



Social and Legal Aspects of the Violence against Women and Domestic Violence

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Human Rights Center



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INTRODUCTION

Human Rights Center has been providing the victims of violence against women and domestic violence with free legal aid for years. Based on the experience, the organization may conclude that the defense of the rights and legal interests of the women is connected with number of social and legal challenges.

The below analytic document aims to underline the problems and challenges in regards with the violence against women and domestic violence based on the analysis of the cases processed by Human Rights Center, to assess the Georgian legislation and its practical implementation, to deliver conclusions and elaborate recommendations.

The document reviews the forms and challenges of violence against women caused by the gender stereotypes widespread in Georgia. It also analyzes legislative frame in Georgia as well as recent legislative amendments. Based on the cases processed by the HRC, the theory of violence cycle and its phases, which determine the dynamics of the domestic violence, is also analyzed. The document underlines the problems related with the violence against women, which happen during forced marriages, gender based crimes, inappropriate application of measures of restraint for grave crimes and using light measures in the cases of violence against women. The analytic document reviews secondary victimization of the women and underlines the need to promote their rehabilitation.

The analytic document sums up the key findings and offers recommendations to address the identified problems.

PROBLEM OF GENDER STEREOTYPES

Violence against women remains one of the most acute human rights violations in the world. In accordance with the global statistics, 31% of women aged from 15 to 49, more precisely about 852 million women, have suffered physical and/or sexual violence from current or former husbands/partners. It means, violence affects every third women in the world and creates large-scaled threat to the women's health and welfare¹. The causes of the violence against women are diverse and mostly are triggered by stereotypes related with the gender roles.

In Georgia, and particularly in rural areas, gender stereotypes about the role of a woman in the society and family are still very widespread. These stereotypes are framed with conservative socio-cultural norms². In accordance with the UNDP survey of public opinion in 2020, 60% of the men and 38% of the women interviewed in Georgia believe that the main duty of a woman is not a professional development, but to take care of her family only. About half of the interviewed women and men believe that the men, rather than women, shall be politicians. In addition to that, more than half of the interviewed men believe that domestic violence is the "internal business of a family". Similar attitude hinders identification of cases of domestic violence, which means the available information about this problem in the country is not reliable.

In accordance with the Constitution of Georgia, the State shall provide equal rights and opportunities for men and women. The State shall take special measures to ensure the substantive equality of men and

¹ World Health Organization. (2021). [Violence against women prevalence estimates, 2018: global, regional and national prevalence estimates for intimate partner violence against women and global and regional prevalence estimates for non-partner sexual violence against women](https://apps.who.int/iris/handle/10665/341337). World Health Organization. <https://apps.who.int/iris/handle/10665/341337>. P. 37

² European Union. 2021. [GENDER EQUALITY IN GEORGIA IN GAP](#) III PRIORITY AREAS: COUNTRY REVIEW EU4GENDEREQUALITY REFORM HELPDESK, p 11

women and to eliminate inequality³. If gender roles are perceived stereotypically, according to which domestic labor of women are underestimated, the intellectual abilities of the men are overvalued in comparison with the women, comfortable environment to purposefully violate the equality rights is created.

In accordance with the Constitution of Georgia, marriage shall be based on the equality of rights and the free will of spouses⁴. Nevertheless, if because of the stereotypes spread in the society, the husband believes that he is superior over his wife, is irritated with the equality status their relationship may turn into domestic violence eventually.

Currently, there are social norms and discriminative attitudes encouraging violence in Georgia. In accordance with the 2020 data, 18,1% of the Georgian population believes it is more important for a boy to graduate the university than for a girl while, for example in Sweden only 2.6% of the population has the same opinion. Furthermore, some teachers, who are responsible for reporting to respective bodies about the facts of violence if identified, in some occasions (betrayal – 12%, going out without permission – 9%, denial to sexual intercourse – 8%, etc.) believe that husbands may beat their wives. Only 14% of teachers believe that physical violence is inadmissible in any case⁵. Above that, gender norms hinder the women to find opportunities for professional development as their main duty is to take care of family and other tasks related with her gender role. All these may unveil the fact that 20-25% of the interviewed women in Georgia have suffered of economic and emotional violence from the side of their partners⁶.

LEGISLATIVE FRAME AND AMENDMENTS

Both Georgian domestic and international laws guarantee protection of the women's rights. In accordance with the Constitution of Georgia, every individual is equal⁷. Both the Civil and Criminal Codes of Georgia protect the women's rights. The Law of Georgia on the Elimination of Violence against Women or/and Domestic Violence, on the Protection and Assistance of Violence Victims is implemented in the country. Also, in 2014, the Law on the Elimination of All Forms of Discrimination was adopted in Georgia.

Georgia has ratified the European Convention on Human Rights and the UN Convention on the Elimination of All Forms of Discrimination against Women. In 2017, Georgia joined the Council of Europe Convention on the Preventing and Combating Violence against Women and Domestic Violence, so called Istanbul Convention. In 2017, based on the respective amendments in the Criminal Code of Georgia, gender sign in the crime has become aggravating circumstance of the liability for any crime punishable under the Criminal Code of Georgia. To prevent the violence against women and domestic violence, to defend women's rights, since 2014 to present respective amendments were introduced to over 25 legislative by-laws⁸.

Early in 2022, Georgia received European Perspective that means, if 12 recommendations are fulfilled, Georgia will be getting the EU membership candidate status. In the frame of the 12 recommendations, the steps taken by the authorities with regard to the 9th priority – to consolidate efforts to enhance gender equality and fight violence against women - were evaluated positively. In the frame of the measures taken

³ The Constitution of Georgia, Article 11 (3)

⁴ The Constitution of Georgia, Article 30

⁵ UN WOMEN. (2020). [VIOLENCE AGAINST WOMEN IN GEORGIA](#)

⁶ United Nations Development Programme, [Men, Women and Gender Relation in Georgia: Public Perceptions and Attitudes](#), UNDP, Tbilisi, 2020

⁷ The Constitution of Georgia, Article 11

⁸ New Year Without Women, [femicide in 2022](#) (28.12.2022) (last seen: 28.09.2023)

by the authorities, the Parliament of Georgia introduced amendments to the Law on Gender Equality; it is now obligatory to measure the influence of all draft-laws on gender; the Government released resolution to pay compensation to the victims of violence; “victim’s status” as pre-condition to get the state service was abolished, and more. The civil society representatives also support the mentioned amendments⁹.

Regardless the abovementioned positive legislative amendments, the statistics about the crimes committed against women is still problematic. Therefore, it is important to address the problem not only on the level of legislative regulations, but in social environment too. The government shall not be oriented on punishing the perpetrators but on the prevention of violence against women and domestic violence, among them on awareness raising of citizens.

FORMS OF VIOLENCE AGAINST WOMEN AND CHALLENGES

All forms of violence against women are violation of human rights and freedoms. Victim woman is an individual, whose constitutional rights and freedoms are breached by negligence or/and physical, psychological, economic and sexual violence or coercion¹⁰. In the instances of domestic violence, a harasser is a family member, who violates the constitutional rights and freedoms of another family member; an abuser shall also be deemed a family member or any other person, who, in the public or private life, commits physical, psychological, economic and sexual violence or coercion in relation to a woman on the grounds of sex¹¹.

The forms of violence are clarified in the Article 4 of the Law of Georgia on Violence against Women and/or Elimination of Domestic Violence, Protection and Support of Victims of Violence:

- physical violence is beating, torture, damage to health, illegal deprivation of liberty or any other action that causes physical pain or suffering, withholding health needs, which leads to damage to health or death of a victim of violence;
- psychological violence – offence, blackmailing, humiliation, threats, or any other action that violates a person's honor and dignity;
- coercion – compelling a person by using physical or psychological force to carry out or fail to carry out an act, carrying out or refraining from which is the right of that person, or making a person tolerate an action carried out against his/her will;
- sexual violence – sexual act by violence or threat of violence, or by taking advantage of the victim's helplessness; sexual act or other acts of sexual nature or child sexual abuse;
- economic violence – an act, which causes restriction of the right to have food, dwelling and other conditions for normal development, to enjoy property and labor rights, to use common property and to administer one's own share of that property¹².

Each form of violence against women is linked with various challenges. For example, in relation with sexual violence, it is worth to mention that 42% of women and 50% of men in Georgia believe that if a

⁹ EU Candidacy Check; [State of Implementation of 12 Priorities](#); Democracy Research Institute, Court Watch, Georgian Democracy Initiative, Georgian Foundation for Strategic and International Studies; Governance Monitoring Center, Partnership for Human Rights, Safari, 2023, p.35

¹⁰ Law of Georgia on Violence against Women and/or Elimination of Domestic Violence, Protection and Support of Victims of Violence, Article 4 (f)

¹¹ Law of Georgia on Violence against Women and/or Elimination of Domestic Violence, Protection and Support of Victims of Violence, Article 4 (h)

¹² Law of Georgia on Violence against Women and/or Elimination of Domestic Violence, Protection and Support of Victims of Violence, Article 4 (a), (b), (c), (d), (e)

woman does not physically fight back, you cannot call it a rape¹³. Moreover, there is low awareness about considering the rape of a wife by a husband to be a crime. These approaches contradict the definitions of sexual violence and rape in the international agreements ratified by Georgia.

In accordance with the so-called Istanbul Convention, in order to criminalize the act as sexual violence particular attention is paid whether it was non-consensual or not. Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.¹⁴ In this light, **the definition of "rape" shall be amended in the Criminal Code of Georgia** so that absence of consent shall be one of the evidences to prove the criminal act. Pursuant to the Article 36 of the Istanbul Convention, the voluntary consent shall be added to the Criminal Code of Georgia. Additionally, group of experts working on the violence against women and domestic violence believe necessary amendments shall be introduced into those provisions of the Criminal Code, which refer to the rape and other forms of sexual harassment¹⁵.

In the cases of psychological harassment, it is worth to take into account that alongside the technological evolution, the means of communication also improve. Consequently, psychological harassment includes not only physical space but the crimes committed with electronic devices.

The number of digital violence has increased in Georgia. For example, Human Rights Center worked on a case, where a man, by using photo-shop program, combined an acquainted woman's face with the photos of a naked body of another woman from the internet. Afterwards, the man via social network contacted acquaintances to disgrace the woman and psychologically harass her. With the advocacy of Human Rights Center, the criminal action was eliminated but it is noteworthy and the surveys also prove that nowadays the scopes of digital violence have increased and it particularly harm the women¹⁶.

Online harassment reflects systemic structural gender inequality. In accordance with the report of the UN Secretary General, it is important that every government shall accelerate efforts to eliminate new and escalating forms of online violence¹⁷. The Government of Georgia shall assess how effectively the provisions of the Criminal Code of Georgia are applied against psychological violence in the cases of violence committed online or with the use of technologies¹⁸ so that the Government takes further steps for the prevention of online psychological violence.

VIOLENCE CYCLE

Often, various forms of violence committed by a harasser against the victim is cycle of unidentified and spontaneous actions and it is difficult to determine common classification of the action. Nevertheless, there are various theories, which aim to determine the character of the violence. One of the theories determining the dynamics of the domestic violence is called theory of violence cycle and it was developed by psychologist Leonore Walker in 1979. In accordance with the social cycle theory, the chain of violence is composed of three main phases: escalating tension, serious incident of violence and reconciliation¹⁹. Similar classification is relatively coherent with the experience of Human Rights Center in relation with

¹³ UN WOMEN. (2020). VIOLENCE AGAINST WOMEN IN GEORGIA, p3

¹⁴ Law of Georgia "Council of Europe Convention on preventing and combating violence against women and domestic violence," Article 36

¹⁵ GREVIO (basic) [Assessment Report](#) 2022, p. 8

¹⁶ INNOVATION AND PREVENTION OF VIOLENCE AGAINST WOMEN, [Practice Brief](#), 2023, UN Women

¹⁷ [ACCELERATING EFFORTS TO TACKLE ONLINE AND TECHNOLOGY FACILITATED VIOLENCE AGAINST WOMEN AND GIRLS](#) (VAWG), (2023).

¹⁸ GREVIO (basic) [Assessment Report](#) 2022, p. 99

¹⁹ Kaslow, F. W. (Ed.). (1996). [Handbook](#) of relational diagnosis and dysfunctional family patterns. John Wiley & Sons./ Cycle of Abuse <https://www.cep-probation.org/wp-content/uploads/2018/10/RJlrmgard-Winkler1.pdf>

the domestic violence cases processed by the organization. Therefore, some of the cases will be analyzed based on the mentioned theory.

Phase I

The abuser spins the violence wheel in the family to obtain power and control. In accordance with this theory, in the first phase of the relationship the tension is escalating between the victim and abuser about the issues like: money, job, family issues, etc. In this period, the victim tries to avoid conflict by compromising and in due respect to the interests of the harasser. On his side, the harasser is irritated, argues, criticizes, curses and sometimes uses coercion, intimidation and quarrel. Eventually the tension reaches top²⁰.

It is important to stop the violence cycle on the stage of escalating tension. A woman contacted the Human Rights Center and reported that she had become a victim of aggression from the side of her former husband. The law enforcement officers had already issued four restraining orders against him but it was not obstacle for him. It is noteworthy that when restraining order fails to fulfil its goal and police officers have to issue it multiple times against the harasser, it is better to apply stricter measures against him. With regard to this particular case, at the trial, with the advocacy of Human Rights Center the parties reached agreement in due respect of the woman's interests.

To prevent violence against women and avoid grave criminal incidents, it is essential to timely stop the stage of the escalating tension.

Phase II

The second, so-called explosion phase in the relationship between the victim and abuser, is characterized with serious incident of violence. The main violence occurs in this phase – physical and/or sexual assault. It is noteworthy that this phase is not triggered by the victim's action but by surrounding circumstances or emotional state of the harasser. Consequently, the victim cannot control the situation and tries to protect herself from injuries. In this period, there is the highest probability of traumas and often the victim calls the police at this stage. Therefore, it is essential that law enforcement bodies had prompt and effective response to the violence in this stage²¹.

Human Rights Center defended legal interests of the father – victim's assignee, whose daughter was victim of systematic violence from the side of her husband. During one of the violent incidents, police arrived on the site and issued restraining order against the abuser. Nevertheless, a year later, the man killed the former wife and staged his suicide attempt. Although the abuser was sentenced to imprisonment, the result was irreversible and three minors were left without mother's care.

In order to prevent similar tragedies, it is important that law enforcement officers adequately assessed the risks and timely responded.

²⁰ Sangeetha J, Mohan S, Hariharasudan A, Nawaz N. Strategic analysis of intimate partner violence (IPV) and [cycle of violence](#) in the autobiographical text -When I Hit You. Heliyon. 2022 Jun 16;8(6):e09734. doi: 10.1016/j.heliyon.2022.e09734. PMID: 35761928; PMCID: PMC9233205.

²¹ Sangeetha J, Mohan S, Hariharasudan A, Nawaz N. Strategic analysis of intimate partner violence (IPV) and [cycle of violence](#) in the autobiographical text -When I Hit You. Heliyon. 2022 Jun 16;8(6):e09734. doi: 10.1016/j.heliyon.2022.e09734. PMID: 35761928; PMCID: PMC9233205.

Phase III

The third phase of the violence cycle is known as “honey moon.” At this stage, the abuser is desired to reconcile and uses the approaches which are very well known in psychology. He becomes attentive and generous partner, regrets and tries to blame the victim herself or other factors in the incident. He also promises not to use violence again and tries to convince the victim that it is not worth to divorce. As a result, the victim has an illusion that everything will change for better. However, of course, time passes and the violence wheel spins again. Every next cycle is more violent and grave. After a while, the reconciliation phase gets shorter and the most part of the cycle is dedicated to violence²².

In the legal context it is important to underline that a victim may change her testimony because of the reconciliation phase in the domestic violence cycle. For example, in the case processed by Human Rights Center, the victim applied to the HRC lawyer for help as she was victim of physical and psychological violence from the side of her husband. During one of the incidents, the husband injured the woman and she needed medical assistance. The abuser was arrested but later was released under bail. With the HRC advocacy, the woman managed to get the victim’s status pursuant to the articles referring to the intimidation and violence against family member in the Criminal Code of Georgia. Nevertheless, the abuser started psychological oppression on the victim, promised not to abuse her again, promised to give her property and the victim changed her attitude and refused to continue criminal proceedings against him.

In another case processed by Human Rights Center a woman applied to the organization for legal consultation; she was a victim of physical and sexual violence from the side of her husband. Although the husband systematically harassed the wife and did not allow her to take sedatives at night, the woman was against suing her husband. HRC lawyer recommended her to meet a psychologist, and as a result, the woman managed to get divorced with the abuser, and left his house. Currently, the woman lives with her friend and has court dispute against the husband to claim her share in the common property.

In this light, although the abuser tries to psychologically intimidate the victim, if the lawyers correctly advocate the case, the violence cycle may stop and women will be empowered. Also, in accordance with the clarification of the European Court of Human Rights, legislative framework must enable the authorities to launch or continue criminal proceedings against alleged perpetrator even if the victim fails to lodge or withdraws complaints against the harasser²³.

PROBLEMS RELATED WITH THE VIOLENCE AGAINST WOMEN

Forced Marriage

Marriage is a voluntary union of a woman and a man for the purpose of creating a family, which shall require marriageable age and consent of the persons to be married, otherwise the marriage will be annulled²⁴. Pursuant to the Article 37 of the Istanbul Convention, state parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalized.

²² Sangeetha J, Mohan S, Hariharasudan A, Nawaz N. Strategic analysis of intimate partner violence (IPV) and [cycle of violence](#) in the autobiographical text -When I Hit You. *Heliyon*. 2022 Jun 16;8(6):e09734. doi: 10.1016/j.heliyon.2022.e09734. PMID: 35761928; PMCID: PMC9233205.

²³ [Gaidukevich v. Georgia](#), no. 38650/18, § 71, 15 June 2023

²⁴ Civil Code of Georgia, Articles 1106, 1107, 1140

Nevertheless, in practice, we have cases of forced marriages, which are punishable under the Criminal Code of Georgia. For example, HRC worked on the case, where the girl blamed the former boyfriend and his friend in the unlawful restriction of freedom. The court found the former boyfriend guilty in forcing the marriage and chasing. However, the convict is still hiding from punishment. As for his friend, he served his prison term under the Article 150¹ of the Criminal Code of Georgia – coercion of marriage.

Since 2017, in Georgia, marriage shall be permitted from the age of 18. Entry into a marriage with a person younger than 18 is prohibited²⁵. Despite that, in 2018, 715 underage mothers and 23 underage fathers were registered in Georgia²⁶. In 2019, investigation was launched into 105 cases of early forced marriages and in 2020 – into 132 cases. In some regions of Georgia, particularly in some communities, because of the traditions the forced and early marriages are still acceptable. Unfortunately, often, similar facts are not registered and neither authorities record data. It hinders effective implementation of the law. Additionally, although forced marriage is punished under the Georgian legislation, and the same crime against the minor is aggravating circumstances, the Article 37 Part II of the Istanbul Convention is not implemented in the Criminal Code of Georgia, which refers to intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage²⁷.

In accordance with the case details of one of the case processed by Human Rights Center, three adults kidnapped a student of the 11th grade at the Lagodekhi municipality public school, when she was going back home from her relative's house. One of the abusers wanted to force her to enter into a marriage with him. Moreover, the harasser raped the girl during unlawful restriction of freedom hoping that their relatives would force her to stay with the abuser. Police was looking for the underage girl during three days. Based on the decision of the first instance court, the harasser was acquitted in the charges brought against him about rape and was found guilty together with his allies only for the violation of the Article 143 Part II “a” and “d” of the Criminal Code of Georgia, which refers to unlawful imprisonment knowingly by the offender against a minor. Luckily, the judgment was sued in the Appellate Court and in 2022, the Appellate Court determined intentional rape of a minor as an aggravating circumstance in the case and the harasser was sent to prison for 15 years instead of previous 7 years. With the ruling of the Appellate Court, the allies of the harasser will spend 6 months more in the custody than based on the previous judgment. The Criminal Law Chamber of the Supreme Court of Georgia rejected the cassation suit of the convicts and the final verdict went in force.

In order to prevent abovementioned crimes, it is necessary to work on the prevention of forced marriages and to raise public awareness about the problem alongside with the promotion of access to education for the girls in order to effectively implement the legislation in practice.

Gender Based Crimes

Commission of gender, gender identity or other signs of discrimination with the reason of intolerance shall be an aggravating factor for liability for all respective crimes²⁸. When a crime is committed against a victim because of gender sign, it shall be qualified as aggravating factor.

²⁵ Civil Code of Georgia, Article 1108

²⁶ [Report on the State of Human Rights and Freedoms in Georgia](#), Public Defender of Georgia, 2018, p. 117

²⁷ GREVIO (basic) [Assessment Report](#) 2022, p. 63

²⁸ Criminal Code of Georgia, Article 53¹ (1)

Often, there are instances when similar cases are not correctly qualified. In one of the cases processed by Human Rights Center, a woman suffered from systemic physical and psychological violence from her husband for years. The violent incidents happened in presence of their children and the abuser indicated at her gender and threatened her with the murder. Nevertheless, gender sign as an aggravating factor was not added to the criminal charges. Only after the active advocacy of HRC, the victim received the status and for the offence committed based on gender sign the Tbilisi City Court sentenced the abuser to imprisonment.

Culminate demonstration of domestic violence, women's discrimination, intimidation and systemic violence is the killing of a woman based on gender sign i.e. Femicide²⁹. Femicide is the killing of a woman based on gender sign, which is motivated by and related with gender-based violence against women, with the attempt to ascertain superior position over the women, to control her behavior, etc³⁰. In this light, when investigating the femicide, identification of this motive is of particular importance.

As for the motive of crime, the following signs of the motive of femicide are considered as important namely: discriminatory or sexist attitude towards the victim; sense of entitlement; control of the behavior; demanding obedience to stereotypical gender roles³¹. Unfortunately, in accordance with the observation of HRC lawyers, there are multiple cases in practice, when the signs of gender motives are identified in the crimes but **the Court fails to consider the gender signs as an aggravating circumstance or fails to adequately verify the motive in the court judgment**. For example, Human Rights Center defended the legal interests of the victim's assignee, the mother, whose daughter was killed by her husband. Although the prosecutor's office requested to identify gender sign and qualify the charge as the murder committed with particular cruelty, all three instances of court found the defendant guilty only in the intentional murder of his family member.

In the court decisions, there are differences between the views of judges when they discuss the gender sign as aggravating circumstances. In relation with the gender-based violence, unfortunately, majority of judges do not think that jealousy against wife proves gender motive while the murder happens because of jealousy, often, demonstrates the sense of entitlement of the abuser and the court verdict shall be developed in this direction³².

In accordance with the 2018-2022 data, 56 cases of femicide or attempt of femicide were identified in Georgia. Among them, in the most – 34 cases the husband was the harasser. As a result of the femicide, in 2022, 21 children became orphans. Mostly the motive of the killings was the desire to obtain control of the women and to “protect dignity.” The women were killed for such a reason too, like, for example refusal to reconcile, to divorce or get married³³.

In accordance with the clarifications of the European Court of Human Rights, when investigating violent incidents and, in particular, deaths, State authorities have the additional duty to take all reasonable steps to establish whether or not hatred or prejudice may have played a role in the events. The crimes committed based on any specific hatred sign shall be differentiated from other crimes committed without similar motives³⁴. Furthermore, a failure to make a distinction in the way in which situations that are

²⁹ Diana E. H. Russel, and Roberta A. Harmes. Femicide in Global Perspective („Femicide in Global Context”). New York: Teachers College, 2001. Print. p. 77-78

³⁰ [Femicide Monitoring Report](#), 2016 Public Defender of Georgia

³¹ [Femicide Monitoring Report](#), 2020 Public Defender of Georgia p. 5

³² [Femicide Monitoring Report](#), 2020 Public Defender of Georgia p. 33-38

³³ New Year Without Women – [Femicide in 2022](#) (28.12.2022) (Last seen: 28.09.2023)

³⁴ [Nachova and Others v. Bulgaria](#) [GC], nos. 43577/98 and 43579/98, § 160, ECHR 2005-VII

essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention, which refers to the prohibition of discrimination based on sex, race, skin color, language, religion, political or other affiliations, national or social origins, or other³⁵.

In the case sent by an applicant to the European Court of Human Rights against Georgia, the applicant had applied to the law enforcement officers for help 16 times but they failed to prevent the tragedy. Consequently, the European Court of Human Rights ruled that **there is a systemic problem in the state when law enforcement bodies start new criminal proceedings against the abuser after each complaint submitted by the victim**. Similar approach is perceived by the abusers as impunity and are encouraged to repeat the crime. In this light, it is important that all complaints were analyzed as one case. To achieve that, the legislative base shall be amended so that respective authorities with their initiative, among them without the complaints submitted by the victim, shall have power to start investigation³⁶.

Other Aggravating Circumstances

Besides gender sign, in accordance with the Criminal Code of Georgia, commission of crime based on race, skin color, language, sex, sexual orientation, gender identity, age, religion, political or other affiliations, disability, citizenship, national, ethnic or social belonging, origin, economic or official status, place of residence or other signs of discrimination, with the reason of intolerance shall be an aggravating factor for liability for all respective crimes in accordance with the Criminal Code of Georgia³⁷. Also, commission of a crime by one family member against another family member, against a helpless person, a minor or in his/her presence, is an aggravating circumstance³⁸.

It is noteworthy that often the abuser purposefully selects the victim, who is in helpless condition and often the violence is committed against vulnerable women, who are disabled, underage or are members of LGBT group.

For example, in one of the cases processed by HRC, the abuser harassed the underage person during two years. After the crime was disclosed, with the HRC advocacy, the judge at the district court sentenced the abuser to 16-year imprisonment. Currently, the case is examined in the Appellate Court. In accordance with the case details of another case processed by HRC, in a village in Kakheti region, a young disabled woman, who lived together with her mother in socially vulnerable family, was victim of sexual harassment from the neighbor. The drunken neighbor entered the house of the young woman and forcibly took her to his house. Although the mother also resisted the harasser she could not protect the daughter. In accordance with the expertise conclusion, the young woman had bites on her lip and cheek and had other injuries too. The woman said the neighbor had abused and sexually harassed her in the past too. After the HRC got involved in the case, the defendant person was sent to 10-year imprisonment for the attempted rape.

With regard to aggravating circumstances, it is noteworthy that when examining the cases of sexual violence committed in 2017-2019, judges never or rarely applied to the respective articles in the Criminal Code. For example, when determining the measure of restraint, gender motive or commission of the crime by a one family member against another family member was not considered as an aggravating circumstance. Nowadays, although some progress is observed, it is still important to incorporate all aggravating

³⁵ European Convention on Human Rights, Article 14

³⁶ [Gaidukevich v. Georgia](#), no. 38650/18, §62, §71, 15 June 2023

³⁷ Criminal Code of Georgia, Article 53¹ (1)

³⁸ Ibid Article 53¹ (2)

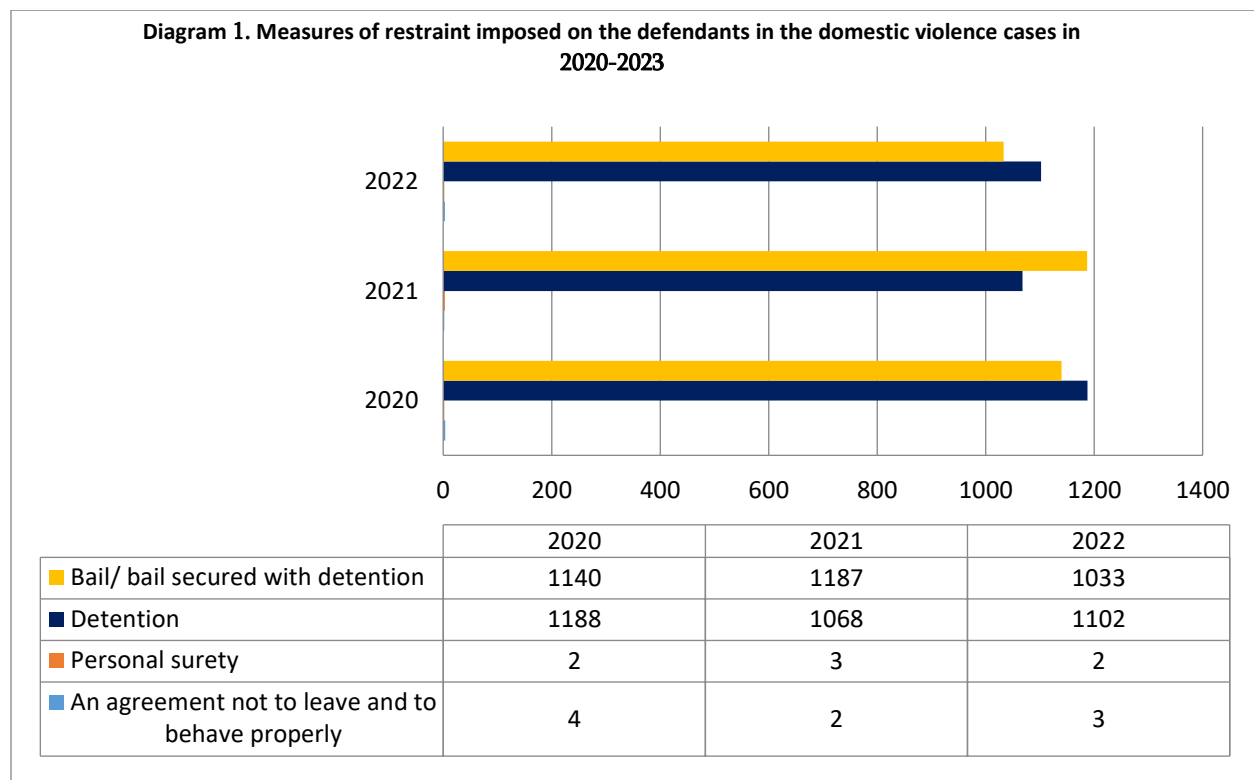
circumstances listed in the Article 46 of the Istanbul Convention into the Georgian legislation not only theoretically, but also they must be effectively applied by the common courts³⁹.

Measures of Restraint

In accordance with the Criminal Procedure Code of Georgia, a measure of restraint shall be applied to ensure that the accused appears in court, to prevent his/her further criminal activities, and to ensure the enforcement of the judgment⁴⁰. Types of a measure of restraint include: bail, an agreement not to leave and to behave properly, personal surety, supervision by the command of the behavior of a military service person, and detention⁴¹.

Often, in cases of violence against women, among them in the cases when harasser violates the restraining order, it is problematic that the court applies lighter measure of restraint than detention as it enables the defendant to commit more grave crime against the victim. It is also a problem that after a short-term imprisonment the harasser returns back to live in the same house with the victim⁴². In some cases, the judge fails to be gender sensitive towards the cases; for example, there was a case when the judge released a defendant under bail and he killed former partner, 26-years-old woman, in front of her three children⁴³.

Human Rights Center requested public information from the district (city) courts of Georgia about the imposed measures of restraint on the defendants in the cases of domestic violence in 2020-2023, which were examined under the Article 126¹ of the Criminal Code of Georgia.



³⁹ GREVIO (basic) [Assessment Report](#) 2022, p. 69

⁴⁰ Criminal Procedure Code of Georgia, Article 198

⁴¹ Ibid, Article 199

⁴² Analysis of 2021 Femicide and Attempted Femicide Cases, Public Defender of Georgia, 2023 p 29

⁴³ New Year Without Women – [Femicide in 2022](#) (28.12.2022) (Last seen: 28.09.2023)

In accordance with the statistical data, in 2020-2022, detention and bail/ bail secured with detention are the measures of restraint which were most often imposed on defendants in the domestic violence cases. It is worth to mention that in 2021, bail was imposed on 1187 persons while 1068 persons were sent to imprisonment. It means, the judges often impose bails on the defendants in the domestic violence cases. In 2021, the statistical data about imposing bails was higher than the proportion of the detention measure. In accordance with the 6 month data in 2023, bail was imposed on 469 persons and detention on 503 persons that means, like in the past years, judges almost equally use bail and detentions against the perpetrators in domestic violence cases.

Some domestic violence cases are so specific that imposing bail as a measure of restraint by judges cannot be justified because the positive obligation of the authorities is to protect victims of domestic violence. As for the loyal attitude towards the defendants increases the risks to have much graver results in future and demonstrates dangerous tendency⁴⁴.

Besides that, imposing bail as a measure of restraint on the defendants in the domestic violence cases, often is paid by the family and loses its initial purpose. For example, in accordance with the case materials of one of the cases processed by HRC, the victim woman tried to put up with her fate because of her two children because she also grew up without father and did not want her children to have the same life. One day, when the mother started argument with the husband when he came home drunk, the man decided that they had to leave his mother's house. When the wife refused, he got irritated and physically abused the wife in front of their children; pulled her with hair and hit in the back. The mother-in-law suggested the woman to call police and the law enforcement officers started investigation. Next day, the abuser did not remember anything and the wife asked police not to detain her husband. Consequently, only bail was used as a measure of restraint against the harasser.

This case demonstrates systemic social and legal challenge as the victim had to pay the bail of 2 000 GEL from the money she had received from her mother who works abroad. As a result, the victim is annoyed at her mother-in-law, who suggested her to call police but afterwards did not help her to pay the bail. Also the victim is very worried that teachers and psychologist in the kindergarten learned about the incident in their family. In this light, the psychological and social-economic state of the victim was left beyond the attention of the system.

SECONDARY VICTIMIZATION

Women, who manage to break the violence cycle and try to legally fight against harassers to the end, unfortunately may become victims of secondary victimization. Victimization, which is not direct result of any crime, but the result of the response to the crimes from the side of some structures and individuals, is known as secondary victimization. For example, a victim may suffer the secondary victimization if she makes testimony in the presence of the abuser; if she is questioned about one and the same incidents several times; indifferent comments are made towards her and more. The states should identify and support measures to alleviate the negative effects of crime and to undertake that victims are assisted in all aspects of their rehabilitation, in the community, at home and in the workplace. The assistance available should

⁴⁴ Statement of Human Rights Center [Statement by Human Rights Center regarding Shortcomings in Judicial Proceedings on the Cases of Domestic Violence](#) (13.09.2022) (last seen: 08.10.2023)

include the provision of medical care, material support and psychological health services as well as social care and counselling. Victims should be protected as far as possible from secondary victimization⁴⁵.

HRC lawyers observed that in some cases law enforcement officers and society members expressed empathy towards the defendants that had negative impact on the victim. Also, there are cases, when the process of granting the victim's status to the woman is dragged out as well as the investigation process. For example, HRC lawyer observed that the investigation was particularly prolonged when the domestic violence charge was brought against the officer of the Ministry of Internal Affairs.

It is important that the Government was oriented on the rehabilitation of the victim women. In accordance with the recent amendments to the Law on the Elimination of Violence against Women or/and Domestic Violence, on the Protection and Support of Violence Victims, primary identification and determination of victims of violence against women and/or domestic violence, their protection, support, rehabilitation and for these purposes, timely and coordinated (mutual) activities of state authorities and other relevant entities shall be determined by the national referral procedures for identifying victims of violence against women and/or domestic violence, for their protection, support and rehabilitation, which shall be approved by the Government of Georgia⁴⁶.

CONCLUSION

Violence against women and domestic violence originated from the stereotypes established in relation with gender roles. In respect to the attitudes in the country, often, the crimes committed in the families are left without reaction that feeds mistrust towards the statistical data about such crimes. Gender roles hinder women to plan their professional and personal lives, thus it is important to strengthen the equality principle in practice.

Although respective legislative base of national and international laws is adopted in the country, the number of crimes committed against women and domestic violence is still a challenge that once again underline the need of public awareness raising.

The Georgian legislation envisages various forms of violence against women or/and domestic violence. Among them, incorrect interpretation of rape is problematic, as the crime of rape – a non-consensual act is excluded from the criminal law. Also, with regard to psychological violence, it is noteworthy that with the developing technologies, the number of digital crimes against women in internet and through photo-manipulations is increasing.

There are many acute problems related with the violence against women. Correct interference of law enforcement officers in each stage of the domestic violence cycle is of particular importance. Namely, when tension is escalating in the family, it is important that law enforcement officers worked on the prevention of serious incident of violence and during reconciliation phase, even when the victim withdraws her complaint, it is important that the criminal proceedings were not dropped against the defendant.

⁴⁵ COUNCIL OF EUROPE COMMITTEE OF MINISTERS [Recommendation Rec\(2006\)8](#)[1] of the Committee of Ministers to member states on assistance to crime victims (Adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies); para 1.3; 3.

⁴⁶ Law on the Elimination of Violence against Women or/and Domestic Violence, On the Protection and Support of Violence Victims, Article 7 (4)

In Georgia, in some communities, forced marriage is still acceptable form of marriage. Hence, on the one hand it is necessary to continue work on the prevention of forced marriages and kidnapping of girls and to make education accessible for the girls; on the other hand, respective amendments shall be introduced to the Criminal Code of Georgia in coherence with the Article 37 Part 2 of the Istanbul Convention.

Although commission of a crime based on gender sign is an aggravating circumstance in the Criminal Code of Georgia, in practice, in some instances, the court fails to consider the gender sign as aggravating circumstance. In other cases, judges do not justify the use of gender sign as aggravating circumstance in their decisions that encourage the harassers to have syndrome of impunity. Besides gender sign, it is worth to note that harasser often chooses a victim because of her affiliation with particular group of people, thus very often disabled women become subjects of violence.

Relatively light measures of restraint are imposed on the defendants in the cases of violence against women and domestic violence. In some cases, judges inadequately assess the risks and after the harassers are released under bail, they become even more aggressive in freedom. Also, it is problem when bails are imposed on the harassers because sometimes the victim has to pay his bails.

It is important that the authorities were oriented on the prevention of secondary victimization, on the one hand, and on the other hand worked on full social, legal and economic rehabilitation of women.

RECOMMENDATIONS

To the Government of Georgia

- it is important to deconstruct stereotypes related with gender roles to empower the role of women in the society, to condemn domestic violence and to promote loyal attitudes towards the women in the families;
- to continue awareness raising of citizens to ensure separation of the stereotypes from crimes and to strengthen sensitiveness towards the violence against women and domestic violence;
- also, it is necessary to raise awareness about sexual offences to correctly interpret the rape, among them when husband commits this crime to ensure adequate response to these crimes;
- to elaborate effective mechanism to eliminate new and increasing forms of digital violence against women, among them to eliminate psychological violence on women by photo-manipulations;
- in the cases when restraining order fails to protect the victim adequately, it is essential to ensure timely interference of law enforcement officers and to correctly assess risks;
- it is necessary to create common database, which will help respective institutions, with their own initiative, among them without complaints submitted by victims, to investigate the cases related with the domestic violence;
- To inform law enforcement officers about specific psychology of victims of domestic violence, which may be demonstrated, among others, in justifying the harasser and withdrawal complaint against him. It shall not hinder launch of criminal proceedings against harasser;
- the authorities shall record all facts of forced marriages and kidnapping of women;
- additional resources shall be spent on awareness raising about criminal nature of forced marriages and kidnapping of girls in some communities of Georgia;
- Respective institutions shall work on the prevention of secondary victimization and to ensure full rehabilitation of the women.

To Common Courts:

- When making decisions, judges, in due respect to factual context of the case, shall consider aggravating circumstances of criminal liability against the person to eliminate, for example, the practice of neglecting the crime committed by one family member against another family member as an aggravating circumstance.
- The courts shall impose bail as a measure of restraint based on fundamental analysis of risks so that the released person shall not commit graver crime against women and avoid future facts of domestic violence.
- In the cases, where gender motives are identified, for example, the harasser has discriminative, entitlement or sexist attitude towards the victim, it is important that the court considered the aggravating circumstances based on gender sign and respectively justify its application or non-application in the verdict.

To the Parliament of Georgia:

- Article 37 Part 2 of the Istanbul Convention shall be added to the Criminal Code of Georgia. Namely, intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage shall be criminalized.
- In accordance with the Istanbul Convention Article 36, the notion of rape shall be amended in the Criminal Code of Georgia and absence of consent shall be one of the facts which prove the criminal action.