Convention.

⁵ *Tsintsabadze v. Georgia*, no. [35403/06](#) (ECtHR, 15 February 2011)

⁶ *Tkheldize v. Georgia*, no. [33056/17](#) (ECtHR, 8 July 2021)

2. European Commission's recommendation or inevitable necessity

Under one of the 12 recommendations, the European Commission called on Georgia to adopt relevant legislation so that national courts proactively take into account the judgments of the ECtHR in their deliberations. In other words, national courts should pay attention to the judgments of the ECtHR, which are of relevance for the deliberations of the respective cases. It should be noted that the ECtHR is not an institution of the European Union but is part of the other regional organization - the Council of Europe. However, it is not surprising that the EU has called for the application of the judgments of the ECtHR. The Council of Europe and the European Union are connected with a strong and long-term cooperation. The role of the Council of Europe as a protector of the rule of law, democracy, and human rights in Europe, is recognized by the Memorandum of Understanding between the EU and the Council of Europe⁷.

The importance of the ECtHR is well known to Georgia too. Since 1999, after Georgia joined the Council of Europe, many legal mechanisms have been improved in the country, including private individuals were allowed to defend their rights in the ECtHR based on the ECHR. The Committee on Human Rights and Civil Integration of the Parliament of Georgia started working on the implementation of the recommendation of the European Commission. It is also noteworthy that civil society also participated in the working group created by the Committee.

2.1. Legislative initiatives

The work of the Committee on Human Rights and Civil Integration of the Parliament of Georgia in terms of improving the mechanisms to proactively apply and enforce the judgments rendered by the ECtHR can be assessed in positive terms. In order to fulfill the recommendations of the European Commission, eleven laws of Georgia are going to be amended: Organic Law of Georgia on General Courts, Organic Law of Georgia on the Constitutional Court of Georgia, Organic Law of Georgia on Prosecutor's Office, Organic Law of Georgia on Normative Acts, Law of Georgia on Lawyers, Criminal Procedure Code of Georgia, Civil Procedure Code of Georgia, Administrative Procedure Code of Georgia, Administrative Offenses Code of Georgia, General Administrative Code of Georgia and Law of Georgia on International Agreements of Georgia.

In the first place, the case law of the ECtHR will be included into the qualification enhancement programs for judges, as well as to the barristers'/lawyers' examination and continued mandatory education programs. Although judges and lawyers have already been free to develop their reasoning based on the case-law of the ECtHR, with current changes, such a provision will be found in relevant normative acts. Moreover, it is also noteworthy that the amendments to the Organic Law of Georgia

⁷ [Memorandum of Understanding](#) between the Council of Europe and the European Union (2007)

on Normative Acts would emphasize the fact that the judgments of the ECtHR are considered as official interpretation of the norms of the ECHR and its additional protocols.

Interesting changes are introduced regarding the procedure of appealing the court judgments, namely that appeals, and cassation complaints may be based on the judgments of the ECtHR to which as the appellant believes the national judgment may contradict. Further, it is also important that determining a violation by the ECtHR on a particular case served as a basis for the reopening of the civil case and for the revision of the criminal case. The similar provision was not applicable to the cases of administrative proceedings, which, under the current legislative initiative, would be changed.

As for the technical part, the structure of the staff of the Appellate and Supreme Courts will include a structural unit oriented on human rights law, including the ECtHR case-law, the main function of which would be to promote the availability of the case-law of the ECtHR to the judges, which would also include the activities of analyzing the judgments of the ECtHR and that of the information and publication campaigns. Effective work of the above unit will make the biggest contribution to the practical implementation of recommendation N11. Furthermore, significantly, the judgments/decisions rendered against Georgia by the ECtHR shall be sent to the Official Gazette of Georgia (*Sakanonmdeblo Matsne*) within 10 days of becoming effective with the latter providing the translation within 180 days. Matsne shall be authorized to translate and publish judgments rendered against other countries that contain important interpretations of the ECHR or its additional protocols.

2.2. Factors that should be taken into consideration

Although the above changes are thoroughly fulfilling recommendation 11 by the European Commission, some questions remain, both in technical terms and in relation to the enforcement. In particular, the European Court of Human Rights publishes its judgments only in English and French⁸; as noted Matsne is only obliged to translate the judgments rendered against Georgia while vis-a-vis other judgments Matsne has no such obligations. Consequently, taking into consideration the workload of Matsne, it is interesting to know what the frequency of translating the case-law would be especially from the colossal number of judgments rendered by the ECtHR⁹. The availability of the structural unit working on analysis of the case-law of the ECtHR will significantly improve the application of relevant judgments, but on the other hand it is necessary to make similar information available to private individuals and/or their lawyers, so they too should be given the possibility to substantiate their positions (at least during appeals or cassation) with the judgments of the ECtHR. So, such documents must be publicly available. With this regard it would be necessary to mobilize additional resources to create a group responsible for selecting the judgments. When selecting the judgments, it would be appropriate to choose the ones through which the ECtHR has interpreted the provisions of the ECHR or that of the additional protocols and not just the judgments simply referring to other judgments. In

⁸ The European Court of Human Rights, Rules of the Court, Rule 76 (2022)

⁹ The European Court of Human Rights, [The ECHR in Facts and Figures](#) (2022)

addition to existing precedents, the cases establishing the matters in a new or different manner must also be selected.

Furthermore, implementation remains challenging. Irrespective of the above legislative amendments, the national courts have already had the responsibility of applying the judgments of the ECtHR. According to the Constitution of Georgia, Georgia is a State governed by rule of law with the legislation complying to the universally recognized principles and norms of international law¹⁰. Meanwhile, in terms of normative hierarchy, international agreements have a predominant legal force vis-à-vis domestic normative acts provided they do not contradict the Constitution of Georgia, a constitutional law and constitutional agreement¹¹. Consequently, after Georgia joined the European Convention, the ECHR became an integral part of the Georgian legislation. The norms of the ECHR are interpreted and specified by the judgments of the ECtHR. Therefore, the judgments of the ECtHR are a significant source for interpreting the European Convention. This responsibility is well stated by Tbilisi City Court, which noted in 2016 that "since the ECtHR decisions and judgments explain and interpret the text of the Convention, they are mandatory precedents and so as soon as contracting states (including Georgia) ratify the Convention, the national authorities must recognize the case-law of the ECtHR as obligatory for fulfillment."¹² All the same, there are instances when using the judgments rendered by the ECtHR, judges do this in a formal manner thus making incorrect or incomplete references in some of the cases.¹³ This suggests that judges attempt to solidify their own arguments with fragmentary references to the judgments of the ECtHR, which is of course unacceptable since it prejudices the interest of the person concerned, on the one hand, and provides legal ambiguity in terms of interpreting the rights, on the other hand.

Consequently, one must be cautious that these changes effect not just the legislation but bring tangible results. The pessimism is brought by the fact that not just the application of the precedents adopted by the ECtHR, but the very execution of the judgments rendered against Georgia is rather imperfect at the national level. In order to rightly assess the challenges, it is necessary to define the role and importance of the ECtHR.

3. Role and influence of the ECtHR

In 1949, ten European states gathered in London - being "convinced that that the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and

¹⁰ Constitution of Georgia, Article 4.

¹¹ Organic Law of Georgia on Normative Acts, Article 7.

¹² Judgment №2/13664-15 by Civil Panel of Tbilisi City Court from February 11, 2016, quoted by Nana Mchedlidze in her paper *The Standards of Applying the ECHR by General Courts of Georgia*, a joint project of the European Union and the Council of Europe "Application of the European Convention on Human Rights and harmonization of national legislation and judicial practice in Georgia in line with European standards" (2017) p. 10.

¹³*ibid*, p. 191.

civilization”¹⁴ - founded the Council of Europe. After the end of World War II, the creation of the Council of Europe was one of the most ambitious steps, which also manifested through the incorporation of the ECHR. The post-war ambition of the Council of Europe has not remained only as an ambition and even today the ECHR is one of the most powerful regional instruments.

The ECHR and additional protocols of the Convention enshrine number of rights and freedoms. In addition, we must admit that it would be erroneous to perceive the ECHR separately from the ECtHR. The convention that was adopted in 1950 cannot naturally answer all contemporary issues. It would be difficult to establish the standards of the Convention based only on the text, as it does not provide the details for all the legal relations envisaged by the ECHR¹⁵. That is why the European Convention as a "living instrument" must be interpreted in the light of present-day conditions¹⁶. This function is entitled to the European Court.

By the first article, the Convention calls on the contracting parties to protect the rights and freedoms defined by the Convention for the persons within their jurisdictions. The convention is not just a declaratory document. Based on it, both private persons (individuals, non-governmental organizations, or a group of individuals) and states have the right to apply to the European Court to protect their rights. However, the respondent is always a contracting State, as it was mentioned, the state is responsible for the protection of the ECHR. The State, on the one hand, is obliged to refrain from interfering with the right of a person, and on the other hand, to take all the appropriate measures to protect persons within its jurisdiction from third parties. The responsibility of the State includes the adoption of a proper legislative framework as well as the efficient use of the framework. Further, it is noteworthy that before lodging an application to the ECtHR, the individual must have exhausted all effective national remedies for protection.

Therefore, it is not surprising that the judgments of the European Court relate to a number of issues, such as freedom of expression, freedom of religion, etc. The European Court has made significant interpretations vis-à-vis Georgia. The ECtHR has deliberated about individual rights, as well as about the Georgia's applications against the Russian Federation. The individuals within the Georgian jurisdiction are familiar with the practice of bending efforts to apply to the ECtHR as a last resort when they are unhappy with the national legal mechanisms¹⁷. As of January 1, 2022, the European Court has rendered a total of 132 judgments in relation to Georgia¹⁸. In three quarters of the judgments, the European Court has found at least one violation of one article of the Convention against Georgia, most

¹⁴ The Statute of the Council of Europe (1949)

¹⁵ Konstantine Korkelia, *How to protect human rights in Georgia with European standards?* German Technical Cooperation Society (GTZ), European Union (2010) p. 16.

¹⁶ *Tyrer v. The United Kingdom*, no. [5856/72](#) (ECtHR, 25 April 1978) para. 31.

¹⁷ This is proved by the number of complaints filed against Georgia. According to the official data of the European Court from 2021, the Court dealt with 127 applications filed concerning Georgia in 2021. See https://www.echr.coe.int/Documents/CP_Georgia_ENG.pdf

¹⁸ European Court of Human Rights, [The ECHR and Georgia in Facts and Figures](#) (2022) p. 3.

often of the Article 3 (prohibition of torture) and Article 6 (right to a fair trial)¹⁹. However, for improving the situation, it does not suffice to merely establish the violation by the Court. The role of the ECtHR is not only to establish the facts and violations. The judgments of the European Court can only be positively effective changing the situation of the applicant and others if the State executes these judgments.

4. Execution of judgments of the ECtHR

In accordance with Article 46(1) of the ECHR, the Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties. Under Article 41 of the ECHR, if the Court finds that there has been a violation of the Convention, the Court may oblige the State to pay a compensation to the injured party.

In case of finding a violation of the Convention or additional protocols, the Court imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress the effects in such a way as to restore as far as possible the situation existing before the breach²⁰. There are cases where the Court calls on the State to take specific actions. An example of this is the first judgment of the ECtHR in relation to Georgia on the case of *Asanidze v. Georgia*, when the court directly demanded the release of the applicant²¹. Although some judgments require individual measures to be taken, certain judgments address the internal legislative and administrative reforms in order to prevent repetition of the violations²². In connection with such offenses, where the systemic flaws are visible the European Court sets a number of recommendations through pilot judgments²³, including on legislative amendments as well.

Execution of judgments goes beyond the competence of the Court and the issue is handed over to the Committee of Ministers of the Council of Europe. The Committee of Ministers receives information from the states and other stakeholders about the execution of specific judgments²⁴. The case will be closed only when the Committee of Ministers is satisfied with the measures taken by the State and is, therefore, adopt a final resolution in this regard²⁵. Noteworthy, where the Committee of Ministers

¹⁹ *Ibid*, p. 4.

²⁰ *Tsartsidze and Others v. Georgia*, no. [18766/04](#), (ECtHR, 17 January 2017) para. 98.

²¹ *Assanidze v. Georgia* [GC], no. [71503/01](#) (8 April 2004) 2004-II.

²² Dia Anagnostou, *The European Court of Human Rights: Implementing Strasbourg's Judgments on Domestic Policy*, Edinburgh University Press (2013), p. 1.

²³ Linos-Alexander Sicilianos, *The Involvement of the European Court of Human Rights in the Implementation of its Judgments: Recent Developments under Article 46 ECHR*, Netherlands Quarterly of Human Rights, Vol. 32/3, Netherlands Institute of Human Rights (2014) p. 239.

²⁴ The Council of Europe Committee of Ministers, Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements (amended on 18 January 2017) Rule 9(2).

²⁵ *Ibid*, Rule 17.

considers that a Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may refer to the Court the question whether that Party has failed to fulfil its obligation under Article 46(1)²⁶.

4.1 Execution of judgments of the ECtHR in Georgia

The Ministry of Justice of Georgia has the key role in execution of the judgments by the ECtHR in Georgia. Responsibility of the Ministry of Justice includes not only the facilitation of the execution of the judgments rendered against Georgia²⁷, but also the examination and processing draft laws and subordinate normative acts with a view to be in compliance with the ECHR²⁸. The reports of the Ministry of Justice and the resolutions of the Committee of Ministers of the Council of Europe clearly indicate that the Ministry of Justice respects the judgments of the Court with due responsibility. **Georgia pays the compensations imposed on the respondent State timely and in full amounts. Furthermore, following the judgments of the ECtHR, the relevant agencies of the State begin or/and resume investigations into specific cases. However, it is noteworthy that these types of measures can only change the condition of a single applicant failing to remedy systemic deficiencies.**

The role of the European Court, as noted, is not to remedy conditions of only one applicant, but the judgment must also have a preventive effect and the State must no longer repeat the violations established by the Court. For these reasons, it would be necessary to improve the national legislation as well as the application of the laws in practice. Further, it should be noted that in some cases the European Court is satisfied with the applicable legislation in Georgia, but the Court often sees the problem in effective application of these legal norms. Therefore, we may conclude that **the steps taken by Georgia are more oriented on the applicants and do not correct the shortcomings that exist in the country**. All of this leads to cases where the European Court establishes the fact of violation of the right on the part of the State several times in similar matters.

4.1.1. Tsintsabadze v. Georgia

On September 30, 2005, convict Zurab Tsintsabadze was found hanging dead in the storeroom of Khoni prison facility²⁹. Even though suspicious circumstances were revealed (for example, how the prisoner could enter the storeroom which is otherwise locked as a rule³⁰), the district prosecutor closed the case because he believed no evidence was identified leading to the assumption that Zurab Tsintsabadze's suicide was incited³¹. The ECtHR deliberated not only on deficiencies in the investigation, but also

²⁶ Article 46(4) of the ECHR (1950).

²⁷ Statute of the Ministry of Justice of Georgia, Article 4 (u)

²⁸ *Ibid*, Article 14 (e)

²⁹ *Tsintsabadze v. Georgia*, no. [35403/06](#) (ECtHR, 15 February 2011) paras. 7-8.

³⁰ *Ibid*, para. 32.

³¹ *Ibid*, para. 38.

emphasized the hierarchy of prisoners and informal governance in penitentiary facilities³². The ECtHR charged the State with EUR 15 000 payable in favor of the applicant³³, which according to the Ministry of Justice was paid within the prescribed period³⁴.

Notwithstanding the discretionary powers of the State to choose the measures to be taken under the supervision of the Committee of Ministers, the measures must be compatible with the “conclusions and spirit” set out in the Court’s judgment³⁵. *Tsintsabadze v. Georgia* is a leading case among the cases under enhanced supervision by the Committee of Ministers concerning Article 2 (right to life) and Article 3 (prohibition of torture) of the ECHR both in the substantive and procedural limbs, mostly imputable to law enforcement officials³⁶.

Regarding the execution of *Tsintsabadze group* of cases, the Committee of Ministers had communications with Georgia also in 2022; further, the Public Defender of Georgia, Georgian Young Lawyers Association and the European Center for Human Rights provided information to the Committee of Ministers. According to the Ministry of Justice of Georgia, the investigations on *Tsintsabadze group* of cases were resumed and they are conducted according to the standards established by the European Convention³⁷. As the Ministry notes, investigations into a number of cases have been successful³⁸. In Zurab Tsintsabadze's case *per se* the then director of Khoni prison has been convicted. He was detained because of dereliction of duty as he did not prevent the destruction of evidence on the scene³⁹. The Ministry of Justice referred to the lack of evidence, calling on the Committee of Ministers to close the case. However, the Committee of Ministers was not satisfied with the available information and requested the State to provide additional details regarding the termination of the investigation and the involvement of the next of kin of the victim⁴⁰. Noteworthy, only the detention of the head of the Khoni prison does not mean effective investigation. Certainly, great deal of time has lapsed after Zurab Tsintsabadze’s case, however, the violations that the European Court has identified are quite relevant also in 2022. In particular, the reactions to the facts by the police officers are delayed or the investigations are procrastinated/ ineffective. Inactivity on the part of the

³² The Council of Europe Committee of Ministers, Communication from NGOs (The Georgian Young Lawyers’ Association (GYLA) and European Human Rights Advocacy Centre (EHRAC)) (21/01/2022) in the case of the *Tsintsabadze group v. Georgia*, DH-DD (2022) 141, (March 2022) para. 18.

³³ *Tsintsabadze v. Georgia*, no. [35403/06](#) (ECtHR, 15 February 2011) para. 101.

³⁴ Report by the Ministry of Justice of Georgia from 2021 on the execution of decisions / judgments rendered against Georgia by the European Court of Human Rights (current cases) (2022) p. 10.

³⁵ *Proceedings under Article 46 § 4 in the Case of Ilgar Mammadov v. Azerbaijan* [GC], no. [15172/13](#) (ECtHR, 29 May 2019) para. 182.

³⁶ The Council of Europe Committee of Ministers, H46-12 *Tsintsabadze group v. Georgia*, Supervision of the execution of the European Court’s judgments, 1428th meeting (2022) p. 1.

³⁷ Report by the Ministry of Justice of Georgia from 2021 on the execution of decisions / judgments rendered against Georgia by the European Court of Human Rights (current cases) (2022) p. 7.

³⁸ The Council of Europe Committee of Ministers, Communication from Georgia concerning the group of cases of *TSINTSABADZE v. Georgia*, DH-DD (2022)143, para. 7.

³⁹ *Ibid*, para. 46.

⁴⁰ The Council of Europe Committee of Ministers, H46-12 *Tsintsabadze group v. Georgia*, Supervision of the execution of the European Court’s judgments (2022) p. 4.

police officers to some extent relate to informal governance in penitentiary facilities which is a part of Zurab Tsintsabadze's case.

Informal governance in penitentiary facilities is familiar also to Human Rights Center. HRC lawyers actively work on prisoners' rights and provide legal aid to them. When communicating with the lawyers of HRC, prisoners often underline the existence of informal governance⁴¹. Furthermore, HRC together with representatives of the National Prevention Mechanism of the Public Defender of Georgia studied penitentiary facility N8 in 2020. During the monitoring visits, along with other challenges (such as insanitary, lack of prison yards), the practice associated with criminal subculture was identified in the form of oppression of the inmates by some group of prisoners and extortions⁴². The Public Defender of Georgia also elaborates on the issues saying that the informal governance and oppression from the privileged inmates is a problem in prison facilities promoted by law enforcement officers⁴³. The Public Defender notes that there is no safe environment for prisoners to apply to relevant agencies or cooperate with the investigation⁴⁴. The Georgian Young Lawyers' Association also informed the Committee of Ministers that since the ECtHR referred to the challenges of informal governance in prisons *in Tsintsabadze case*, it would be necessary for the State to take specific steps to resolve the issue⁴⁵. It is also noteworthy that the European Committee for Prevention of Torture drew attention to the obvious signs of informal governance in Georgian prisons also in 2021. Prisoners testified to the Committee representatives about the practice of collecting money for the 'common fund'⁴⁶. The Committee called on Georgia to take all necessary steps to combat the informal governance⁴⁷. Georgian authorities argue that everything is being done to prevent violence from prisoners and the issue of the 'common fund' is not in the agenda⁴⁸. All this indicates that instead of eliminating major problems the authorities are fixated on the issues that cause less discordance of opinion - such as compensation for damages - that do not actually change systemic deficiencies.

4.1.2 Tkhelidze v. Georgia

Violence against women, including domestic violence is, unfortunately, part of Georgian reality. According to the official statistics of the Supreme Court of Georgia, 88 restraining orders were issued in 2021 on the facts of violence against women⁴⁹. Furthermore, in 9 months of 2021, the Georgian

⁴¹ For detailed information, see [Annual Report](#) by Human Right Center on State of Human Rights in Georgia, 2020 (2021) p. 40.

⁴² For detailed information, see [Report](#) on the Monitoring The Penitentiary Facility N8 (2020), p. 36.

⁴³ The Committee of Ministers, Communication from an NHRI (Public defender of Georgia) in the case of *Tsintsabadze group v. Georgia*, DH-DD (2022)142, (March 2022), paras. 8-22.

⁴⁴ *Ibid*, para. 17.

⁴⁵ The Committee of Ministers, Communication from NGOs (The Georgian Young Lawyers' Association and European Human Rights Advocacy Centre) in the case of the *Tsintsabadze group v. Georgia*, DH-DD (2022)141, (2022) paras. 18-33.

⁴⁶ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), [Report](#) to the Georgian Government on the ad hoc visit to Georgia (2022) 11, para. 12.

⁴⁷ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), [Report](#) to the Georgian Government on the ad hoc visit to Georgia (2022) para. 25.

⁴⁸ [Response](#) of the Georgian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its ad hoc visit to Georgia, (2022) pp. 7-8.

⁴⁹ The Supreme Court of Georgia, [Statistics of domestic violence](#), issued protective orders - 2021.

district (city) courts rendered 1650 judgments of conviction for the offenses under Article 11¹ (liability for domestic crimes) and Article 126¹ (domestic violence) of the Criminal Code, among which 1462 cases were violence against women⁵⁰.

The ECtHR is also aware of this issue, having rendered several judgments against Georgia⁵¹. Thus, on June 8, 2021, *in the case Tkhelidze v. Georgia*, the ECtHR established a violation of Article 2 (right to life) of the European Convention in terms of the State's relevant substantive positive obligations, as well as in terms of the procedural limb of Article 14 (prohibition of discrimination) of the European Convention⁵².

The case concerns the incident from 2014 when a man killed a woman with a gun and then committed suicide. The applicant argued before the European Court that law enforcers failed to prevent the murder of their daughter on the one hand and did not effectively investigate the offense on the other hand⁵³. According to the case files, the applicant's daughter was a victim of domestic violence having been continuously threatened and abused. It is noteworthy that the police launched an investigation into the homicide and unlawful possession of a firearm. Domestic violence was added to the file as the motive a few days later. However, the investigation was discontinued as the person liable for the crime was deceased⁵⁴.

When assessing the national legislation of Georgia, the ECtHR underlined that there existed an adequate legislative and administrative framework designed to combat domestic violence against women in the country in general⁵⁵. However, the court noted the frequency with which the victim and applicant requested help from the police⁵⁶ and other factual circumstances concluding that the police knew or certainly ought to have known of the real and immediate threat to the safety of the applicant's daughter⁵⁷. The ECtHR imposed EUR 35 000 on the State to be paid to the applicant which, according to the Ministry of Justice of Georgia, was paid within the timeframe⁵⁸. Further, in its communications with the Committee of Ministers, Georgia noted that the investigation is being conducted *inter alia* with regard to the officers of the Ministry of Interior who might have been informed about the facts of the case⁵⁹.

⁵⁰ Supreme Court of Georgia, [Statistics of domestic violence](#), judgments on criminal cases - 2021 (9 months).

⁵¹ *Tkhelidze v. Georgia*, no. [33056/17](#) (ECtHR, 8 July 2021); *A and B v. Georgia*, no. [73975/16](#) (ECtHR, 10 February 2022)

⁵² *Tkhelidze v. Georgia*, no. [33056/17](#) (ECtHR, 8 July 2021)

⁵³ *Ibid*, para. 1.

⁵⁴ *Ibid*, para. 20.

⁵⁵ *Ibid*, para. 52.

⁵⁶ Within a very tight time frame of some six months the applicant requested help from the police on at least eleven occasions. *Ibid*, para. 53.

⁵⁷ *Ibid*.

⁵⁸ Report by the Ministry of Justice of Georgia from 2021 on the execution of decisions / judgments rendered against Georgia by the European Court of Human Rights (current cases) (2022) p. 114.

⁵⁹ The Council of Europe Committee of Ministers, Communication from Georgia concerning the case of *Tkhelidze v. Georgia* (№33056/17) DH-DD (2022)427, 1436th Meeting (June 2022) para. 5.

Tkheldze v. Georgia is the first⁶⁰, but not the only case clearly demonstrating the systemic deficiencies women living in Georgia face. In the judgment *A and B v. Georgia* from 2022, the ECtHR observed that whilst the domestic legislative framework provided for various temporary restrictive measures in respect of alleged abusers, the relevant domestic authorities not only failed to resort to them, but did not even advise the victim of her procedural rights and of the various legislative and administrative measures of protection available to her⁶¹. The number of facts of violence against women remain a challenge and that domestic violence is still considered a private matter⁶².

Among the general steps to eliminate violence against women, it is worth mentioning the creation of the Department for Monitoring the Quality of Human Rights Protection and Investigation within the Ministry of Interior one of the priorities of which is timely response and effective investigation of violence against women and domestic crimes. The progress in terms of public policy and response to domestic violence by the law enforcement officials is also noted by the Public Defender. However, according to the Public Defender's 2021 Report, it is still problematic for law enforcement agencies to identify cases of violence against women and domestic violence as a systemic and holistic crime⁶³. Flaws are visible at the stage of investigation, as well as during the court proceedings⁶⁴. Often the blames are put on the victim by the police; the victim is questioned in the presence of the potential perpetrator etc. There are often cases when the court takes lenient attitudes toward the defendant and rules for remand on bail as a measure of restraint increasing thus the real risks of repeat violence on the victim⁶⁵. Unfortunately, women feel unprotected in Georgia because even approaching the police 11 times may not be enough for proper response from the authorities meaning that the State fails deliberately or not to protect them.

5. Conclusions

Since June 17, 2022, the relations of Georgia and the EU have moved to another historical phase. Georgia was specifically defined the directions and has a real possibility to get closer to the EU and gain the candidate status. Whilst the work has begun to fulfill the priorities of the European Commission, the previous experience shows that often changes only remain on paper and Georgia is still tackling with problems that exist more than 15 years.

Bringing the recommendations of the European Commission and the judgments of the ECtHR to the Georgian agenda should not be simply the fulfillment of the obligation. Each of these organizations is

⁶⁰ *A and B v. Georgia*, no. [73975/16](#) (ECtHR, 10 February 2022) para. 42.

⁶¹ *Ibid*, para. 48.

⁶² United Nations, [Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia](#) (2016) para. 10.

⁶³ The Report of the Public Defender of Georgia [On the Situation of Protection of Human Rights and Freedoms in Georgia](#), (2021). 151.

⁶⁴ See Georgian Public Defender, [Femicide Monitoring Report](#) (2020)

⁶⁵ See [Statement of Human Rights Center regarding Shortcomings in Judicial Proceedings on the Cases of Domestic Violence](#) (2022)

focused on the development of democracy, human rights, and rule of law in Georgia. Judgments rendered by the ECtHR may not only significantly improve the legal status of a particular victim but also positively change the general environment. However, this certainly requires making appropriate steps by the State. We should welcome the fact that Georgia, as a contracting State of the European Convention, respects the judgments of the ECtHR. Further, the State pays just satisfaction imposed on it in a timely manner and provides information to the Committee of Ministers. However, this does not mean that the matters where the European Court found violations by Georgia are no longer repeated. To solve the problems, it is necessary to solve systemic deficiencies, to admit them in the first place and then solve them with a holistic approach. Otherwise, it turns out that the State only formally and superficially performs the responsibilities imposed on it.

In monitoring the current developments, HRC positively assesses the legislative changes related to recommendation N11 of the European Commission. HRC also notes the initiative of the Special Investigation Service addressing the Parliament of Georgia to have the authorities to investigate the facts of violation identified by the ECtHR,⁶⁶ - the initiative also must be welcomed provided the independence of the Special Investigation Service is ensured. Therefore, the improvement of the national legislation is certainly an utmost but insufficient step. Any change should bring results for the whole community, for where the changes in the legal framework do not bring the results in practice, other names would be added to the list of Tsintsabadze and Tkheldze.

⁶⁶ The Special Investigation Service [addressed](#) the Parliament of Georgia with proposals on the implementation of the Recommendation of the European Commission (2022)