



UN JOINT PROGRAMME  
FOR GENDER EQUALITY

# ANALYSIS OF 2021 FEMICIDE AND ATTEMPTED FEMICIDE CASES

2023

**Methodology by Tamar Dekanosidze**

**Analysis of criminal cases and statistical data by Giorgi Gotsiridze and Gvantsa Kharatishvili**

This publication has been prepared by the Public Defender of Georgia within a UN joint program “For Gender Equality” with the financial support of Sweden. The Public Defender’s Office is responsible for the contents of this report, which does not necessarily reflect the views of Sweden or the UN Women’s Organization.

# CONTENTS

<b>Introduction</b>	<b>4</b>
<b>1. Research methodology</b>	<b>5</b>
<b>2. Femicide/attempted femicide statistics</b>	<b>8</b>
<b>3. Categories and types of femicide observed</b>	<b>11</b>
<b>4. Flaws at the investigation stage</b>	<b>12</b>
4.1. Attempted murder and deliberately inflicting severe bodily injury (attempting to inflict such injury)	12
4.2. Problems with identifying the gender motive	15
4.3. Current plea-bargaining practices	18
4.4. Other shortcomings in investigation	19
4.5. Victim support mechanisms in the course of administration of justice	21
<b>5. Shortcomings in judicial proceedings</b>	<b>22</b>
5.1. Explanation, and reasoning of, the gender basis in criminal cases by courts	22
5.2. Use of Article 53 <sup>1</sup> by courts and imposing a harsher sentence for gender-based offenses	26
5.3. Problems with proper risk assessment by courts	27
<b>6. Analysis of judicial dismissals in criminal cases</b>	<b>30</b>
<b>Concluding remarks</b>	<b>31</b>
<b>Recommendations</b>	<b>32</b>
<b>Addendum 1: Statistics provided by the Prosecutor-General's Office</b>	<b>34</b>

## INTRODUCTION

The consistently high rate of killings and attempted killings of women shows that eradication of gender-based serious crimes in the country requires rigorous implementation of the stringent State policies on violence against women and domestic violence in practice on the one hand and improvement of protection and assistance mechanisms for violence victims on the other hand, is critically important.

In assessing the implementation of the 2022 judgement in a femicide case against Georgia,<sup>1</sup> the Council of Europe's Committee of Ministers stated that, in order to decrease the high numbers of femicide and attempted femicide, the underlying causes of these crimes had to be tackled. The Committee of Ministers urged Georgia to enhance her efforts aimed at improving communication with victims of violence against women and domestic violence.

It is for these reasons that, in its Special Report, the Office of the Public Defender of Georgia has decided to also examine the existing victim support services during criminal proceedings in addition to analyzing how justice was being administered in femicide and attempted femicide cases in 2021.

According to the Prosecutor General's data,<sup>2</sup> 22 women were killed in 2021.<sup>3</sup> Eleven of these cases were domestic crimes, while the remaining half were based on some other motives. When it comes to attempted murders, 31 such cases occurred against women,<sup>4</sup> of which sixteen were family crimes domestic crimes and the remaining fifteen involved some other motives. The Public Defender of Georgia looked into 2 femicide and 12 attempted femicide cases occurred in 2021.

The monitoring of the Public Defender of Georgia has revealed an increased detection of the gender motive in femicide and attempted femicide cases. The Monitoring also indicated improved reasoning by courts in their judgments in gender-based crime cases. However, problems were identified regarding inaccurate qualification in these cases, the practice of concluding plea agreements with persons found guilty of attempted femicide and inadequate risk assessment by courts.

It occurred again in the reporting period state agencies had received reports on alleged violence against women and/or domestic violence before the actual femicide or attempted femicide,<sup>5</sup> however the offences still could not be prevented. Especially alarming was a femicide attempt, which the convicted defendant committed while he was subject to court-ordered interim measures.

This report not only describes problems, but also proposes recommendations to help state authorities improve their response to gender-based offences.

---

1 Tkhelidze group v. Georgia (Application No. 33056/17), CM decision is accessible at <https://bit.ly/3HnFK7l>

2 Letter from the Prosecutor-General's Office N 13/4275; 28.01.2022

3 Including two instances of "causing a person to commit suicide" and two instances of "inflicting bodily injury, which resulted in the death of the victim"

4 Including 10 instances of "causing a person to attempt committing suicide" perpetrated by a family member, 3 instances of causing a woman to attempt committing suicide for some other motive"

5 In two cases in 2021, the Ministry of Internal Affairs received reports of attempted suicide prior to the actual attempts. In one of these cases, the Ministry had received two reports on domestic violence, which then served as a basis for issuing two protective warrants against the perpetrator respectively. In another case, three reports had been made to the police before the victim tried killing herself; a deterrent warrant was issued and an investigation into alleged domestic violence and violation of the terms and conditions of the deterring warrant was ongoing. Letter from the Ministry of Internal Affairs no. MIA 2 22 03484022; 09.12.2022, case no. 8848/22



# 1. RESEARCH METHODOLOGY

The Office of the Public Defender of Georgia developed a methodological framework to conduct the monitoring of gender-based killings of women (femicide) and it was used while drawing up this report as well.<sup>6</sup>

For the purposes of the research, in furtherance of the Latin American Model Protocol while also having consideration to the Georgian context,<sup>7</sup> the Public Defender uses the following definition of femicide: Femicide is a gender-based killing of a woman, i.e. the killing of a woman, the motive or context of which is related to gender violence, discrimination against women, the subordinate role of women, which stems from or is warranted by a desire to have entitlements to a woman, a position superior to a woman, the attitude of ownership toward her, control of her behavior or other ground related to her gender, including the causing a woman to suicide for any of the above reasons.

The killing of a woman does not automatically amount itself to femicide. Pursuant to the Latin American Model Protocol for the Investigation of Gender-related Killings of Women, the killing or death of a woman is considered femicide when it is connected to her gender. In other words, there must be elements indicating that the motive or the context of killing had to be related to gender-based violence and/or discrimination.<sup>8</sup>

Regarding crime motives, while analyzing court cases for the purposes of this report, we applied the following elements as indicators of the femicidal motive:

- Discriminatory or sexist attitude towards the victim;
- The attitude of ownership;
- Control of the victim's behavior;
- Demand to obey stereotypical gender roles.<sup>9</sup>

The monitoring of femicide cases was conducted in three stages. In the **first stage**, we obtained statistical data on killings and attempted killings of women from the Ministry of Internal Affairs and the General Prosecutor's Office and requested copies of convicting judgments on the same matter from the Georgian courts of general jurisdiction.<sup>10</sup>

6 Femicide Monitoring Report: gender-based killings of women, Analysis of 2016 criminal cases, Office of the Public Defender, 2017

7 Latin American Model Protocol for the Investigation of Gender-related Killings of Women (femicide/feminicide) – hereinafter referred to as “the Latin American Model Protocol” further in the report

8 Latin American Model Protocol for the Investigation of Gender-related Killings of Women (femicide/feminicide), Regional Office for Central America of the United Nations High Commissioner for Human Rights (OHCHR), ISBN 978-9962-5559-0-2, pp. 13-14

9 For detailed information of methodology issues, please see our 2016 Femicide Monitoring Report, pp. 6-10, accessible online at <https://bit.ly/2KrEn9k> [last viewed November 26, 2020].

10 In requesting information from the authorities, we focused on those articles of the Criminal Code of Georgia that could potentially be used for bringing charges in femicide and attempted femicide cases. These articles were: premeditated murder (Art. 108), premeditated murder in aggravating circumstances (Art. 109), premeditated murder committed at the time of sudden and strong emotional disturbance (Art. 111), deliberately inflicting serious health injury (Art. 117), causing a person to commit suicide (Art. 115), attempted premeditated murder (Articles 19-108) and attempted premeditated murder in aggravating circumstances (Articles 19-109), deliberately inflicting less serious health injury, which resulted in the death of the person (Article 118.2); deliberately inflicting less serious health injury, committed against a family member, for a gender motive or against a pregnant woman, an underage person or a person in a helpless situation, if this conduct resulted in the death of the person (Article 118.4); deliberately inflicting serious or less serious health injury at the time of sudden and strong emotional disturbance (Art. 121); deliberately inflicting serious or less serious health injury in excess of permissible limits of self-defense (Art. 122). We also requested in-

At the **second stage**, in order to specifically detect femicide or attempted femicide, we analyzed the judgements of conviction and other judicial decisions obtained from Courts of first instance, Court of Appeals and the Supreme Court.

At the **third stage**, we asked Courts of first instance, Court of appeals, and the Supreme Court to provide full case materials related to the judgments we identified as femicide/attempted femicide cases at Stage Two of our monitoring. Moreover, we also asked for information on the same cases from the Ministry of Internal Affairs to gain comprehensive understanding of the full picture and identify any drawbacks occurred in the administration of justice.<sup>11</sup>

As a result of our quest for information, we gained access to 21 verdicts in criminal cases occurred in 2021. Having analyzed the content of the judgments, we asked for full case material on 19 out of these 21 cases. We read the full case materials and identified that the 14 of them contained elements of femicide or attempted femicide. Out of 14, 2 were femicide cases, while 12 were attempted femicides. The remaining 5 cases were not femicide or attempted femicide. In one case dealt by the Bolnisi District Court,<sup>12</sup> prior to her death, the woman had been physically abused by her husband but, according to a forensic report ordered in the case, the death did not result from violence. The violent husband was found guilty of domestic violence (a crime under Article 126<sup>1</sup> of the Criminal Code), but since the woman died of natural reasons, the case did not qualify as femicide and thus it is not included in this report.<sup>13</sup>

The report also does not include a case heard by the Tbilisi City Court, which concerned an altercation between two sisters over the noise coming from the TV set. In that case, one sister inflicted life-threatening injuries on another sister with a knife.<sup>14</sup> Committing an offense due to the sound volume generated by a TV set had no connection with gender as a crime motive, as both the defendant and the victim were women.<sup>15</sup>

Another case involving the killing of a woman, which we chose not to include in the report was heard by the Tbilisi City Court. In this case, the male defendant and the murdered woman had been neighbors. The defendant had been blaming the victim for unlawfully entering his house and committing larceny. The blaming escalated into a violent argument between the defendant and the victim, which ultimately resulted in the woman's death. Consequently, this case does not qualify as femicide and has not been included here.<sup>16</sup>

One additional case not included in this report was tried by a court of jury at the Tbilisi City Court.<sup>17</sup> The defendant had been charged under Article 108 of the Criminal Code for killing the victim with a knife. Additionally, he faced a charge under Article 177(2) (larceny resulting in serious harm). According to the sentencing judgment reached by the court without jurors in the case, the defendant's intent to steal a laptop and other items from the victim's home arose after he had killed the victim. So, the defendant's

---

formation under other articles of the Criminal Code, which could include elements of femicide such as rape resulting in the death of the victim (Art. 137.4.b), other type of sexual conduct, which resulted in the death of the victim (Art. 138.3b), illegal abortion resulting in death (Art. 133.3), sterilization absent consent resulting in death (Art. 133<sup>1</sup>.3), mutilation of female sex organs resulting in death (Art. 133<sup>2</sup>.3), trafficking in human beings resulting in death (Art. 143<sup>1</sup>.4.b), torture resulting in death (Art. 144<sup>1</sup>.3.c).

11 In 4 cases, we were given access to the case materials physically at the premises of the Tbilisi City Court

12 Bolnisi District Court, Case no. 1/227-21

13 Bolnisi District Court, Case no. 1/227-21

14 Tbilisi City Court, Case no. 1-3420-21

15 Tbilisi City Court, Case no. 1-3420-21

16 Tbilisi City Court, Case no. 1/5222-21

17 Tbilisi City Court, Case no. 1/1956-21



motive for killing the woman was not the intent to take possession of the items belonging to her. Hence, the defendant's conduct was assessed as the conduct envisaged by Article 108, not Article 109(3)(c) of then-applicable version of the Criminal Code (murder for gain). In the sentencing judgment, the Tbilisi City Court expressly stated that a motive for the murder remained unascertained, but this was not even necessary for Article 108 of the Criminal Code to be applied to the instant case.<sup>18</sup>

There was a doubt regarding whether the killing was femicide case or not. The doubt was rooted in the fact that the victim was a sex worker, and the defendant was her client. According to the minutes of the trial, the prosecutors questioned each witness about their knowledge of relationship between the woman and the defendant yet all the witnesses responded in the negative.<sup>19</sup> The prosecution office took all the steps to identify the gender motive in the case, even later in the trial process, but despite their efforts, no such motive was identified.<sup>20</sup> It is for this reason that the above-mentioned case is not reported herein.

After analysis of the court cases, we decided not to include in the monitoring report a case dealt with by the Signagi District Court, which concerned a woman who received serious health injury as a result of being hit in the head with a stone. According to the witnesses, the defendant was throwing stones indiscriminately and anyone present in the yard could have been similarly injured.<sup>21</sup>

In order to assess the existing victim support services in the country, we not only analyzed materials of the criminal cases, but also conducted two focus group meetings with witness and victim coordinators both from the Ministry of Internal Affairs and the Prosecutor-General's Office. In addition, 10 individual meetings were conducted with victims of violence against women and domestic violence.

---

18 Tbilisi City Court, Case no. 1/1956-21

19 Tbilisi City Court, Case no. 1/1956-21

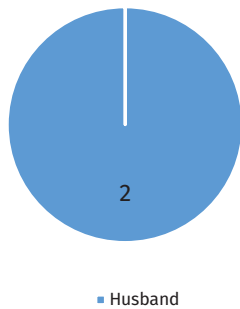
20 Tbilisi City Court, Case no. 1/1956-2

21 Signagi District Court, Case no. 1-169

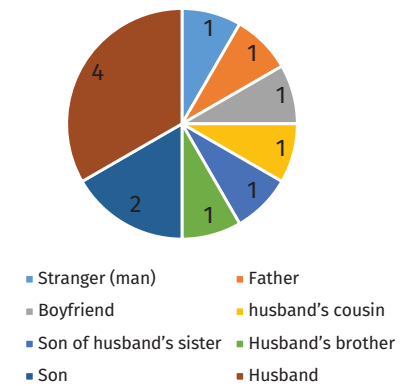
## 2. STATISTICS OF FEMICIDE AND ATTEMPTED FEMICIDE

The Office of the Public Defender analyzed 14 cases of femicide and attempted femicide. In these 14 cases, 2 were femicides and 12 were attempted femicides.

**Chart no. 1: Perpetrators of femicide**

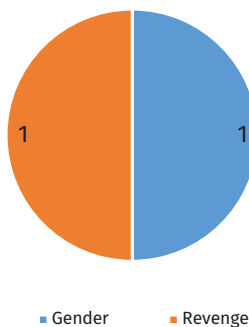


**Chart no. 2: Perpetrators of attempted femicide**

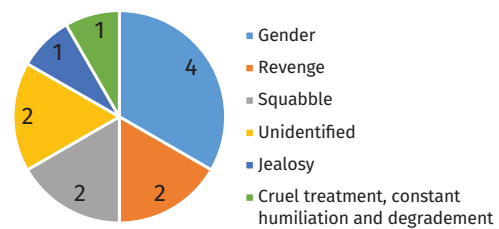


The statistics show how the previous trend remains unchanged: husbands or former husbands are the ones who most frequently commit femicide or attempted femicide. During the reporting year, “revenge”, “jealousy”, and “squabble” have been common motives in femicide and attempted femicide cases. Another motive identified by courts has been the victim’s “gender”.

**Chart no. 3: Femicide motives<sup>22</sup>**



**Chart no. 4: Attempted femicide motives**



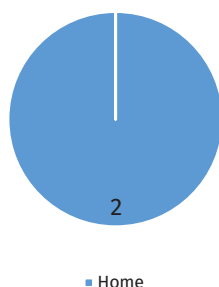
<sup>22</sup> We counted and analyzed the motives in femicide and attempted femicide cases according to the motive identified by the courts themselves in their judgments.



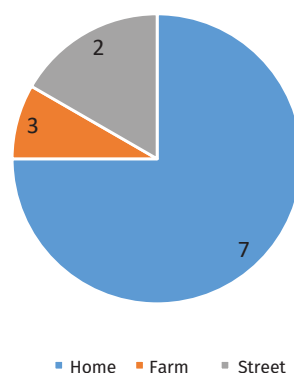


As usual in femicide cases, both femicides and attempted femicides are most commonly committed at home.

**Chart no. 5: Place of commission of femicides**



**Chart no. 6: Places where attempted femicides were committed**

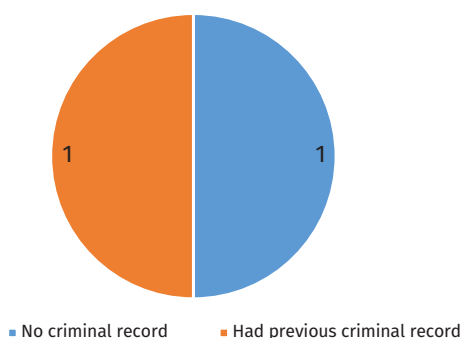


Weapons used to commit **femicide** included a gun in one case and a metal object in another. As for **attempted femicides**, a knife was used in 7 cases, a gun in 1 case, gasoline in 1 case, an axe in 1 case, medical pills in 1 case and a blade in 1 case.

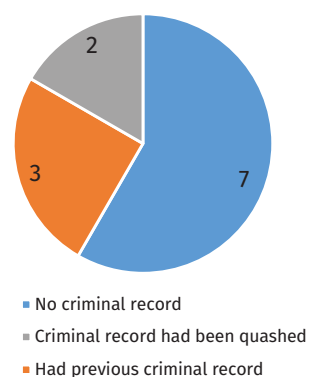
Unlike previous years, perpetrators were not under any intoxication (were sober) when committing the femicides or attempted femicides.<sup>23</sup> Analysis of the statistical data shows that the trend has remained unchanged - the perpetrators of femicide and attempted femicide have college-level education and were unemployed or from a low-income family.<sup>24</sup>

In regard to whether the perpetrators of femicide and attempted femicide had previous criminal record, the picture is shown below:

**Chart no. 7: Whether femicide offenders had previous criminal record**



**Chart no. 8: Whether attempted femicide perpetrators had previous criminal record**



23 In both cases of complete femicide, the perpetrators were sober. Perpetrator were sober also in 8 out of 12 cases of attempted femicide.

24 Education: 1 femicide perpetrator had a secondary school education, while another had not finished the secondary school. As for perpetrators who committed attempted femicide, 6 of them had secondary school education, 4 had incomplete school education and 2 had university degrees. Employment status: 1 femicide perpetrator was unemployed, another was a construction worker. When it comes to the employment status of attempted femicide perpetrators, 9 of them were unemployed, 1 was a baker, 1 was a construction worker and 1 was a shepherd.

In those 14 cases we analyzed, 4 defendants and 6 victims were national minorities.

The harshest punishment imposed for femicide was imprisonment for 18 years. The mildest punishment was 15 years of imprisonment. The harshest sanction for attempted femicide was imprisonment for 16 years, 9 months and 15 days, while the mildest sanction was a suspended sentence of imprisonment for 5 years and 3 months. Below we provide information on the provisions of the Criminal Code invoked by the Prosecution Office to bring charges in femicide and attempted femicide cases:

#### **Femicide cases:**

<b>Legal classification of criminal cases under the Criminal Code<sup>25</sup></b>	<b>Number of cases</b>
Articles 11 <sup>1</sup> and 109(2)(d <sup>1</sup> ), (f)	1
Articles 11 <sup>1</sup> and 109(2)(d <sup>1</sup> ), (f), 109(3)(a)-(b)	1

#### **Attempted femicide cases:**

<b>Legal classification of criminal cases under the Criminal Code<sup>26</sup></b>	<b>Number of cases</b>
Articles 19 and 108	3
Articles 11 <sup>1</sup> and 115(1)	1
Articles 11 <sup>1</sup> and 115(2)(a)	1
Articles 11 <sup>1</sup> , 19 and 109(2)(d <sup>1</sup> ),(f)	1
Articles 19 and 117(5)(d <sup>1</sup> )	1
Articles 11 <sup>1</sup> and 117(3)(e)	1
Articles 11 <sup>1</sup> , 117(3)(e) and 117(5)(d <sup>1</sup> )	1
Articles 11 <sup>1</sup> and 117(3)	1
Articles 19 and 109(3)(b)	1

<sup>25</sup> The charges are framed according to the 2021 version of the Criminal Code of Georgia

<sup>26</sup> Ibid.



### 3. IDENTIFIED CATEGORIES AND TYPES OF FEMICIDE

As a result of the monitoring, we observed certain types and categories of femicides and attempted femicides perpetrated. In one case, the husband killed his wife due to jealousy and separation, the defendant regarded the separation as humiliation of his dignity.<sup>27</sup> In two cases, children attempted to take away their mother's life because, as "a married woman", the mother was not supposed to diminish the dignity of her family by having a boyfriend.<sup>28</sup> In another case, a woman received life-threatening injuries from a perpetrator seeking retaliation against the woman's male family member considering the woman was the latter's property and could take revenge on him by hurting the woman.<sup>29</sup> In other cases, jealousy for another man, whether or not the relationship was real or imaginary, served as a motive for attempted killing of a woman, or for causing a woman to attempt suicide.<sup>30</sup>

In one case, an attempted killing of a woman occurred because of the reason that she turned down a stranger's offer in the street to engage in an intercourse with him as perpetrator believed it was "uncommon" for blonde women to decline such offers.<sup>31</sup> In another case, individual attempted to put a woman on fire because, after she became a widow, she refused to allow her male relative to care for her. The relative not only helped with household chores, but also checked her text messages on the phone.<sup>32</sup> In another case a woman received life-threatening injuries with a knife because she did not allow her former male partner to take their shared child to the man's new family while the man considered the child belonged only to him and thus had to live with his new family.<sup>33</sup> A husband's brother hit the woman in the head with an axe because the victim was not cleaning up the yard from dog feces.<sup>34</sup> Another defendant tried to kill his former female partner with particular cruelty because he had already been issued a deterrent warrant previously for abusing her.<sup>35</sup> A husband considered himself "disgraced as a man" because his wife told him to go to the shop for something inflicting a life-threatening injury on his wife with a knife in response.<sup>36</sup> A young woman tried to kill herself because her father was humiliating her for going to the sea with a man.<sup>37</sup>

---

27 Rustavi Town Court, Case no. 1/692-21

28 Gurjaani District Court, Case no. 1/47-21; Senaki District Court, Case no. 1/29-2021

29 Signagi District Court, Case no. 1/60-21

30 Tbilisi City Court, Case no. 1/1251-22; Samtredia District Court, Case no. 1/152-21; Tbilisi City Court, Case no. 1/3595-21

31 Tbilisi City Court, Case no. 1/4041-21

32 Poti Town Court, Case no. 1/236-2021

33 Tbilisi City Court, Case no. 1/5623-21

34 Mtskheta District Court, Case no. 1/254-21

35 Tbilisi City Court, Case no. 1/4189-21

36 Tbilisi City Court, Case no. 1/1690-21

37 Tbilisi City Court, Case no. 1b/r790-21

## 4. FLAWS AT THE INVESTIGATION STAGE

### 4.1. Attempted murder and Intentional infliction of grave injury (attempting to inflict such injury)

In the reporting period, the Prosecution Office continued to have trouble with whether to classify the conduct as “attempted murder” or as “deliberately inflicting serious bodily injuries” when deciding on what charges to bring. In two cases in which women victims received life-threatening injuries, the Prosecution Office brought charges for “deliberately inflicting serious bodily injuries” while the cases were more appropriate to be classified as “attempted murder”. In order to find out what the perpetrator’s actual intent was – which is decisive for what charges should be brought - the investigation authorities have to closely follow the Supreme Court-established standards.

According to the Supreme Court’s explanation provided in its judgment no. 680ap dated 17 May 2018, when differentiating between attempted murder and deliberately inflicting serious bodily injury, the Chamber will take into account all the details of a case at hand. In order to exclude wrong legal classification of the two different types of conduct (attempted premeditated murder and deliberately inflicting serious bodily injury), courts should identify and analyze all the circumstances of a case they are seized with. It is necessary to focus on the subjective element of the offense, i.e. the offender’s intent, which is key in deciding whether conduct should be classified as an attempted premeditated murder or as deliberate infliction of serious bodily injury. Finding the perpetrator’s intent, on its turn, requires consideration of the following: **the method and the weapon of crime commission, number of injuries and their locations, the context in which the injuries were inflicted, relations between the offender and the victim in general and at the moment of inflicting the injuries in particular, etc.** The Chamber notes that, for correct legal classification of the conduct, a court should also have regard to what made the criminal conduct stop and the offender’s post-crime behavior. Assessing these factors and circumstances should guide the court to decide whether the conduct had been committed with the intent of taking away the victim’s life.

A vivid example of the Prosecution Office’s incorrect legal classification labelling case as “deliberate infliction of serious bodily injury”, when it was “an attempted killing of a woman” is a case heard by the Poti Town Court.<sup>38</sup> So, in this case, after the death of his uncle, the defendant decided to care for uncle’s wife and three children who became fatherless. The defendant was inspecting the victim’s text messages on the phone and in the social media suspecting that the victim might be building a relationship with another man. The defendant repeatedly told his aunt not to interact with strange men without his consent. This resulted in an altercation between the victim and the defendant.<sup>39</sup>

The victim demanded the defendant to stay away from her home after she learned about wrong rumors suggesting the victim and the defendant were having intimate relationship. On May 17, 2021, the intoxicated defendant went to the victim’s place. The victim and her children were home. A squabble happened between the defendant and the victim. The defendant shouted, “I will kill you” and “I will burn this place”. At first, the defendant reached the victim’s body with a lit cigarette and then grabbed a plastic bottle with 300 grams of gasoline, spraying it on the victim’s chest area and onto the bed sheet. The defendant lit up a safety match but the victim’s child outmanaged to extinguish the fire by swatting it with a hand. Each attempt of the defendant to light up a match was being met with the victim’s and her children’s joint resistance. Eventually the defendant left the house, and the victim called the 112 service.<sup>40</sup>

<sup>38</sup> Poti Town Court, Case no. 1/236-2021

<sup>39</sup> Poti Town Court, Case no. 1/236-2021

<sup>40</sup> Poti Town Court, Case no. 1/236-2021



As per the medical report dated May 21, 2021, the examination of the victim's body revealed a first-degree burn. The injury was likely caused by a result of the application of hot object to the specific area. The injury is a mild-type of injury.<sup>41</sup> The Prosecution Office classified the defendant's conduct not as an attempted murder, but as an attempt to deliberately inflict serious bodily injury for a gender motive (Articles 19-117(5)(d<sup>1</sup>)).

In the instant case, attention has to be paid to the fact that the defendant decided to use gasoline – a life-threatening methods – to jeopardize the victim's life. The defendant sprayed gasoline onto the victim in the chest area, on the clothes, which if ignited could have resulted in victim's death. Consideration should also be given to the part of testimony that says that the defendant was making threats to kill the victim. According to the established judicial practice, in order to determine whether or not a crime was premeditated, consideration is to be given to a combination of what defendant had been saying before the crime commission and the actual conduct committed afterwards. In the instant case, the defendant commenced implementation of what constitutes “the taking away of the victim's life” but was unable to finish the conduct just because other persons got in his way by rendering resistance. It follows from the judicial practice established by the Supreme Court that the defendant's conduct had to be classified as “an attempted murder” and not as “attempted premeditated infliction of serious bodily injury”.

furthermore, attention should be given to the fact that the attempted killing took place in the presence of underage children. Evidence gathered during the investigation indicates that the defendant tried to kill the victim while her three underage children were present. In practice, such conduct is usually framed as a charge under Articles 19-109(3)(b) of the Criminal Code version dated April 27, 2021 (attempting the commission of murder with particular cruelty) but the Prosecution Office decided to not wait for a forensic chemistry report, which had been requested by the investigation authority that would provide details about the use of gasoline. Instead, the prosecutor's office proceeded to conclude a plea agreement with the defendant. Although, after all, the defendant had been sentenced to imprisonment for 4 years and 6 months, giving the conduct correct legal assessment and subsequently determining a sentence in accordance with the legal classification was nonetheless necessary.

Elements of “attempted killing” rather than “infliction of serious bodily injury” were evident in another case adjudicated by the Gurjaani District Court.<sup>42</sup> By the end of 2021, when the defendant was abroad, a resident of a village neighboring to his home village contacted the defendant over the phone saying that two days ago he covertly followed the defendant's father as the latter left home at night. The defendant's father went to the defendant's mother. The defendant found out that his mother had a love relationship with some other man. The defendant was disapproving of this relationship and demanding that his mother abandon her partner.<sup>43</sup>

After the defendant returned to Georgia, he asked his wife one day to go to her parents' place, explaining that he needed to speak with his mother alone. The wife replied she would go to her parents but instead stayed in the yard to hear the conversation between the defendant and his mother. The defendant said he was not going to tolerate his mother having intimate relations with another man and cheating on his father. The defendant grabbed the victim by her throat, pushed her from a chair knocking her down and hit her with a kitchen knife thrice. The defendant caused one wound in the abdomen, one in the back and one in the buttock. According to the defendant, after inflicting three wounds on his mother, he left her alone because he did not want to kill her. The defendant had just finished wounding the victim

41 Poti Town Court, Case no. 1/236-2021

42 Gurjaani District Court, Case no. 1/47-21

43 Gurjaani District Court, Case no. 1/47-21

when his wife entered the room. According to the defendant, if he wanted to kill his mother, he could do so before his wife came in. The defendant stated that after that he took his wife to her parents' place, returned home to assist his mother but she was not there anymore.<sup>44</sup> Once the defendant arrived home, he cleaned his knife, came out of the house and saw his mother at a neighbor's place. The defendant offered his mother taking home.<sup>45</sup>

A forensic medical report dated March 1, 2021, states that the puncturing cut on the front wall of the abdomen with injuries in the large intestine and greater omentum constitute serious injuries and may be life-threatening. The puncturing cut in the left side of the chest area not penetrating into the chest cavity and the puncturing cut in the coxal area are considered mild injuries with signs of short-term violation of health.<sup>46</sup>

The Prosecution Office awarded decisive importance to the fact that, before the wife's entry into the room, the defendant had the possibility of inflicting more wounds on his mother but did not do so. During that one minute before the defendant's wife came in, the defendant did not hit his mother anymore. In the prosecutor's opinion, this was proof to that the defendant did not intend to kill his mother but to inflict serious bodily injury – something he had already done.

Whether the offender intended to deliberately inflict serious bodily injury or to kill the victim should be ascertained using the Supreme Court-established criteria. No doubt the defendant could hurt his mother more during the one-minute period. But the number of wounds actually inflicted (3 wounds) and their localities (the abdominal area) are to be given due consideration.

An Additional factor favoring the classification of the defendant's actions as an attempted murder, equally crucial for consideration and possibly even decisive was the defendant's behavior after he committed the conduct. If the defendant solely intended to cause serious bodily injury to his mother rather than killing her, he would allow his wife to provide first medical assistance to the mother. Instead of calling the 112 service himself, the defendant compelled his wife to leave the house – and had even used some force to this effect – depriving his wife of the chance to either call 112 or to offer first medical aid and abandoning the victim alone. Even after this episode, instead of calling 112, all the defendant did was the wiping away of the traces of crime.<sup>47</sup>

In labeling the defendant's conduct as "deliberately inflicting serious bodily injury", the investigation body considered it a decisive fact that nothing prevented the defendant from causing more than three wounds to the victim. However, the investigation body overlooked the actions of the defendant after inflicting these three wounds on his mother. In order to give conduct a correct legal assessment, the Supreme Court requires both judicial organs and investigation bodies to give regard to a defendant's actions after criminal conduct has discontinued in order to discern whether a defendant's real intent was to kill the victim or to merely inflict serious bodily injuries. Having inflicted three wounds, including one of them being life-threatening, the defendant created all the conditions for ending the victim's life: abandoned the victim home alone and prevented others from rendering first medical aid to the victim or calling the ambulance.

The defendant did everything to cause the victim to die; the fact that she did not actually die owes to external factors not related to the defendant. This proves, once again, that charges should have been

44 Gurjaani District Court, Case no. 1/47-21

45 Gurjaani District Court, Case no. 1/47-21

46 Gurjaani District Court, Case no. 1/47-21

47 Gurjaani District Court, Case no. 1/47-21



brought not under Articles 11<sup>1</sup> and 117(3e)(5d) (deliberately inflicting serious bodily injury upon a family member for a gender motive) but under Articles 11<sup>1</sup>, 19 and 109(2)(d<sup>1</sup>), (f) (attempting to kill a family member for a gender motive). The investigation body would have given the latter classification to the conduct had it had due regard to the part of the defendant's interview protocol where the defendant's actions following the discontinuation of the crime are described.<sup>48</sup> The above-described defect at the investigation stage is a type of defect that is to be attributed to the investigation body and more specifically to the Prosecution Office, which could not be corrected by any means at the trial stage because courts are deprived of the possibility of modifying charges if the modification will deteriorate the defendant's situation. Hence, the Prosecution Office had to do a better job examining all the circumstances in the case and giving the defendant's conduct correct legal assessment.<sup>49</sup>

#### **4.2. Problems with identifying the gender motive**

In 6 out of 14 cases examined within our monitoring, the General Prosecutor's Office referred to the gender motive as a qualifying element of the charges. In the remaining number of cases, even though we believe they too included indications of the gender motive, the Prosecution Office did not bring charges under the relevant article of the Criminal Code. This subchapter examines three especially problematic situations in which the circumstances of the cases were indicative of the presence of the gender motive in the defendants' actions but were not identified as such.

Despite clear evidence from the materials of a case handled by the Tbilisi Court concerning the leading of a person to attempt suicide, wherein the defendant tried to kill herself because of the reason that her father was systematically humiliating and degrading her for a gender motive, the Prosecution Office did not identify the gender motive and went on to classify the defendant's conduct under a generic provision of Article 115(1) in conjunction with Article 11<sup>1</sup>. Had the gender motive been formally recognized in the charges, they would be brought under Article 115(2)(a), not 115(1), which establishes criminal liability merely for a general offense of causing a person to commit suicide.<sup>50</sup>

In the above-mentioned case, the defendant [the father] was blaming the victim [the daughter] for destroying their family and was permanently demanding that the victim convince his mother to come back home. Afterwards, the defendant dredged up some memories of what the victim had been doing in the past insulting the victim at the same time. The father was rebuking his daughter for spending a vacation in a company of strange people. The defendant argued that he did not need a daughter who would rat him out to the police. Due to the insults, she received from her father, the victim tried to kill herself.<sup>51</sup>

The main reason the defendant was humiliating the victim as if the victim "contributed to the falling apart of their family" but the defendant was also scolding the victim for going on vacation with some stranger. The defendant considered himself "a family boss" who had the right to control the actions of his daughter. In the opinion of the defendant, going for a vacation in a company of a strange person without having obtained the father's consent in advance was, an unsuitable behavior for a young woman. The defendant was using exactly this motive to humiliate her, which is indicative of a gender-based crime.

---

48 Gurjaani District Court, Case no. 1/47-21

49 Gurjaani District Court, Case no. 1/47-21

50 Tbilisi City Court, Case no. 1b/r790-21

51 Tbilisi City Court, Case no. 1b/r790-21

The Prosecution Office failed to identify the gender motive and bring charges accordingly in another attempted killing case heard by the Tbilisi City Court.<sup>52</sup> On June 26, 2021, the defendant, acting with the intention to cause her death, inflicted wounds on the victim with a knife in the abdominal cavity, hand and shin. The defendant was charged under Articles 19 and 108 of the Criminal Code (attempted murder).<sup>53</sup>

When interviewed, the defendant said he saw a young girl who was physically beautiful and attractive and blonde. The defendant liked the girl and decided to follow her and introduce himself. The defendant told the victim he wanted to get to know her and have intercourse with her. He asked the victim to go with him to his place. According to the interview protocol, the victim pushed the defendant away with her hand and moved on. The defendant got angry when his request for sex was turned down. He approached the victim from behind, grabbed her by the neck and knocked her down. The defendant got on top of the victim, took a knife from the left pocket of his pants and stabbed the victim in various parts of her body while she lay on the ground. The defendant's actions were discontinued by a police officer. The defendant acknowledged that if the police officer had not intervened, he would have gone ahead and killed the unknown girl. According to the defendant, he would do so because the girl turned down his offer to have sex with him.<sup>54</sup>

The victim said she was walking that day and wearing earphones. According to the victim, neither before she was grabbed by her throat nor before she was stabbed with a knife did the strange man ask her for money or sexual intercourse.<sup>55</sup> In fact, the testimonies of the defendant and the victim given in the investigation contradict each other. The contradiction might be explained by the fact the victim wore earphones and might not hear the defendant talking to her. In any case, the investigation authority had to give priority to the defendant's confession that he committed the crime because his offer for sex was rejected. Since the motive behind crime is a so-called subjective element of a crime, the defendant is the best person to know why he wanted to commit the crime.

According to a forensic psychiatric report dated November 11, 2021, the defendant had a non-psychotic mental disorder, specifically an emotionally unstable personality disorder. However, when he was committing the crime, he was capable of realizing and understanding what he was doing and that his conduct was unlawful and he was able to control it (in other words, the defendant was imputable or mentally sane). When the defendant was examined by a forensic psychiatrist, he was diagnosed with emotionally unstable personality disorder and mental decompensation, rendering him incapable of understanding own actions, providing testimony or participating in investigation and judicial activities.<sup>56</sup>

The Prosecution Office did not wait for the psychiatric report to be completed and issued a charging document before the report was made available. However, by the time formal charges were brought against the defendant, the investigation body had already interviewed the defendant who said his motive for attacking the victim was the victim's refusal to engage in sexual intercourse with him. Accordingly, the defendant's interview protocol already contained the indications of the gender basis of the crime committed and thus the defendant's conduct should have been classified not as an attempted murder (Articles 19 and 108 of the Criminal Code) but as gender-based attempted killing (Article 19 and 109(d<sup>1</sup>) of then-in force version of the Criminal Code).

52 Tbilisi City Court, Case no. 1/4041-21

53 Tbilisi City Court, Case no. 1/4041-21

54 Tbilisi City Court, Case no. 1/4041-21

55 Tbilisi City Court, Case no. 1/4041-21

56 Tbilisi City Court, Case no. 1/4041-21





There was a problem identifying a crime motive in a case of attempted femicide adjudicated by the Mtskheta District Court.<sup>57</sup> On August 10, 2021, the victim who was cleaning up a yard from dog feces had an altercation with the defendant. The defendant got very angry and hit the victim with a hatchet on the head. The motive for this conduct was the woman's inability to maintain the house clean because of the dog. According to the defendant, it was the woman's job and responsibility to keep the house clean, which allegedly became impossible since the dog started to live in the house.

According to the case materials, the dog was a major reason for the confrontation between the defendant and the victim. The defendant had been continuously demanding the removal of the dog from the house. However, other than that, it turns out from the victim's testimony to the police, that the defendant had also been in a conflict with the victim because it was the victim's responsibility as a woman to remove dog poop from the yard. The law enforcement authorities failed to react to this fact. As a result, the crime was given a wrong legal classification due to the absence of the identification of the gender motive in the case.

Article 273 of the Criminal Procedure Code allows a judge, if the criminal conduct has been given wrong legal classification, to modify the latter only if the modification favors the defendant. It was for this reason that in the cases discussed in this subchapter the Prosecution Office's wrong legal classification resulted in bringing softer charges and accordingly imposition of softer sentences.

In terms of identification of the crime motive, a case heard by the Senaki District Court presents itself a good example. In that case, the defendant had initially been charged under Articles 11<sup>1</sup>, 19 and 109(2) (f) (attempted killing of a family member).<sup>58</sup> According to the investigation body's initial case theory, the defendant tried to kill his mother because the victim reported to the police about her son (the defendant) cultivating cannabis. However, investigative actions conducted subsequently revealed that the crime motive was the mother's alleged relationships with strange men. The defendant told one of the witnesses: "Why did my mother did this to me, why did I deserve this. She's my mother in any case, how can I kill her?"

While collecting evidence on a woman's intimate life, investigation authorities should guide themselves with the principle of proportionality. They should stay within the frames of what is strictly necessary for giving the conduct a correct legal assessment so that they do not excessively look into the details of the woman victim's private life. In the course of investigation, the law enforcement should obtain only minimum amount of evidence of woman's intimate life capable of proving the motive of crime committed by her male family member. In the above-described case we welcome the fact that the investigation body did not identify the man with whom the victim had intimate relations or the exchange of messages between the victim and her boyfriend; instead, the investigation authority confined itself to collecting only general information on this issue. All the investigation needed to find out – and did find out - was that the defendant learned about his mother's relationship with an intimate partner, which the defendant considered was unsuitable and decided to execute her. Eventually, in the instant case, the law enforcement body successfully stroke a fair balance between the secrecy of the woman's private life and the interest of doing justice.

---

57 Mtskheta District Court no. 1/254-21

58 Senaki District Court, Case no. 1/29-2021

### 4.3. Current plea-bargaining practices

During the reporting period, plea agreements were concluded in two cases of attempted femicide. In our opinion, the Prosecution Office's decision to enter into a plea agreement with the defendant in one of these cases is problematic. The case involving a woman who was sprayed with gasoline by her husband's sister's son in an attempt to burn her, was adjudicated by the Poti District Court without a hearing on merits.<sup>59</sup> Moreover, it was wrong for the Prosecution Office, for plea bargaining purposes, to give any serious meaning to the victim's notary-verified affidavit that the victim had no claims against the defendant. The investigation body acknowledged itself that the crime was gender-based and the fact that the victim had no complaints against the defendant could have been the result of pressure exerted by the husband's relatives on the victim. This is a dangerous phenomenon of shifting the liability from a defendant to a victim.

In addition to wrong legal classification of the conduct, the Prosecution Office was overly fast in entering a plea bargaining deal. Although the problem with the expedited plea bargaining was partially balanced by the fact that the defendant was imposed a sentence of 4 years and 6 months of imprisonment and would thus stay isolated from the victim.<sup>60</sup>

More fair and commensurate with the degree of societal danger of the conduct were the terms and conditions of a plea agreement entered into in another case dealt with by the Mtskheta District Court.<sup>61</sup>

According to the case materials, the victim signed an affidavit that she had no complaints against the defendant and that she had nothing against the prosecution office making a plea-bargaining deal with the defendant. The Mtskheta District Court heard the case without a trial on merits approving a plea agreement with its judgment. As a result, the defendant was sentenced to 8 years of imprisonment of which 5 years have to be served physically in the penitentiary.

While 5-year imprisonment might be considered as an inadequate punishment in other cases, circumstances in this case, considering the defendant's age (72 years old), suggested a low risk of the defendant re-offending after serving 5 years in the penitentiary. So the punishment imposed in the given case (5 years of imprisonment) was adequate enough to prevent the defendant from reoffending.

Application of the notion of plea bargaining in femicide cases is allowed if the terms and conditions of the plea agreement reached between the parties are fair, meet the objective of imposing a punishment that is proportional to the degree of societal danger posed by the criminal offence in question, allows the defendant to properly realize their actions and, most importantly, ensures prevention of future femicide. Of the court cases analyzed in this report, all of which ended with concluding a plea agreement with the defendant, the above-mentioned objectives were fulfilled in the case dealt with by the Mtskheta District Court, partially fulfilled in a case heard by the Poti District Court and were not fulfilled at all in a case adjudicated by the Signagi District Court.

<sup>59</sup> The case is discussed in subchapter 4.1 herein.

<sup>60</sup> Poti Town Court, Case no. 1/236-2021

<sup>61</sup> For more information on the facts of the case, see subchapter 4.2 herein. Mtskheta District Court, Case no. 1/254-21



#### 4.4. Other shortcomings in investigation

One of the gaps characteristic of femicide or attempted femicide investigations in the reporting period was the investigation authorities' unwillingness to interview juvenile eyewitnesses and to assign them the victim status.<sup>62</sup> In one case, the investigation body did not seize the defendant's mobile phone for its further examination despite the fact that the victim tried killing herself due to the degrading and insulting text messages she was receiving from the defendant's phone.<sup>63</sup> In another case, an investigator seized a victim's medical records without an authorizing judicial warrant, resulting in finding the medical record inadmissible evidence at the pretrial hearing.<sup>64</sup>

In one of the cases dealt with by the Tbilisi City Court, the victim and the defendant were spouses. The victim had a child and a grandchild of her own. On New Year's Eve, they were all celebrating the coming year of 2021 together. The wife asked the husband to go to the store to buy some Coca-cola. The drunk husband felt offended and started swearing at his wife. After some time only the victim and the defendant remained in the living room. The defendant kept insulting his wife because the wife told him to go to the store for a Coke.<sup>65</sup>

At 2:00 in the morning, the defendant followed his wife as she entered her grandchild's room. The victim was talking to her grandchild when the defendant stabbed her in the waist on the left side of the body.<sup>66</sup> The investigation authority never tried to interview the juvenile witness according to the established rules for juveniles<sup>67</sup> or to give the juvenile the victim status. The grandchild was the only eyewitness to the scene and could have testified, which testimony would be direct evidence in the case and this incontrovertible evidence under the Georgian criminal law.

According to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Art. 26, States Parties undertake to consider a child who witnesses a scene of domestic violence a victim of domestic violence. A child is considered to have witnessed violence not only when he or she observes the scene of violence, but also when they hear shouting or sounds of violence or are systematically suffering from the consequences of violence.

In the same case, the first time the investigation authority seized the victim's medical records was on January 20, 2021 in an unlawful manner, i.e. without an authorizing judicial warrant or the victim's consent. Next time, on March 18, 2021, they seized the same papers lawfully, based on a judicial warrant. But the first-time seizure on January 20 was considered by the court inadmissible evidence.

It was because of this lack of evidence and the victim's use of the right not to testify against a close relative that the Tbilisi City Court rendered a judgment of acquittal in the case. The situation was corrected by the Appeals Court later, which replaced the acquittal with a convicting judgment.<sup>68</sup> The Appeals Court based its convicting judgment on a forensic report, which on its turn relied on medical

62 Tbilisi City Court, Case no. 1/1690-21

63 Samtredia District Court, Case no. 1/152-21

64 Tbilisi City Court, Case no. 1/1690-21

65 Tbilisi City Court, Case no. 1/1690-21

66 Tbilisi City Court, Case no. 1/1690-21

67 For example, by asking the witness to draw a painting to express what they felt, by involving a court-appointed juvenile advocate and a psychologist

68 The Tbilisi Appeals Court relied, as a matter of major evidence, on a conversation between the victim's daughter and a 112 call operator, which clearly elucidated that the victim had received the wound as a result of being stabbed with a knife and not as a result of falling on broken potter fragments as the defense was trying to assert during the trial in the court

records lawfully seized on March 18. The flaws at the investigation stage of the proceeding show that the investigation was carried out in a negligent and neglectful manner failing to follow the rule of law while collecting evidence.

Insufficient investigation was observed in a case dealt with by the Samtredia District Court.<sup>69</sup> In that case, while the defendant was abroad, he was asking his wife in Georgia to have the video calling function on her phone constantly on so that he could control every step of her. The defendant was demanding his wife to look into his eyes and say she was not cheating on him. In the summer of 2020, the defendant called his wife to tell her he learned about the wife being unfaithful to him and demanded that she leave the house of the defendant's parents. The victim fulfilled the defendant's request, which made the defendant even angrier. The defendant kept calling the victim on WhatsApp and from various foreign phone numbers threatening to kill her. More specifically, the defendant was telling the victim: "I will stab you with a knife in the stomach. I will mutilate your face so that you are no longer attractive to anybody."<sup>70</sup>

Because of the threats and insults she was receiving from her husband, the victim changed her phone number and deleted her WhatsApp, which also resulted in wiping out all the threatening text messages from her husband. To avoid unwanted communication, she blocked her husband also on Facebook.

On June 10, 2021, the defendant returned to Georgia. At the victim's request, the spouses got divorced.<sup>71</sup> On June 25, 2021, the defendant told the victim's father: "If you can't take care of your own daughter, I will take care of her and will destroy her." The defendant then swore at his former wife.<sup>72</sup> The victim learned about these facts and decided to kill herself by running a knife over her left wrist.<sup>73</sup>

According to a forensic psychologic report dated July 12, 2021, based on the criminal case materials and the outpatient psychological examination report, the victim was being subjected to insults, humiliation and blackmailing on part of the defendant, causing her to suffer.<sup>74</sup>

The Prosecution Office pressed charges against the defendant for psychological violence, threatening to kill his wife, and causing his wife to attempt committing suicide by way of degrading and humiliating her. According to the defendant's mother, the spouses had not been in physical contact with each other since 2019 when the defendant went to a foreign country. The defendant was committing criminal actions using the computer system – phone and Internet. Also, the defendant has been conveying threatening messages to or humiliating the victim either himself or through other people.

According to the case materials, both the victim and all the witnesses have deleted the text messages the defendant had been sent over the phone or via the Internet. So, the investigation body had to determine, first of all, the location of the phone and the computer the defendant was using for sending the messages. The phone and the computer had to be seized and inspected before the defendant would delete the content from the devices. The criminal case materials do not show whether the law enforcement body undertook any investigation actions or inquiries to this effect. This means that there has not been effective and thorough investigation into the case. Furthermore, the defendant was charged under Articles 11<sup>1</sup> and 115(2)(a) of the Criminal Code (causing a family member to attempt committing

69 Samtredia District Court, Case no. 1/152-21

70 Samtredia District Court, Case no. 1/152-21

71 Samtredia District Court, Case no. 1/152-21

72 Samtredia District Court, Case no. 1/152-21

73 Samtredia District Court, Case no. 1/152-21

74 Samtredia District Court, Case no. 1/152-21



suicide for a gender motive), which is a serious crime allowing the investigation authorities to conduct covert investigative measures.

Another conspicuous case in which a victim attempted killing herself because of the physical and moral violence she was getting from her husband was dealt with by the Tbilisi City Court. In that case, the investigation body searched the house of the defendant's father in an attempt to find a device the defendant was using as a crime weapon. Although the police was not able to seize the communication device itself, it did take all the reasonable steps to obtain evidence in the case involving gender-based intolerance.<sup>75</sup>

#### **4.5 Victim support mechanisms in the course of administration of justice**

Prevention of femicide and attempted femicide cases requires the government not to only carry out fair justice in domestic violence and violence against women cases, but to inform, as a matter of critical importance, victims about available victim support and protection mechanisms and to provide all the required support and assistance during entire criminal proceedings.

A majority of women interviewed positively speak of law enforcement authorities' response to the occurrences of violence against women and domestic violence. The respondents expressed their satisfaction with the law enforcement bodies' sensitive approach to victims and provision of information on available services. However, they mentioned some challenges as well.

For example, in interacting with women victims of domestic violence, law enforcement members were using legal terminology which the women could hardly understand. As a result, the women did not quite understand what was going on in the ongoing proceedings and had difficulty receiving correct information about the criminal case. It should be noted that victims were not informed on the available victim support and assistance mechanisms in the beginning of investigation. Respondents interviewed either obtained this information by themselves or became aware of it only after they were assigned the victim status. Nor were the victims informed about the possibility to have electronic surveillance imposed on the defendant.

Witness and victim coordinators speak of their overly busy work schedule.<sup>76</sup> Due to the shortage of their staff, they are stationed mostly in regional centers lacking the possibility to reach out to surrounding districts. As the coordinators say, each region/district is different and the peculiarities of the locations have to be borne in mind when communicating with victims.

The coordinators state there is no document governing which cases fall within the jurisdiction Prosecution Office's witness and victim coordinators and which cases are the job of Ministry of Interior coordinators. The matter is regulated merely by practice, without any clear rules. Also, the coordinators suggested it would be more effective and even indispensable that they intervene at an earlier stage of a criminal proceeding, immediately after investigation commences.

Witness and victim coordinators state that there are problems with the practical use of the GPS monitoring system. Victims refuse to use GPS monitoring for various myths about the system. Another widespread reason for not wearing the GPS monitoring system is the victims' fear they will damage the equipment.<sup>77</sup>

<sup>75</sup> Samtredia District Court, Case no.1/152-21

<sup>76</sup> According to the coordinators, they intervene not only in violence against women and domestic violence cases, but in other types of offense cases too

<sup>77</sup> As a witness and victim coordinator from the Interior Ministry told us, a victim refused to use the system because she was afraid she could damage the equipment even though, as the coordinator said, victims will not incur any costs even if the equipment breaks. However, police officers said the opposite when meeting with Public Defender's representatives that when a GPS monitoring device is handed over to a victim, the victim receives a warning that he/she will have to reimburse the costs if the equipment gets damaged

## 5. SHORTCOMINGS IN JUDICIAL PROCEEDINGS

### 5.1. Explanation, and reasoning of, the gender basis in criminal cases by courts

During the reporting period, the Prosecutor General's Office identified the gender motive in 6 cases. Among these six cases (gender-based femicides and attempted femicides), Four (ended with first instance courts rendering convicting judgments. The two remaining cases ended with a different result. Like in the previous years, it remained a problematic question in the reporting period whether a jealousy crime against a woman was to be treated as a gender-based crime. The judicial practice on such cases has continued to be non-uniform.

We welcome explanations given by the Rustavi Town Court and the District Courts of Senaki and Gurjaani in their judgments on the gender motive in crimes. Satisfyingly, the judgments provide a detailed explanation of what is "the gender motive" as well as reasoning based on international instruments and authoritative texts why the crime at hand is to be considered a gender-based crime.

However, there were a number of cases with apparent gender motive in the reporting period in which the courts either did not discuss such motive at all or did not provide reasoning for it in their judgments. For example, all Samtredia District Court said about the gender motive of the offense in the reasoning part of its judgment dated March 2, 2022<sup>78</sup> was that the crime was gender-based.

Judges are required to provide reasoning for both facts and law in their judgments in criminal cases. In spite of convincing evidence to suggest that the offense had been committed for a gender motive, the judgment does not explain what specific evidence made the judge conclude the defendant committed the crime of causing the victim to attempt suicide. Even more so, nor did the judge explain what exactly was indicative of the gender basis of the crime. In summary, the judge did not follow the required criteria for descriptive and reasoning parts of a judgment listed in Article 273 of the Criminal Procedure Code.

In two cases the Tbilisi City Court did not notice the gender motive and the defendant was acquitted on that count. One of these cases concerned the killing of a wife by her husband.<sup>79</sup> The charging document dated March 18, 2021, states that there is a probable cause for arguing that the defendant committed a premeditated murder of his family member for a gender-based motive. According to the facts of the case, the defendant living at his wife's place in Tbilisi believed that the victim who he had been married to unofficially, without registration, was not entitled, as a woman, to have her private life and to divorce him. Against this background, due to the victim's gender and intolerance, the defendant decided to kill the victim hitting her in the head with a blunt object inflicting lethal injuries. Hence, the defendant committed a crime under Articles 11<sup>1</sup> and 109(2))(d<sup>1</sup>),(f) (premeditated murder of a family member for a gender-based motive).<sup>80</sup>

During the trial, the defendant admitted to killing his wife but denied any gender-based motive in mind. According to the defendant, in 2020, a child was born to him and his wife; in 2021, the defendant and the victim lived separately but started living together again afterwards.<sup>81</sup>

On November 5, 2021, an altercation happened between the defendant and the victim because of a phone call. The victim told the defendant she had intercourse with her former husband when she

78 Samtredia District Court, Case no.1/152-21

79 Tbilisi City Court, Case no. 1/1251-22

80 Tbilisi City Court, Case no. 1/1251-22

81 Tbilisi City Court, Case no. 1/1251-22



and the defendant were living separately. The defendant got angry and used some insulting language against the victim. According to the defendant's explanations, the victim started asserting that the child was from another man; having heard this, the defendant lost control of himself in rage and hit the victim with a metal object in the head.<sup>82</sup>

During his direct examination at a trial in the Tbilisi City Court, the defendant said: "The child meant the whole world to me. Knowing this, she told me something that made me lose control of myself." To a lawyer's question "Did it serve as a motive that you heard her saying the child was not yours and that she was cheating on you?", the defendant answered: "Yes, the adultery too. I was so irritated that that served as an additional reason."<sup>83</sup>

According to the finding by the Tbilisi City Court, "in the instant case, the defendant corroborated that out of his suspicion of infidelity he had a quarrel with his wife with whom he was in an unregistered marriage. During the quarrel, the defendant learned about his wife's infidelity. For this reason and also because the wife told him the child was not his child, the defendant hit the victim with a piece of metal in the head once, which resulted in the death of the victim."<sup>84</sup>

"In the instant case, the court concurs with the defense, which disagrees with the prosecution and challenges only the part of the prosecution's assertion that the crime had been committed for a gender motive. The defense argues that the defendant committed the crime not because of gender-based intolerance, but during an altercation when he learned about his wife being infidel to him. Hence the defense is asking the court to acquit the defendant on this count."<sup>85</sup>

"The court agrees with the defense's position and wishes to explain that, pursuant to Article 109(2)(d) of the Criminal Code, killing a person because of their gender is an aggravating factor of homicide. In the instant case, the accused person is facing an aggravated guilt because of the victim's gender. Therefore, it has to be ascertained whether a major motive of this killing was the victim's gender."<sup>86</sup> The court also took note of the defendant's position that his motive for killing his wife was not her gender, but his revenge for her adultery.<sup>87</sup> The court said that even though the case materials included various witness statements indicating the defendant had been violent toward the victim and had been rebuking his wife for wearing overly revealing clothes, these evidence were not sufficient to prove that the defendant committed the impugned crime out a proprietary attitude to his wife or stereotypical thinking about women's role in the society.<sup>88</sup>

The Tbilisi City Court is contradicting itself. On the one hand, the court considers a crime committed out of proprietary attitude to the victim a gender-based crime but, on the other hand, it asserts a killing of wife out of revenge due to the wife's alleged infidelity is not gender-based. Killing a woman for her infidelity is a killing because of her gender, because a husband is punishing his wife exactly because he considers the wife to be his property.<sup>89</sup>

---

82 Tbilisi City Court, Case no. 1/1251-22

83 Tbilisi City Court, Case no. 1/1251-22

84 Tbilisi City Court, Case no. 1/1251-22

85 Tbilisi City Court, Case no. 1/1251-22

86 Tbilisi City Court, Case no. 1/1251-22

87 Tbilisi City Court, Case no. 1/1251-22

88 Tbilisi City Court, Case no. 1/1251-22

89 Tbilisi City Court, Case no. 1/1251-22

Unfortunately, the Tbilisi City Court, without providing any convincing arguments, drew a line of distinction between a killing for the motive of revenge for infidelity and a gender-based killing. The court did not classify a killing of wife out of revenge for her infidelity as a gender-based killing. Unfortunately, the prosecution office did not invoke the defendant's statement – which was obtained not through a cross examination, but through a direct examination – to support its charges of gender-based killing.<sup>90</sup>

It is notable that the Tbilisi Appeals Court upheld the Tbilisi City Court's judgment. It provide a legal reasoning to prove there was no gender motive in the defendant's criminal action albeit different from that of the Tbilisi City Court. According to the Appeals Court, the prosecution failed to produce any evidence corroborated beyond the reasonable doubt standard capable of proving that the crime had been committed for a gender motive. Nor did the prosecution office argue that the defendant killed his wife because of the way she was dressing, her dauntless character, disagreement on the matters of child upbringing or all of these.<sup>91</sup> The Appeals Court stated the prosecution's witness's statement was hearsay evidence.

At first, we wish to welcome the fact that, unlike the trial court, the Appeals Court did not exclude that retaliation against a wife because of jealousy or infidelity could be a gender-based crime. It is regrettable, however, that the Appeals Court did not evaluate and consider the defendant's statement that he had killed his wife because of jealousy or cheating with her first husband.

The Tbilisi City Court dealt with another case in which a husband tortured his wife, which made the wife try killing herself. The City Court did not consider this a gender-based crime and decided to modify the prosecution-authored charge under Articles 11<sup>1</sup> and 115(2)(a) (causing a family member, due to the latter's gender, to attempt suicide) with charges under Articles 11<sup>1</sup> and 115(1) (causing a family member to attempt suicide).<sup>92</sup>

In that case, the defendant and the victim had been living as a couple since 2020. The defendant had been jealous of the victim and would not let her have male students. The victim could only take students who were females or underage boys. The defendant was also inspecting the victim's text messages.<sup>93</sup>

On March 19, 2021, the defendant was trying to make the victim confess and say who she was cheating on him with. For about 5 or 7 minutes the defendant was insistently demanding that the victim say the truth. The defendant kept saying that if the victim does not tell him who she was having a love affair with he would treat her in a different way. The victim did not wish to argue with the defendant and decided to leave the home. The defendant used force to block her way to the hallway.<sup>94</sup> He locked the entrance door to the apartment, took a club and started simulating how he'd beat the victim with a club, in order to exert a psychological influence upon the victim.<sup>95</sup>

According to the case materials, the defendant attempted to strangle the victim several times by smothering her with a pillow, by pushing a scissors onto her throat, by wrapping hands around her neck and by forcing her head into a washbasin and holding it underwater (5 episodes of crime). In addition, the defendant was physically abusing the victim who developed bruises as a result. The defendant was also threatening that if she was not telling the truth, he was break her neck. According to the case

90 Tbilisi City Court, Case no. 1/1251-22

91 Tbilisi City Court, Case no. 1/1251-22

92 Tbilisi City Court, Case no. 1/3595-21

93 Tbilisi City Court, Case no. 1/3595-21

94 Tbilisi City Court, Case no. 1/3595-21

95 Tbilisi City Court, Case no. 1/3595-21





materials, the victim tried to kill herself because of the violence she had been suffering from but her attempt was unsuccessful because the defendant did let her finish the commenced.<sup>96</sup>

By its judgment of January 25, 2022, the Tbilisi City Court found the defendant guilty of a crime under Articles 11<sup>1</sup> and 1441(1) of the Criminal Code (torture) sentencing him to 8 years of imprisonment. As an additional punishment, the defendant was ordered to pay a fine of two thousand (2,000) Georgian Lari. The court quashed the initial charge under Articles 11<sup>1</sup> and 115(2)(a) (causing a family member for the gender motive to attempt suicide) and replaced it with a different charge under Articles 11<sup>1</sup> and 115(1) (causing a family member to attempt suicide) sentencing him to 3 years of imprisonment. However, the sentence imposed for the crime of torture, as a more severe punishment, absorbed the punishment for another offense the defendant had been charged with and, as a result, the defendant was eventually sentenced to 8 years of imprisonment and a fine of 2,000 Georgian Lari.<sup>97</sup>

The problem with the above-described judgment is that the court was unable to identify the gender motive in the offense impugned. The judgment says: “As regards the assertion that the offense has been motivated by gender-based discrimination, the evidence examined during the trial does not prove this. More specifically, neither the victim nor witnesses have said the defendant was committing the crime with a view to demonstrating his dominant role or because he viewed the victim as his property. The victim and the witnesses have spoken only about the defendant being jealous for which reason he was banning his wife from having male friends, accepting male students and singing along with them. Hence, in the instant case, we do not see sufficient grounds for aggravating the defendant’s situation by adding the gender-based discrimination motive to his charges.”<sup>98</sup>

The judge did not categorize acts of jealousy as a form of a crime committed out of gender-based intolerance. Nor did the judge provide reasoning why the fact that the defendant was not allowing the victim to interact with male friends or take male students was not indicative of a proprietary attitude toward his wife. Such sort of prohibition is a vivid demonstration of a man treating a woman as his property and thinking he is entitled to ban his female partner from having even business relationship with male persons. Triggered by jealousy, the level of control over a partner woman’s professional and business life whereby the controlling man determines what sex the woman’s students should be is exactly indicative of the man’s intention to show his dominant role; on top of that, the defendant was torturing the victim for the purpose of obtaining information on the victim’s relationship with other men and the victim attempted killing herself because of the gender-based torture she had been subjected to.<sup>99</sup>

What follows from the above-discussed cases is that there is a lack of uniform understanding of the concept of gender in Georgian courts’ jurisprudence. Some judges consider the presence of jealousy and jealousy-motivated control of a woman’s life in a criminal case a proof of a gender-based crime, while other judges go the other way around. It is the Supreme Court’s prerogative to eliminate the non-uniformity of the judicial practice by issuing its authoritative explanation of the gender motive in criminal cases [a gender-based crime].

---

96 Tbilisi City Court, Case no. 1/3595-21

97 Tbilisi City Court, Case no. 1/3595-21

98 Tbilisi City Court, Case no. 1/3595-21

99 Tbilisi City Court, Case no. 1/3595-21

## 5.2. Use of Article 53<sup>1</sup> by courts and imposing a harsher sentence for gender-based offenses

The Use of the provisions of Article 53<sup>1</sup> of the Criminal Code by courts remains problematic. Paragraph 1 of the article toughens criminal liability for any offense envisaged by the Special Part of the Criminal Code if committed out of gender-based intolerance. Pursuant to paragraph 3 of the same article, a sentence for an offense committed for gender intolerance must exceed the minimum measure of punishment prescribed for the offense in question with at least 1 year. Under paragraph 4 of Article 53<sup>1</sup>, the additional one year will not be added to the punishment for a gender-based crime, if gender is a constituent element of the crime in question.

On more practical terms, a defendant's sentence will not increase with this 1 year in addition to the minimum sanction established for the crime he/she committed if the Prosecution Office brings charges under a crime, which, according to the Criminal Code, includes gender as one of its constituent elements. It is important to mention that if the Prosecution Office does not indicate gender as a qualifying criterion in its charging document but nevertheless the court considers the crime has been committed by the gender motive, the trial judge will not be authorized to amend charges to the detriment of the defendant, i.e. cannot make the charge more severe than the one pressed by the Prosecution. However, in that case, according to the Article 52, the judge does have to add the 1 year of imprisonment to the minimum duration of deprivation of liberty envisaged by the offense in question.

From this perspective, we wish to emphasize a judgment rendered by the Signagi District Court in a case in which the defendant attempted killing her relative (a woman) because he was angry with her child. The Signagi District Court found the defendant guilty of a crime under Articles 19 and 108 of the Criminal Code (attempted murder). The facts of the case feature elements of a gender-based crime. The court found, as an incontrovertible fact, that the defendant attacked the victim because he was angry with her child and was seeking retaliation.<sup>100</sup> In a patriarchal society, where a woman is considered property of a man, the conclusion should be, that an attempted murder committed in order to retaliate against a male family member is a gender-based crime.

The court was thus capable, by way of invoking Article 53<sup>1</sup> of the Criminal Code of considering gender as an aggravating circumstance and adding one additional year to the minimum sentence envisaged by the offense in question. The offense under Article 108 of the Criminal Code is punishable with a minimum of 8 years and a maximum of 15 years of imprisonment. Although the Signagi District Court sentenced the defendant to 8 years of imprisonment, it did so not because it thought the crime was committed for a gender motive but because the defendant used a knife as a crime weapon.<sup>101</sup> Pursuant to Article 53<sup>1</sup> (2), using a weapon (including a knife) to commit an offense is exactly the same type of aggravating circumstance as committing a crime for the motive of gender intolerance. In the instant case, neither the prosecution office nor the court viewed the crime as a gender-based crime despite the fact that the said motive was evident from the facts established by the court itself.

<sup>100</sup> Signagi District Court, Case no. 1/60-21

<sup>101</sup> Signagi District Court, Case no. 1/60-21



### 5.3. Problems with proper risk assessment by courts

Like in the previous years, during the reporting period, courts continued using non-custodial measures of restraint for the offenses of violence against women and incompliance with a deterrent judicial warrant. The use of non-custodial measures meant giving the defendants another chance to reoffend, but this time it could result in more serious crime against their victims such as an attempted murder. Furthermore, courts were allowing defendants to go back to continue living together with victims while the defendants never stopped being aggressive.

In a case adjudged and decided by the City Court of Tbilisi on April 27, 2022, a defendant was found guilty of committing an attempted murder with special cruelty and was sentenced to 17 years of imprisonment.<sup>102</sup>

That case is a vivid example of the judiciary's failure to prevent an attempted murder with special cruelty because it had not done a proper assessment of risks posed by the defendant and applied too light a non-custodial measure against the defendant. According to a judicial decision on first appearance and application of restraint measures (arraignment decision), two months before he attempted killing his wife, the defendant had been arrested for crimes under Articles (381<sup>1</sup>)<sup>103</sup> and (126)<sup>104</sup> of the Criminal Code committed against the same victim. The Prosecution Office moved for imposing a custodial pretrial measure upon the defendant but the court opted for a bail of 5,000 Georgian Lari.<sup>105</sup>

Pursuant to Article 205 of the Criminal Code, custody as a pretrial measure should be imposed only when there is no other way of preventing a defendant from escaping justice, hindering the administration of justice or the collection of evidence in the case, or reoffending.

In evaluating the risk of the defendant reoffending after being temporarily released pending trial, the court overlooked the surrounding facts of the case. In particular, in its arraignment decision the court stated that because the defendant had no previous convictions, the offense committed was a less serious offense punishable with a light sentence, the defendant had a permanent place of residence, and had a tight nexus with the country of proceedings, the court considered it disproportional to use a custodial pretrial measure on the basis of the probable cause standard, given the lower gravity of the offense committed and personal characteristics of the defendant.

The defendant breached the terms and conditions of the deterrent warrant issued against him because of a financial dispute existing between him and the victim. Notably, at the time the court was discussing which pretrial restraint measure to use in respect of the defendant, the conflict between the defendant and the victim was ongoing. So the fact that the deterrent warrant did not actually have a deterring effect for the defendant who simply approached the victim and committed an offense should have served as a clear indication that the defendant was very likely to reoffend. The facts in the case all bespoke a high risk of the defendant re-committing a crime, which could only be avoided by committing him to custody.

Despite the evident risk, the court released the defendant on bail and exactly two months after the release pending trial the defendant committed another, more serious crime against the victim – attempted to kill her with special cruelty. This case is a good example of the decisive role courts play when selecting a measure of restraint for a defendant pending trial in preventing femicide by assessing risks for a victim's life on a case-by-case basis.

<sup>102</sup> Tbilisi City Court, Case no. 1/4189-21

<sup>103</sup> Incompliance with the terms and conditions of a deterrent warrant

<sup>104</sup> Battery or other violence, which caused physical pain to a victim but did not result in the consequence envisaged by Article 120 of this Code

<sup>105</sup> Tbilisi City Court, Case no. 1/4189-21

In another case heard by the Gurjaani District Court during the reporting period, in which a defendant inflicted three injuries on his mother because of her relationship with a boyfriend, the court released the defendant on bail after first been committed to detention as a pretrial measure.<sup>106</sup> At the arraignment hearing on February 18, 2021, the magistrate judge of Lagodekhi ordered that the defendant be taken in custody but on March 24, 2021, Gurjaani District Court at a pretrial hearing replaced the custodial measure with a bail. The court justified doing so by referring to facts such as that the defendant's wife was pregnant, the defendant had come to terms with the victim and the victim (his mother) was asking the court to be merciful to him. According to the court, the defendant was being characterized as a positive individual and he could no longer destroy evidence since the prosecution office had already collected them.<sup>107</sup>

On April 13, 2021, the Gurjaani District Court found the defendant guilty on all counts, sentencing him to 7 years of imprisonment. The imposed punishment was then reduced by one fourth (1/4) based on Article 73(3) of the Juvenile Code and eventually the defendant received a sentence of imprisonment for 5 years and 3 months, which was immediately converted into a suspended sentence. The judgment was later upheld by the Tbilisi Appeals Court on September 2, 2021 and by the Supreme Court on February 23, 2022.<sup>108</sup>

The Supreme Court provided the following substantiation to justify its use of a suspended sentence in that case: "The defendant confesses to his guilt and repents for the conduct he is charged with. He has cooperated with the investigation and did not challenge the prosecution's evidence thereby contributing to a prompt administration of justice. According to the individual assessment report, the juvenile is strongly motivated to resolve the conflict because his wife is pregnant and the couple is eagerly waiting for the child to come. The defendant feels responsible before his family: he has worked in agriculture as a shephard and as a worker at construction works; before his arrest, he worked on a seasonal agriculture job in Turkey – all of which bespeak his love for work and the sense of responsibility toward his family. The defendant has good relations with both his peers and adult co-villagers. None of his friends has had a conflict with the law or has demonstrated delinquent behavior. The defendant is not a high-conflict personality, does not display aggressive behavior, is not a drug user, does not gamble, does not have physical or mental health issues, is able to deal with stress, understands the importance of prevention in order to avoid future reoffending, and repents for what he has done."<sup>109</sup>

However, there is also another perspective presented in the above-mentioned individual assessment report, which states: "The Assessment of the juvenile revealed his impulsive character as hereadily becomes incapable of keeping balance in a crisis situation and finds it hard to control own behavior and emotions. The offense described in the charges is a proof of that, giving rise to the doubt that the juvenile has had the experience of resolving problems by use of force."<sup>110</sup>

It's also worth noting that, after a phone call that informed him about his mother's intimate life, the defendant left the country he had been staying in for a seasonal work, returned to Georgia and committed an offense against his mother. In fact, the various personal traits listed in the court's judgment did not in principle serve him as a barrier capable of preventing him from committing a gender-based crime.<sup>111</sup>

<sup>106</sup> Gurjaani District Court, Case no. 1/47-21

<sup>107</sup> Gurjaani District Court, Case no. 1/47-21

<sup>108</sup> Gurjaani District Court, Case no. 1/47-21

<sup>109</sup> Gurjaani District Court, Case no. 1/47-21

<sup>110</sup> Gurjaani District Court, Case no. 1/47-21

<sup>111</sup> Gurjaani District Court, Case no. 1/47-21



What also seems relevant is that the defendant felt remorse for his actual unlawful conduct but, according to the individual assessment report, by the time he was at liberty already, he disapproved of his mother's behavior blaming her for tainting the dignity of the family. According to the report, "The juvenile confesses to his guilt and takes responsibility for his conduct. Naming reasons for his actions, he refers to his mother lying and cheating on her husband, which, in the defendant's opinion, placed him [the defendant] in a shameful and degrading position in the eyes of his co-villagers. Although he considers no justification exists for the actions of his mother and feels less of an empathy for her, he does regret himself being in conflict with the law..."<sup>112</sup>

So, neither the one-month detention nor the bail serves as sufficient means for the defendant to understand that her mother had the freedom of choosing her sexual partner freely and the defendant had no right to intervene in her private life in the name of "dignity of the family". This is also corroborated by the defense in its cassation complaint, which acknowledges the commission of the crime of "deliberate infliction of serious bodily injury on a family member" but denied the conduct had any gender motive. The cassation complaint, where relevant, states: "finding the juvenile guilty under Articles 11<sup>1</sup> and 117(5) (d<sup>1</sup>) of the Criminal Code constitutes a propaganda of **licentious sexual life** suggesting that both married men and women are simply free to have their sexual life as they want, to choose anyone as their partner for intimate relations while having a family in our country curbs spouses from having an unlimited freedom. The changing of sexual partners and the trespassing of monogamy in principle encourages sexual insolence – a concept contradicting the moral principles of a majority of members of our society."<sup>113</sup>

It was evident that, after release on bail, the defendant would go back to their normal place of residence where the defendant and the victim would continue living in the same house because neither the defendant nor the victim had a home of their own. None of the courts that came to deal with the case from the perspective of various judicial instances discussed how the defendant would be prevented from reoffending if imposed a suspended sentence, despite the fact that the defendant continued to not be able to control own emotions and remained unreceptive of his mother's relationship with a sexual partner.

We would like to emphasize the social worker's recommendations provided in individual assessment report for the defendant: improving his anger and emotion management skills, raising his awareness of violence against women and its negative consequences, receiving information on human rights and freedoms and take a family psychotherapy course.<sup>114</sup>

Pursuant to Article 65 of the Criminal Code, "If a court decides to impose a suspended sentence, where there are appropriate grounds, it can impose specific legal duties upon the defendant such as: ... taking a mandatory training course on how to change their violent attitudes and behavior, if the defendant perpetrated a family crime domestic crime. ... A court can impose other duties as well in order to help improve the defendant's conduct."

Through the operative part of its judgment, the Appeals Court ordered a defendant released on a suspended sentence to not change his place of living without informing the Probation Bureau in advance.<sup>115</sup> Neither the Gurjaani District Court, nor the Tbilisi Appeals Court ordered the defendant to undergo a training course on amending violent attitudes and behavior or a course to raise awareness of violence against women and human rights and freedoms or a family therapy together with his mother.

---

112 Gurjaani District Court, Case no. 1/47-21

113 Gurjaani District Court, Case no. 1/47-21

114 Gurjaani District Court, Case no. 1/47-21

115 Gurjaani District Court, Case no. 1/47-21

## 6. ANALYSIS OF JUDICIAL DISMISSALS IN CRIMINAL CASES

In the reporting period, the Public Defender analyzed 5 judicial decisions that terminated the criminal prosecution against the defendants. In 4 of these 5 cases, the criminal proceeding ended because the defendant was declared insane, while the remaining case was discontinued due the death of the defendant.

Only two of the five dismissals include a description of the facts of the case. For example, according to a judgment delivered by the Zugdidi District Court, the defendant inflicted injuries on his grandmother in the head, face and left shoulder, that were incompatible with life, resulting the victim's death.<sup>116</sup> The defendant was arrested and charged with a crime under Articles 11<sup>1</sup> and 109(2)(f) of the Criminal Code (killing a family member), but the criminal proceeding in the case was terminated due the defendant being mentally insane.<sup>117</sup>

Case facts are described in more detail in another judgment rendered by the Tbilisi City Court. According to the judgment, the defendant, acting with the motive of retaliation, inflicted on the victim 7 wounds in various areas of the body with a knife. The injuries in their entirety were life-threatening. The defendant was stopped by a neighbor who came out at the victim's shouting. The victim was taken to the Surgery Center where his/her life was saved. The defendant was presented charges under Articles 19 and 108 of the Criminal Code (attempted murder) but the proceedings in this case discontinued because of the defendant's mental insanity.<sup>118</sup>

The same amount of detail in the description of facts cannot be found in two other cases dealt with by the Tbilisi City Court. In one of these cases, the criminal proceedings were terminated due to the defendant's death;<sup>119</sup> the other case involved a juvenile who deliberately inflicted serious bodily injury on his grandmother.<sup>120</sup> The same is true [inadequate description of facts provided in the judgment] of a case heard by the Telavi District Court concerning a murder of two or more individuals (Article 109(3) (a) of the Criminal Code).<sup>121</sup> These judgments are problematic, since not only they do not provide a description of the wrongful conduct, but they do not even indicate the names (first and last names) of the victims. These judgments are an example of the fact that, in judicial dismissal cases, facts of the case are not being provided with adequate detail in the courts' final judgments.

116 Zugdidi District Court, Case no. 1/425-2021

117 Zugdidi District Court, Case no. 1/425-2021

118 Tbilisi City Court, Case no. 1/2589-21

119 Tbilisi City Court, Case no. 1/4364-21

120 Tbilisi City Court, Case no. 1/2021-21

121 Telavi District Court, Case no. 1/283-21



## CONCLUDING REMARKS

We welcome the fact that, during the reporting period, the Prosecution Office has been actively identifying the gender motive in the charges brought in criminal cases concerning crimes against lives of women but, at a later stage, the charges were being amended by courts without proper reasoning.<sup>122</sup> Despite the prosecution office's activeness, there were some cases which, although involved indications of gender intolerance, the Prosecution Office did not classify them as gender-based crimes.<sup>123</sup>

In the reporting period, the Prosecution Office was sometimes failing to distinguish "attempted murders" and "deliberate infliction of bodily injury" from one another.<sup>124</sup> Also problematic was their failure to assign the victim status to child witness and interview them.<sup>125</sup> The practice of entering into a plea agreement with defendants in cases concerning offenses against women's life and health remained a matter of concern.<sup>126</sup>

The reporting period saw an increased number of convicting judgments in gender-based crime cases, but not all the courts considered jealousy crimes to be gender-based<sup>127</sup> leading to to a non-uniform judicial practice. Also, in the reporting period, although judgments in gender-based crimes included court reasonings, some failed to provide proper explanation of why the crime committed was gender-based.<sup>128</sup>

The flawed practice of courts of improperly assessing risks posed by defendants continued, which led to defendants released on bail committing a more serious crime after release such as attempted femicide.<sup>129</sup> And courts were imposing a suspended sentence without first providing for guarantees to prevent attempted femicide.<sup>130</sup>

---

122 Tbilisi City Court, Case no. 1/1251-22; Tbilisi City Court, Case no. 1/3595-21

123 Tbilisi City Court, Case no. 1b/r790-21; Tbilisi City Court, Case no. 1/4041-21; Mtskheta District Court, Case no. 1/254-21

124 Poti Town Court, Case no. 1/236-2021; Gurjaani District Court, Case no. 1/47-21

125 Tbilisi City Court, Case no. 1/1690-21

126 Poti Town Court, Case no. 1/236-2021; Mtskheta District Court, Case no. 1/254-21

127 Tbilisi City Court, Case no. 1/1251-22; Tbilisi City Court, Case no. 1/3595-21

128 Samtredia District Court, Case no.1/152-21

129 Tbilisi City Court, Case no. 1/4189-21

130 Gurjaani District Court, Case no. 1/47-21

## RECOMMENDATIONS

### **Directed at the Ministry of Internal Affairs and the Prosecutor-General's Office:**

- ▶ With a view to distinguishing between “attempted murders” and “deliberately inflicting serious bodily injury”, the Prosecution Office to study the circumstances in each case in high detail in accordance with the criteria established by the Supreme Court judgment no. 680 dated May 17, 2018.
- ▶ In attempted suicide cases with evident indications of a gender basis of the crime, the Prosecution Office to bring charges under the appropriate paragraph of Article 115 of the Criminal Code;
- ▶ In furtherance of the best-interests-of-the child principle, assign juveniles the victim status, including in cases where the offense was directed against another member of the family and the juvenile became an eyewitness to the crime scene;
- ▶ Assign to juveniles a juvenile advocate and a psychologist in order to receive useful information from them in a manner suitable to them, especially in cases where the child is the only direct witness to a femicide / attempted femicide;
- ▶ Whenever obtaining a victim's health record (history) from a medical institution, do so on the basis of the victim's clear and informed consent or a relevant judicial warrant;
- ▶ In a charging document, expressly refer to the gender motive whenever a defendant justifies commission of the crime by a victim's refusal to have sexual intercourse with the defendant;
- ▶ Write up the rules for involving victim and witness coordinators of the Prosecutor General's Office on the one hand and of the Ministry of Internal Affairs on the other hand in a criminal proceeding and their rights and duties; draw a clear line between the functions of Ministry coordinators and the Prosecution Office's coordinators;
- ▶ Where appropriate, involve victim and witness coordinators in a criminal proceeding right at the start of an investigation.

### **Directed at courts of general jurisdiction:**

- ▶ In the reasoning part of their judgments, courts to provide adequate explanation of why the particular crime is a gender-based crime, if the defendant is found guilty of committing the crime for a gender-based motive as an aggravating circumstance of his guilt.
- ▶ When hearing jealousy crimes committed against women, consider whether jealousy is to be treated as a gender motive;
- ▶ For the sake of establishing a uniform court practice, the Supreme Court to develop a comprehensive definition of a gender-based crime;
- ▶ Courts to start invoking Article 53<sup>1</sup> of the Criminal Code more actively, in particular, use the gender element envisaged by that provision for adding one additional year to the minimum sentence prescribed for the conduct, if “gender” is not a constituent element of the crime for which the charges are filed;





- ▶ In selecting pretrial restraint measures to be imposed on a defendant in cases concerning violence cases, violence against women or the breaching of terms and conditions of a deterrent warrant, courts to ascertain the risks of continuation of the crime or reoffending on a case-by-case basis. The fact that a person is charged with a less serious crime must not, ipso facto, without looking into the specific circumstances of the case, serve as a basis for application of a bail or other non-custodial measure;
- ▶ In their case dismissing judgments, courts to provide, as much as possible, a detailed description of the facts of the case and the name of the a victim.

## ADDENDUM 1: STATISTICS PROVIDED BY THE PROSECUTOR-GENERAL'S OFFICE

As per the information provided by the Prosecutor General's Office,<sup>131</sup> in 2021, 9 women were **killed** in **domestic crime incidents**. In 6 of these cases, criminal prosecution were initiated against 5 individuals under Articles 11<sup>1</sup> and 109 of the Criminal Code,<sup>132</sup> in 1 case the perpetrator committed a suicide, and in 2 cases no perpetrator was identified at the material time. Gender intolerance motive was registered in 1 of these cases. All of the cases were investigated by the Ministry of Internal Affairs.

Here are ages of the victims: 3 women were 18 to 30 years old; 1 woman was 30 to 40 years old, 1 woman was between 40 and 50, 2 women were between 50 and 60, 1 woman between 60 and 70, and 1 woman was over 70 years old.

The geography of the crimes committed has been as follows: 2 offenses were committed in Tbilisi, 2 in Kakheti (2 women in 1 case), 3 offenses in Kvemo Kartli (3 women in 2 cases), 1 offense in Samegrelo-Upper Svaneti and 1 offense in Achara.

When it comes to how victims related to perpetrators, a husband killed his wife in 3 cases, a former husband killed his former wife in 1 case, a son killed his mother in 1 case, a grandchild killed his/her grandmother in 2 cases, and in 2 cases, the relationship between a defendant and a victim remained unascertained at the moment.

8 women and 1 transgender woman were killed for **"other motive"** in 2021. All of these cases were investigated by the Ministry of Internal Affairs. Of the total of 9 cases, criminal prosecution was initiated in 7 cases against 7 individuals; in 1 case, the perpetrator remained unidentified at the relevant stage, and in 1 case the perpetrator committed suicide. Criminal prosecution started under Article 108 against 6 of these persons and under Article 109 against 1 person. The gender intolerance motive was formally identified in one case.

Victims' age was as follows: 2 women were aged between 18 and 30, 3 women were 30 to 40 years old, 1 woman was 50 to 60 years old, 2 women were aged between 60 and 70, and 1 woman was over 70.

The crime geography looks as follows: 5 offenses were committed in Tbilisi, 2 in Kakheti, 1 in Achara and 1 in Samtskhe-Javakheti.

This is how defendants related to their victims: in 4 cases, the killing was committed by a victim's acquaintance, in 3 cases by a stranger, in 1 case by a sexual partner and in 1 case the relationship between the defendant and the victim was unascertained at the moment.

We will now provide statistics on attempted killings of women. In 2021, 6 **attempted killings** were committed against 6 individuals as a matter of **domestic crime**. Criminal prosecution started against all of the 6 individuals under Articles 11<sup>1</sup>, 19 and 109 of the Criminal Code.<sup>133</sup> Gender intolerance was formally registered as a crime motive in 3 cases. All the cases were investigated by the Ministry of Internal Affairs.

Victims' ages were: 1 woman was between 30 and 40 years old, 1 woman was between 40 and 50, 2 women were aged between 50 and 60, 1 woman was 60 to 70 years old and 1 woman was over 70 years old.

131 Letter from the Prosecutor-General's Office no. 13/4275 dated 28.01.2022

132 One of these persons committed 1 killing of a woman and 1 attempted killing of a woman.

133 One of these individuals committed 1 killing of a woman and 1 attempted killing of a woman.



Geographical distribution of the crimes was the following: 1 crime occurred in Tbilisi, 1 in Shida Kartli, 1 in Kvemo Kartli, 1 in Samegrelo-Upper Svaneti, and 2 in Samtskhe-Javakheti.

Relationship between defendants and victims was the following: the attempted killings were committed by a husband against a wife in 1 case, by a son against his mother in 1 case, by a father-in-law against his daughter-in-law in 1 case, by a son-in-law against his mother-in-law, by a formerly son-in-law against his formerly mother-in-law, and by one member of a household against another in 1 case.

In 2021, 9 persons attempted killing 11 women and 1 transgender woman for **“other motive”**. All of these cases were investigated by the Ministry of Internal Affairs. Of these 11 cases, criminal prosecution started against 6 persons under Articles 19 and 108 of the Criminal Code and against 3 persons under Articles 19 and 109. The gender-based intolerance as a motive was formally registered in 1 case; in 2 other cases, the crimes were committed with the motive of gender-based intolerance by association.

Victims of these crimes were aged 18 to 30 (3 women), 30 to 40 (2 women), 40 to 50 (4 women), 50 to 60 (2 women) and 60 to 70 (1 woman).

Geography of the above-mentioned crimes was the following: 6 of them were committed in Tbilisi, 1 in Achara, 2 in Shida Kartli, 1 in Kakheti and 2 in Samtskhe-Javakheti.

As for the type of relationship between the defendants and the victims, in 7 cases attempted killing was committed by an acquaintance, in 1 case by a sexual partner and in 4 cases by a stranger.

In 2021, as part of **a domestic crime**, 10 individuals were prosecuted under Articles 11<sup>1</sup> and 115 of the Criminal Code for the crime of **“causing to commit suicide”** committed against 10 women. Gender-based intolerance as a crime motive was identified in 5 cases. Gender-based and religious intolerance motives were identified in 1 case. All of these crimes were investigated by the Ministry of Internal Affairs through its relevant departments.

Age distribution of victims of these crimes was the following: 1 woman was under 18, 5 women were between 18 and 30 years old, 3 women were aged between 30 and 40, and 1 woman was over 70 years old.

The crime geography was as follows: 3 of the crimes were committed in Tbilisi, 2 in Samegrelo-Upper Svaneti, 1 in Kvemo Kartli, 1 in the Western Georgia and 1 in Samtskhe-Javakheti.

In terms of the relationship between the defendants and victims, the causing of a person to attempt suicide was committed by husbands in 5 cases, by fathers in 3 cases, and by members of a household against another member in 2 cases.

In 2021, criminal prosecution started against 5 individuals under Article 115 of the Criminal Code for **“causing to attempt suicide”** (three women victims, one in each case) and for **“causing to commit suicide”** (two women victims, one in each case) for **“other motive”**. In 1 case, criminal prosecution was terminated because the death of the defendant. Gender-based intolerance was identified as crime motive in 2 cases. All of these crimes were investigated by the Ministry of Internal Affairs.

Victims' age distribution was as follows: 3 women were aged under 18 and 2 women were between 18 and 30 years old.

As for the geography of the crimes, 1 crime was committed in Tbilisi, 3 in Achara and 1 in the western Georgia.

As for defendant-victim relationship, “causing to attempt suicide” or “causing to commit suicide” were committed by a sexual partner in 4 cases and by an acquaintance in 1 case.

**Deliberately inflicting serious bodily injury resulting in the death of the victim** was committed as part of domestic crime against 2 women in 2021. Of these cases, criminal prosecution started in 1 case against 1 person under Articles 11<sup>1</sup> and 117(4) of the Criminal Code. In 1 case, the perpetrator was younger than the age of criminal responsibility in Georgia.

Victims of these crimes were aged as follows: 1 woman was less than 18 years old, and 1 woman was aged between 30 and 40. As for the crime geography, 1 case occurred in Kvemo Kartli and 1 in Kakheti.

In terms of defendant-victim relationship, in 1 case the offense was committed by a husband against his wife and in 1 case by a brother against his sister.



