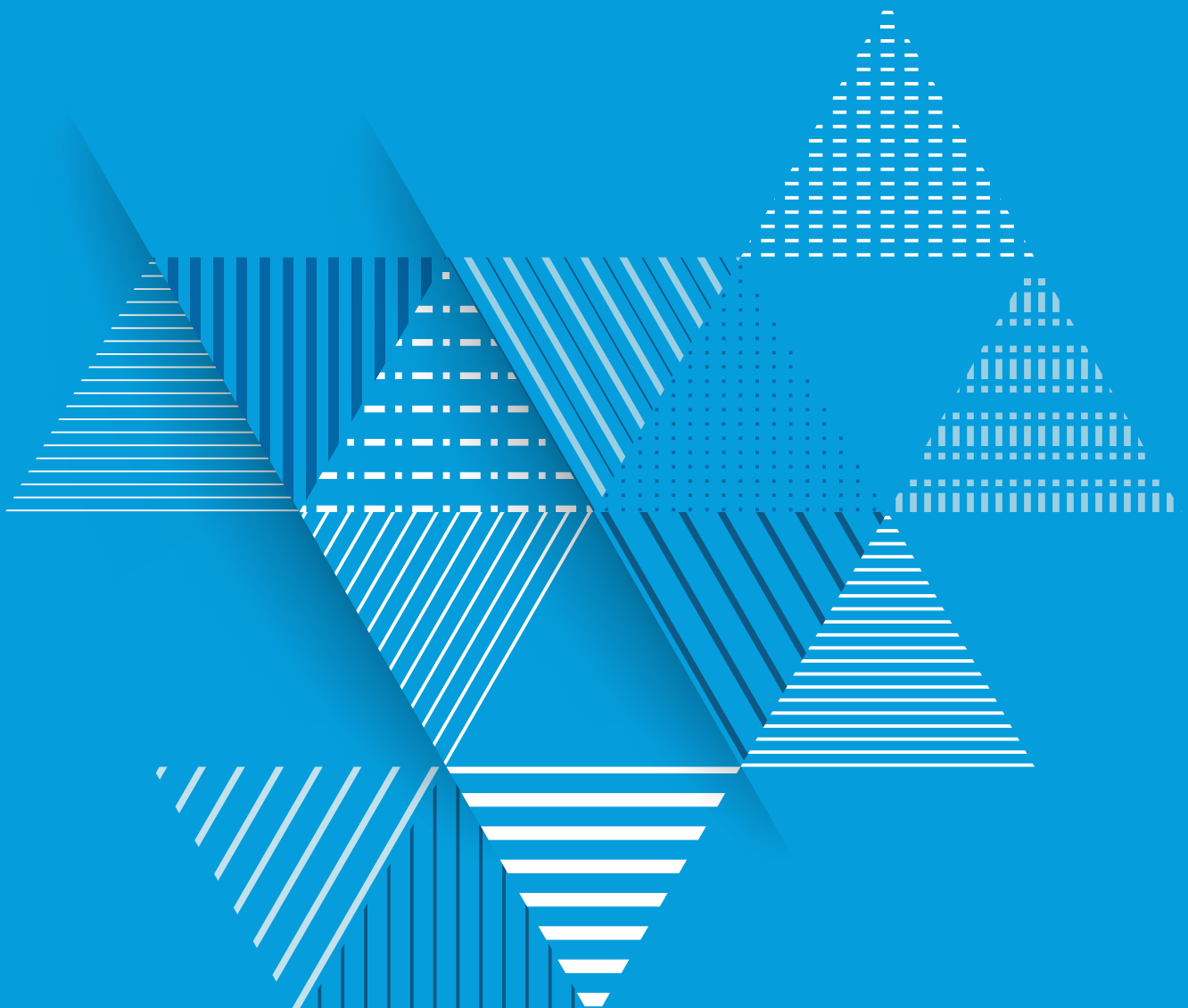


Public Defender of Georgia

REPORT ON FEMICIDE MONITORING: GENDER-RELATED KILLINGS OF WOMEN

Analysis of Criminal Cases
Committed in 2016



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Preface

Femicide, the killing of women¹ and girls on the grounds of gender, is the most severe expression of gender inequality. According to the 2011 global survey on homicide, the number of overall homicides have decreased², but, unfortunately, the number of femicides have increased.³ Femicide is a global problem that needs to be solved through the consistent, coordinated and equality-based policy of the State.

In 2013, the UN General Assembly made the resolution on femicide. The resolution calls on the member countries to take any possible measures for the elimination of gender-related killings of women and girls. In order to implement the legislation and policy of prevention and elimination⁴ of this type of crime, the resolution outlines one of the tools to fight this crime: collecting data on cases of femicide, analyzing it and sharing the results.

In 2015, the UN Special Rapporteur on Violence against Women, its Causes and Consequences, Dubravka Šimonović, called on the UN member countries to carry out goal-oriented work on the prevention of gender-related killings of women. She also called on them to create a femicide monitoring system⁵ with the aim of examining this kind of crime.

On February 15-19, 2016, the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences, Ms. Dubravka Šimonović, undertook an official country visit to Georgia. The goal of the visit was to examine the challenges and deficiencies while implementing the State obligation of eliminating violence against women, its causes and consequences. The UN Special Rapporteur held meetings with representatives of governmental bodies and civil society.

¹ The term “femicide” has been used since XIX century to describe women killing. For discussions on the term and evolution of its definition, please, see the 2012 Report (UN/ A/HRC/20/16) of the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences, page 6-7. http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.16_En.PDF [last seen on April 12]

² Homicide is killing of one person by another person with “malice aforethought” or through negligence.

³ United Nations Office on Drugs and Crime (UNODC), ‘The Global Study on Homicide’, Vienna, UNODC publication, 2011; The information is available on the following web-site: http://www.unodc.org/documents/data-and-analysis/statistics/Homicide/Globa_study_on_homicide_2011_web.pdf [last visited on April 12]

⁴ United Nations, A/RES/68/191, p. 4, (paragraph 7), The information is available on the following web-site: https://www.unodc.org/documents/commissions/CCPC/Crime_Resolutions/2010-2019/2013/General_Assembly/A-RES-68-191.pdf [last visited on April 12]

⁵ The information is available on the following web-site: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16796> [last visited on April 12]

In her final report, the UN Special Rapporteur emphasized recommendations given to Georgia by the UN Committee on the Elimination of Discrimination against Women in July, 2014. The recommendations were in regards to taking preventive measures against the killing of women by an intimate partner. The UN Special Rapporteur noted that in many cases when the killer was an ex-partner or a current partner, victims had already reported the violence to the police, though there were no adequate and effective protection measures taken.

Consequently, Ms. Dubravka Šimonović once again called on Georgia to create “the Femicide Monitoring Mechanism” a.k.a. “the Monitoring Mechanism of Gender-Related Killings of Women”. This means that the State collects data on femicide cases and publicizes it on November 25 annually. The main goal of this initiative is to make a detailed analysis of each case of femicide in order to identify deficiencies in the protection mechanisms, remedy them and develop the system.⁶

In order to fulfill the recommendations of the UN Special Rapporteur, on November 25, 2016, the Public Defender of Georgia declared readiness for creating “the Femicide Monitoring Mechanism” with technical support of UN Women. The Office of the Public Defender of Georgia is a national institution that protects human rights in the country. Within the scope of its mandate and through “the Femicide Monitoring Mechanism”, the Public Defender seeks to analyze each case of killing of a woman, attempted murder and incitement to suicide on the grounds of gender. This will result in identifying deficiencies in the mechanism of protection for victims/sufferers and refining and implementing the mechanism afterwards.

The present document is a special report of the Office of the Public Defender of Georgia within the framework of “the Femicide Monitoring Mechanism”. The crimes analyzed in this report were committed in 2016. We hope the presented discoveries and recommendations will be taken into consideration in the process of planning and implementing the State policy against femicide.

⁶ UN, *Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia*, A/HRC/32/42/Add.3, 22 July 2016, 6. The information is available on the following web-site: <http://www.ohchr.org/Documents/Issues/Women/SR/A.HRC.32.42.Add.3.pdf> [last visited on April 12]



I. RESEARCH METHODOLOGY

I.1. Definition of Femicide

In the field of international law on human rights there is not a universally agreed definition of “femicide”. The term “femicide” is not recognized by the international treaties on human rights, even by the United Nations Committee for the Elimination of All forms of Discrimination against Women and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). The term has never been used by the European Court of Human Rights, though it can be found in the practice of Inter-American court, the 68th⁷ and 70th⁸ resolutions of the UN General Assembly and documents made by the United Nations Special Rapporteurs on Violence against Women.

The term “femicide” was established by a feminist sociologist Dianna Russell in the 1970s. The political aim of “femicide” as a separate term is to reveal discrimination and oppression of women, inequality and systematic violence, with its culmination – the most severe violation – death of a woman.⁹

For the goals of the present research and due to the tendencies of femicide in Georgia, we use the definition of femicide based on the Latin American Model Protocol:

Femicide is the murder of a woman due to her gender, i.e., killing of a woman with its motive or context related to gender-based violence, discrimination or a subordinate role of a woman, expressed by the desire to have rights over her, superiority, proprietary attitude, control over her behavior or other reasons based on gender. Also, femicide is incitement to suicide due to the above reasons.

Femicide differs from the murder of a woman with a different motive or the killing of a man based on these characteristics: the crime is committed because of the subordinate role women in society and social-cultural norms acknowledging that men are superior and that the life of a woman is less valuable and respectable. Cultural elements make the perpetrator believe he has rights to make decisions related to a woman’s behavior, body and life. If a woman does not obey, he has a right to punish her. Femicide preserves and strengthens the social and cultural norms of subordination and oppression, and often enables a perpetrator to evaluate the murder as a case of “man’s honour”.¹⁰

I.2. Main Characteristics of Femicide

Killing a woman does not automatically mean that a femicide is committed. According to the Latin American Model Protocol (hereinafter: the Latin American Guiding Protocol), for investigating gender-related killings of women there ought to be the certain characteristics to identify femicide. The murder (death of a woman) must

⁷ The information is available on the following web-site: <http://www.un.org/en/ga/68/resolutions.shtml> [last visited on April 12]

⁸ The information is available on the following web-site: <http://www.un.org/en/ga/70/resolutions.shtml> [last visited on April 12]

⁹ Diana E. H. Russel, and Roberta A. Harmes. Femicide in Global Perspective. New York: Teachers College, 2001. Print. pp. 77-78

¹⁰ Please, see the Latin American Model Protocol, p. 36

be related to gender identity. The motives of the murder or context must be connected to gender violence and/or discrimination.¹¹ If there are no such characteristics, the murder is a homicide and not a femicide.

During the investigation process of each murder of a woman, the State and law-enforcement bodies should consider the possibility of the crime being a femicide. If there are no gender-based motives, the case should be qualified as a general homicide.

The killing of a woman by a man should be qualified as a femicide if the motive of the crime is related to a discriminative attitude towards woman and a general context of gender violence. The reason for committing a femicide can also be connected to the situation when the perpetrator considers the victim to be a subordinate object that has to obey the man as the dominant and superior subject.¹²

When analyzing the court cases, we concluded that certain motives for femicide are essential for the present research, namely:

- Discriminative and sexist attitudes towards a victim;
- Proprietary attitudes;
- Control over behavior;
- Demand to obey stereotypical roles.

Disobedience by a victim and opposing demands are motives/reasons for a perpetrator to commit a crime.

I.3. Articles of the Criminal Code of Georgia in which Femicide is Found

Georgian legislation does not consider “femicide” as a separate article or as an aggravating circumstance. Under the law, gender-related killing is not defined as an aggravating circumstance for an intentional murder. Thus, classification and statistics of femicide are not separated from the other kinds of murder.

Femicide can be found in crimes qualified by the following articles of the Criminal Code of Georgia:

- Intentional murder (article 108, the Criminal Code of Georgia);
- Intentional murder under aggravating circumstances (article 109, the Criminal Code of Georgia);
- Intentional murder under a state of sudden, strong emotional excitement (article 111, the Criminal Code of Georgia);

¹¹ Latin American Model Protocol for the Investigation of Gender-related Killings of Women (femicide/feminicide). Hereinafter, Latin American Model Protocol. Office of the High Commissioner for Human Rights, Latin America, ISBN 978-9962-5559-0-2, p. 13-14.

¹² Please, see the Inter-American Model Protocol (the above protocol), p. 35.

- Intentional serious damage to health that caused death (article 117.2, the Criminal Code of Georgia);¹³
- Incitement to suicide (article 115, the Criminal Code of Georgia);

In addition, femicide can be found in the following articles:

- Rape that caused death (article 137.4.b, the Criminal Code of Georgia);
- Violent act of a sexual nature that caused death (article 138.3.b, the Criminal Code of Georgia);
- Illegal abortion resulting in death (article 133.3, the Criminal Code of Georgia);
- Sterilization without consent that caused death (article 133¹.3, the Criminal Code of Georgia);
- Damaging woman's sexual organs that caused death (article 133².3, the Criminal Code of Georgia);
- Human trafficking that caused death (143¹.4. b, the Criminal Code of Georgia);
- Torture that caused death (article 143¹.3.c, the Criminal Code of Georgia);

The above articles may qualify femicide, in addition to other crimes that have no connection with gender motives. Thus, in order to determine that a concrete crime is a femicide, the following factors should be taken into account: the victim is a woman; and the offense is related to the above articles. After analyzing the circumstances, it can be determined if the crime is a femicide or not.

I.4. Complexities of Identifying Femicide and Ways to Identify

Article 11¹ of the Criminal Code of Georgia simplifies ways to identify domestic femicide. This article states which parts of the Code define domestic violence.¹⁴ Thus, domestic femicide (gender-based killing of a spouse/ wife or ex-wife) can be identified if it is related to the above-mentioned articles together with article 11¹ of the Criminal Code of Georgia.

However, femicide is not only killing a woman inside of a family (i.e., killing a wife or ex-wife). Femicide is all kinds of killings of women (inside or outside of a family) that are related to gender discrimination, control over women's behavior, proprietary attitude towards women, gender-based violence and/or subordination. Also, femicide is incitement to suicide (article 115, the Criminal Code of Georgia) due to the above reasons inside or outside of a family. In the most cases, when a husband/ex-husband kills a wife/ex-wife (and the crime is qualified under article 11¹), the circumstances show that the case is a femicide.

Additionally, discrimination motive is defined as aggravating circumstances under the legislation. It means that if a murder is committed due to racial, religious, national, or ethnic intolerance (article 109.2, the Criminal

¹³ The crime qualified by the article 117.2 of the Criminal Code of Georgia can be defined as a femicide only if the qualification is incorrect. If the crime is qualified in a correct way, it is an intentional murder (the article 108 of the Criminal Code of Georgia) or intentional murder under aggravating circumstances (the article 109 of the Criminal Code of Georgia).

¹⁴ This article considers the following family members: spouse, mother, father, grandmother, grandfather, child (step-child), foster child, fosterer, spouse of a fosterer, adopted child, adoptive family (adoptive mother, adoptive father), guardian, grandchild, sister, brother, parents-in-law, brother-in-law, sister-in-law, ex-spouse, and people who have or had joint family farming.

Code of Georgia), the verdict is more severe than a murder without aggravating circumstances. This kind of an offense is punished with jail time for a term of 13 to 17 years (unlike the article 108, where the term is 7 to 15 years). Though, as it was mentioned above, this article determines that only the above listed factors are considered aggravating circumstances, which does not include discrimination due to sex/gender that is a part of femicide. Consequently, gender-related killing without other aggravating circumstances cannot be qualified under the article 109.

It needs to be noted that, according to the article 53¹ (article 53.3¹ is removed) of the Criminal Code of Georgia, if the motive for a crime is discrimination due to gender, this aggravates the committed offense and it should be taken into account when the court imposes a sentence:

- Commission of a crime on the grounds of race, skin colour, language, sex, sexual orientation, gender, gender identity, age, religion, political or other beliefs, disability, citizenship, national, ethnic or social origin, material status or rank, place of residence or other discriminatory grounds shall constitute an aggravating circumstance for all relevant crimes provided for by this Code;
- Commission of a crime by one family member against another, against a helpless one, against or in the presence of a minor, with particular cruelty, by using or threatening use of a weapon, or by using official status shall constitute an aggravating circumstance for all relevant crimes provided for by this Code.

Correspondingly, the most adequate (but not sufficient) way to identify femicide is to investigate the above mentioned crimes defined under articles 53¹ and 111¹ of the Criminal Code of Georgia.



2. RESEARCH METHOD

In order to monitor femicide, the Department of Gender Equality of the Office of the Public Defender requested information on cases of femicide and femicide attempts from the Ministry of Internal Affairs of Georgia, the Main Prosecutor's Office of Georgia and the Common Courts.

Requesting the information from the Civil Courts, Court of Appeals and the Supreme Court occurred in several stages.

We requested enacted court decisions on cases of murder and attempted murder committed in 2016. The cases were requested from all Civil Courts, as well as the Kutaisi Court of Appeal, Tbilisi Court of Appeal and Supreme Court.

The information was requested according to articles of the Criminal Code of Georgia that can qualify femicide, namely: intentional murder (article 108, the Criminal Code of Georgia); intentional murder under aggravating circumstances (article 109, the Criminal Code of Georgia); intentional murder under a state of sudden, strong emotional excitement (article 111, the Criminal Code of Georgia); intentional serious damage to health that caused death (article 117.2, the Criminal Code of Georgia); incitement to suicide (article 115, the Criminal Code of Georgia); and attempt of a crime (articles 19, 108 and 19, 109, the Criminal Code of Georgia).

The court decisions were requested additionally according to articles of the Criminal Code of Georgia that could be related to femicide, namely: rape that caused death (article 137.4.b, the Criminal Code of Georgia); violent act of sexual nature that caused death (article 138.3.b, the Criminal Code of Georgia); illegal abortion resulting in death (article 133.3, the Criminal Code of Georgia); sterilization without consent from the victim that caused death (article 133¹.3, the Criminal Code of Georgia); damaging woman's sexual organs that caused death (article 133².3, the Criminal Code of Georgia); human trafficking that caused death (143¹.4. b, the Criminal Code of Georgia); and torture that caused death (article 143¹.3.c, the Criminal Code of Georgia). It is worth noting that none of the courts provided a decision made under these articles.

All in all, 53 court decisions¹⁵ were submitted to the Office of the Public Defender from the Common Courts. After studying the decisions, it was decided to request detailed materials for only 19 of those cases. In 27 of the cases, crimes were not committed in 2016. In 7 cases, gender motive was not identified. After studying the 19 decisions, only 11 cases were chosen for the research, as the other crimes were not committed on the grounds of gender.¹⁶

¹⁵ Several courts sent the same decision twice; in some occasions the Court of Appeals and the First Instance Court sent the same decisions. There were 5 such decisions and they are not taken into account.

¹⁶ It needs to be noted, that there are no statistics on the information requested from the court and court decisions. Additionally, gathering and processing the requested information needed much time and court resources. Thusm the process of receiving the information from the courts was complicated. Consequently, the research has no pretensions on statistical accuracy. It only analyzes the decisions and materials of cases submitted by the courts.



3. RESULTS OF MONITORING CASES ON FEMICIDE AND FEMICIDE ATTEMPTS

A crime can be classified as a femicide if its motive is related to discriminatory attitudes towards a woman or amgeneral context of violence. Motive for femicide can also be a situation where a victim is considered an object subordinate to an offender and she has to obey a man who is the dominant and superior subject.¹⁷ Correspondingly, according to article 53¹ of the Criminal Code of Georgia, if the motive of a crime is discrimination due to gender, this aggravates the committed offense and it is taken/should be taken into account when the court imposes a sentence.

Despite the fact that using the mentioned article (53¹) is within the competence of a court, the role of investigation is crucial, as it has to find proof of discriminatory motive and submit it to the court. The judge does not have an opportunity to find evidence independently. His/her role in this regard is passive. Only in exceptions, under agreement with both sides, does a judge have the limited ability to clarify and make the facts more precise. This can be done only when it is necessary to ensure fair justice.¹⁸ In such conditions, if the prosecution does not provide relevant evidence, the court is deprived of the opportunity to find a possible discriminatory motive.

Within the framework of this research, court decisions on criminal cases and case materials were requested from the courts. The Public Defender's Office evaluated the flaws identified at the investigation level, as well as during the court proceedings. In all the cases studied, the investigation and case proceedings were carried out in a timely manner. Though in three cases the plaintiff was not recognized as an assignee¹⁹ in a timely manner.

All in all, 11 court decisions²⁰ were analyzed within the framework of the research: 7 femicides, including the case of a transgender woman, and 4 attempted femicides. Out of seven decisions on femicide cases, 2 decisions were made by the Regional Court of Telavi and 5 decisions were made by the Tbilisi City Court. All these crimes were committed in 2016.

¹⁷ See the Inter-American Model Protocol (the above protocol) p. 35.

¹⁸ The article 25 of the Criminal Code of Georgia

¹⁹ These decisions are: 1) Court decision NI/3395-16, made by the Tbilisi City Court on December 1, 2016; 2) Court decision NI/73-16, made by the Regional Court of Telavi on July 12, 2016; 3) Court decision NI/4057-16, made by the Tbilisi City Court on February 8, 2016.

²⁰ For the details of the research methods, please, see the Annex NI.

Statistical Information

Femicide:

Perpetrator:

Family member - 5 cases:
- Man partner - 4 cases
- Son (man) - 1 case
Acquaintance man - 1 case
Stranger man - 1 case

Motive:

The court identified the motive of the crime only in 7 cases, including:

Revenge on the grounds of jealousy - 2 cases
Revenge - 1 case
Covering the crime - 1 case
Life issues - 1 case
Argument - 1 case
Offense - 1 case

Ways and weapons of crime:

- Knife - 3
- Knife and concrete slab - 1
- Fired gun - 1
- Beating - 1
- Crushing with a car and being hit with a stone repeatedly - 1

Punishment:

The court discussed 6 cases at hearings, and on one case a plea agreement was made. The shortest term of punishment for femicide was 5 years in jail and 3 years of conditional sentencing. The most severe punishment was 11 years in jail. In one case, the court found the accused guilty, but the punishment was not determined as the convict died in the penitentiary facility.

In 4 cases out of the 7 the perpetrator committed the crime under alcohol influence.

Education and work:

In 4 cases of femicide the perpetrators had secondary education and are unemployed. In the other 3 cases, education and work status of the perpetrator cannot be identified as there are no relevant materials (only in one case is it written that the offender has secondary education).

Ethnicity:

Of femicide that were studied, the accused as well as the sufferer were representatives of ethnic minority in 2 cases.

Attempted Femicide:

Person committing the crime:

In all 4 cases of attempted femicide, the crime was committed by a family member, including 2 attempts of killing by a husband/male partner and 2 attempts by an ex-husband/ex-partner.

Place of committing of crime:

In 2 cases, the crime was committed at the house of the victim or the yard of the house. The other 2 cases occurred in public spaces: the street and the territory of a cemetery.

Punishment:

The court discussed all the cases at hearings. Correspondingly, a plea agreement was made on none of the cases. The shortest term of punishment for attempted femicide was 4 years of conditional sentence. The most severe punishment was 11 years of in jail (the perpetrator was sentenced for attempting intentional murder of his wife).

Ways and weapons of crime:

Hammer - 1 case
Axe - 1 case
Knife - 1 case
Systematic domestic violence - 1 case

Education:

Out of the 4 cases of attempted femicide, the offenders have only secondary education in 3 cases (this information was not indicated in the materials of the other case).

3.1. Deficiencies at the Level of Court

In all the cases of femicide and attempted femicide analyzed within the framework of the research by the Office of the Public Defender of Georgia, the perpetrator had discriminatory/sexist attitudes towards the victim. Also, he had proprietary attitudes, control over her behavior and/or demanded her to obey gender roles. The reason/motive for committing the crime is disobedience by the victim and behaving against the gender-based demands of the perpetrator.

Gender-related motives of the crimes was found in the testimonies of defendant, plaintiff and witnesses, where the vocabulary often indicates gender issues. To be more precise, victims frequently mentioned that after an early marriage, she was “serving her husband and family”. In cases of disobedience by the women to gender roles, the defendant committed violence while acting as the “family head”. Such violence includes restrictions on going out, communicating and working, systematic humiliation and violence.

However, in most cases (only one of them is an exception) neither the prosecution nor the court underlined a discriminatory motive. On some occasions, the motive of the crime is not defined, and on other occasions the motive involves arguing, revenge, anger and jealousy. Accordingly, in this chapter, we discuss the cases where deficiencies were found at the level of identifying and naming femicide and attempted femicide.

Of the mentioned cases, on only one occasion²¹ did the court discuss aggravating and mitigating circumstances according to article 53,²² paragraph 3 (old edition) of the Criminal Code of Georgia. The court concluded that according to its essence, the offense was particularly dangerous. During the discussions the court did not mention the discriminatory motive even though the relevant article of the Criminal Code of Georgia on the discriminatory motive is indicated. Thus, it can be assumed that the problem of naming is not solved even if a judge refers to the relevant article, because the case was still not identified as “femicide” or “gender-related killing”.

After analyzing the requested cases, the problem of naming not only emerged, but also a possible unethical approach of a judge. Namely, during the last speech of the accused, the judge stated that the indicated circumstances could be repeated as *“the health condition [of the sufferer/victim] seems to be heavy and it can easily be noticed.”* It needs to be noted that the judge evaluated the health condition of the sufferer without having the concrete documentation in the case materials that would enable him/her to make the above-mentioned assessment.

²¹ Court decision NI/3395-16, made by the Tbilisi City Court on December 1, 2016.

²² Aggravating circumstances of article 53 I, the Criminal Code of Georgia: 1. Commission of a crime on the grounds of race, skin colour, language, sex, sexual orientation, gender, gender identity, age, religion, political or other beliefs, disability, citizenship, national, ethnic or social origin, material status or rank, place of residence or other discriminatory grounds shall constitute an aggravating circumstance for all the relevant crimes provided for by this Code. 2. The offence by a member of the family against another; against a person made vulnerable by particular circumstances; against or in the presence of a child; with particular cruelty; committed with the use or threat of using a weapon; or with using an official position are aggravating circumstances in the determination of the sentence in relation to offences established in accordance with this article.

It is worth noting that a competent investigation of a possible hate crime was not carried out in relation to the murder of a transgender woman. This is particularly notable, because since the first day of the investigation, all information gathered pointed towards a possible transphobic crime. After analyzing the case materials, it can be assumed that the investigation was incompetent and was not directed towards identifying a possible motive of hate.

As for determining a penalty, the perpetrator was charged with a severe sentence (imprisonment for 13 years) according to the article 108 (imprisonment for a term of 7 to 15 years) of the Criminal Code of Georgia. However, the judge did not discuss aggravating circumstances defined by the article 53.3¹ (effective at the time of charging) of the same Code, i.e., commission of a crime due to intolerance of sexual orientation, gender or gender identity. Thus, the decision points towards the verdict having no mitigating circumstances, whereas aggravating circumstances are considered when committing a crime with a conditional sentence.

3.2. A History of Violence

In many cases, femicide or attempted femicide is a culmination of the systematic and repeated violence that women go through before death or harm. Accordingly, while qualifying a crime as femicide or attempted femicide, it is essential to identify if the victim suffered gender-based discrimination and/or violence from the perpetrator before the murder.²³ Investigation of the history prior the crime is essential for finding out the motive and imposing a sentence.

According to the 46 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (created on April 12, 2011), parties shall take the necessary legislative or other measures to ensure that the following circumstances, insofar as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offences established in accordance with this Convention:

- The offence was committed against a former or current spouse or partner as recognized by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority;
- The offence, or related offences, were committed repeatedly;
- The offence was committed against a person made vulnerable by particular circumstances;
- The offence was committed against or in the presence of a child;
- The offence was committed by two or more people acting together;
- The offence was preceded or accompanied by extreme levels of violence;
- The offence was committed with the use or threat of a weapon;
- The offence resulted in severe physical or psychological harm for the victim;
- The perpetrator had previously been convicted of offences of a similar nature.

²³ See the Inter-American Model Protocol (the above protocol) p. 53.

After analyzing the case materials, it was found that on some occasions it was not even mentioned that the sufferer/victim had already reported the violence to law enforcement agencies. This was only discovered because the Public Defender examined concrete cases of domestic violence/violence against women as part of its mandate.

Evidence of a history of violence can be frequently found in the testimonies of the sufferer, the accused and other witnesses. However, it is worth noting, that in none of the cases did the investigation find additional evidence that the victim or another person had already appealed to the police for possible domestic violence. Also, there was no mention of what kind of measures were carried out by law enforcement agencies and why the femicide or attempted femicide was not avoided.

As for the courts, they do not consider discriminatory motives while imposing sentences in relation to the mentioned cases, even when the witnesses' testimonies clearly indicate this kind of motive of violence.

For most cases, systematic and continuous physical, psychological and economic violence was not taken into account when determining a motive for the crime. Neither was it considered by the court as an aggravating circumstance

In 8 cases out of the 11 that were analyzed, it can be seen that the victim suffered violence from the perpetrator before the crime. Among them are 6 cases when, before the femicide/attempted femicide, the Ministry of Internal Affairs of Georgia had already been informed of a case of possible domestic violence.²⁴

3.3. Qualification as Femicide

In femicide cases, it is important that the crime qualification is adequate for the severity of the crime. Otherwise, it would be impossible to have a gender-sensitive system of criminal legislation where crimes against women are recognized, qualified and punished by the prosecution and the judiciary bodies in a competent way.

In the case discussed by the Telavi Regional Court, there was an obvious problem²⁵ of qualification. Namely, according to the prosecution, the offender was accused of intentional murder under the article 108.11¹ of the Criminal Code of Georgia. In this case the offender demanded that the victim register a house for him against her will, and then committed physical violence that caused a lethal end. It needs to be noted that article 108 of the Criminal Code of Georgia imposes liabilities for intentional murder. The material essence of the given verdict is that the action is considered as just a "murder", as it neither conveys the qualifying circumstances or the existence of privileging components.

Under this article, the criminal result represents an obligatory object of murder— death that can be committed by action or without action. Besides, it makes no difference if the intention is direct or indirect. As for the motive, it can be various: jealousy, hooliganism, ill will, etc. The State's positive obligation is to protect life, so it is committed to discuss even murders that have no motive.

²⁴ For the detailed information on the messages about the concrete criminal case, please, see the Annex N2.

²⁵ Court decision N1/73-16, made by the Regional Court of Telavi

In the above-mentioned case, there are the factors to be taken into account: age of the victim, health condition and severity of damages. Considering all these, it is ambiguous why the qualification of the crime was changed in favor of the accused. The fact that the court decision is not substantiated²⁶ makes the case even more unsubstantiated.

To conclude, it is essential that the prosecution qualify gender-related killings of women in a correct way that would make it possible to impose corresponding liabilities on a verdict.

3.4. Circumstances Taken into Account by the Court when Imposing a Sentence

According to the article 53, part 3 of the Criminal Code of Georgia, when imposing a sentence, the court must take into account the aggravating circumstances and mitigating circumstances of the offender, particularly, the motive and goal of the crime, the unlawful intent demonstrated in the act, the character and degree of the breach of obligations, the modus operandi and unlawful consequence of the act, prior history of the offender, personal and financial circumstances, and conduct of the offender after the offence, in particular, the offender's desire to indemnify the damage and reconcile with the victim.

In most of the court decisions examined (one case is an exception), discriminatory motive is not identified, thus, it is not indicated as an aggravating circumstance of liability.

The analyzed cases show that in some occasions courts indicated that there were no aggravating and mitigating circumstances. In other cases, the following factors were highlighted:

- In one court decision, the aggravating circumstance is a conviction. In another case, aggravating circumstances are: motive of the crime – revenge; and the modus operandi of the act – the offense is committed during tourist season, at the beach, in a place of public gathering;
- As for mitigating circumstances, one decision indicated that the offender was evaluated positively (though the court did not clearly say what that meant), confessed and regretted the misconduct, collaborated with the investigation and contributed to the timely and effective implementation of justice; in another case, the mitigating circumstance was the health condition of the convicted, his conduct at the court hearing and attitude towards it.

It needs to be noted, that apart from aggravating and mitigating circumstances, when determining a sentence, the court also considered the following factors: sufferer's position (if she had pretensions); issue of reconciliation

²⁶ For the detailed information on the criminal case of G. M., please, see the Annex N2 (Court decision NI/73-I6, made by the Regional Court of Telavi).

between the victim and the perpetrator; condition of the sufferer (if she survived or recovered); if the convicted was a bread winner; health condition of family members; age of the convicted; and if the convicted collaborated with the investigation.

None of the analyzed decisions considered the history prior the crime when imposing a sentence for domestic violence. In this regard there is only one exception – the decision of the Regional Court of Khelvachauri.²⁷ In this decision, it is mentioned that there are no aggravating or mitigating circumstances for the liabilities of the accused. Although, when determining the sentence, apart from the other circumstances, the court took into account the following factors: the crime was committed against a mother of three under-aged children; before the offense, the accused harrassed his wife; after committing the crime the accused continued calling the victim and threatening her; and he only regrets he could not fulfill his threats.

²⁷ Case N I-275/16



4. CONCLUSION

The high level of femicide in the country is tightly connected with gender inequality, policies related to women and domestic violence and deficiencies of the system in supporting victims of domestic violence/sufferers. Accordingly, it is crucial to take systemic steps to correct these flaws.

The analyzed cases show that the court does not discuss the possible gender motive even when the evidence (e.g., testimonies of witnesses) gathered by the investigation clearly indicate femicide or attempted femicide. Thus, it can be assumed that there is a problem of naming these kinds of incidents at the stage of the court.

As for the stage of the investigation, among the decisions analyzed by the Public Defender, there were cases where the materials did not indicate and/or it was vague if the victim/sufferer had already appealed to law enforcement bodies prior the violence. It is also not indicated even when the witnesses' testimonies show that violence occurred before the crime. Instances where victims had appealed to law enforcement bodies about the prior violence were found only because the Department of Gender Equality of the Public Defender had examined these cases within its mandate. That is why the Office of the Public Defender was aware of the appeals to law enforcement bodies and the activities law enforcement carried out.

Thus, it can be assumed that the current system of protection and support for victims is not effective. In 6 cases out of 11, the victim had already appealed to law enforcement bodies, but the risk of violence was not identified and relevant monitoring was still not carried out. If the relevant activities had been carried out, there would have been an opportunity for protecting and rescuing the victim/sufferer.

The analyzed cases show the problems with appealing to law enforcement bodies. On several occasions, there was systematic violence, though the victim/sufferer was reluctant to announce it to the police. Apart from this, the analyzed cases show that the court did not use gender sensitive language towards women and domestic violence. This includes putting blame on the victim, which can be considered as victimization for the second time at the level of the court.

Recommendations:

- It is important to carry out comprehensive statistics on violence against women and domestic violence, as well as hate crimes, in order to analyze deficiencies and flaws in the system of protection and support of victims of violence that result in high levels of femicide in Georgia.
- It is crucial to improve the systems of protection and support for victims of violence. Law enforcement agencies should have a methodology to evaluate risks of violence and guiding principles to monitor the cases.
- It is essential to consider all complaints/announcements on gender violence together, as fighting against concrete incidents of violence separately does not bring a desirable outcome with regard to protection and support for victims of violence.
- When analyzing each case of violence, the existing situation in terms of gender inequality in the country should be taken into account. In each case, the risk of gender violence should be considered in connection with the general situation.
- Femicide must be determined under the Criminal Code of Georgia separately as a gender-related killing. This will increase the opportunity to name gender killings of women/attempted killings of women in a correct way. Also, this will provide an opportunity to collect accurate statistics.
- At the level of the court, gender-based motive should be identified in cases of femicide or attempted femicide. The court ought to discuss gender motive and not be limited by only referring to a concrete article.
- It is essential that the Prosecutor's Office of Georgia search and consider materials on prior incidences of violence. Also, relevant evidence ought to be searched for to identify a discriminatory motive.
- It is essential that the court consider the specifics of a crime when defining mitigating circumstances or assessing the convicted's personality.

Annex I: Statistics of the Prosecutor's Office on the Killings of Women in 2016

According to data of the Main Prosecution of Georgia, there were 32 cases of killings of women in 2016. Fourteen (43.8%) of them were committed by a family member, and 18 (56.2%) in other circumstances. In 9 cases there was an attempted killing of a woman, including 5 cases of domestic crime. In 4 cases there was a different motive.

There were 14 cases of domestic violence. Criminal prosecution started on 12 cases. In 8 cases, criminal prosecution started under article 111-108, in 3 cases under article 111-109, and in one case under article 117 (6).²⁸ Two incidents ended with the suicide of the accused, and correspondingly, criminal prosecution was not started.

In 4 cases, criminal prosecution was terminated because of mental illness, and in one case – because of the death of the accused. The remaining 7 cases were discussed at court hearings and the defendants were found guilty.²⁹

Eighteen crimes were committed with another motive. Three of them are under investigation. In another three cases, characteristics of the criminal offense were not found, which ended with termination of the investigation. In 12 murder cases, criminal prosecution started against 10 persons and 9 of them were found guilty. Criminal prosecution against the tenth person was terminated as the accused died.³⁰

According to data of the Main Prosecution of Georgia, in 2016, criminal prosecution started on 9 attempted killing of a woman. In 5 cases, the investigation started on the grounds of domestic violence and criminal prosecution was started against 4 persons: in 3 cases under article 111-19-108 of the Criminal Code of Georgia, and in one case under article 111-19-109 of the Criminal Code of Georgia.³¹ All the cases ended with plea guilty verdict. In 4 cases of attempted killing of a woman, the criminal prosecution started against 4 persons: in three cases under article 19-108 of the Criminal Code of Georgia, and in one case under the article 19-109³² of the Criminal Code of Georgia. All the accused were found guilty.³³

²⁸ Article 111-108 murder committed by family member; article 111 – 109 murder of a family member under aggravating circumstances; article 117 (6) – intentional damage of health causing death. Family member: spouse, mother, father, grandmother, grandfather, child (stepchild), foster child, fosterer, spouse of a fosterer, adopted child, adoptive family (adoptive mother, adoptive father), guardian, grandchild, sister, brother, parents-in-law, brother-in-law, sister-in-law, ex-spouse, care-giver, supporter, and people who have or had joint family farming.

²⁹ Aspects of Criminal Law in the killings of women, Main Prosecution of Georgia, 2017. Available on-line http://pog.gov.ge/res/docs/public_information/qaltamkvlelobebisanalizi.pdf

³⁰ Letter of the Main Prosecution of Georgia N 13/72420; 08/11/2017

³¹ Attempt of murder of family member article 111-19-108; Attempt of murder of family member article under aggravating circumstances article 111 –19- 109.

³² Attempt of murder - the article 19-108; Attempt of murder the article under aggravating circumstances article 19-109

³³ Letter of the Main Prosecution of Georgia N 13/81465; 14/12/2017

Annex 2: Detailed Analysis of the Discussed Cases

Femicide Cases

I. Case of E.P. (Case NI/3158-16, Tbilisi City Court)

• Description of the Facts – Plot of the Case

According to the decision of the prosecution made on April 4, 2016, E.P. was accused of intentional murder determined under articles 111 and 108 of the Criminal Code of Georgia. On April 3, 2016, being drunk, E.P. wounded his wife with the intention of murder during an argument. The woman had several wounds in her chest and back. The victim died before being taken to the hospital.

On April 4, 2016, the court decided to fulfill the prosecutor's motion and used imprisonment as a preventive measure.

On April 14, 2016, the Tbilisi City Court found E. P. guilty of committing a crime under articles 111 and 108 of the Criminal Code of Georgia and was sentenced to 10 years imprisonment. The prosecution did not agree with this decision and appealed to the Court of Appeals. As the crime was committed with particular cruelty and the accused wounded his wife with a knife 21 times, the prosecution wanted a more severe punishment. The Court of Appeals granted this appeal and sentenced E. P. to 12 years imprisonment.

The case materials show that in 2016, E. P. was 50 years old and P.P. was 48 years old. They had 2 children: 27 year old N. P. and 24 year old K.P. E. P. had secondary education and was temporarily unemployed at the time the crime was committed. When committing the crime, he was drunk. The crime was not committed in the presence of children.

• Deficiencies at the Level of Investigation:

Investigation on criminal case N010030416001 started immediately after receiving information about the case (message to 112 Emergency Coordination and Urgent Assistance Center) on April 3, 2016. The investigation started under article 108 of the Criminal Code of Georgia, at Department I of the Detectives Division in Tbilisi, the Ministry of Internal Affairs of Georgia.. On April 4, the qualification changed and the investigation continued under articles 111 and 108 of the Criminal Code of Georgia.

All possible actions of investigation and legal proceedings were implemented in a timely manner without prolongation. The motivating attitude/conduct of the accused towards the victim can be seen in the witnesses' testimonies:

The family members (children) of the victim noted that the accused physically systematically degraded and violated his wife, beating her on the face and body and causing her physical pain. The victim's brother notes that once when he saw damage on his sister's head, he took her to the hospital and reported the damage to law enforcement bodies. As he says, "E. received warning" and the victim reconciled with the accused for the sake of children.

The testimonies of the children of the accused and the victim prove that frequent argument, loud speech and physical violence were experienced by the victim. Apart from that, one of them practically witnessed the murder. According to the testimony of the accused, he met one of his children on the stairs and told him: "Look after your mother, maybe I killed her". Then he tried to hide.

On June 14, 2016, N.P. was authorized as a legal representative and his rights were explained to him. Though, documents do not show if he wanted to examine the case materials or not.

On April 3, 2016 (06:23 a.m.), E.P. was arrested without a court decision on the basis of urgent need. On the same day, he was questioned and he admitted that he was guilty. It should be taken into account that there was possible grounds for hiding as the accused was aware of the unlawful nature of his conduct. He could foresee the probable outcomes of his actions, though did not help his dying wife and instead left the house.

• Deficiencies at the Level of Court:

On June 30, 2016, at the pre-trial session, the parties did not debate on the evidence. The court approved the evidence presented by both parties.

According to the article 73rd of the Criminal Procedure Code of Georgia, evidence was not discussed at the main hearing as it was not considered debatable by the parties. Additionally, the accused had admitted he was guilty.

According to the decision made by the Tbilisi City Court on June 14, 2016, E.P. was found guilty of intentional murder defined under articles 111 and 108 of the Criminal Code of Georgia. The court noted that **the accused did not have aggravating circumstances**, though this position was not substantiated.

According to the prosecutor's position, the court imposed a sentence that ensured achievement of punishment goals. Also, the prosecutor recommended that the court consider imposing a sentence on the grounds of article 53 of the Criminal Code of Georgia. However, a prosecutor is not authorized to negotiate for a certain kind of punishment. It is only within the competence of the court to determine this issue, but the court did not discuss it at any time. The court failed to evaluate this conduct and its relevancy in regard to a gender motive. Generally, the court ought to consider circumstances like: motivation for the offense, reason, the method through which the crime was conducted, unlawful desire expressed in the conduct, etc.

Messages to the Ministry of Internal Affairs of Georgia prior to the Femicide:

Message on February 16, 2015: the citizen P.P. called the patrol police on address: Flat N13, Al. Tsulukidze Str. №18, City Tbilisi. The caller announced that she wanted the patrol police sent to the mentioned address due to domestic violence. The patrol police went to the place. The patrol inspector explained to P.P. about a restrictive order, but she refused to use and asked for a verbal warning to be instead given to E.P.

Message on October 27, 2015: the citizen P.P. again called the patrol police. The patrol police officer filled in a protocol on the response. The caller P.P. explained that she had had a little argument with her ex-husband E.P., and they had settled it before the patrol police came to the home. She refused assistance from the police officer.

2. Case of G.M. (Case N1/73-16, Telavi Regional Court)

• Description of the Facts – Plot of the Case

On January 8, 2016, according to the decision of the prosecution, G.M. was accused of intentional murder determined under articles 111 and 108 of the Criminal Code of Georgia. The accused frequently used alcohol and verbally and physically violated his paralyzed mother. On January 5, 2016, the victim Z.M. died due to received damages.

On January 9, 2016, the court decided to fulfill the prosecutor's motion and used imprisonment as a preventive measure.

On September 12, 2016, the Regional Court of Telavi found G.M. guilty of the accused conduct determined under article 111, 117, paragraph 6 of the Criminal Code of Georgia. The court considered that the conduct mentioned in the decision of accusation was proven according to the standard of beyond reasonable doubt. As the plea agreement was made, the court was guided by article 20, paragraph 5 of the Criminal Code of Georgia and sentenced the accused to 8 years imprisonment, out of which 3 years were a conditional sentence with probation. The parties did not appeal the decision.

The case materials show that at the moment of committing the crime, G.M. was 49 years old and Z.M. was 67 years old. G.M. has secondary education and in 2016 he was temporarily unemployed. The crime was not committed in the presence of children.

• Deficiencies at the Level of Investigation:

Investigation on criminal case N043070116001 started right after receiving information on the case (message to 112 Emergency Coordination and Urgent Assistance Center) on January 7, 2016. The investigation started in the Department of Detectives in the Main Regional Division of Kakheti, Ministry of Internal Affairs of

Georgia. The investigation started under article 108 of the Criminal Code of Georgia. On March 14 of the same year, the qualification was changed and the investigation continued under article 11¹, 117, paragraph 6 of the Criminal Code of Georgia.

The investigative activities and case proceedings were carried out in a timely manner. In this case, the evidence consists of facts that are obvious, convincing and that coincide with each other. The evidence is of the standard beyond a reasonable doubt. The case materials clearly show that the offender demanded that the victim go against her will and register the house in his name. In order to achieve this goal, the accused physically violated the victim Z.M., which ended with her death.

The information received after questioning of witnesses clearly shows the offender's motivating attitude/ conduct towards the victim:

The family member of the sufferer (sister) and neighbors note that there were systematic conflicts between the accused and the victim, namely, the accused demanded that the victim register the house to him. In order to avoid conflict, the sister (E.M.) of the victim took her to Tbilisi and looked after her.

The family member of the sufferer (sister) and witnesses note that there was continuous violence towards the victim, though the latter never reported it to the police. Thus, evidence (documentation on reaction of the police) was not found in this regard, as there was not any.

As for criminal prosecution, the accused was arrested on January 7, 2016, without a court decision on the grounds of possible hiding (it needs to be noted that when being arrested the accused was at home in the village. During the 3 days after the crime, he did not hide and moved freely. Thus, the grounds of the possible hiding are questionable). The next day, G.M. was questioned, but he did not admit his guilt.

Despite all the above mentioned facts, on March 14, 2016, the decision was requalified under article 11¹-117(6) of the Criminal Code of Georgia. This decision was not substantiated.

On March 12, 2016, the victim's sister (E.M.) was authorized as a legal representative. It should be noted that this assignment was not implemented in a timely manner, as the crime qualification changed after two days. Although the assignee of the sufferer was informed of her rights, she did not have reasonable time to study the case materials and get involved in the process. The case documents do not show her position - if she wanted to examine the materials or not.

• Deficiencies at the Level of Court:

According to the decision made by the Regional Court of Telavi on July 12, 2016, G.M. was found guilty of intentional murder determined under articles 11¹ and 108 of the Criminal Code of Georgia. The judge did not substantiate what facts were proven by the evidence; he just considered the evidence to be beyond a reasonable doubt. He also noted that **the accused did not have aggravating circumstances**, though this position was not substantiated because of the plea agreement.

The case materials did not contain messages about the violence that were sent to the Ministry of Internal Affairs of Georgia. Although, when the Public Defender requested information from the Ministry, several messages were submitted to our office.

The Messages to the Ministry of Internal Affairs of Georgia prior to the Femicide:

On August 27, 2012, before the citizen G.M. intentionally and severely violated (causing her death) his mother Z.M., there was a message. The message initiator was the citizen R.I., who noted that he had had a conflict with G.M. Administrative proceedings started based on the this reported fact. After questioning, it was found out that R.I. visited G.M. at his home and they had an argument. Neither characteristics of a crime nor administrative infractions were identified, so the administrative proceedings were terminated.

On September 19, 2012, administrative proceedings started on the basis of a message from citizen K.T. Citizen Z.M. was questioned, who noted that her son G.M. frequently comes home drunk. Because of this, they had conflicts with one another. G.M. was questioned and warned through the relevant protocol. As there were no signs of a crime, administrative proceedings were terminated.

On September 3, 2013, there is another message from citizen K.T. on domestic violence in the family of citizen G.M. The information/documentation on the administrative proceedings connected with this message had been deleted because of the expiration of the term of its protection. This information/documentation is also not protected in the electronic system of the Ministry of Internal Affairs of Georgia.

On January 27, 2013, there was a message on an instance of mother beating by citizen G.M. The Regional Division of Dedoplistskaro of the Kakheti Police Department started an investigation into this case. The criminal case was N040270113001 under article 125, part I, of the Criminal Code of Georgia. The citizen Z.M. was questioned, and she stated that she had damages due to being beaten. G.M. and other persons were also questioned and investigative activities were carried out. The investigation was terminated, as there were no signs of a crime as determined under the Criminal Code of Georgia.

On September 7, 2013, there was a message from someone who called an ambulance and the patrol police. The woman said Z.M. had been beaten by her son. The Regional Division of Dedoplistskaro of the Kakheti Police Department started administrative proceedings under this message. Z.M., E.M. and G.M. were questioned. The proceedings were terminated, as there were no signs of a crime as determined under the Criminal Code of Georgia.

On April 24, 2015, there was a message about domestic violence between a mother and a son. The patrol police were called. The Regional Division of Dedoplistskaro of the Kakheti Police Department started administrative proceedings under this message. The citizen E.M. stated that G.M. verbally humiliated her and Z.M. In connection with the message, the citizen G.M. was given a written warning.

3. Case of S.G. (Case N 1/B-28-17, Tbilisi Court of Appeals)

Description of the Facts – Plot of the Case:

On April 13, 2016, investigation was started by a subdivision of the Detectives Division of the Tbilisi Police Department. The investigation started under signs of a pronounced action determined by article 108 of the Criminal Code of Georgia. On April 15, 2016, according to a decision of the Tbilisi City Court, the accused was sentenced to imprisonment as a preventive measure. The highest preventive measure, imprisonment, is not only proportional to the qualification of a serious crime, but also because the accused had already been convicted several times (had convictions) on intentional crimes against property.

According to the decision of the Tbilisi City Court made on December 1, 2016, S.G. **was sentenced to 10 years imprisonment.**

The case materials show that S.G. was 42 years old and N.S. was 35 years old. The victim and the perpetrator had 1 under-aged child as a result of cohabitation and 2 children from previous marriages (children were 15, 7 and 3 years old). S.G. has secondary education. He does not have an official job – he is self-employed. The crime was not committed in the presence of children.

• Deficiencies at the Level of Investigation:

On April 13, 2016, the investigation of the mentioned case started in a subdivision of the Detectives Division of the Tbilisi Police Department. The investigation started under the signs of a crime as determined by article 108, part one, of the Criminal Code of Georgia. On April 14, it was requalified according to a decision on the accusation under article 11¹, 108 that classifies the crime as domestic violence committed on the grounds of jealousy with **the motive of revenge.**

Since the first day of the investigation, the investigation activities and case proceedings were carried out **without prolongation.** The witnesses' testimonies show that the Prosecutor's Office tried to get objective information and identify the real motive. To be more exact, the witnesses' testimonies show that the victim suffered continuous harassment and that she frequently **had various injuries to her body as a result of physical violence.**

The accused admitted that he was guilty. The case materials show that after committing the offense, he was indifferent towards the victim and did not do anything to help her. This fact is substantiated by the police that came to the place of the crime, as well as by testimonies of the neighbors: "The accused was standing about 20 meters away smoking a cigarette."

It should be noted, according to the psychiatric expertise of the court, the accused was not under physiological affects or another non-pathological condition that would have influenced his consciousness when committing the crime.

On June 30, 2016, the mother of the sufferer was authorized as the legal representative. The case materials show she was required to take strict measures against the perpetrator. Despite this fact, that a concrete limit was not determined, the mother was authorized as the assignee late in the proceedings, because she was only provided with the materials at the court proceedings on July 7, 2016, when the investigative activities were already finished.

• **Deficiencies at the Level of Court:**

On July 19, 2016, at the court hearing, the defense appealed the issue of evidence accuracy. The judge evaluated the evidence individually and decided that the evidence presented by the prosecution was accurate. It needs to be noted that the testimony of the accused, where he admitted that he was guilty, was not debated by the parties. His admission of guilt was considered prejudicial under article 74, subparagraph d, of the Criminal Code of Georgia.

The court discussed aggravating and mitigating circumstances under article 53, part 3 of the Criminal Code of Georgia. The court presumed that the scale of the criminal conduct was extremely dangerous. It also stated that this crime was one of the cruelest cases of violence.

On December 1, 2017, the defense appealed to the Court of Appeals. Based on the decision made on February 8, 2017, the Court of Appeals did not change the decision of the First Instance Court.

According to the verdict made on July 13, 2017, the appeal was not permitted to be discussed at the level of the Supreme Court.

The messages to the Ministry of Internal Affairs of Georgia prior to the Femicide:³⁴

Message at 22:15 p.m. on April 7, 2015: the caller reported that her husband had physically violated on her. At 22:26 p.m. the victim deleted the mentioned message.

Message at 19:45 p.m. on August 23, 2015: the caller reported that she had had a conflict with her husband. For further response, the message was forwarded to the Department of Patrol Police at the Ministry of Internal Affairs of Georgia. According to the information provided by the Department of Patrol Police at the Ministry of Internal Affairs of Georgia, patrol inspectors came to the place. The incident was over and the victim did not require further help, so the protocol on response was fulfilled at that place.³⁵

³⁴ Letter N 1806361, written on July 20, 2016, by the Administration of the Ministry of Internal Affairs of Georgia; Letter N 20/11-1397690, written on June 8, 2016, by the the Department of Patrol Police of the Ministry of Internal Affairs of Georgia;

³⁵ The mentioned femicide case was studied by the Public Defender of Georgia with its own initiative on the basis of information in media sources, in 2016.

4. Case of N.A. (Case N 1/4622-16, Tbilisi City Court)

Description of Facts – Plot of the Case:

According to the accusation made on July 13, 2016, N.A. was accused of a crime determined under article 111-108 of the Criminal Code of Georgia. Namely, on July 13, 2016, N.A. wounded his wife K.I. in her throat on the grounds of jealousy, with the intention of murder and with the motive of revenge. On July 14, 2016, the court fulfilled the prosecutor's motion and used imprisonment as a restrictive measure against the accused. At the court hearing, the accused agreed with the prosecutor's motion.

The case materials show that when the offense was committed, N.A. was 26 years old and K.I. was 20 years old. At the time of their marriage, K.I. was 13 years old. They had 2 under aged children. At the time of the crime, the under-aged brother of K.I. (11 years old) was at the place. The case materials show that N.A. had secondary education and was unemployed. According to the conclusion of the experts, N.A. was not a drug addict. However, it was also shown that the accused used psychiatric substances like benzodiazepines.

• Deficiencies at the Level of Investigation:

The investigation started right after receiving information (message from 112) on criminal case N100130716001 on July 12, 2016. The investigation started in Subdivision 1 of the Detectives Division of the Tbilisi Police Department under article 111-108 of the Criminal Code of Georgia. The qualification was not changed by the time the case was completed.

All possible investigative activities and case proceedings were carried out in a timely manner, without prolongation.

Two months before the committing of the crime, the victim went to her parents to live with them. The husband asked her to come back, but the victim refused, though she noted that she wanted to live separately. The accused prohibited the victim from using a mobile phone, was jealous and thought she had a hidden love affair.

On August 2, 2016, M.I. (the victim's grandmother) was authorized as her legal representative. She was informed of her rights, though the case materials did not show her position related to if she demanded that the accused be severely punished or not.

• Deficiencies at the Level of Court:

On October 17, 2016, at the pre-trial session, the parties debated over the evidence, and the court discussed the matter at the session and confirmed the evidence presented by the parties. It should be noted that the accused admitted to being guilty at this session.

According to the Court decision made on March 24, 2017, N.A. was found guilty of intentional murder as determined under articles 111, 108 of the Criminal Code of Georgia. The court noted that **the accused did not have aggravating circumstances for the crime**, but this position was not supported. The court substantiated the chosen punishment and noted that “the strictness of the punishment should be equivalent severity of the crime.” The court also stated that the punishment ought to be relevant and proportional in regard to the convict’s personality and severity of the crime. Correspondingly, the court sentenced the accused to 11 years imprisonment.

The messages to the Ministry of Internal Affairs of Georgia prior to the Femicide:³⁶

According to information³⁷ provided by the Ministry of Internal Affairs of Georgia, at 18:59 p.m. – several hours prior to the murder – there was a message to LEPL 112, an agency of the Ministry of Internal Affairs of Georgia. The caller (the grandmother of the deceased) reported physical violence towards her granddaughter and asked for help. The next call was made by the accused (23:33 p.m.), who reported that he had killed his wife and wanted to surrender to the police.

Based on the message of the victim’s grandmother, workers of the Ministry of Internal Affairs of Georgia questioned her. She stated that her grand-daughter was temporarily living with her because of conflicts with the husband. On July 12, 2016, the accused went to the grandmother’s house, argued with his wife, verbally abused her and pushed her when leaving. The caller asked that the police warn the accused to stop coming to her place and abusing them. The same day, the police workers questioned the accused, who stated that he had been to the grandmother’s place, had an argument with his wife and then left the house.

5. Case of Accusation of M. N. and G. K. (Case NI/235-16, Telavi Regional Court)

• Description of Facts – Plot of the Case:

According to the accusation’s decision, on May 7, 2016, the victim E.G. joined M. N. and G. K. while they were driving in a car. M. N. decided to kill E.G. intentionally, by taking her out of the car, beating her with a stone on several parts of her body and killing her. M. N. was accused under article 108 of the Criminal Code of Georgia. It should be noted that when questioned for the first time, the perpetrator admitted that he had raped the victim.

At first, as part of the decision of accusation, the charges were not placed under article 137 of the Criminal Code of Georgia, as the conclusions of the expertise were not made by that time. Later, on July 29, 2016, the accusation was changed and M. N. was charged under article 137, part one and article 109, subparagraph “b”,

³⁶ The mentioned femicide case was studied by the Public Defender of Georgia with its own initiative on the basis of the information in media sources in 2016.

³⁷ Letter N 2072147, written on August 18, 2016, by the Administration of the Ministry of Internal Affairs of Georgia;

part one and subparagraph “b”, part 3 of the Criminal Code of Georgia. The perpetrator was accused of the following conduct: rape of the victim and murder with particular cruelty, as he wanted to hide the fact that he raped the victim, in addition to beating her, striking her with a stone several times and running her over with a car.

According to the accusation’s decision, on May 7, 2016, G. K. was accused of not reporting the crime to the police. He was accused under article 376 of the Criminal Code of Georgia.

According to the decision of the Telavi Regional Court made on February 1, 2017, M. N. was found guilty under article 137, part one and article 109, part one, subparagraph “b” and part 3, subparagraph “b” of the Criminal Code of Georgia. The punishment was not determined as the accused died at the penitentiary facility on November 2, 2016. With the same decision, G. K. was found guilty under article 376 of the Criminal Code of Georgia and was sentenced to 2 years 3 months imprisonment.

According to the decision of the Tbilisi Court of Appeals made on May 17, 2017, the decision made on the case of G. K. by the Telavi Regional Court on October 12, 2017 was upheld. The Supreme Court of Georgia made a verdict on October 12, 2017 and did not discuss the appeal, as the cassator filed a motion to leave the appeal undiscussed.

The case materials show that the victim and the accused persons did not know each other. However, in additional and court testimonies the accused said he knew the victim. The victim was 59 year old, and married with 2 adult children. I. G. was 36 years old and G. G. was 38 years old. M. N. was 49 years old. The crime was not committed in the presence of children. At the time when the crime was committed, M. N. was drunk. He had a secondary education and was temporarily unemployed.

• **Deficiencies at the Level of Investigation:**

The investigation of the mentioned case started in the Signaghi District Division of the Main Regional Division of Kakheti of the Ministry of Internal Affairs of Georgia on May, 5, 2016. The investigation started on a case of unlawful restriction of liberty of E. G. by unknown persons and was based on a message from the victim’s spouse. The investigation started under the signs of a crime as determined by article 143, part 1, of the Criminal Code of Georgia.

Since the first day of the investigation, the investigative activities and case proceedings were carried out in a timely manner without prolongation.

As for the criminal prosecution, M. N. was arrested under the accusation of article 19, 108 of the Criminal Code of Georgia at 04:00 a.m. on May 6, 2016. The same day, at 05:00 a.m., G. K. was arrested under the accusation of article 376 of the Criminal Code of Georgia.

When being questioned, the accused M.N. admitted to being guilty of raping and then killing by beating the victim with a stone on the head and the chest. During the additional questioning, the accused did not admit to the rape and said that he had known the victim in person and had a relationship with her. He said that the victim demanded money and had threatened to tell his wife about their relationship. Then they had an argument, she fell down and then he accidentally drove the car over her. G.K. said in his testimony that he was drunk by this time and did not remember what happened. Before this, being questioned as a witness, he had said that M.N. violated the sufferer, hit him as well as her, and after that he did not remember anything. When he recovered consciousness, the accused put him in the trunk of the car. Imprisonment was used as a preventive measure against both of the accused. In the prosecutor's motion, it is mentioned that the perpetrator had been convicted three times. He had been convicted for beating a woman, violence and threatening.

On May 21, 2016, within a reasonable time, the victim's spouse was authorized as an assignee of the victim and he received information on the case. On August 3, the qualification was changed and he was authorized as an assignee for the second time. He again received information on the case and stated his position: use of the strictest punishment.

• Deficiencies at the Level of Court:

During the court hearing, the accused did not admit to being guilty and stated that he had known the victim, who voluntarily had a sexual relationship with him prior to the day of the crime, and on the day of the crime as well. As for the case of her death, he stated that during the argument he pulled her hair, and she fell down and hit her head. When the accused tried to place her in the car, he accidentally drove the car over her.

According to the Telavi Regional Court's decision made on February 1, 2017, the court concluded that M.N. raped the victim and to cover this crime killed her with particular cruelty. M.N. was found guilty **without being sentenced**, as he had died on November 2, 2016. G.K. was found guilty under article 376 of the Criminal Code of Georgia and was sentenced to 2 years 6 months imprisonment.

According to the decision of the Tbilisi Court of Appeals made on May 17, 2017, the decision of the First Instance Court remained the same.

According to the verdict made on October 12, 2017 by the Supreme Court of Georgia, the cassation appeal was not discussed, as the cassator used a motion for leaving the appeal undiscussed.

6. Case of B.O. (Case NI/4057-16, Tbilisi City Court)

• Description of Facts – Plot of the Case:

According to the decision of accusation, on June 7, 2016, B.O. was accused of the crime determined under article 111, 108 of the Criminal Code of Georgia. The crime was committed in Tbilisi on the basis of revenge,

with the intention of murder. The perpetrator used a firearm that he had purchased unlawfully, kept and carried illegally. He directly pointed the weapon at his wife E.K. and made several shots.

According to the decision of the Tbilisi City Court made on February 8, 2017, B.O. was found guilty under article 236, parts 2 and 3, and article 111, 108 of the Criminal Code of Georgia and was sentenced to 10 years imprisonment. The parties did not appeal the decision.

The accused and the sufferer were married and had 1 under-aged child (15 years old). The victim was 35 years old, the accused was 36 years old. The crime was not committed in the presence of a child. B.O. had incomplete higher education and was unemployed. It is not clear if he was under the influence of alcohol (presumably, he was not). According to the narcotics expert, he had used drugs.

• **Deficiencies at the Level of Investigation:**

The investigation on the mentioned case started the same day, on June 6, 2016, under the crime determined by article 19, 108 of the Criminal Code of Georgia. The same day, the qualification was changed and the investigation continued under article 108 of the Criminal Code of Georgia.

Since the first day of the investigation, the investigative activities and case proceedings were carried out in a timely manner without prolongation. During the investigation, the witnesses' testimonies show the motive of the crime:

According to the testimonies of victims' sisters, the husband of the victim (the accused) had been jealous of his wife ever since serving a sentence and leaving the penitentiary facility. He thought that his wife had had a lover while he was in prison. They had a fight, and the accused verbally and physically violated his wife and threatened to kill her.

The sufferer did not want to appeal and did not report to the police. Accordingly, it was impossible to gather evidence of **domestic violence**. The sufferer's colleague and another acquaintance (the wife of the offender's friend) stated in their testimonies that the accused was jealous (one of them mentioned "insane jealousy", psychological violence and threats of killing).

The offender's mother highlighted the private life of the sufferer. She stated that when her son was in prison, the victim led a "vicious life." The son called her and said that he had wounded his wife and wanted to surrender to the police. The witness states that the accused committed the crime because of the wife's "licentious life" ("Perhaps, he was jealous and had a reason. Perhaps, he discovered the truth about his wife's behavior and killed her").

According to the under-aged child (15 years old) of the accused and the victim, his parents had a conflict that intensified after the father was released from the prison. The son was not told the reason. One week earlier, they had an argument and stopped talking with each other. On the day of the crime, the accused called the son and asked for forgiveness.

According to the ordinance on August 2, 2016, the sister of the victim M.K. was authorized as her assignee. She studied the case materials on August 25. It should be noted that the ordinance on assigning was made 2 months after the crime. Additionally, it is worth noting that the most of the investigative activities were carried out during the days following the crime. Thus, the basis of assigning was clear in case materials from the early stage of the investigation.

As for the criminal prosecution, according to the protocol on questioning the offender as a witness on the day of the crime, B.O. surrendered to the police for hurting his wife.

When being questioned, the accused stated the motive of the crime: when he was in prison, he felt that his wife betrayed him and had a lover. After being released from prison, he found out that his wife was in a love affair with another man. The husband asked the wife several times for a divorce and to “not ashame his dignity”, but she refused, deceived him and hid the truth. The wife was indifferent to him, and the conflicts got more frequent. On the day of the crime, he sent a text message to her and asked if a certain person attended her birthday party in 2013. The answer was that she did not want to speak about this issue. The accused then decided to see her. During a conversation, he took a wife’s mobile phone to check the text messages. The victim confessed that she had a relationship with the mentioned man and asked the husband to go from her life. The accused stated that he got very anxious, offended and told the woman that he would not forgive the betrayal and would kill both of them. The woman tried to grab the firearm from him, but she could not do it and fell down. The man shot her several times. As for having the weapon, the accused indicated that he found it in the rented flat, did not know to whom it belonged and that he had it at his father’s flat on the day of the murder. He threw the weapon and the victim’s mobile phone into the Mtkvari River, wrote to their son and called his mother. He decided to surrender to the police, regretted his conduct and asked for forgiveness.

According to the verdict issued on June 8, 2016, imprisonment was used as a preventive measure against B.O.

• **Deficiencies at the Level of Court:**

It should be noted that in the prosecutor’s concluding speech, the motive of the crime is revenge on the basis of jealousy. However, the reason for this jealousy – proprietary attitude of the accused towards his wife – was not mentioned, even though it was clear from the evidence in the case materials.

According to the decision on February 8, 2017, B.O. was found guilty under article 236, parts 2 and 3 and article 108 of the Criminal Code of Georgia, and was sentenced to 10 years imprisonment. The parties did not debate over the evidence, so the evidence was not discussed at the court hearing. The judge just named

the evidence that proved the accusation with the standard beyond a reasonable doubt. The evidence was not discussed and the facts that prove evidence were not indicated. Thus, when discussing the motive (apart from revenge) of the accused, his proprietary attitude towards his wife was not mentioned.

The accused's position is that the term of punishment does not make any sense, as he punished himself the most severely. He says the victim was not just a wife and the mother of his child, she was also the closest person to him and he loved her most of all. He feels extreme responsibility for his child and asks him for forgiveness. He says: "All I can do is pray for her soul."

When determining the punishment, the judge indicated the basis of the punishment determined under article 53 of the Criminal Code of Georgia. He decided that the mitigating circumstances for the accused are the following: admitting guilty and regretting his conduct, his health condition (psychiatric problem), his behavior at the court hearing and his attitude toward the proceedings. As for aggravating circumstances, these are: being convicted for intentional crime several times previously, and receiving concessions on more than one occasion, including amnesty, on the basis of reexamining the verdict – despite this, he committed the crime once again.

7. Case of G.M. (Case I/5654-16, Tbilisi City Court)

Description of Facts – Plot of the Case

According to **the decision of accusation** made on October 18, 2016, G.M. was accused of attempted murder under article 19, 108 of the Criminal Code of Georgia. On October 14, 2016, the accused met his acquaintance – the victim Z.Sh. – whom he had known since 2011 when he was serving his a sentence in a penitentiary institution. Z.Sh. and the offender's girlfriend, M.T. (who was expecting a baby from the offender), had a conflict. The accused wanted to settle the conflict between them. When they met, the victim was drunk and they both also drank alcohol together. At that time, G.M. told Z.Sh. to let M.T. work as a sex worker in a certain place. Z.Sh. became aggressive, verbally offended G.M., and indecently exposed herself to him. The accused, who was also under the influence of alcohol, got furious and smashed the victim's head with a concrete block with the intention of killing her, and then wounded her in the throat with a knife that he found nearby. However, the victim was still breathing and moving. In order to fulfil his intention to murder her, the accused again smashed a concrete block into her head. As a result, the victim stopped moving. G.M. then escaped.

On November 22, 2016, the sufferer died in hospital, so in the decision of accusation made on December 9, 2016, the accusation **was requalified under article 108 of the Criminal Code of Georgia**.

According to **the decision** of the Tbilisi City Court made on 3 February, 2017, G.M. was found guilty under article 108 of the Criminal Code of Georgia and was sentenced to 13 years imprisonment.

At this stage the verdict was appealed by the defense according to the rules of appealing.

The victim (according to the identity card of Z.Sh.) was a 34-year-old transgender woman. Neither the decision of accusation, nor the court verdict, indicate this fact.

The case materials show that when committing the crime, G.M. was 31 years old and Z.Sh. was 34 years old. G.M. has secondary education and in 2016 he was unemployed. When committing the murder, he was under the influence of alcohol.

• **Deficiencies at the Level of Investigation:**

The investigation started the same day, on October 18, 2016, based on a case of attempted intentional murder determined under article 19, 108 of the Criminal Code of Georgia.

The relevant investigative activities and case proceedings were carried out. Recognition as a victim was implemented on October 18, 2016, in a timely manner. The next day, the victim's advocate studied the case materials on the basis of a request. On December 10, 2016, the victim's mother was authorized as a representative, though she said that did not want to study the case materials.

As for the prosecution, right after obtaining the substantiated evidence, G.M. was arrested at the place of M.T. at 20:10 on October 16, 2016. The accused was arrested on the basis of trying to escape. He was arrested without a court order.

In the additional questioning, M.T testified differently that she did initially (she was not informed on the facts), stating that the sufferer prohibited her from working in the specific place, and she had said this to the accused. The accused promised to talk to the victim and settle the issue. The witness says that the accused frequently came to her and that he knew the victim. The offender told her he had beaten the victim for swearing at M.T. when they were drinking together. The offender smashed a concrete block on her head so violently that the concrete broke, "her head was smashed, he cut her throat with a knife." The witness also noted that the victim and the offender had known each other since serving sentence in a penitentiary facility together.

The accused admitted to being guilty during questioning and explained: his girlfriend was expecting a baby from him. Three months earlier, she went to the specific place to work as a sex worker. At the place of work, she met "a man with a non-traditional sexual orientation who called himself a woman's name". The accused said that the victim told M.T. that it was her working place and that no one else could work there. If M.T. again dared to come to the place, the victim would beat her. The accused noted that when he came to M.T. at her place of work, he saw the victim who "was wearing a dress and looked like a woman". He recognized this person and remembered that in 2011, when serving his sentence in the prison in a general cell, the victim was in a so called "chickens' cell" – a cell for prisoners with non-traditional sexual orientation. The offender said that almost every day, M.T. complained of being offended by the sufferer. When the accused came to the place

of work in order to talk her and settle the issue, the victim was with an unknown boy. The accused highlighted the way the victim was clothed: she was wearing a dress and had a wig on her head. The mentioned boy left, and the victim and the offender started drinking together. The accused told the victim that M.T. was expecting a baby from him, and asked the victim not to harass M.T. anymore. The victim's verbal humiliation and offensive conduct towards the accused (indecent exposure) made the offender furious, hitting her in the head with a concrete block. She fell down and lost her wig. As the victim continued offending the accused, he understood that he could not leave her alive and wounded the fallen victim with a knife twice in her throat. As a result, the knife was bent, so he once again hit her with a concrete block, this time so violently that it broke and the sufferer's head was smashed. The accused said he would have not tolerated such humiliation from anyone. During the additional questioning, the accused noted that the sufferer "humiliated him in a heinous way", which aggravated him and made him kill her. Although, he had not come to the place with the intention of murdering the victim and he regrets his conduct.

The investigative activities and case proceedings were carried out in a timely manner. They were implemented with the qualification of article 108 of the Criminal Code of Georgia, in a way that is necessary for gathering essential information on a criminal case. A comprehensive investigation was not carried out to identify a probable hate motive, even though the information obtained by the investigative activities since the beginning of the investigation indicated that the victim belonged to a vulnerable social group and was oppressed due to the gender identity.

In particular, the day after the offender was arrested, on October 17, information was requested from the Penitentiary Department on the institution and time of serving the sentence by the accused and the victim. On October 20, the investigative body had a letter from the Penitentiary Department containing information about the accused and the sufferer serving sentences at the same time. Additional investigative activities were not carried out in this regard: the persons who served sentences in the same cells as the accused and the sufferer were not identified and questioned on matters of relation/attitude of the offender toward the victim. This is essential, especially if we consider the subculture of prisons, as LGBT representatives often suffer discriminatory attitudes from the other prisoners.

The investigation did not check if the sufferer sent a message to "112" on the day of the crime, or if she had ever reported unlawful activities against her to the police, and if such a report existed, if it mention the offender or not.

It is notable that the prosecutor commanded an investigator: 1. To question a worker of the non-profit organization "Center for Assistance of Transgender Women"; 2. To identify and question the persons who, on October 19, 2016, during the court session when the accused G.M. was first presented, held a demonstration in the yard of the Tbilisi City Court to support transgender women and to request relevant information from television stations; and 3. To carry out operative searching activities and investigative actions to identify the person who drank alcohol together with the sufferer on the day of the crime. It should be noted that according to the case materials, the above mentioned person was not found. Additionally, the relevant video

recordings were requested and submitted by the television stations, and the transgender persons who had participated in the demonstration and knew the victim were questioned. They stated that they knew the sufferer, though they did not know anything the case and the motive of the crime.

It is worth noting, that in order to find the motive of the crime, the accused and his family members were questioned. The accused answered that he did not violate the sufferer based on their gender, sexual orientation, gender identity and/or other characteristics. The motive was personal, which he had already explained. He had met the victim before the day of the crime, and if he had hated her due to her sexual orientation, he would have violated her earlier and would not have drunk with her.

To the question “ Does the accused get irritated by another person’s sexual orientation and/or gender identity, causing hatred in him?” the perpetrator’s brother answered that he had not noticed if his brother had ever expressed hatred or disgust toward anyone, particularly due to gender identity. The accused had never discussed another persons’ sexual life with him. The accused was tolerant. The mother and sister of the accused answered this question in the same way: the accused had never had aggression towards persons with different sexual orientations or transgender persons. Thus, the investigators excluded the idea that the offender had committed the crime due to gender identity or a discriminatory motive.

In order to identify the motive, questions to the offender (he does not have an obligation to give a testimony, as he has the right to remain silent) and his relatives (they also have a right not to give testimony against their close relative) about if the accused committed the crime due to hatred, are not enough. It should be noted that the witnesses’ testimonies are similar and it is unlikely that common citizens would talk with such legal terminology.

In the case materials, there is a statement from the non-profit organization “Support Group of Women’s Initiatives” to the Ministry of Internal Affairs of Georgia and the general prosecutor (the statement was sent to the investigator), where the organization called on the investigative agencies to pay attention to the factors of the OSCE’s guiding principles during investigation of the mentioned case. The factors of the OSCE’s guiding principles may point to a hate crime: the victim differs from the accused by her sexual orientation and gender identity; she belongs to a group that frequently suffers from attacks by other social groups; there is a historic hostility between the social groups that the accused belongs to and the groups that the victim belonged to; and the sufferer may differ from the offender in appearance, clothing, speech, past life, background, etc.

It is worth noting that during the investigative activities these issues were not given much attention. A comprehensive investigation was not carried out to identify a probable motive of hatred.

• Deficiencies at the Level of Court

During the pre-trial session, the accused agreed to the evidence, thus, the evidence was not debated at the stage of the main hearing. It is worth noting that during the stage of main hearing, the advocate used a motion

on researching the allegations, as the accused, through consideration of the previous advocate's consultations, had refused researching of the allegations. He had only admitted that he committed the crime in a state of extreme agitation.

In a friend of the court statement by the non-profit organization "Educational and Monitoring Center of Human Rights (EMC)", special interest was paid to the characteristics indicating that a probable hate motive existed as determined in the OSCE's document. Also, there was mentioned that if a victim is a representative of a minority, the investigation ought to start its activities on the basis of a motive of intolerance. The fact that the sufferer and the offender knew each other and had a certain kind of relationship did not exclude this motive.

The sufferer's advocate addressed the court and indicated that the motive was not investigated sufficiently. He requested that the transphobic motive be investigated and asked for consideration of the following facts: the place of the crime (where the sufferer worked as a sex worker and was frequently a victim of violence); the relationship between the accused and the sufferer at the prison (the statement of the accused that the victim was in the so-called "chickens' cell" and he was in a general cell, as well as the general negative attitude towards LGBT persons in the prison); and the way the crime was committed (with particular cruelty).

In the verdict of the Tbilisi City Court made on February 3, 2017, the mentioned issues are not indicated. G.M. was found guilty of the crime as determined under the article 108 of the Criminal Code of Georgia and was sentenced to 13 years imprisonment. In the description and motivation part of the verdict, the factual circumstances of the decision are written. It is indicated that article 108 of the Criminal Code of Georgia determines murder without qualifying circumstances, with the main fact being the result (death), the connection between the conduct and the result, and action with direct and indirect intentions. As for the motive, it "can be various and may emerge from revenge, jealousy, argument, etc."

As for determining the punishment, despite the fact that it was severe (imprisonment for 13 years), according to the considered sanction (restriction of freedom for a term of 7-15 years) established under article 108 of the Criminal Code of Georgia, the judge did not discuss aggravating circumstances of the punishment as determined under article 53, 31 (edition effective at the time of judgement) of the same Code. These circumstances include committing a crime due to intolerance of sexual orientation, gender, and/or gender identity. The verdict indicates that the accused has no mitigating circumstances, however, the verdict indicates that the crime was committed under aggravating circumstances.

Attempted Femicide

8. Case of A.T. (Case N I-275/16, Regional Court of Khelvachauri)

• Description of Facts – Plot of the Case

According to the decision of accusation made on June 20, 2016, A.T. deceived his ex-wife N.T into going with him to a the cemetery. When they reached an isolated place far from the road, he used a hammer and hit her in the head and hand with it with the intention of murdering her. The victim sustained many life-threatening injuries. Accordingly, A.T. was accused under article 111, 19 – 108 of the Criminal Code of Georgia.

The case materials show that the accused fled immediately after committing the crime. He tried to influence family members by calling the mother of the victim, threatening her and urging her to give false testimony to the police. If she did not satisfy his demands, he threatened “to do even worse to her daughter.” The case materials also show that A.T. committed the crime between 22:05 and 22:30, and then expressed his indifference by leaving the victim to die.

According to the April 3, 2017 decision of the Regional Court of Khelvachauri (the accused did not attend the court process), **A.T. was sentenced to 11 years imprisonment.**

According to the case materials, A.T. was 34 years old and N.T was 27 years old. They had 3 under-aged children.

• **Deficiencies at the Level of Investigation:**

The investigation of the mentioned case started on June 11, 2016, with the crime determined under article 108 of the Criminal Code of Georgia. After researching the factual circumstances, the qualification was changed to be under article 19, 111 – 108 of the Criminal Code of Georgia according to the relevant decision made on the same day.

Since the first day of the investigation, all investigative activities and case proceedings were carried out in a timely manner, without prolongation. The case does not show if case proceedings on the threatening of the victim’s mother were carried out separately, or even if an investigation was implemented on the this case.

As for the criminal prosecution, on June 20, 2016, the district prosecutor of Khelvachauri issued an ordinance on starting search for the accused. The same day, according to the decision of the Khelvachauri District Court, punishment was used as a preventive measure against the accused. The term of the punishment started on the day of arrest.

Arrest of the accused and relevant proceedings have not been implemented as of today today, as the accused escaped. According to the ordinance on starting a search for the accused, on June 10, 2016, the accused crossed the border through the Sarpi customs crossing point into Turkey.

While it is true that during the investigation, the direct motive and grounds of the crime were not indicated, the case materials clearly show the investigation questioned the victim and witnesses in a comprehensive and competent way, finding the nature of the relationship between the victim and the offender, instances of

violence by the accused before the crime, and grounds of jealousy. The protocols on questioning the witnesses indicate that the crime was committed on the grounds of revenge.

Although the victim had reported to the police on two occasions instances of violence before that day, the case materials do not show the information on implemented activities and decisions in response to the announcements.

On June 20, 2016, N.T. was recognized as a victim. Her position was that the offender should be punished in the most severe manner.

• **Deficiencies at the Level of Court:**

The court session was held without participation of the accused. At the hearing, the judge presumed that the evidence presented by the prosecution was beyond a reasonable doubt, objective and convincing. However, in the decision, it was indicated that the accused did not have aggravating or mitigating circumstances of criminal liability. Correspondingly, the judge did not discuss the circumstances determined under article 53 of the Criminal Code of Georgia.

According to the decision of the Khelvachauri District Court (trial was held without participation of the accused), A.T. was found guilty and was sentenced to 11 years imprisonment.

Messages to the Ministry of Internal Affairs of Georgia prior the Attempted Femicide:

With its own initiative, the Public Defender of Georgia studied the above-mentioned case of femicide on the basis of information publicized by media sources in 2016. According to information from the Ministry of Internal Affairs of Georgia, prior to the crime, the sufferer had made two announcements (on February 24, 2016, and May 13, 2015) of potential domestic violence. At one point, the victim was offered the opportunity to file a restrictive order, but she refused. On the second occasion, N.T. stated that an unlawful fact against her had not taken place.³⁸

9. Case of Z.G. (Tbilisi City Court, Case NI/4190-16)

• **Description of Facts – Plot of the Case:**

According to the decision of accusation made on July 29, 2016, Z.G. was accused under article 111, 115 of the Criminal Code of Georgia. He was accused of incitement of his family member to suicide through cruel behavior to the victim and systematic degradation of her dignity. From July 2015 to July 20, 2016, he systematically degraded his wife M.M., did not allow her to work, and physically violated her, hitting her in

³⁸ Letter N 2005065, written on August 10, 2016, by the Administration of the Ministry of Internal Affairs of Georgia;

her face and body that caused severe pain to the victim. M.M., who was humiliated by systematic degradation and violence, jumped into the Mtkvari River near the Metekhi Bridge. She wanted to die by suicide. She was rescued by emergency medical assistance in a timely manner.

On July 30, 2016, the prosecutor's motion was satisfied by the court's decree and imprisonment was used as a preventive measure against the accused.

On September 27, 2016, the Tbilisi City Court found Z.G. guilty of the charges under article 11¹, 115 of the Criminal Code of Georgia and with the standard of beyond a reasonable doubt, determined the above-mentioned conduct was committed by him. Z.G. was sentenced to 3 years imprisonment, which was considered the same as a conditional sentence for 4 years with a probationary period. The parties did not appeal the decision.

According to the case materials, the accused and the victim were married and had 3 children (two of them were of age and one was under-aged). The victim is a representative of an ethnic minority, does not speak the state language and is 39 years old. When the crime was committed, Z.G. was 44 years old. The case materials show that Z.G. has secondary education and was unemployed when the crime was committed.

• **Deficiencies at the Level of Investigation:**

The investigation of criminal case N006200716007 started immediately after receiving information about the incident (message from the hospital) on July 20, 2016. The investigation started in the first unit of the Old Tbilisi Division of the Tbilisi Police Department under article 115 of the Criminal Code of Georgia. On July 27, the qualification changed and the investigation continued under articles 11¹, 115 and 126¹ (part 2, subparagraph b) of the Criminal Code of Georgia.

All possible investigative activities and case proceedings were carried out in a timely manner without prolongation. Persons were questioned: the victim (twice) and her family members, workers of the emergency rescue service, doctors and policemen. The medical documents of the victim were requested, and special medical expertise was completed for the court. The expertise concluded that the wounds on the victim's body were severe and life-threatening. The injuries were made by a blunt instrument. There were also bruises and scrapes that were not severe. It can not be determined when these damages were made.

From the information of the witnesses' testimonies, the motive of the accused person's attitude/behavior towards the victim, became clear.

During the first questioning on July 27, 2016, the victim stated that since getting married at the age of 16, she had been "serving the husband and the family". She highlighted the fact that she experienced systematic beating and violence. She also stated that her husband prohibited her from going out to work, and violated her in the presence of family members. If she asked for money, he physically hurt her. She had never reported

this to the police. She was suspicious of him and wanted to leave the house, but the accused threatened that he would not allow her to see their children. On July 29, during the additional questioning, the victim indicated experiencing systematic verbal humiliation and incidents of beating during the last year. Additionally, she felt degraded when the offender would call her an “idiot” or “uneducated”, and did not want to live any more.

The testimonies of the children of the accused and the victim also indicated times of frequent arguments, loud speech, and violence toward the victim. Additionally, E.G. noted that one reason for the conflict was that the victim had neurosis and was suspicious of the husband, to which he responded with aggression and beatings from him. Apart from suspicion, G.M. stated other circumstances as well: the husband did not allow the woman to go out and work. Under-aged P.G. stated that the sufferer did not go out and the brother visited her at school. S.G. is an eyewitness of the beating on July 20.

M.M. was recognized as a victim on July 29, 2016. Due to her the condition of her health, it was only possible to question her on July 27. Thus, after receiving the evidence (direct testimony), recognition as a victim was implemented in a timely manner. It is worth noting that, according to the ordinance, she received physical and emotional damage. The rights were explained to the victim, though her position is not clear from the documents about whether she wanted to study the materials or not.

As for the criminal prosecution, on July 27, 2016, after questioning the victim, the accused was arrested without a court order on the basis of probable escaping (it should be considered that 7 days after the event, the accused was on one of the streets in Tbilisi, , was moving freely and did not try to escape.; thus, it is vague what was meant by “probable escaping”). The same day, Z.G. was questioned and he exercised his right to remain silent.

The sufferer and witnesses (children) confirmed incidents of continuous violence, though the victim had never reported it the police. Thus, the evidence (documents on the police response) were not found in this regard (domestic violence).

On July 29, 2016, the following facts were mentioned in the decision of accusation: systematic degrading by the accused, physical violence, and prohibition from working. The motive of the accused’s conduct is not indicated, even though it can be found in the evidence (testimonies of the accused and the witnesses), including the desire to have power over the woman, and superior position towards her.

Several days after issuing the ordinance of accusation (on 18 August), the protocol for questioning the accused was made by the investigation. The motive of conduct became clear from the protocol: the accused said that the wife asked him to let her work, though he had enough income “in order to ensure she had everything she needed.” As the victim had no education, she could work only as a vendor at a shop and “she did not deserve it”. The accused admitted that the conflicts on the the issue ended with verbal and physical abuse from him. He was the head of the family and the wife had to obey his decisions. If she went to work, he warned that he would not let her see the children. The accused admitted to beating the wife on July 20 and regretted that. He made a promise to no longer abuse her verbally or physically. He said that he would protect his wife.

• Deficiencies at the Level of Court:

On September 15, 2016, at the pre-trial session, the parties did not debate the evidence and the court substantiated the evidence presented by them. The mentioned evidence of the prosecution and documents of the defense were as follows: 1. The sufferer M.M. stated that she did not have complaints against her husband and the family relationship between them was restored. She consented to a conditional sentence on the offender as they had children and he led family farming; 2. The statements of the witnesses (children of the accused and offender, E.G. and S.G.) who said the parents had reconciled, requested a plea agreement and to charge the offender with a conditional sentence.

According to article 73 of the Criminal Code of Georgia, as the evidence was not debated by the parties, the evidence was not discussed at the main hearing. Additionally, the accused admitted to being guilty.

At the court hearing, the prosecutor repeated the contents indicated in the ordinance of accusation, which did not contain a motive and used a motion on making a decision on the guilty plea.

In the court decision made on September 27, 2016, Z.G. was found guilty under article 11¹, 115 of the Criminal Code of Georgia for incitement of a family member to suicide. The decision proves the circumstances stated in the ordinance of accusation: the accused systematically degraded the victim from July 2015 to July 20, 2016; he did not let her work; and abused her physically, beating her in the face and body and causing her severe pain. The victim, who was humiliated by systematic degrading and violence, jumped into the Mtkvari River to die by suicide. Like the ordinance of accusation, this decision does not indicate the motive. Despite the evidence not being discussed at the main hearing, the judge did not substantiate what was proved by the evidence. He just named the pieces of evidence and stated that the evidence was beyond a reasonable doubt.

As for determining the sentence, the prosecution's position was that the court had to use such a charge as would ensure achievement of the punishment goals (to avoid another crime, implement re-socialization). Additionally, the prosecutor asked the court to pay attention to the grounds of determining punishment under article 53 of the Criminal Code of Georgia. He highlighted domestic violence and the fact that the victim had not reported it to the police for a long time.

At the main hearing, the judge read the statements of the victim and witnesses who addressed the court. Namely, the victim requested to be permitted to state her position: the economic situation in the family worsened after the accused was arrested, he was the breadwinner, and the load was now on her shoulders, but she was unhealthy and unemployed. The court used strict measures that removed all possibility of settling the conflict within the family. The sufferer stated that she is schizophrenic (there is no documentation to prove that), her neurosis is severe, she has hallucinations, and obsessive thought, but she is not receiving treatment. The situation in the family is systematically worsened by her provocative behavior. She has 3 children, including

one under-aged child, who is nervous, frightened and affected by the father's arrest. She requested that her husband not be imprisoned. The children stated that since the father was arrested, the family is in economic crisis, their under-aged sister got sick, having nervous attacks and depression, not going to school or eating. They requested that their father not be imprisoned.

The defense requested the use of a conditional sentence due to the fact that the accused admitted to being guilty, cooperated with the investigation, reconciled with the victim, and that the victim needs treatment. The advocate called on the court to make a decision that would let the family live peacefully afterwards. The advocate stated that the victim had not agreed with the accused on various issues many times and that this caused his conduct. The accused was deeply affected by the situation. If he was imprisoned, this would cause an economic crisis in the family.

According to the court decision, "the court considers that the accused admitted to being guilty and regrets his conduct. He is the breadwinner and reconciled with the sufferer who has no complaints towards him. He has an under-aged child who has a serious health condition, which was proved by a document presented at the trial. Her condition has worsened since the arrest of her father and she has nervous attacks. She depressed, does not go to school and does not eat. Additionally, the accused has no aggravating circumstances."

According to this, the court sentenced Z.G. to 3 years of imprisonment. On the basis of articles 63-64 of the Criminal Code of Georgia, it was considered as 4 years of a conditional sentence with a probationary period. Additionally, during the last speech of the accused, the judge stated that the circumstances mentioned by him may happen again, and that his wife may behave in the same way, as "her health condition is bad and it easily noticed."

On the mentioned case, the investigation started immediately after receiving information about the case. All necessary investigative activities were carried out in a timely manner. Recognition as a sufferer was done without prolongation. Despite the fact that the motive is not a necessary constituent of the crime determined under article 115 of the Criminal Code of Georgia, the motive should be indicated in the ordinance of accusation. The motive was clear from the evidence, but the court did not discuss this issue.

As for **determining the punishment**, according to the effective legislation, the prosecutor is not authorized to use a motion on using a certain type of punishment. It is only within the competence of the court to make such a decision. Additionally, according to article 53, part 3 of the Criminal Code of Georgia, apart from the issue of reconciliation, the court ought to consider the following circumstances: the motive and aim of the conduct, how the crime was conducted, unlawful desires in the conduct, etc. Discussing and identifying the motive is essential, as committing a crime with a motive of intolerance that has discriminatory grounds (e.g., gender, gender identity) is an aggravating circumstance of liability.

10. Case of G. J. (Case NI-2136/16, Tbilisi City Court)

• Description of Facts – Plot of the Case

According to the ordinance of accusation made on February 25, 2016, G.J. was accused under article 111, 19, 108 of the Criminal Code of Georgia. On February 23, 2016, G.J. decided to kill his spouse N. G. on the basis of an argument. In order to fulfill his intention to kill her, he wounded her with a knife in the chest and on other parts of her body in the yard of a house in Tbilisi on February 23, 2016.

According to the decision of the Tbilisi City Court made on February 25, 2016, imprisonment was used as a preventive measure against the accused.

In the verdict made on September 14, the Tbilisi City Court found G.J. guilty under article 111, 19, 108 of the Criminal Code of Georgia and was sentenced to 7 years imprisonment.

The accused and the sufferer are in an unofficial marriage (the accused was in an official marriage and has 4 children), they have one child together (who is 4 years old) and who was present when the crime was committed. The sufferer is 33 years old and has 2 children: her own 15 year old and 4 years old together with the accused. G.J. is 42 years old. The case materials show that he has secondary education and at that moment worked as a driver. When committing the crime, he was under the influence of alcohol.

• Deficiencies at the Level of Investigation:

The investigation of criminal case N007230216003 started immediately after being notified on February 23, 2016, on the basis of conduct determined under article 19, 108 of the Criminal Code of Georgia.

All possible investigative activities and case proceedings were carried out in a timely manner, without prolongation. With the ordinance made on February 25, 2016, N. G. was recognized as a victim.

As for the criminal prosecution, on the same day, G. J. was arrested without a court order, on the basis of evidence of the crime on his clothing and probable escaping.

In regard to the motive of the crime, it should be noted that the evidence showed attitudes toward the woman's role: the accused stated during the questioning that the sufferer was his girlfriend. At a party, there was a conflict between him and the victim's brother. N. G. was on her brother's side, which made the accused angry. He poured wine on her and went out into the street. When he returned, the victim verbally offended him, so he got angry and stabbed her with the knife. Witness G. M. (the taxi driver who took the accused to the place and back) stated that the accused had traces of blood on his hand, that he threw the knife out of the window, and talked loudly saying that she had betrayed him, having had a lover and receiving what she deserved.

Additionally, being questioned as witnesses, T.T., R.A., and the sufferer's brother P. G. stated that the accused told the sufferer "you speak too much". He told her to go and leave the men alone. He verbally abused her and poured wine on her.

Being questioned on February 26, 2016, the victim stated that the accused was aggressive, verbally abused her and splashed wine on her. The people attending the party noticed him. Then he told her that he would kill her. He asked her why she had turned him out of the house and stabbed her with the knife 3 times. It should be considered that during the investigation, the victim was not asked if there prior instances of violence (to determine domestic violence). Also, she was not asked if these circumstances had occurred before, namely, remarks on much talking and demands to go and leave the men alone. The mentioned questions were asked to victim at the trial.

• Deficiencies at the Level of Court:

The following evidence was examined by the parties at a hearing: the victim explained that the accused had indirectly expressed his dissatisfaction about the presence of certain guests (the brother's friends and a woman who was a relative released from a penitentiary institution). The victim answered questions instead of the guests in order to stop the conflict. She asked the accused not to drink any more, to which the defendant replied that she did not have the right to tell him what to do, after which he threw wine into her face. In addition, in response to the prosecutor's question about whether the accused said anything else, she replied that she could not remember. According to the victim's position, she is convinced that the defendant loves her and he did not actually intend to kill her. She also mentioned that they had a good relationship and agreed to a plea agreement (the corresponding written statement is included in the case file).

According to the defendant, the cause of the conflict was the unwanted guests (friends of his brother-in-law and the relative of his wife, a woman who was released from the penitentiary institution). He mentioned that he had had frequent conflicts with his wife and had warned her. When he saw the guests at his home again, he felt insulted and told her about his disapproval, which was followed by his wife's unseemly response ("speaking at a high tone that is unacceptable for a woman") and threw wine into her face.

According to the testimony of P. G., the victim joked with the defendant, who felt insulted once again and warned her. The situation became tense. He threw wine into her face. According to the testimonies of R. A. and T. T., the victim and the defendant had an argument, but they do not remember specific details or the content of the dialogue. They did not mention the words of the defendant in the testimonies given during the investigation. Therefore, the words should not have been taken into consideration.

According to the verdict of September 14, 2016 of the Tbilisi City Court, G.J. was found guilty under articles 11¹, 19 and 109 of the Criminal Code of Georgia. There is nothing to indicate the motive of crime in the decision of the prosecution ("after an argument with his spouse, he decided to murder her"), and the judgment states: the examined evidence shows that the accused did not like the visit of the mentioned guests and perceived

their visit at his home as an insult from his spouse. In addition, the spouse replied loudly to his remarks about this. All this caused a desire for revenge in the accused and thus, he decided to attempt murder. Nevertheless, the Court did not indicate that the revenge was due to the defendant's biased opinions about a woman's role.

As for determining the sentence, the Court took into account the fact that the victim survived, is healthy and has reconciled with her spouse. The criminal's personality was also taken into account: he is characterized as a positive person who maintains a big family. The court sentenced him to 7 years imprisonment.

I I. The case of V. Kh. (Khelvachauri Regional Court, No. I - 188/16)

• Description of Facts – Plot of the Case

According to the Decree of the Prosecution of April 01, 2016, V.Kh was accused under article 11¹, 19, 108 of the Criminal Code of Georgia on March 31, 2016 for the attempted intentional murder of his ex-wife in a house in Batumi. He caused multiple life-threatening wounds on the woman's head, back and arm. He was not able to fulfil his intention because witnesses to the crime stopped him and grabbed the axe from him.

According to the verdict made on April 02, 2016 by the Khelvachauri District Court of Appeals, the accused was charged with imprisonment as a preventive measure (the verdict indicates that the accused agreed with the prosecutor's motion on the use of detention).

According to the verdict made on September 07, 2016 by the Khelvachauri District Court, V. Kh. was found guilty under Article 11¹, 19, 108 of the Criminal Code of Georgia and was sentenced to 7 years imprisonment.

According to the verdict made on December 20, 2016 by the Kutaisi Court of Appeals, the decision of the first instance court remained unchanged. The appeal was filed by the parties (the prosecutor appealed the decision on the part of the sentence, demanding a stricter punishment).

According to the verdict made on May 02, 2017 by the Supreme Court of Georgia, the cassation of the conviction was not allowable.

According to the case materials, the accused and the victim were divorced and had two adult children: 30 year old M. Kh. and 25 year old N. Kh. The victim was 52 years old and the convicted was 56 years old. From the case materials, it can be seen that V. Kh. had secondary education and was temporarily unemployed at the time the crime was committed.

Deficiencies at the Level of Investigation:

Investigation on criminal case N173310316002 was initiated under article 11¹, 118 of the Criminal Code of Georgia immediately after receiving the the information about the case. On the same day, according to the

prosecutor's decree, qualification of the case was changed and the investigation continued under article 111, 19, 108 of the Criminal Code of Georgia and a group was formed to investigate the case.

On the same day, without a court order, the accused was detained in his home on the basis of finding him right after committing the crime and trying to hide. The defendant had injuries.

Without delay, the following investigative/case proceedings were conducted. On April 08, 2016, within a reasonable time, M.F. was recognized as a victim. She said that she did not want study the case materials.

As for the comprehensive investigation, it should be taken into consideration that the children of the victim and the accused are N. Kh. and M. Kh, who reported systematic physical abuse of the victim by the accused. The defendant also noted a number of arguments they had had before the incident. According to the testimony of the victim, she had been repeatedly threatened with murder and beaten, though she bore the suffering because of their children. A question was not asked about calling the police for help. This is needed in order to make a correct evaluation of the response to the instances of domestic violence on one hand, and, on the other hand, to find evidence of the response to the victim's previous messages (if any) and ensure a comprehensive investigation. The victim noted that there was no response from the police when she informed them about systematic violence by the accused. This is mentioned in the statement dated July 8, 2016, written to the court. In their testimony, the children also indicated the violence. Therefore, it was necessary to obtain documents confirming the information stated by the victim and family members, and the response by the police. In this case, there were only 2 messages to the police without documentation on depicting their response.

In addition, while being questioned as witnesses, the children made note of a dispute between the accused and the victim's immovable property (house). Also, according to the victim's testimony, the accused threatened her with murder and told her that after her death, everything would be left to him. In the motion of the prosecutor used on April 1, 2016, the investigation was focused on previous conflicts between the victim and the accused. According to the same motion, information requested by the Public Registry confirmed the accused person's interests in the property, which required additional investigative actions in this direction. However, no evidence was obtained in this respect. Determining the motivation of action (material self-interest or gender intolerance) was important, though motive is not a necessary point according to article 108 of the Criminal Code of Georgia.

In the course of the investigation, the accused partially admitted to being guilty in his testimony on March 31, 2016, saying that the axe accidentally hit the victim and that he did not intend to kill her. In the previous year, the former husband asked his ex-wife to reconcile, to which the wife refused. He became "fed up", was angry and nervous. He still loves the victim and wants to live with her like old times. At the court, the accused named the dispute over the property as a motive.

• Deficiencies at the Level of Court:

According to the evidence examined at the trial, the following motives were identified:

The victim said that during the incident, the accused told her he would kill her and the house would remain his property. The victim said that the accused beat and insulted her, and sometimes went to her work and argued with her there. “It was his way” and that is why he beat her. To the prosecutor’s question about whether the victim asked for help from the police, she said that she had and mentioned several police departments that had her case. Police and district attorneys (she probably means inspectors) also came when they were called. After the attempted murder, the former spouse demanded division of the property under court rule.

At the court hearing, the accused stated that he had planned to file a complaint against the victim in connection with the division of property and the victim became angry. The victim threatened him. The victim was holding the axe in her hands and the accused was trying to take away the axe when they fell down. The victim asked him to leave the home because the house was registered to her. To the police, the accused reported beating and verbal offence without specifying any circumstances.

In the concluding words, the prosecutor gave attention to the conclusion that the property was registered in the name of the victim and a property dispute would not have been in her interest. The defendant’s interest was to kill the victim and get the property. That is why he locked her up and struck her with the axe.

With the verdict of the Khelvachauri District Court on September 7, 2016, the Court decided that V.Kh. had committed attempted murder of his ex-wife. **The motive of the crime** was not indicated in the resolution and judgment of the prosecution. In the determination of the **sentence**, the judge referred to **the crime for the purpose of revenge** as an aggravating circumstance, but did not indicate the reason for revenge or any proof of this motivation. The verdict contains the evidence examined at the trial, including the testimonies of the defendant (the victim was holding the axe and they fell down as he was trying to take it away from her), the victim (the accused attacked her after opening the gate in the morning and hit her on the head, waist, and arm) and witness (where there was no indication of any motive of revenge). Apart from the aggravating circumstances (revenge), when sentencing, the court took into consideration the age of the accused (56 years) and his health condition. The accused was sentenced to 7 years imprisonment.

According to the verdict of the **Kutaisi Court of Appeals**, the verdict of the first instance court remained in force. The verdict indicates that evidence undeniably confirmed the case of an attempted murder by M. P. **on the basis of revenge resulting from the conflict between the victim and the accused.** In addition, there was no information about the conflict.

Messages Recorded at the Ministry of Internal Affairs of Georgia before the Attempted Femicide:

In 2016, the Public Defender of Georgia studied this case of attempted femicide with their own initiative on the basis of information disseminated through media outlets. According to the information provided by the Ministry of Internal Affairs of Georgia, before the mentioned instance, from 2013 to 2015 **seven cases** of probable domestic violence were reported to law enforcement agencies. According to the information submitted, as the notifications did not contain any signs of a criminal offense, law enforcement agencies did not respond to them.³⁹

³⁹ Letter from the Administration of the Ministry of Internal Affairs of Georgia, July 26, 2016, No. 1859144

