

JUDGMENTS OF 2014 FEMICIDE CASES IN GEORGIA



Koninkrijk der Nederlanden



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OF 2014 FEMICIDE CASES
IN GEORGIA**

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I. INTRODUCTION

Femicide – the gender related killing of a woman – attracted the particular attention of the State, media and society in 2014. According to data from the Chief Prosecutor’s Office of Georgia, 34 women were murdered in 2014, 17 out of which were the victims of domestic crimes.¹

Femicide is a murder, the victim of which is a woman and which occurs based on reasons related to gender. Femicide is a gender crime that is a part of the general context of structural inequality, subordination and violence against women. Spouses or former spouses commit the majority of femicides in Georgia – accordingly, domestic femicide is one of the main manifestations of this crime.

International human rights law recognizes violence against women as a form of discrimination against women². According to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (*hereinafter* the Istanbul convention), “violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women... the structural nature of violence against women [is]gender-based violence, and ...violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”³. Femicide is the extreme manifestation of gender-based violence and discrimination.

In its Concluding Observations of 2014, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed particular concern about the increased number of women killed by their husbands/partners, urging the authorities of Georgia to take measures to prevent the growing number of murders of women

¹ Letter of the Chief Prosecutor’s Office of Georgia of February 9, 2016, N13/7801.

² United Nations Committee on the Elimination of Discrimination against Women, General Recommendation N19, 1992, para. 1; *see also* Convention on preventing and combating violence against women and domestic violence (*hereinafter* Istanbul convention), Istanbul, 11.05.2011, Article 3(a); *Opuz v. Turkey*, App. N33401/02, European Court of Human Rights, 09.06.2009, para. 200.

³ Istanbul Convention, Preamble.

and other forms of domestic violence.⁴

The legislation of Georgia does not recognize femicide as a separate crime. All cases of killings of women are investigated and punished under the general context of crimes against human beings. No separate statistics are collected on the killings of women based on their gender.⁵

Effective investigation and punishment of femicide, and applying a gender perspective in criminal proceedings, is vital for achieving adequate recognition of the gravity and scale of gender-based killings of women, restoring justice, preventing repetition of femicide and ensuring transformative equality for women⁶.

The aim of the study is to evaluate the response of the prosecution and judicial bodies to femicides committed in Georgia in 2014, through analysing court judgments. This is the first legal study of its kind prepared in Georgia.

The study reviews international experience on legal issues of femicide and conducts analysis of the judgements of the first instance courts of Georgia on femicides committed in 2014. It examines the issues of identifying the motive of the crimes, classification of the crimes and proportionality of sentences imposed on perpetrators, as well as the role of the prosecution and the courts in preventing, investigating and punishing femicide.

The study was prepared in the framework of the project “Raising Public Awareness and Monitoring State Action to Combat Gender Based

⁴ Committee on the Elimination of Discrimination against Women, Concluding Observations on 4th and 5th reports of Georgia. July 24, 2014, CEDAW/C/GEO/CO/4-5, para.20, 21 and 42. See the link: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGEO%2fCO%2f4-5&Lang=en

⁵ The statistics are collected on those crimes committed against women that are qualified with Article 11¹ (domestic crime). The crimes that are not domestic, but are committed on the basis of gender, are not registered separately. Additionally, domestic crimes committed against women do not automatically imply crimes committed with the motive of discrimination based on gender - though these crimes are still not registered separately.

⁶ Transformative equality is a form of equality, through which existing gender roles and hierarchies are transformed in order to eliminate subordination of women in the society. See The UN Convention on the Elimination of All Forms of Discrimination against Women, A Commentary, editors: Marsha A. Freeman, Christine Chinkin, Beate Rudolf. Oxford University Press, 2012. p. 54-55.

Killings in Georgia” financed by the Embassy of Netherlands and the Embassy of Great Britain.

Methodology:

The study incorporates the judgements of first instance courts, delivered throughout 2014 and 2015, on femicides committed from January 1, 2014 to December 31, 2014. **Twelve judgements of conviction** were obtained from the courts as public information, delivered on crimes under articles 108 (Murder), 109 (Murder under aggravating circumstances), 117.2 (Intentional infliction of grave injury that caused death) and 115 (Incitement to suicide) of the Criminal Code of Georgia (CCG).

As the aim of the study is to assess the response of the courts to femicides, the study analyses only the cases that were brought as criminal proceedings in the courts and that had been adjudicated at the time of completion of the study⁷. Accordingly, the study cannot cover three possible acts of incitement to suicide of 2014 that are still being investigated⁸. In addition, the study does not cover the crimes of femicide that were not referred to the court, as the offender had committed suicide. Lastly, the study does not analyse the judgement delivered on the murder of a transgender woman committed in 2014, as, due to the specificity of implied transphobic crime, a different analytical approach is required.

While the study focuses on the judgements in femicide cases only, the study does not cover those murders of women that are not related to gender (e.g. the murder of a woman during aggravated robbery, or due to unsettled debt).

In its analysis of femicide judgments, together with the theoretical discussion of criminal legislation of Georgia, the study draws on the reports of the UN Special Rapporteur on Violence against Women, the Committee on the Elimination of Discrimination against Women, case

⁷ The aim of the study is to examine how femicide cases are brought to justice only through analysing the texts of the court judgements – the study does not envisage reviewing criminal case materials used in investigation and prosecution. Researcher has no access on this kind of information in accordance with Georgian criminal legislation. Despite this, the aims of the research can be reached based on the information included in the judgements delivered by the courts.

⁸ The information describes the situation of January 2016.

law of the European Court of Human Rights and the Inter-American Court of Human Rights, as well as scholarly articles. In addition, guidelines of the Latin American Model Protocol on investigation of femicide and feminist methods used in the judgements of the Inter-American Court are applied in the analysis.

II. FEMICIDE LEGAL ISSUES – INTERNATIONAL EXPERIENCE

A. Femicide - gender related killing of a woman

There is no recognized definition of femicide, as the term and the crime. There are different approaches on normative-sociological content and elements of the crime of femicide in social and political sciences and domestic legislations of the states.

The term “femicide” was introduced during the 1970s feminist movement to conceptualize the phenomenon of the killings of women and to combat the fatal violence against women⁹. According to the feminist sociologist Diana Russel¹⁰, **femicide is killing of a woman conditioned by sexism and “motivated by a sense of entitlement to or superiority over women, by pleasure or sadistic desires toward them, or by an assumption of ownership of women.”**¹¹ “Femicide” is an alternative to the neutral term “homicide” with the political objective of recognizing and uncovering discrimination, oppression, inequality, and systematic violence against women that in its most extreme form culminates in the deprivation of life of a woman.¹²

Unlike femicide, the term “feminicide” that was introduced by the Mexican researcher Marcela Lagarde **denounces the lack of response from the state towards the killings of women – when the state does not have the political will to investigate these crimes and to**

⁹ Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, May 23, 2012, A/HRC/20/16, para. 20, see in English: http://www.ohchr.org/Documents/Issues/Women/A.HRC.20.16_En.pdf

¹⁰ Diana Russel, and Nicole Van De Ven, eds. Crimes Against Women: Proceedings of the International Tribunal 3rd ed. Berkeley: RUSSELL PUBLICATIONS, 1990. See. The original English version link: http://www.dianarussell.com/f/Crimes_Against_Women_Tribunal.pdf

¹¹ Diana E. H. Russel, and Roberta A. Harmes. Femicide in Global Perspective. New York: Teachers College, 2001. Print. p. 77-78

¹² *ibid*

bring perpetrators to justice.¹³ Accordingly, in case of femicide (as well as in some cases of femicide) the state shall be responsible for impunity of the killings of women.

Not all homicides of women are eligible to be classified as femicides. According to the Latin American Model Protocol for the Investigation of Gender-Related Killings of Women (*hereinafter* Latin American Model Protocol), femicide exists when the killing of a woman (the death of a woman) is related to her gender – **there must be specific signs that the motive of the killing, or the context of killing is related to gender-based violence or/and discrimination.**¹⁴

The legislation of Georgia does not recognize femicide as a separate crime. Accordingly, for the purposes of this research, based on the definition of femicide in the Latin American Model Protocol and taking into consideration the nature of the killings of women committed in Georgia, the following definition of femicide will be used: **femicide – gender related killing of a woman, that is, killing of a woman with the motive or in the context related to gender-based violence, discrimination or subordinate role of a woman, manifested in a sense of entitlement to or superiority over a woman, by an assumption of ownership of a woman, by a desire to control her behaviour or any other reasons related to gender, also incitement to suicide based on the abovementioned reasons.**

Femicide differs from other homicides of women committed for any other signs and reasons, or the homicide of men, by following signs: the killing is committed because of the influence of subordinate role of women in the society and social-cultural norms recognizing the superiority of men and because of the lack of disrespect for the life of women. These cultural elements make the perpetrator believe that he has sufficient determinative power over the lives and bodies of a woman to punish her, ultimately preserving the social orders of inferiority and oppression. Femicide sustains and reinforces social and cultural norms on subordination and suppression that, in the majority of cases, make the perpetrator feel reinforced in his “manhood” through such a conduct.¹⁵

¹³ Rosa-Linda Fregoso, and Cynthia Bejarano, eds. *Terrorizing Women: Femicide in the Americas*. Duke UP, 2010. Introduction.

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

¹⁵ See Latin-American Model Protocol, p. 36

B. Structural factors, categories and types of femicide

The root cause of femicide, as well as violence against women, is gender inequality, unequal distribution of power between men and women and subordinate role of a woman in the society.¹⁶ Gender based violence against women shall not be seen as an isolated case – it is the manifestation of the structural situation, as well as the social and cultural phenomenon with deep roots in the perceptions and culture of the society.¹⁷ According to the report of the UN Special Rapporteur on Violence against Women, femicide reveals “persistent penetration of a sexist culture in which institutionalized gender inequality serves as the basis for gender discrimination and helps legitimize the subordination of women and the differential treatment in terms of access to justice”¹⁸

Intersectional discrimination also influences femicide – when the committed violence is related to not only gender but also other factors – social status, race, sexual orientation, religion or ethnic origins etc.

The UN Special Rapporteur on Violence against Women identifies two categories of femicide:¹⁹ **active (direct) and passive (indirect) femicide.** **Active (direct)** femicide includes: killings of women as a result of domestic violence; killings as a result of intimate-partner violence; killings of women with misogynist motive;²⁰ honour-related killings; armed conflict-related killings; dowry-related killings;²¹ killings of women in the name of „honour”; gender identity- and sexual orientation-related killings (lesbophobic and transphobic femicide); and ethnic- and indigenous identity-related killings, etc.

¹⁶ IACHR, Situation of the Rights of Women in Ciudad Juárez, Mexico (available only on English language), OEA/Ser.L/V/II.117 Doc. 44 (March 7, 2003)

¹⁷ see. Istanbul Convention, preamble, see also CEDAW Committee report on Mexico, The Committee of Women Discrimination, in accordance with Article 8, Optional protocol UN Doc. CEDAW/C/2005/OP.8/MEXICO (27 January 2005), paragraph. 159.

¹⁸ The citation is referred in the Inter-American Model Protocol (see above), p. 14.

¹⁹ Report of the Special Rapporteur (see above) A/HRC/20/16, May 23, 2012, para. N16, available on the link: http://www.ohchr.org/Documents/Issues/Women/A.HRC.20.16_En.pdf

²⁰ Misogyny- is the hatred or dislike of women or girls. See Code, Lorraine, Encyclopaedia of Feminist Theories, 1st ed. London: Routledge. 2000, p. 346. ISBN 0-415-13274-6

²¹ The practice is widely spread in India, Pakistan, Bangladesh and Iran; this term covers the deaths of young brides who are murdered, or driven to suicide by continuous harassment and torture perpetrated by the groom’s family in an effort to extort dowry payment or an increased dowry of cash or goods. (See the Report of the Special Rapporteur on Violence against Women, 23 May 2012, A/HRC/20/16, p. 14, available at: http://www.ohchr.org/Documents/Issues/Women/A.HRC.20.16_En.pdf)

Passive (indirect) femicide includes: deaths due to poorly conducted or clandestine abortions; maternal mortality; deaths from harmful practices (e.g. female genital mutilation); deaths linked to human trafficking, drug dealing, organized crime and gang-related activities; the death of girls or women from simple neglect, through starvation or ill-treatment; and deliberate acts or omissions by the State, etc.

The following **types**²² of femicide are identified based on the international experience:

Intimate femicide: the killing of a woman by a man with whom she had an intimate (emotional or sexual) relationship. The perpetrator of the crime can be husband, ex-husband, sex partner, ex-sex partner, boyfriend, ex-boyfriend, lover, or person with whom she had a child. The crime can also be committed by a man, who murders a female friend or acquaintance that refuses to engage in an intimate relationship (emotional or sexual) with him.

Family femicide: the killing of a family member or a female relative (this also might or might not be intimate femicide).

In addition, the following types of femicide can be identified: **transphobic femicide**,²³ **lesbophobic femicide**,²⁴ **sexual femicide**,²⁵ **non-intimate femicide**,²⁶ Femicide because of **prostitution or stigmatized occupations**,²⁷ **child femicide**,²⁸ femicide because of **association/**

²² See Latin-American Model Protocol (See above), p. 15-16

²³ The killing of a transgender or transsexual woman⁵⁵ in which the perpetrator (or perpetrators) kills her because of a hate or rejection of her transsexual condition or gender identity.

²⁴ The killing of a lesbian woman in which the perpetrator (or perpetrators) kills her because of a hate or rejection of her sexual orientation.

²⁵ The killings of women that have been kidnapped, tortured, and/or raped by a man or an organized group.

²⁶ The killing of a woman by a man unknown to her and with whom the woman had no relationship. For example, a sexual assault that culminates in the murder of a woman at the hands of a stranger. This also includes a case where a neighbour kills his female neighbour without there having been any type of relationship or connection.

²⁷ The killing of a woman that works in prostitution and/or another stigmatized occupation (such as strippers, servers, masseuses, or dancers in nightclubs) by a man or several men. This includes cases in which the perpetrator (or perpetrators) assassinates a woman motivated by the hate and misogyny that the occupation of the victim generates.

²⁸ The killing of a girl under the age of 14 by a man in the context of his position of responsibility, trust, or power as an adult vis-à-vis her status as a minor.

connection,²⁹ femicide because of trafficking,³⁰ racist femicide³¹ and femicide because of female genital mutilation³². The list is not comprehensive. **These categories and types of femicide are intersectional and each killing of a women could include elements of more than one type of femicide.**

C. **The duty to prevent, investigate and punish femicide; the duty to restore violated rights and provide compensation**

1. **Femicide and *due diligence* standard**

According to international human rights law, states have the duty to ensure not only formal equality between men and women (establish legislative guarantees for equality), but also to recognize the structural inequality and discrimination that affect women. The State has to ensure substantive (equality or results) and transformative equality – to reach the condition in which gender roles and hierarchies are transformed to eradicate subordinate role of women in the society.³³

The State might be held responsible for acts of private individuals if the State fails to act with due diligence. This includes the duty to prevent, investigate and punish the crime, as well as to provide compensation to victims of femicide.³⁴ The European Court of Human Rights applied this principle in 2009 in its judgment of *Opuz v. Turkey*³⁵ and in its sub-

²⁹ The killing of a woman “in the line of fire” by a man that was killing or attempting to kill another woman. This might be the victim’s friend, relative, mother, daughter, or a female stranger that was simply in the same place at the same time when the perpetrator attacked the victim.

³⁰ The killing of women produced in the context of human trafficking.

³¹ The killing of a woman because of hate or rejection of her ethnic or racial origins or her genetic features.

³² The killing of a girl or woman as a result of the practice of genital mutilation.

³³ The UN Convention on the Elimination of All Forms of Discrimination against Women, A Commentary, editors: Marsha A. Freeman, Christine Chinkin, Beate Rudolf. Oxford University Press, 2012. p. 54-55.

³⁴ CEDAW, General Recommendation N19, Violence against women, 1992, para. No. 9, see in English language at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

³⁵ *Opuz v. Turkey*, complaint N33401/02, decision of European Court of Human Rights of June 9, 2009. Before the mentioned case the CEDAW Committee applied due diligence standard in case *Fatma Yıldırım v. Austria*, decision of October 1, 2007.

sequent cases related to violence against women. The Istanbul Convention also provides the standard of *due diligence*³⁶.

States have the obligation to take comprehensive and sustainable measures to address the root causes of violence against women as a systemic problem, to effectively investigate and punish femicide, to restore violated rights for victims and to provide compensation (reparations).³⁷

2. The duty to prevent femicide

The obligation to prevent violence against women and femicide includes the duty of states to create legal mechanisms that safeguard the rights of women and to provide guarantees for their enforcement. States shall develop a policy against femicide, implement administrative and cultural measures to prevent femicide and guarantee access to justice to women,³⁸ punish the perpetrators and compensate victims for the harm suffered - constituting the integral part of the measures to prevent femicide.³⁹

In case of femicide the state shall be held responsible if the authorities knew or ought to have known about the existence of a real and immediate risk to the life of a woman and they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk and protect the life of the woman.⁴⁰ This includes the cases, when the victim of violence, before the femicide was committed, had applied to the appropriate state authorities and requested protection, however, these authorities failed/were unable to assess the gravity of the situation and did not provide appropriate assistance to the woman. According to the Istanbul Convention, states shall ensure that the assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and, if necessary, to

³⁶ Istanbul Convention(See above), Article N5.

³⁷ Report of the UN Special Rapporteur (See above) UN Doc. A/HRC/23/49 (May 14, 2013), para. 20.

³⁸ IACHR, Access to Justice for Women Victims of Violence in the Americas (2007) (available in English language), para. 5.

³⁹ See e.g. IACtHR, Case of González et al. ("Cotton Field") v. Mexico, decision of November 16, 2009, para. 252.

⁴⁰ Opuz v. Turkey (See above), para. 129.

provide co-ordinated safety and support.⁴¹ While assessing the risk the relevant authorities should take into account that in most cases, women who are victims of violence tend to apply to relevant authorities only when the violence reaches its extreme stage.

The duty to prevent femicide includes the obligation of the state to modify, transform, and eliminate wrongful gender stereotyping.⁴²

According to Article 5 of the UN Convention on the Elimination of All Forms of Discrimination against Women, the states shall take all appropriate measures “to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices, which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for men and women“. Wrongful gender stereotypes that reinforce the subordinate role of women are the major causes of violence against women. Gender-related prejudices and practices might justify gender-based violence as a form of protection or control of women.⁴³

Gender stereotypes are sometimes reflected in legal provisions and influence the conduct of state actors in the government, as well as of private actors.⁴⁴ In the process of investigation of crimes and criminal proceedings, gender myths and prejudices, as well as cultural stereotypes may result in inaccurate assessment of the actions of the perpetrator and the victim, as well as of inaccurate evaluation of the evidence. This approach may result in ignoring the important pieces of evidence that can seriously affect the outcome of criminal proceedings and the right of women to access justice.⁴⁵

According to the Inter-American Protocol, the wrongful gender stereotypes result in incomprehensive domestic and gender-based violence legislation. E.g. during the investigation and criminal proceedings the assessment of the victim’s credibility depends upon whether her behaviour was in line with gender norms; the tacit presumption is that the victim was responsible for what happened to her, either because

⁴¹ Istanbul Convention (See above), art. 51.1.

⁴² CEDAW Committee, R.K.B. vs. Turkey, UN Doc. CEDAW/C/51/D/28/2010 (April 13, 2012), para. 8.8.

⁴³ The United Nations Committee on the Elimination of Discrimination against Women, General Recommendation, No. 19, 1992. Para. 11.

⁴⁴ See K.B. vs. Turkey (See above), Un Doc. CEDAW/C/51/D/28/2010, para.8.8.

⁴⁵ See Inter-American Model Protocol (See above), p. 24, para. 61-64.

of her dress, her occupation, sexual conduct, or relationship to the aggressor; references are made to stereotypes about male or female sexuality of the victim or the perpetrator; the testimony of a man has more weight than that of a woman; previous sexual life of a woman is taken into consideration to determine the elements of the crime, or to assess its gravity, etc.⁴⁶

3. The duty to investigate and punish femicide

Investigation of cases of femicide and punishment of perpetrators is vital as femicide is not an isolated case of violence against women – it is committed within the general context of violence against women. Prompt and effective investigation of femicide and adequate punishment of perpetrators is important not only for proper administration of justice in a specific case but for the general prevention of violent crimes against women.⁴⁷

The investigation of femicide shall be conducted with gender perspective, by persons who have undertaken relevant trainings related to gender⁴⁸ and the prosecution and the courts shall conduct gender analysis. If the prosecution bodies have not undertaken relevant gender-related trainings, significant pieces of evidence might not be obtained and examined. This might lead the investigation to the wrong direction and prevent uncovering the truth in the case.⁴⁹ Additionally, the investigation of femicide is ineffective if the prosecution and judicial bodies do not consider the systemic nature of the violation and only analyse these cases as isolated crimes.⁵⁰

The Supreme Court of Mexico delivered a landmark decision on March 25, 2015, on the case of killing of Mariana Buendia by her husband (initially the murder was wrongly classified as suicide). Mariana Buendia was subjected to systematic physical, psychological and sexual violence from her husband before the killing. The Supreme Court stated that the investigation bodies had the obligation to investigate **all the**

⁴⁶ Latin-American Model Protocol (See above), p. 25.

⁴⁷ See e.g. Inter-American court of Human Rights (IACtHR), Case of González et al. (“Cotton Field”) v. Mexico (November 16, 2009), para. 293-455.

⁴⁸ See Report of the UN Special Rapporteur (See above) UN Doc. A/HRC/23/49 (May 14, 2013), para. 73. See also IACtHR, González et al. v. Mexico, (See above), para. 455;

⁴⁹ Latin-American Model Protocol (See above), p. 25-26.

⁵⁰ See González et al. (“Cotton Field”) v. Mexico (See above), para. 366

cases of killings of women with **gender perspective**, examine the possibility of **gender-based discrimination** in the case and **establish whether or not the crime was femicide**. The Supreme Court decided that the investigation did not meet the foregoing criteria and returned the case for reinvestigation.⁵¹

4. The duty to restore violated rights and provide compensation (reparations)

Victims of gender-based violence and members of the families of femicide victims are entitled to having their violated rights restored and to compensation (reparations). According to the Istanbul Convention “parties shall take the necessary legislative or other measures to ensure that victims have the right to claim compensation from perpetrators... Adequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources”.⁵²

The Inter-American Court’s practice reinforces that reparations in the femicide cases should comprise not only of material compensation, but also of symbolic recognition of the violation and suffering inflicted by the victim (symbolic redress), as well as a wide range of guarantees of non-repetition. Reparations should also aim at remedying the situation of violence and structural discrimination that is the context of the case.⁵³

According to the UN Special Rapporteur “Reparations for women cannot be just about returning them to the situation in which they were found before the individual instance of violence, but instead should strive to have a transformative potential. This implies that reparations should aspire, to the extent possible, to subvert instead of reinforce pre-existing patterns of crosscutting structural subordination, gender hierarchies, systemic marginalization and structural inequalities that may be at the root cause of the violence” against women.⁵⁴ Participa-

⁵¹ Supreme Court of Mexico, Case N 059/2015, decision of March 25, 2015. See link: <http://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=3060> [available only on Spanish language]

⁵² The Istanbul Convention (See above), art. 30.

⁵³ Case of González et al. (“Cotton Field”) v. Mexico (See above), para. 450.

⁵⁴ Report of the Special Rapporteur on violence against women, UN Doc. A/HRC/14/22 (April 22, 2010), para. 85.

tion of victims (their family members), and taking into account their views on the purposes of justice and on the restoration of justice in this process has paramount importance.

III. FEMICIDE IN THE GEORGIAN LEGISLATION

The Georgian legislation does not recognize the crime “femicide”. There is no specific article of CCG declaring femicide – killing/incitement to suicide of a woman related to her gender – as a separate crime. Neither are gender related killings the aggravating circumstances under the article of murder in CCG.⁵⁵ Accordingly, classification and statistics of femicide, that is separated from other crimes, is not available.

Despite femicide is not identified in the Georgian legislation as a separate crime, currently the following articles of CCG apply/might apply to investigate and punish femicide:

Murder (Article 108 of CCG); Murder under aggravating circumstances (Article 109 of CCG); Intentional murder in a state of sudden, strong emotional excitement (CCG Article 111); Intentional infliction of grave injury that caused death (Article 117.2 of CCG);⁵⁶ Incitement to suicide (Article 115 of CCG).

The above articles may apply to both femicide, and other crimes that do not contain any gender-related motive. Accordingly, the only way to identify femicide cases is to analyse all court judgments (provided the victim is a woman) delivered under the above articles and to detect femicide based on facts of the cases.

Identification of domestic femicide is relatively simple by looking at the application of Article 11¹ of CCG that defines articles of CCG specifying domestic crimes⁵⁷. Accordingly, domestic femicide (gender-relat-

⁵⁵ According article 109.2.d of CCG, committing a crime on the grounds of racial, religious, national or ethnic intolerance is considered as aggravating circumstances. Murder related to gender is not an aggravating circumstance.

⁵⁶ The crime qualified under article 117.2 of CCG is femicide only in case if the applied classification as not correct; if classification were correct then article 108 of CCG (murder) or article 109 of CCG (murder under aggravating circumstances) would have been applied CCG.

⁵⁷ For the purposes of this article, the following persons shall be considered as family members: a spouse, mother, father, grandfather, grandmother, child (stepchild), foster child, adopting parent, adopting parent’s spouse, adoptee, foster family (foster mother, foster father), guardian, grandchild, sister, brother, parents of the spouse, son-in-law,

ed killing of a wife or an ex-wife) could be detected if the above articles are applied together with Article 11¹ of CCG.

It is noteworthy that not **all homicides** of women committed in the family by husband/ex-husband (whereas article 11¹ applies) are eligible to be classified as femicides. A murder shall be qualified as femicide only if it is gender-related - that is the perpetrator had a gender-related motive while committing the crime. Additionally, **femicide is not the killing of a woman committed in the family (by a husband/ex-husband) only. Femicide is a gender-related killing of a woman (whether committed in or outside the family), that is, killing of a woman with the motive or in the context related to gender-based violence, discrimination or subordinate role of a woman, manifested in a sense of entitlement to or superiority over a woman, by an assumption of ownership of a woman, by a desire to control her behaviour or any other reasons related to gender, also incitement to suicide** (article 115 of CCG) **based on these reasons.** Yet, femicide is observed in the majority of cases related to the killing of wives/ex-wives by their husbands/ex-husbands (whereas article 11¹ of CCG was applied) - the circumstances reveal that the case is femicide.

The minimum sanction for murder (article 108 of CCG) is imprisonment for a term of 7 years, and the maximum - 15 years. When a murder is committed under aggravating circumstances, e.g. repeatedly, with particular cruelty, of a pregnant woman knowingly by the offender etc.⁵⁸ (article 109 of CCG), the imposed sanction could be imprisonment for a term of minimum 11 years up to life imprisonment taking into account the nature and peculiarity of aggravating circumstances. The sanction for incitement to suicide (article 115 of CCG) may be restriction of liberty for 3 years or imprisonment for a term of two to

daughter-in-law, former spouse, also persons who maintain or maintained a common household.

⁵⁸ The Article 109 considers the following aggravating circumstances: murder: related to hostage taking; in a manner that intentionally endangers the life or health of other persons; aimed at concealing or facilitating any other crime, of a pregnant woman knowingly by the offender; of a minor or a helpless person knowingly by the offender; with hooligan motives; due to racial, religious, national or ethnic intolerance; by more than one person, of two or more persons; with particular cruelty; for mercenary purposes or by contract; aimed at transplanting or otherwise using an organ, part of an organ or tissue of the victim's body; repeatedly (except for the murders provided for by Articles 110-114 of this Code), related to the official duties or public duties of the victim or of the victim's close relative,

four years. Intentional infliction of grave injury that caused death (article 117.2 of CCG) is punished with imprisonment for a term of 4 to 7 years. If the murder was committed in a state of sudden, strong emotional excitement (sudden, strong emotional excitement, article 111 of CCG), the perpetrator shall be punished by restriction of liberty for up to 3 years or by imprisonment for a term of one to 3 years. Article 11¹ carries the function of generating statistics of domestic crimes and is not designed to affect the type and extent of the sentence.

According to the above, if the classification of femicide is not correct – e.g. a murder was committed (article 108 of CCG) and the act is classified as an intentional infliction of grave injury that caused death (article 117.2 of CCG), the maximum imposed sanction may be imprisonment for a term of 7 years, whereas the maximum sanction under article 108 of CCG is imprisonment for a term of 15 years.

Additionally, under CCG some discriminatory motives can be considered as an aggravating circumstance – the murder committed due to racial, religious, national or ethnic intolerance (article 109.2 of CCG), which is punished more severely than the murder committed without aggravating circumstances. The sentence for the former is imprisonment for a term of 13 to 17 years (unlike the article 108 that prescribes imprisonment for a term of 7 to 15 years). However, this article only envisages discrimination based on the mentioned motives and does not consider sex/gender based discrimination that is an integral part of femicide. Accordingly, gender related murder cannot be classified under Article 109 of CCG in the absence of the other aggravating circumstances (not related to gender), which are included in the article.

It is noteworthy that according to Article 53.3¹ of CCG the existence of gender-related discrimination aggravates the classification of a crime and these circumstances should be taken into account by courts while defining sanction. This article provides: *commission of a crime on the grounds of race, colour, language, sex, sexual orientation, gender identity, age, religion, political or other beliefs, disability, citizenship, national, ethnic or social origin, material status or rank, place of residence or other discriminatory grounds shall constitute an aggravating circumstance for all the relevant crimes provided for by this Code.*

Therefore, under the existing criminal legislation the most relevant (but insufficient) tool to classify and identify the femicide is the application of Article 53.3¹ together with the relevant article of CCG. This article may be applied if an article or a part of an article used for classi-

fication of a crime does not provide for discrimination as an aggravating circumstance.⁵⁹ However, in practice Georgian courts have never applied article 53.3¹ to crimes related to discrimination against women or against other persons.⁶⁰ Accordingly, if, based on Article 53.3¹ of CCG, Georgian courts aggravate the imposed sanctions, there will be a greater possibility to recognize femicide as a gender based crime against women, to develop statistics on this crime and to apply adequate sanctions to perpetrators.

IV. THE ROLE OF THE PROSECUTION AND THE COURTS IN FEMICIDE CASES

According to the criminal procedural legislation of Georgia, investigation shall be conducted “thoroughly, fully and impartially”⁶¹ The Prosecutor’s Office, being the prosecuting authority, leads the investigation process and bears the burden of proof for the prosecution in judicial proceedings.⁶²

The criminal proceedings are conducted based on principles of adversarial trial.⁶³ The court is obliged to provide the parties with equal opportunities to protect their rights and lawful interests without giving preference to either of them.⁶⁴ “In this model there is a perception that judges should be neutral and passive. The adversarial proceedings are based on the belief that well-trained and interested parties will provide the court with sufficient information and arguments, and the main purpose of the judge is to provide such opportunities to the parties.”⁶⁵ Accordingly, when analysing the activities of the prosecution and judicial authorities related to femicide, the extremely limited role of the judge needs to be taken into account.

⁵⁹ Article 53.4 of CCG .

⁶⁰ Information obtained from common courts of Georgia as of December 2015.

⁶¹ Criminal Procedure Code of Georgia, Article 37.2.

⁶² Criminal Procedure Code of Georgia Article 32 and 33.

⁶³ Criminal Procedure Code of Georgia Article 9 and 25.

⁶⁴ Criminal Procedure Code of Georgia, Article 25.1.

⁶⁵ Constitutional Motion of the Supreme Court of Georgia concerning the constitutionality of article 306.4 of CCG and Constitutional Motion of the Supreme Court of Georgia concerning the constitutionality article 297.g of CCG, Decision of the Constitutional Court of Georgia №3/1/608,609, II-15.

Collection and presentation of evidence related to the crime is the duty of the prosecution. The court is prohibited from independently obtaining and examining evidence that proves the guilt or supports the defence. The collection and presentation of evidence is the responsibility of the parties. In exceptional cases, a judge may, after obtaining consent of the parties, ask clarifying questions if so required for ensuring a fair trial.⁶⁶

Based on the above, the prosecution carries the duty to present the court all the important information related to the circumstances of the alleged crime. This equally applies to the circumstances qualifying the crime, aggravating and mitigating circumstances. E.g. the prosecution has to present the court all the evidence (through questioning the witnesses and other forms) concerning discriminative motive in cases of femicide and show the court the gender-related signs of the crime.

Only the court has the right to define the type and extent of the sanction within the scope (minimum and maximum allowed sanctions) specified in the relevant article. The prosecution is not entitled to participate in imposing penalties. The judge is the only responsible party for the imposed sanction.

The court does not hear the merits of the case when approving a plea bargain. When entering into a plea bargain, the defendant pleads guilty and agrees with the prosecutor to a sentence, to mitigation or to partial removal of charges,⁶⁷ and afterwards the plea bargain agreement shall be approved by the court.⁶⁸ The court may make amendments to a plea bargain only with the consent of the parties.⁶⁹

The judge is not obliged to approve the plea bargain agreement reached between the defendant and the prosecutor; he/she enjoys a discretionary power and delivers a decision on a plea bargain based on the law.⁷⁰ This right of courts is an important leverage for overseeing the fairness of the conditions of the plea bargain and for preventing its abuse. Accordingly, based on the public interest, the court is entitled to reject a plea bargain that prescribes an inadequate sentence for the defendant.

⁶⁶ Criminal Procedure Code of Georgia, Article 25.2

⁶⁷ Criminal Procedure Code of Georgia, Article 209.1.

⁶⁸ Criminal Procedure Code of Georgia, Article 212.1.

⁶⁹ Criminal Procedure Code of Georgia, art. 213.6.

⁷⁰ Criminal Procedure Code of Georgia, art. 212.5.

When conducting the investigation, in case of alleged discrimination motive, the representatives of the Ministry of the Internal Affairs have to apply Article 53.3⁷¹ of CCG that provides for crimes committed on discriminatory grounds.⁷¹ No such instruction is in place for the prosecutors.⁷² Despite this, the prosecution is obliged to collect and present the court all the evidence indicating the gender-related signs of the crime and the discrimination based on sex. If, in the presence of gender-related signs of the crime, the investigative body does not present all the relevant evidence and information to the court on these signs, the duty to conduct the investigation thoroughly, fully and impartially is violated.

The court has the duty to adequately evaluate all the presented evidence and to aggravate the sentence for gender related crimes. On the other hand, if the prosecution fails to submit evidence of gender-related motive in the crimes, the court does not have the power to investigate the motive of the crime and examine the possible signs of discrimination.

As regards the classification of the crime, the judge does not have the authority to change this classification to a graver than the one presented by the prosecution. E.g. if femicide is classified by the Prosecutor's Office as an intentional infliction of grave injury that caused death (article 117.2 of CCG), the court cannot influence this classification and is unable to deliver the judgement stating that the murder was committed (Article 108 CCG). The judge is only authorized to change the charges in favour of the defendant.⁷³

The judgement of the court shall be lawful, substantiated and fair.⁷⁴ A court judgement is considered reasoned if it is based on the body of incontrovertible evidence that has been examined during the court hearing. A court judgement is considered fair if the sentence imposed

⁷¹ Indication of the Minister of the Internal Affairs of Georgia N47, on prevention of discrimination and implementation of effective response measures to crimes on the grounds of discrimination by units of Ministry of Internal Affairs, 23.12.2014.

⁷² Information obtained from the Chief Prosecutor's Office as of November 24, 2015. Based on the letter N13/1285 of the January 8, 2016, of the Chief Prosecutor of Georgia, the Chief Prosecutor's Office of Georgia does not keep the statistic records regarding the issue provided in article 53.3¹ of CCG.

⁷³ Article 273.1 of Criminal Procedure Code of Georgia; guidelines regarding sentence form, validity and stylistic accuracy (the Supreme Court of Georgia), 2015, p. 108.

⁷⁴ Criminal Procedure Code of Georgia, Article 19.1

corresponds to the personality of the convicted person and to the gravity of the crime he/she has committed.⁷⁵

Accordingly, in cases of femicide, the prosecution, as well as the courts have significant responsibility within their authority for ensuring fair proceedings. Failure of the persecution and judicial authorities to give adequate evaluation to cases of gender-related murders/incitements to suicide contradicts the principle of the rule of law, undermines the belief of women victims of violence and of their family members in the law enforcement and judicial authorities, and maintains gender-based discrimination and subordination in the society.

V. ANALYSIS OF THE COURT JUDGEMENTS DELIVERED ON THE FEMICIDES COMMITTED IN 2014

A. Main tendencies of the judgements delivered on femicides committed in 2014

This study analyses 12 judgements on femicides delivered by the first instance courts of Georgia. 5 judgements were delivered by the Tbilisi City Court, 3 – by the Telavi District Court, 1 – by the Rustavi and 1 by the Kutaisi City Court, 1 – by the Ozurgeti and 1 by the Khelvachauri District Court. In each case, the date of the commission of the crime is 2014.

In 7 cases the perpetrator was the victim's husband, in 3 cases – the ex-husband, in 1 case – the victim's intimate partner and in 1 case – the potential ex-intimate partner. Accordingly, in 10 cases the crime was intimate and domestic femicide, as the perpetrator was the victim's husband or ex-husband. 2 cases constitute intimate femicides as the offenders are not husbands/ex-husbands of the victim. They were in an intimate relation with the victims.

7 cases were classified as a murder (Article 108 of CCG), 1 case – as a murder under aggravating circumstances (Article 109.3 - repeatedly), 3 cases – as an intentional infliction of grave injury that caused death (Articles 117.2 and 117.8 of CCG) and 1 case – as an incitement to suicide (Article 115 of CCG).

The motive of the crime was identified only in 5 cases – in 2 cases the motive of the crime was jealousy and in 3 cases – revenge caused by

⁷⁵ Criminal Procedure Code of Georgia, Article 259.

jealousy, “unhealthy lifestyle”⁷⁶ of the victim and dispute. In the remaining 7 cases the court judgements do not examine the motive at all. The reader can identify the motive of the crime only based on the circumstances described in the judgement. In plea bargain agreements the judgements do not provide sufficient information to identify the motive of the crime.

In two cases of femicide the perpetrators were the employees of the law-enforcement bodies and were authorized to carry a service weapon, with which they committed the crime. In one case the convicted person is a chief inspector of the security division of special forces of investigation services of the Ministry of Finance of Georgia and the latter is an inspector-investigator of Zestaponi Regional Division of the Ministry of Internal Affairs of Georgia. In 1 case the perpetrator was not authorized to carry the weapon that he attempted to commit the crime with. Because this weapon did not fire, he hit his wife with a car. In 5 cases the weapon of the crime was a kitchen knife, in 1 case – an axe, in 1 case – the floor mop, in 1 case the offender beat his wife to death, and in 1 case of incitement to suicide the crime was committed as a result of sending humiliating text messages.

In 3 cases the place of femicide was a public place (park, field, street), in the other 9 cases – the residence of the victim.

When committing femicide, 4 perpetrators had a previous conviction.

One of the offenders was suffering from diminished capacity, while another – after committing the crime, developed mental disorder in the isolation. Other perpetrators were sane.

The court conducted hearings on the merits for 9 cases of femicide; in 3 cases a plea bargain agreement was concluded – the accused pleaded guilty. In 1 case out of the mentioned 3, the perpetrator was convicted for attempted murder before committing femicide. In the other case the agreement on plea bargain was concluded for incitement to suicide.

The minimum type and extent of the actual sentence for femicide was fine with an amount of 2000 GEL (imprisonment for a term of four years was imposed as a conditional sentence. The case was related to incitement to suicide); the maximum imposed sanction was imprisonment for a term of 15 years (this was a sanction imposed on the previously convicted person based on a plea bargain agreement).

⁷⁶ Judgment of the Rustavi City Court dated 7 May 2015, case # 1-252-14.

In 2 cases, due to mental illness, the defendant was imposed to serve a sentence in the B. Naneishvili National Centre of Mental Health until recovery, while sanctions in all other cases were served, according to the general rules, in the penitentiary institution.

B. Analysis of the motive of femicide

The major difference between femicide and other crimes against life is the identity of the victim and the perpetrator and the motive of the crime. Killings of women by men might be qualified as femicide, if the motive of the crime is related to the general context of gender-based violence or discrimination. The motive of femicide is also related to the offender's perception of a woman as a subordinate object who must obey with a dominating and prevailing man.⁷⁷

Article 273.1 of the Criminal Procedure Code of Georgia specifies that the descriptive-reasoning part of a judgement of conviction shall include a description of the criminal act the commission of which was established by the court. In addition, the judgement shall indicate the place of the commission of the crime, the time and manner, as well as the form of guilt, **motive**, purpose and consequences of the crime. Thus, establishment of a motive is one of major responsibilities of a judge in criminal proceedings and noncompliance to this requirement may cast doubts on the legality and reasonableness of the judgement.

The motive of the crime is identified in only 5 out of the 12 judgements analysed for this research. In 2 cases the motive of the crime was jealousy, while in 3 – revenge based on jealousy, revenge for an “unhealthy life-style of the victim” and revenge based on dispute.

Despite the fact that in the analysed 12 judgments gender-based motive was not identified, the factual circumstances of crimes described in the judgments ascertain the existence of such a motive that resulted in the killings of women.

Notwithstanding to the fact whether the victim and the batterer were married or the marriage had come to an end, the perpetrator acted with discrimination and a sense of entitlement to the victim, controlled her behaviour and required her to obey fully to gender roles. The non-obedience by the victim and contradiction to the aforementioned requirements were the reason/motive of the crime, as the analysis of the judgments reveal.

⁷⁷ See Inter-American Model Protocol (see above), p. 35.

According to the judgment of the Tbilisi City Court dated 23 January 2015,⁷⁸ the victim and the perpetrator divorced as the husband was “rude, jealous and they often had disputes over regular issues”. The offender categorically demanded to reconcile and once tried to drown his wife in the Tbilisi Sea and threatened to kill her with his firearm. In this case, the court established that the offender was a violent husband, however the Court concluded that the motive of the crime was jealousy and did not in addition discuss the motive of discrimination, while looking over the existing evidence.⁷⁹

According to the judgment of the Rustavi City Court dated 7 May 2014, the spouses divorced as the husband suspected that the wife led “unhealthy style of life” (the judgement does not clarify what “unhealthy style of life” means). The perpetrator who felt offended by the behaviour of his ex-wife decided to revenge.⁸⁰ The court stated that the motive of the crime was revenge for “unhealthy style of life”; however, the court does not discuss the specific indications of a gender-related motive and does not analyse discriminatory prejudice.

The judgement of the Kutaisi City Court dated 7 April 2015 also describes the control of the ex-wife, discriminatory prejudices and ownership assumptions of the perpetrator. The domestic conflicts were caused by jealousy of the offender, his desire to control the woman’s behaviour, the woman’s relations with other people (including after divorce), problems related to seeing the child, payment of alimony, and “lies and improper life-style” of the ex-wife. During the court proceedings discrimination based on sex was revealed in identifying certain facts, namely, the offender warned his ex-wife that “she would not be pardoned” if “she behaved badly” (according to the circumstances of the case, “bad behaviour” meant any relations with another man). Despite this, the court did not examine the existence of the motive of discrimination, as well as any other possible motivation.⁸¹

The judgement of the Telavi District Court dated 25 June 2015 describes misogynist (hatred or intolerance towards women) femicide committed with the name of honour; according to the testimonies of

⁷⁸ The Tbilisi City Court, Case N1/4942-14, 23 January 2015.

⁷⁹ As mentioned by the mother of the victim in the documentary “2014” by Lia Jakeli, the husband prohibited his ex-wife to dance and sing that clearly indicated existence of discriminatory motive.

⁸⁰ The Rustavi City Court, Case N1-252-14, 7 May 2014.

⁸¹ The Kutaisi City Court, 17 April, 2016, case N1/797-2014.

witnesses, the offender tried to find moral justification for the crime and he was ready to carry responsibility for his behaviour. The perpetrator stated that the crime was incited by “wife’s behaviour” as she informed him “I prefer my child over you”.⁸² The circumstances of the case indicate the existence of possible misogynist motive towards the victim as manifested in the behaviour of the offender after committing the crime – in front of the village shop he was saying “I have cut the throat of my wife, come and see it”⁸³ and requested the neighbours to call the police. There was no trace of blood on the offender’s clothes; as he explained he had changed his clothes to be ready for going to the police. Despite the perceptions of the offender towards the victim, the court did not examine the motive of the crime.

According to the judgment of the Kutaisi District Court dated June 9 2015, the offender suspected that his wife was leading so called improper lifestyle and had a lover – “I tried everything to ensure that you live properly but you have a lover”, “I killed her because she was cheating”. As witnesses stated, the victim had a love affair with another man and “everybody knew about it”. The court stated that the husband killed his wife due to jealousy. The Court does not discuss whether jealousy was connected to discrimination based on sex.⁸⁴ In the same lines, the Tbilisi City Court in its judgement dated April 7 2015 only focused on the motive of jealousy in killing of an intimate partner by a man.⁸⁵

The judgement of the Tbilisi City Court dated 22 May 2015 does not identify the motive of the crime, whereas the victim and the offender had a dispute “because of somebody”⁸⁶ (the judgement does not describe the facts in details) before the murder. Likewise, the Tbilisi City Court does not consider the motive of the crime in its judgment dated 8 August 2015; in this case, on the crime scene, the offender informed the police that he witnessed how his wife was cheating on him with the landlord, he beat her and decided to kill her.⁸⁷

⁸² The Telavi District Court, 25 June 2015, case N1/305-14.

⁸³ According to the judgment, the offender said to neighbours: “I’ve cut throat of my wife like a pig”; “I’ve cut the throat of my wife, come and see it; the head and body are lying separately”.

⁸⁴ The Telavi District Court, 9 June 2015, case N1/59-15.

⁸⁵ The Tbilisi City Court, 7 April 2015.

⁸⁶ The Tbilisi City Court, 22 May 2015, case N1/6524-14.

⁸⁷ The Tbilisi City Court, 18 August 2015

The Ozurgeti District Court, in its judgment dated 26 February 2015, established that the only motive of the murder of the wife was a revenge: “hereby the court stresses the motive of the crime and identifies that the tool and means of the crime, the seriousness of the wound and the defendant’s behaviour after the crime reveal that the dominant motive of the defendant - that is the moving force of the defendant’s behaviour - was revenge, which, in this specific case was caused by the conflict between the spouses”.⁸⁸

The analysed femicide cases reveal that the prosecution and/or judicial bodies abstain from or fail to investigate or give adequate evaluation to possible motives related to discrimination during investigation and judicial proceedings. This is reflected in the relevant judicial decisions, which do not contain considerations on a possible gender-related motive. **In cases of femicide, the courts mainly refer to common motives (jealousy, revenge) that do not/should not exclude the possibility of the existence of other motives.** In most of the judgments, the motive of the crime is not identified at all. However, in many cases, the motive could rather easily be identified based on the case materials and the facts presented in the judgment.

During the investigation and judicial proceedings on the killings of women, due examination and evaluation of the motive of the crime shall be conducted, taking into account gender perspective and issues related to gender. To identify the motive of discrimination, it is necessary to analyse the offender’s attitude towards the victim and the criminal act itself during the investigation and judicial proceedings. There is a need for thoroughly investigating whether the possible discriminatory or sexist attitude, sense of ownership or gender stereotyping towards the victim had a role in provoking the crime. In this respect, the existence of more than one motive (gender-related crime accompanied by the motive of jealousy) should not be excluded; if there is more than one motive, all motives should be evaluated separately.

According to the case-law of the European Court of Human Rights, as well as the Istanbul Convention,⁸⁹ gender-based violence is a form of discrimination against women. Therefore, it is important that in cases of killings of women, the judicial and the prosecution bodies do not confine to identifying only revenge, jealousy and other related motives, and to analyse whether gender-based discrimination played a role in the case.

⁸⁸ The Ozurgeti District Court, 26 February 2015, case N050100114679410.

⁸⁹ Istanbul Convention (see above), article 3(a). Opuz v. Turkey (see above).

C. Classification of crimes of femicide

In femicide cases it is extremely important that the classification given to the crime reflects the gravity of the act committed. Classification of the crime as a less grave act than the actually committed offence ignores the right of the victim to get the full recognition of her suffering, as well as the right of women to be protected from illegal acts against them. Inaccurate classification of the crime undermines the creation of a gender-sensitive justice system that duly recognizes, classifies and punishes crimes against women.

It is noteworthy that when the prosecution does not classify the crime correctly, the court does not have the authority modify the classification to a graver crime. The court may change the classification to the crime of the same or of less gravity.⁹⁰ The foregoing is based on Article 273.1 of the Criminal Procedural Code of Georgia, which provides that “a judgement shall indicate circumstances which mitigate or aggravate liability. If the charges are found to be groundless, or if the classification of the crime is incorrect, the grounds and motives for changing the charges in favour of the accused shall also be indicated.” Accordingly, the prosecution has a decisive role in the due classification of femicide in every criminal case.

In 8 out of 12 analysed judgments of femicide the crime was classified as a murder (article 108 or 109 of CCG), in 3 cases – an intentional infliction of grave injury that caused death (article 117.2 of CCG). 1 crime was classified as an incitement to suicide (article 115 of CCG).

In its judgment dated 23 January 2015, the Tbilisi City Court established that the defendant shot his ex-wife for several times from a close distance that resulted in 4 perforating wounds in the area of hips. The victim died because of anaemia caused by the damaged hip artery. In such circumstances, it is impossible that the offender did not realize the imminent threat to the life and the real possibility of death – he at least had an eventual intention (consciously permitted or was negligent about the occurrence of these consequences) to the possible death. In addition, according to the testimonies analysed during the court proceedings, the defendant for several times threatened the victim to kill her using his firearm and tried to drown her in Tbilisi Sea. After the committed crime, he concealed himself from the scene of the

⁹⁰ Guiding principles of form, justification and text style of judgments in criminal cases (the Supreme Court of Georgia), 2015, p. 108.

crime and did not try to help the victim. Despite these facts, the prosecution and subsequently the court qualified the crime as an intentional infliction of grave injury that caused death.⁹¹

In another case, because of jealousy the defendant initially beat his intimate partner in the area of face and head; afterwards he hit her with a floor cleaning brush in head intentionally inflicting grave injury that caused her death. In this case, under the judgement of the Tbilisi City Court dated 7 April 2015,⁹² the crime was classified as an intentional infliction of grave injury that caused death (Article 117.2 of CCG). The judgment describes the factual circumstances very briefly and does not contain the justification for the applied classification. The fact that the offender caused injuries in the head of the victim with a solid object may indicate his possible attempt of murder, as most probably he could realize that this action was causing threats to life. In this case, the court had to examine more facts presented by the parties and reflect them in the judgement adequately to exclude any doubts on the incorrect classification of the crime.

The crime was classified as intentional infliction of grave injury that caused death (Article 117.2 of CCG of Georgia) also in the case where a husband hit his wife with his fists in the face and the head, and hit her face against asphalt inflicting grave injuries dangerous to life. The woman died at a hospital a month after this event. The decision of the Tbilisi City Court dated 18 August 2015 describes that the defendant told the patrol police, who came to the scene of the crime, that he had beaten his wife because she was cheating and that he wanted to kill her. In addition, the perpetrator refused to help the victim; according to the facts described in the judgement, the doctors of the emergency asked him to assist in carrying her out of the room; as a result of the request the husband got agitated, returned to the room and began to beat his wife with hands and feet yelling her to get up. If the victim had survived, she would be gravely disabled and have a very short life.⁹³

Accordingly, the following circumstances can be identified in the above case: a) the defendant intentionally inflicted injures to his wife in the head - the area that is dangerous for life; b) he declared to the police of-

⁹¹ Judgement of the Tbilisi City Court dated 23 January 2015, Case #1/4942-14, pp. 2.1.10, 3.5. As it was mentioned in Chapter IV of this research, a judge is not entitled to change charge to more grave one.

⁹² The Tbilisi City Court, 7 April 2015

⁹³ The Tbilisi City Court, 18 August 2015

ficers who appeared on the crime scene that he wanted to kill his wife; c) the defendant did not help the emergency doctors to take his wife out – on the contrary, he continued beating her. Therefore, it is completely unclear why the crime was classified as an intentional infliction of grave injury, rather than a murder.

In the above examples, the acts, at a glance, might include the signs of a premeditated murder; however, in some cases, the classification applied by the prosecution does not go beyond the intentional grave injury to health. Therefore, the prosecution and the courts need to examine the subjective part of the crimes⁹⁴ more thoroughly, identify the nature of the intent and take into account gender perspective and systemic nature of violence against women.

It is noteworthy that in one case (not related to femicide) the Supreme Court rejected the request of the applicant to change the classification of a murder to an intentional infliction of grave and noted: “even though there is no trustworthy evidence of the purpose of killing the victim, even though K.K. was acting with a motive of revenge; however as noted above the injuries were inflicted in the areas dangerous for life and K.K was aware of this, including the possibility of death... Thus this is a case of an attempted murder with eventual intention, in which the offender K.K. was aware of the nature of his action, was able to foresee the possible result of his action – death of the victim and was negligent about the occurrence of such outcome.”⁹⁵

The above analysis reveals that the classification applied by the prosecution to crimes against women has a paramount importance. This is particularly evident in cases when the prosecution applies classification that is lighter than the act actually committed. When this is the case, the judge has to either reject the charges on the basis of being ungrounded and acquit the defendant, or render a judgement of conviction within the scope of charges presented by the prosecution, despite the fact that the committed crime could be graver. The judge does not have any other alternatives in such cases.

⁹⁴ Intentional/ Circumspection attitude for the arrival of the illegal outcome; the motive and goal.

⁹⁵ Judgment of the Supreme Court of Georgia dated 24 September 2008, case #745ap-08. The same opinion is stated in the judgement of the Supreme Court of Georgia dated 24 May 2006, case # #212-ap. Even though these cases are not related to femicide it obvious that the consideration in these judgments are very important for identifying classification, including in cases related to femicide.

D. **Analysis of a prior gender/domestic violence history suffered by a victim as an aggravating circumstance**

In many cases femicide is the culmination of systematic and cyclic violence suffered by women prior to their death. Therefore, **a fundamental aspect for uncovering femicide is the analysis of the context of discrimination and of the types of violence inflicted on the victim before the killing.**⁹⁶ For this, **it is important that the courts examine the history of domestic and/or gender based violence suffered by the victim and take into account this history while defining the motive of the crime, classifying the crime and determining sanctions for the crime.**

The Istanbul Convention provides a list of aggravating circumstances that apply when crimes are committed against women, *inter alia*: a) the offence was committed against a former or current spouse or partner; b) the offence was preceded or accompanied by extreme levels of violence.⁹⁷ The Law of Georgia on Domestic Violence⁹⁸ and CCG (art. 11¹)⁹⁹ provide that violence committed by both - spouse and ex-spouse - constitutes domestic violence.

In 12 analysed judgments of femicide the courts identified domestic/gender-based violence against the victim committed by the offender, through description of facts, only in 3 cases.¹⁰⁰ In the remaining 8 cases the courts disregarded these facts/did not discuss them in the judgments.

⁹⁶ Inter-American Model Protocol (see above), p. 53.

⁹⁷ Istanbul Convention (see above), art. 46..

⁹⁸ Law of Georgia on Domestic Violence, Protection and Assistance of of Victims of Domestic Violence, article 4(g) defines "a member of a family": "for the purposes of this law mother, father, grandmother, grandfather, spouse, child (step-child), stepchild, step parent, spouse of a step parent, adopted child, foster family (foster mother and father), grandchild, sister, brother, parents in law, sister in law, brother in law, ex-spouse, persons in unregistered marriage and their family members, guardian."

⁹⁹ For this article the family members are as follows: spouse, mother, father, grandfather, grandmother, child (step-child), adopted child, step parent, spouse of a step parent, foster child, foster family (foster mother and father), guardian, grandchild, sister, brother, parents-in-law, son-in-law, sister-in-law, ex-spouse, also persons who run or used to run domestic joint family economy.

¹⁰⁰ Domestic violence was traceable in relation to victim of femicide of a lecturer at Ilia University; however, the court proceedings did not take place due to suicide by the offender.

According to the judgment of Tbilisi City Court dated 18 August 2015, the child of the deceased stated that the offender and the victim were living together in an unregistered marriage since September 2014. After one and a half month of the cohabitation, the defendant began drinking alcohol, beating his spouse and swearing. The children wanted to call the police, however the mother did not let them. The woman used to say: “Now he is angry and will calm down”. After the defendant’s request, the children moved to a friend’s house to live. They visited their mother when the defendant was not at home, as he forbade them to see her. Even though the court was aware of the history of violence in the family, these facts were not taken into account while determining the motive of the crime, the mitigating and aggravating circumstances, and the sanction.¹⁰¹

The judgment of the Rustavi City Court dated 7 May 2014¹⁰² does not mention domestic violence committed before femicide, despite the fact that the victim was systematically subjected to physical and psychological violence from the defendant. On 6 March 2014, the victim had even called the police and asked protection from violence.¹⁰³ However, the Court created a positive picture of the offender and when imposing the sanction (7 years and 6 months of imprisonment) took into account, *inter alia*, the fact that he was “characterised positively”. The reason why the facts of domestic violence were overlooked in the judgment could be that the prosecution had not presented the relevant information to the Court, or the prosecution might have referred to these facts, but the judge failed to take them into account.

According to the judgment of the Kutaisi City Court dated 17 April 2015, the victim was subjected to physical and psychological violence by her husband prior to her death.¹⁰⁴ The defendant kidnapped and married the victim who was a minor then. He and his family used to abuse the victim through physical and psychological violence during the co-habitation and divorce; he even threatened her with his service weapon that he was authorized to carry as an inspector-investigator of Zestaponi District Police Unit. Before the murder, the victim had applied to Zestaponi Police, the Prosecutor’s Office and the General Inspection of the Ministry of Internal Affairs, however, these bodies did

¹⁰¹ The Tbilisi City Court, 18 August 2015.

¹⁰² The Rustavi City Court, 7 May 2014, case # 1-252-14.

¹⁰³ Information provided by the Ministry of Interior on 20 November 2015

¹⁰⁴ The Kutaisi City Court, 17 April 2015, case N1/797-2014.

not undertake the measures prescribed by the law to protect the victim and to stop the abuser. Despite the fact that the judgment of the Koutaisi City Court describes physical and psychological violence against the victim, these circumstances are not taken into account by the court while identifying the motive of the crime (there is no reasoning on the motive in the judgment). The court does not refer to these facts as the aggravating circumstances while defining the sanction.

It is noteworthy that due to the application of GYLA in this case, in its judgment dated 24 July 2015 the Administrative Cases Chamber of Tbilisi City Court “considered it confirmed that the defendants [the Ministry of Internal Affairs of Georgia and the Chief Prosecutor’s Office of Georgia] did not adequately perform their obligations prescribed by the law, did not implement relevant measures to prevent the crime and gender-based discrimination against the victim and to protect her life.” Based on the foregoing the Court stated that the Ministry of Internal Affairs and the Chief Prosecutor’s Office were liable to moral compensation to the victim.¹⁰⁵

The judgment of Tbilisi City Court dated 23 January 2015 creates a positive precedent on the examination of domestic violence preceding the crime of femicide¹⁰⁶. The court stressed that the offender - the chief inspector of the Special Detachment of the Investigation of the Ministry of Finance of Georgia – was a violent and jealous husband. The Court describes the instances when the offender threatened to kill the victim with a gun and tried to convince her (his ex-wife) to reconcile with him with an attempt to drowning and threats. The defendant could demonstrate violence using his service gun, which he was carrying all the time. The family of the victim was aware of the defendant’s violent actions, however hesitated to inform his office.

The Court also considered that committing of a crime against a family member (article 11¹ of CCG) should be used as an aggravating circumstance while imposing the sanction. **Thus, this case was the only one out of the femicide cases committed in 2014 and discussed in this study, in which the court considered that a crime committed against a family member was an aggravating circumstance, as required by the Istanbul Convention (however, the judgment does not refer to the Convention itself).** Despite this, even in this case the court did not take into account the domestic violence

¹⁰⁵ The Tbilisi city Court, 24 July 2015, case N3/387-15.

¹⁰⁶ The Tbilisi city Court, 23 January 2015, case N1/4942-14.

history as an aggravating circumstance and based on this history the Court did not establish that the perpetrator could have acted with discriminatory motive, among other possible motives. Yet the court established that the murder was committed on the basis of revenge after dispute.

In all the remaining femicide judgements, the courts describe the circumstances of murder very briefly and do not note whether the victim was subjected to prior violence. Accordingly, **it is important that in all cases of femicide the court judgments examine the history of domestic/gender based violence suffered by the victim prior to her death and take them into account as aggravating circumstances while imposing the sanction.** The examination of domestic/gender-based violence history will simplify not only the identification of the motive of the crime and the application of the fair sanction for the offender, but will also contribute to the identification of femicide as a gender related crime.

E. Femicide committed by a law-enforcement officer as an aggravating circumstance

Commission of a crime by a state official and especially a law-enforcement officer requires specific assessment by the courts.¹⁰⁷ In the case of “Enukidze and Girgvliani vs Georgia”, the European Court of Human Rights stated: “the Court expects States to be all the more stringent when punishing their own law-enforcement officers for the commission of such serious life-endangering crimes than they are with ordinary offenders, because what is at stake is not only the issue of the individual criminal-law liability of the perpetrators but also the State’s duty to combat the sense of impunity the offenders may consider they enjoy by virtue of their very office and to maintain public confidence in and respect for the law-enforcement system.”¹⁰⁸

In the case of *Eremia and Others v The Republic of Moldova*¹⁰⁹ the European Court of Human Rights also noted that when domestic violence is committed by a police officer the victim faces greater threat. The Court

¹⁰⁷ Guiding principles of form, justification and text style of judgments in criminal cases (the Supreme Court of Georgia), 2015, p. 193.

¹⁰⁸ Enukidze and Girgvliani vs. Georgia, Application N°25091/07, Judgment of the European Court of Justice dated 26 April 2015, para. 274.

¹⁰⁹ Case of Eremia v The Republic of Moldova, application N 3564/11, Judgment of the European Court of Justice dated 28 May 2013.

considered that this was particularly disturbing since the offender was a person, whose professional duty was to protect others and prevent crime, and over whose conduct the authorities may arguably have had more influence than they would have over a private individual.¹¹⁰ However, one of the obstacles for responding to such cases of violence is demonstrated tolerance of colleagues to law-enforcement officers. Therefore, the responsibility of the State is particularly significant to uncover, and to adequately investigate and punish domestic crimes committed by law enforcement officials.

Law-enforcement officers were the perpetrators of crimes in 2 of the femicide cases. According to the judgment of the Kutaisi City Court dated 17 April 2015¹¹¹, the perpetrator was a district inspector-investigator of Zestaponi District Unit of the Ministry of Internal Affairs of Georgia. According to the judgment of Tbilisi City Court dated 23 January 2015, the crime of femicide was committed by the chief inspector of the Special Detachment of the Investigation of the Ministry of Finance of Georgia.¹¹² In both cases, their position allowed the perpetrators to carry the service gun.

According to the above judgment of Tbilisi City Court, the defendant wounded his wife and wife's brother with his service gun causing the death of the woman. Having noted the status of the offender, the Court noted: when a state representative, especially a law-enforcement officer commits a crime, it is not reasonable to use a light sanction for the purposes of proportionality of punishment. On the contrary, such officials have greater responsibility compared to other criminals, as in such cases the main issue is not just the criminal responsibility of an individual offender, but the obligation of the state to eliminate the feeling of impunity some perpetrators may hold as a result of an official position. Even more so, such cases are also important to maintain trust and respect to law-enforcement bodies in the country.¹¹³ The offender was imposed imprisonment for the term of 12 years (Intentional grave bodily injury that caused the loss of life is punished by imprisonment for a term of ten to fourteen years).¹¹⁴

¹¹⁰ *Eremia v Moldova* (see above) , para. 51 and 63.

¹¹¹ The Kutaisi City Court, 17 April 2015, case N1/797-2014.

¹¹² The Tbilisi City Court, case N1/4942-14, 23.01.2015.

¹¹³ The Tbilisi City Court, 23 January 2015, case #1/4942-14, para. 5.4.

¹¹⁴ The action was qualified under article 11¹-117.8 (Intentional infliction of grave injury to two or more persons that caused death shall be punished by imprisonment for a term

The Kutaisi City Court did not share the reasoning of Tbilisi City Court in the similar case – when the offender committed a crime using his service gun.¹¹⁵ The court only developed an abstract reasoning in its justification part of the judgment. The reasoning did not provide enough details to identify whether the status of the offender was taken into account while defining the sanction. “...the court considers that the sanction of S.Ts. should have such a form and length that will serve as a basis for his safe integration into the society in the future and will help him to comprehend the nature of the committed action, the level of threat and reprehensibility of his behaviour, the gravity of the results and finally should decrease the risk of re-occurrence of a new crime that itself will promote restoration of justice...”¹¹⁶ The court imposed 11-year imprisonment (murder is punished by imprisonment for a term from 7 to 15 years.)

Based on the aforementioned and taking into account the standards established by the European Court of Human Rights, if a public officer, especially a law enforcement official, commits a crime, particularly when the official position facilitates the commission of the crime, this fact should be considered as an aggravating circumstance and reflected in the judgment. In such cases, the decrease of imprisonment term through plea bargain agreements should be used only in exceptional circumstances.

F. Sanctions imposed by the courts for femicides

1. General rules of imposing sanctions and their importance for femicides

The sanctions imposed by the courts for femicides shall duly reflect the gravity of the crime. The type and form of the imposed sanction needs to represent a balance between the legitimate interest of the victim/victim’s family, the need for rehabilitation of the offender and the expectation of the society towards the punishment. The sanction is a means to get the court’s recognition of the gravity of the killings of women and to restore justice for the victim/her family.

of ten to fourteen years) and art. 188.1 (Negligent damage or destruction of another person’s property which has resulted in substantial damage shall be punished by a fine or corrective labour for up to a year, or with restriction of liberty for up to two years.).

¹¹⁵ The Kutaisi City Court, 17 April 2015, N1/797-2014.

¹¹⁶ *Ibid.*

Plea bargains in femicide cases shall be fair and shall not envisage only a fine or a non-custodial sentence as a sanction. Only reference to the fact that the offender cooperated with the investigation and pleaded guilty should not result in a lighter sanction, especially in cases of endemic crimes against women – violence and femicide.

While imposing a sentence, the court enjoys discretion to take into consideration “circumstances that mitigate or aggravate liability of the offender; in particular, the motive and goal of the crime, the unlawful intent demonstrated in the act, the character and degree of the breach of obligations, the modus operandi and unlawful consequence of the act, prior history of the offender, personal and financial circumstances, and conduct of the offender after the offence, in particular, the offender’s desire to compensate the damage and reconcile with the victim.”¹¹⁷ The court shall also be obliged to provide grounds for the type and extent of the sentence, the imposition of a conditional sentence, the imposition of a sentence that is less than the minimum sentence stipulated and the imposition of a more lenient sentence.¹¹⁸

The imposed sanction should serve the three goals specified in article 39.1 of CCG: restoring justice, preventing repetition of a crime and re-socialising the offender. The sanction shall always be justified – it is essential that the courts are not formalistic when imposing the sanction, which occurs rather frequently in practice.¹¹⁹

2. Sanctions imposed by courts in specific cases of femicide

The minimum sanction for crimes of femicide committed in 2014 was fine in the amount of 2000 GEL (4 years imprisonment was considered as conditional) and the maximum sanction – 15 years of imprisonment. Plea bargain was concluded in 3 cases. In 2 cases the defendants, due to mental health problems, were sanctioned to serve imprisonment in medical facility – B. Naneishvili National Centre of Mental Health (Jgoni-Kutiri) - until recovery.

¹¹⁷ CCG of Georgia, art. 53.3

¹¹⁸ Criminal Procedural Code of Georgia, art. 273.2.

¹¹⁹ Mzia Lekveishvili, Purpose of Punishment and Criminal Law and Criminological Aspects of Imposition of a Sanction, „Justice and Law“, #4(43), 26).

2.1. Circumstances that influenced imposition of sanctions

While defining the sanction, in the majority of cases, the courts only cited the requirements provided in Article 53.3 of CCG and stated that the sentence was based on these conditions. The article provides: “When imposing a sentence, the court shall take into consideration circumstances that mitigate or aggravate liability of the offender, in particular, the motive and goal of the crime, the unlawful intent demonstrated in the act, the character and degree of the breach of obligations, the modus operandi and unlawful consequence of the act, prior history of the offender, personal and financial circumstances, and conduct of the offender after the offence, in particular, the offender’s desire to indemnify the damage and reconcile with the victim.” Despite this, in femicide cases it is impossible to take into account the criteria of reconciliation with the victim and the reference to reconciliation must be irrelevant to domestic crimes in general.¹²⁰

As of mitigating and aggravating circumstances, the only aggravating circumstance the courts referred to was a previous conviction of the perpetrator for the intentional crime.¹²¹ The judgment of Tbilisi City Court dated 23 January 2015¹²² is exceptional in this regard, as the Court considered that a crime committed against the family member was an aggravating circumstance. The same judgment stated that if a law-enforcement officer commits a crime it should be taken into account as an aggravating circumstance.¹²³

Since in none of the femicide cases the motive of gender/sex related discrimination was investigated/established, discrimination was not considered as an aggravating circumstance; accordingly, there was no reference to part 3¹ of article 53 of CCG in any of these cases.

The courts considered that the mitigating circumstances were as fol-

¹²⁰ It is noteworthy that in the majority of cases “reconciliation” of a victim and an offender in case of domestic offence is considered as a basis for terminating criminal proceedings or pre-condition for imposing light sanction to an offender (analysis of 11 judgments related to domestic violence rendered by common courts of Georgia in 2014-2015).

¹²¹ The Tbilisi City Court, 7 April, 2015; The Tbilisi City Court, 22 May 2015, case N1/6524-14; The Tbilisi City Court, 18 August, 2015.

¹²² The Tbilisi City Court, 23 January 2015, case N1/4942-14.

¹²³ The Tbilisi City Court, 23 January 2015, case N1/4942-14.

lows: pleading guilty,¹²⁴ cooperation with the investigation,¹²⁵ positive characteristics¹²⁶ and non-existence of a previous conviction.¹²⁷

Sanctions imposed on the perpetrators, as stated by the courts, served the goal of their safe reintegration into the society, restoring justice, decreasing the risk of repetition of a crime and general and private prevention. In addition, the courts noted that the sanctions should help the offenders to comprehend the nature of the committed act and the illegal nature and the gravity of results.

2.2. Use of sanctions in specific cases of femicide

In some cases of femicide the courts were particularly lenient in imposing sanctions, while not examining and taking into account the aggravating circumstances. In addition, the courts referred to mitigating circumstances in a formalistic way and without due examination.

Considering the gravity and the scale of femicides, the Khelvachauri District Court proved to be extremely lenient in the case of incitement to suicide as femicide.¹²⁸ A plea bargain agreement was concluded in the case, which provided a completely inadequate sanction to the perpetrator – fine of 2000 Gel (4 years of imprisonment was considered conditional with probation).¹²⁹

The Telavi District Court, in its judgment dated 5 August 2015, also used a rather inadequate sanction based on a **plea bargain**.¹³⁰ The offender confessed in the intentional murder of his wife (Article 11¹-108 of CCG) with crushing the car after unsuccessfully shooting her. The Court considered that admitting the guilt by the defendant was a mitigating circumstance and the facts of the case did not identify any ag-

¹²⁴ The Rustavi City Court, & may 2014, case N1-252-14. The Telavi District Court, 5 August 2015, case N200100115702991; The Ozurgeti District Court, 26 February 2015; The Tbilisi City Court, 7 April 2015.

¹²⁵ The Rustavi City Court, 7 May 2014, case N1-252-14; The Ozurgeti District Court, 26 February 2015.

¹²⁶ The Rustavi City Court, 7 May 2014, case N1-252-14.

¹²⁷ *Ibid.*

¹²⁸ This article provides restriction of liberty for up to three years or by imprisonment for a term of two to four years.

¹²⁹ The Khelvachauri District Court, 29 October 2014.

¹³⁰ The Telavi District Court, 5 August 2015, case #1/16-15.

gravating circumstance. Finally, the Court imposed imprisonment for a term of 7 years, out of which 1 year was considered conditional; thus, the real sanction was 6 years of imprisonment¹³¹ (Article 108 of CCG provides imprisonment for a term of 7 to 15 years).

In its judgment dated 25 June 2015,¹³² the same court imposed the imprisonment for a term of 12 years to the offender who murdered his wife because of a possible misogynist motive¹³³ (Article 11¹-108 of CCG) and tried to give certain justification to his behaviour. The Court did not provide any examination of mitigating and aggravating circumstances. The sanction imposed in the judgment of the Telavi District Court dated 9 June 2015 was even lighter – in this case, the offender killed his wife as he considered that she was cheating and “everybody knew about it” (Article 11¹-108 of CCG). The Court imposed imprisonment for a term of **9 years**¹³⁴. It might seem that the Court was influenced by the misogynist attitude of the offender in the former and by the moral aspects of the victim in the latter and imposed a lighter sanction in the latter. However, apart from the factual circumstances described in the judgments, there is no other indication that the court was guided with this kind of deliberation.

In its judgment dated 7 May 2015¹³⁵ the Rustavi City Court imposed imprisonment for a term of 7 years and 6 months¹³⁶ to the offender who killed his ex-wife, as he was upset because of her “unhealthy life” (article 11¹-108 of CCG). The Court considered that the repentance of the offender, his cooperation with the investigation, positive characteristics and non-existence of a previous conviction were mitigating

¹³¹ The sanction for a murder (art. 108 of CCG of Georgia) is imprisonment for a term of from seven to fifteen years.

¹³² The Telavi District Court, 25 June 2015, case N1/305-14.

¹³³ After the murder I. CH. said in front of the village shop: “I have cut my wife’s throat, come and see it”. “Come, I’ve cut the throat of my wife like a pig” “I have cut my wife’s throat, the head and body are lying separately”. He asked the neighbours to call a police. I.Ch’s clothes did not have traces of blood; he explained that he got ready to go to the court. He used the right to silence; however, the court could establish that the accused tried to find a moral justification of his behaviour and stated that the reason of the murder was the words of his wife “I prefer our child over you” and was ready for responsibility. During the second examination, he pleaded guilty and said that he did not want such a result but “the wife’s behaviour forced him”.

¹³⁴ The article provides imprisonment for a term of from seven to fifteen years.

¹³⁵ The Rustavi City Court, 7 May 2014, case #1-252-14.

¹³⁶ The article provides imprisonment for a term of from seven to fifteen years.

circumstances. It is noteworthy that, as it seems, the Court did not examine the facts of domestic violence against the victim, for which the victim had even applied to the police. Therefore, the court's reasoning is ambiguous in considering that the offender was "positively characterized" and for imposing a light sanction based on this fact.

The court applied the minimum sanction – imprisonment for a term of **7 years**¹³⁷ - against the defendant who was a domestic batterer, as evidenced by witnesses.¹³⁸ The history of violence before the murder (article 11¹-108 of CCG) was not considered as an aggravating circumstance in this case either. The imposed sanction reveals that the court did not take into account the previous conviction. The judgment of the Tbilisi City court dated 18 August 2015 stated that at the time of committing the crime the offender was in a state of diminished capacity and during the isolation a temporary mental disease was developed. Therefore, the court imposed the mandatory treatment in B. Naneishvili Mental Health National Centre until the full recovery and afterwards serving the sanction according to general rules.

The Ozurgeti District Court also determined a mandatory treatment in B. Naneishvili Mental Health National Centre to the person charged with the murder of his wife (Article 11¹-108 of CCG) and imposed imprisonment¹³⁹ for a term of **9 years**¹⁴⁰. The Court established that at the time of committing the crime the offender was in a state of diminished capacity and during the isolation temporary mental disease was developed. Likewise, the Court considered that admitting the guilt and cooperating with the investigation were the mitigating circumstances.

The court was also very lenient in relation to a man, who killed his intimate partner. In its extremely brief judgment dated 7 April 2015¹⁴¹ Tbilisi City Court imposed him an imprisonment for a term of **5 years**.¹⁴² The crime was classified as the intentional serious injury to health that caused death (Article 117.2 of CCG). In addition to probable inaccurate classification and despite the previous conviction of the offender (that represents an aggravating circumstance and is indicated in the

¹³⁷ The article provides imprisonment for a term of from seven to fifteen years.

¹³⁸ The Judgement of the Tbilisi City Court dated 18 August 2015.

¹³⁹ The Ozurgeti District Court, 26 February 2015.

¹⁴⁰ The article provides imprisonment for a term of from seven to fifteen years.

¹⁴¹ The Tbilisi City Court, 07.04.2015.

¹⁴² The article provides imprisonment for a term minimum 4 years and maximum 7 years.

judgment) the court considered that “frankly admitting of the crime and repentance” were mitigating circumstances and imposed a lighter sanction.

Likewise, the Kutaisi City Court did not examine the aggravating and mitigating circumstances in its judgment dated 17 April 2015,¹⁴³ imposing imprisonment for a term of **11 years**¹⁴⁴ to a police officer who murdered his ex-wife (Article 11¹-108 of CCG). The Court did not elaborate whether the status of the offender, domestic violence preceding the murder or any other circumstances influenced the gravity of the sanction (please see more details on the judgment in Chapter E).

The highest sanction out of all femicide cases – imprisonment for a term of 15 years – was imposed in one judgement (the judgment of Tbilisi City court dated 15 September 2014). As the offender had a previous conviction, the crime was classified under Article 11¹-109.3.e of CCG – murder committed repeatedly. Unless a plea bargain entered into, the punishment for this crime would be imprisonment for a term of 16 to 20 years or life imprisonment.¹⁴⁵

The analysed court practice reveals that the classification of an offence together with Article 11¹ of CCG - does not influence the sanction, with the exception of a single case discussed above. Even more so, in some cases, it might seem that judicial and prosecution bodies tend to be softer in relation to domestic crimes.

The judgment of Tbilisi City Court dated 23 January 2015¹⁴⁶ is a positive precedent in terms of substantiating the sanction, unlike the aforementioned cases. Despite the problem of classification – the crime was classified as intentional infliction of a grave damage against one or more persons (article 117.8 of CCG) – and not as a murder, the Court stated that an offence committed against a family member (Article 11¹ of CCG) is a crime with aggravating circumstances. As noted above, it was the only case out of all analysed judgments, in which the court referred to this aggravating circumstance.

Unlike other femicide cases, in the above judgment the Court compre-

¹⁴³ The Kutaisi City Court, 17 April 2015, case N1/797-2014.

¹⁴⁴ The article provides imprisonment for a term minimum 7 years and maximum 15 years.

¹⁴⁵ According to article 55 of CCG, the court may impose a sentence that is less than the lowest limit of the measure of a sentence prescribed by the relevant article of this Code, or other, more lenient sentence, if a plea bargain is concluded between the parties.

¹⁴⁶ The Tbilisi City Court, 23 January 2015, case N1/4942-14.

hensively discussed the reasons for identification of the sanction and its goals. The Court noted that the sanction is not just the reaction of the law to a crime but in every specific case, it should be individual and adequate and has to have a clearly personal character. For comprehending the gravity and the threat of the crime, it is of a paramount importance to impose a fair sanction that is necessary and proportional with the legitimate interest of the law. Duration of a sanction and term of imprisonment represent an effective preventive measure – it gives the opportunity to the offender to contemplate the results of the offence for the victim, his/her mistakes and change the life-style.¹⁴⁷

In addition to the criteria specified in Article 54.3 of CCG, while identifying the sanction the Court took into account the suffering inflicted to the family of the victim and the impact of the crime on the society. The victim had a minor child who was experiencing moral suffering and psychological stress without his mother; the court also mentioned that the brother of the victim (who was also injured by the defendant) could not move due to the injuries at the moment of delivering the judgment. In addition, the Court noted: “even though the court and the imposed sanction cannot ensure reconciliation of the society, the sanction that is proportional to the gravity of the crime may facilitate reconciliation providing a legal response and therefore replacing the personal or public revenge with the feeling of restored justice.”¹⁴⁸

Unlike the Kutaisi City Court, the Tbilisi City Court took into account the severity of the crimes committed by public officials (see Chapter E) and imposed imprisonment for a term of 12 years for the purposes of re-socialization of the convicted person, the principle of necessity and proportionality of the sanction, also the general and private prevention.¹⁴⁹

As long as the above reasoning is an exception and does not change the overall situation, it is hard to state that the response of the courts to femicide cases is adequate. As a rule, in cases of femicide, the provided reasoning is very brief, only referring to statutory regulations without an explicit identification of the criteria that served as the basis for the type and extent of the imposed sanction.

The above analysis of the femicide judgments reveals that the fair

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*

sanction that takes into account the severity of the problem of violence against women and the purpose of restoration of justice for the victim, needs to provide as an aggravating circumstance the discriminatory motive, the gender-based/domestic violence suffered by the victim prior to her death and the fact of the commission of the crime against a family member. In all cases, the court has to give adequate evaluation to crimes committed by a law enforcement officer. A plea bargain should not provide for inadequately lenient sanction that does not meet the general goals of prevention of femicide and violence against women.

VI. CONCLUSION AND RECOMMENDATIONS

The analysis of the judgments of conviction in femicide cases reveals the deficiencies in the acts of both judiciary and prosecution in identifying the crimes as femicide, establishing the motive and classifying the crime, defining mitigating and aggravating circumstances and imposing sanctions to perpetrators. In none of the cases of femicide the gender-related motive was identified. The killings of women are either considered to be related to regular motives or the judgments do not contain any information on the motive in contrary to the procedural legislation. In some cases, femicide is qualified as a lighter crime, while the circumstances of the case provide the need for other classification. Sanctions imposed to perpetrators are sometimes unreasonably lenient.

In none of the femicide cases the courts and the prosecution bodies apply gender perspective. Justice is administered using general methods of adjudicating crimes against human beings, towards which the prosecution and the judiciary reveal incomprehensive and sometimes a loyal approach. Femicides are treated as isolated cases of violence against women and they are not analysed through the general context of gender-based violence and discrimination against women.

Except one judgment, the courts have not examined violence suffered by the victim before the killing in order to give adequate evaluation to such violence while determining sanctions. In none of the cases had these facts any impact on identifying the motive and classifying the crime. Sanctions imposed for femicide through procedural bargaining mostly fall short to reflecting the gravity of the crime, the victims' families' expectation for sanctions and the goals of justice for crimes committed against women. Taking into account the gravity and danger of crimes against women committed by law-enforcement officers, there is a need to give a special evaluation to these acts in every case.

Investigation, prosecution and punishment of femicide shall have the transformative potential – alongside the purpose of prevention of crimes and the punishment of perpetrators, the judgments of the courts shall aim for the recognition of suffering of women victims of violence, and for transforming structural inequality, discrimination, subordination and gender hierarchies, which are the root causes of violence against women and femicide. In each case, victims'/their families' views and expectations shall be given maximum consideration for justice to prevail.

Recommendations:

To the Parliament of Georgia:

- Legislative amendments in the Criminal Code of Georgia shall introduce the following aggravating circumstances: commission of a crime **the motive or context of which is related to gender-based violence against women, discrimination, or subordinate role of a woman, which could be manifested in the sense of entitlement to or superiority over a woman, assumption of ownership of a woman, control over her behaviour, or any other reason related to gender.**
- Crimes committed against family members (crimes provided in Article 11¹ of CCG) shall be considered as aggravating circumstance (in line with Article 46.a of the Istanbul Convention);
- Existence of domestic/gender-based violence against the victim before the commission of murder/intentional infliction of grave injury shall constitute an aggravating circumstance (in line with Article 46.f of the Istanbul Convention);
- Commission of femicide/gender-related crime by a public official, especially a law enforcement officer, shall constitute an aggravating circumstance;
- Commission of femicide/domestic crime/gender-related crime using service firearms shall constitute an aggravating circumstance (in line with Article 46.g of the Istanbul Convention providing that if “the offence was committed with the use or threat of a weapon;” it shall be taken into consideration as aggravating circumstance).

To the Chief Prosecutor's Office:

- In all cases of killings of a woman, especially when the victim is either a wife/ex-wife or an intimate partner of the perpetrator, the prosecution shall be guided by the hypothesis that the crime committed might be femicide. The prosecution shall examine with all available means whether, alongside all other possible motives, the murder is related to gender-based motive (e.g. discriminatory attitude or desire of entitlement over a woman, desire to control her behaviour, or the offender's perception of a woman as a subordinate object who must obey with a dominating and prevailing man). The prosecution shall submit all the evidence to the court and highlight the existence of the motive of discrimination on the basis of sex;
- The prosecution shall comprehensively examine and submit to the court the information on alleged domestic/gender based violence against the victim committed by the offender before the murder with a view that the court will use these facts as an aggravating circumstance;
- The Chief Prosecutor's Office shall develop statistics of gender-based crimes – killings of women on the basis of gender, intentional infliction of grave injury that caused death and incitement to suicide (according to the information provided by the Chief Prosecutor's Office dated 24 November 2015, it was planned to develop instructions for prosecutors to refer to article 53.3¹ of CCG when investigating a case related to discrimination on the basis of sex);
- In femicide cases a plea bargain shall only be concluded when all the available evidence does not suffice for the conviction verdict. Concluding a plea bargain agreement on the basis of "public interest considerations" shall not be allowed;
- Detailed guidelines on methodology of investigation of gender-based crimes shall be prepared for investigation and prosecution bodies. Oversight of practical application of the existing guidelines shall be ensured;
- Prosecutors shall undergo comprehensive trainings in the following directions: uncovering the motive of gender-based discrimination in crimes against women, methods of collection of relevant evidence and application of Article 53.3¹ of CCG in criminal prosecution, where relevant.

To the Common Courts:

- In all cases of killings of a woman, especially when the victim is either wife/ex-wife or intimate partner of the perpetrator, the courts shall be guided by the hypothesis that the crime might be a femicide. The court shall duly evaluate the evidence submitted by the prosecution concerning discriminatory or other gender-related motive (e.g. discriminatory attitude or desire of entitlement over a woman, desire to control her behaviour, or offender's perception of a woman as a subordinate object who must obey with a dominating and prevailing man), refer to this motive in the judgment and impose higher sanctions if the gender-related motive is established;
- The judge shall give due consideration to the alleged domestic/gender based violence against the victim committed by the offender before the murder, analyse these facts and take them into account while imposing the sanction. The judge shall scrutinize the motive of discrimination on the basis of gender and sex and apply Article 53.3¹ of CCG in all possible cases;
- The judge shall analyse the gravity of femicide/domestic crime committed by public officials, particularly by law-enforcement officers, and treat such circumstances as aggravating circumstances;
- In accordance with Article 273.1 of the Criminal Procedural Code of Georgia, conviction verdicts shall contain detailed discussions on the motive of the crime, the reasons for accepting and rejecting certain evidence and the aggravating and mitigating circumstances. The type and term of the sanction imposed on the perpetrator must be substantiated.
- The courts shall approve a plea bargain agreement in femicide cases only when the available evidence does not suffice for the conviction verdict. Approving a plea bargain agreement on the basis of "public interest considerations" shall not be allowed. Within the scope of authority the courts shall exercise control over the provisions of such plea bargain agreements and reject the agreements, where the penalty is disproportionate and ignores the suffering experienced by the victim;
- The court shall substantiate the judgments in femicide cases taking into account the general context of violence against women, discrimination and subordination.

Annex №1

1. Tbilisi City Court, Case N1/4942-14, January 23, 2015

Judge: Khatuna Kharchilava

Classification: Articles 11¹-117.8; 188.1 of the CCG

Status of the defendant: chief inspector of the security division of Special Forces of investigation services of the Ministry of Finance of Georgia

On 14 May 2014 A.Ts. asked his ex-wife S.Z. who he had disagreement with, to meet. A.Ts. went to S.Z.'s workplace and they went together by a taxi to S.Z.'s house. On the way, A.Ts. started asking S.Z. to reconcile. When they stepped out of the taxi, S.Z.'s brother who received SMS from his sister asking for help approached them. A.Ts. and his ex-wife's brother T.Z. had a dispute and A.Ts. shot T.Z. in the hips for several times. When he fell down, A.Ts. turned to his ex-wife who was screaming loudly asking for help and shoot towards her, aiming at her hips. When S.Z. fell on the ground, **the defendant left the crime scene.** S.Z. and T.Z. were taken to the hospital, S.Z. died and T.Z. got life threatening bodily injuries.

A.Ts. and S.Z. got married several years before the killing. **A.Ts. was a chief inspector of the security division of Special Forces of investigation Services of the Ministry of Finance of Georgia. He was authorized to carry/store a service weapon.** Several months before the incident the conflict started between him and S.Z. and the latter moved to live with her parents together with her minor son. According to S.Z. the reason for break-up was that A.Ts. was a **rude and jealous person and they had disputes over regular issues.** A.Ts. was asking for reconciliation with S.Z. using threats and intimidation. The court emphasized that A.Ts. had been a **violent husband**, that is why S.Z. did not want to reconcile with him. There have been incident/incidents when A.Ts. took her to Tbilisi Sea and **tried to drown her**, also **he threatened to kill her with a gun.** The aim was to conciliate with S.Z. The service weapon that he was always carrying with him gave him the opportunity to demonstrate violence. S.Z.'s family, despite the fact that they were aware about A.Ts.'s actions, refrained to inform his management about these facts. After the incident A.Ts. called his co-worker and told him that he wounded his wife and her brother with a service weapon and wanted to surrender the weapon.

The court recognized that the injuries of T.Z. and their location were in the life threatening areas. The defendant denied the intent of inflicting grave injury to his ex-wife and said that he did not know how S.Z. got shot.

According to the court assessment, A.Ts. committed a crime under Article 117.8 of CCG (Intentional grave bodily injury to two or more persons that caused death), that is characterized with double guilt – intention to inflict a grave bodily injury and negligence towards the death.

The court noted that committing a crime **against the family member (Article 11¹) should be taken into consideration as an aggravating circumstance when imposing a penalty.**

The court points out that the court does not possess any information concerning the **circumstances aggravating or mitigating his responsibility.**

When identifying the sentence (punishment) the court stressed that sanction was not just the reaction of the law to a crime but in every specific case, that it should be individual and adequate and should have a clearly personal character. For the purposes of comprehension of the gravity and threat of the crime, it is of a paramount importance to impose a fair sanction that is necessary and proportional to the legitimate interest of the law. Term of imprisonment represent an effective general preventive measure – it gives opportunity to the offender to contemplate the impact of the offence on the victim, his/her mistakes and change his life-style

In addition to the criteria specified in Article 54.3 of CCG, while defining the sanction the court took into account the sufferings inflicted to the family of the victim and the outcomes influencing the society. The victim had a minor child who was suffering without his mother; the court also mentioned that T.Z. could not move due to injuries when the decision was announced. In addition the court noted: “even though the court and the sanction cannot ensure the reconciliation of the society, the sanction that is proportional to the gravity of the crime may facilitate reconciliation providing a legal response and therefore replacing a personal or public revenge with the feeling of established justice.”

The Tbilisi City Court discussed the importance of crimes committed by public officers: “when a state representative, especially a law-enforcement officer commits a crime it is not reasonable to use light sanction for the purposes of proportionality of punishment. On the

contrary, such officials have a greater responsibility compared to other criminals as in such cases the main issue is not just the criminal responsibility of an individual offender, rather the obligation of the state to eliminate the feeling of impunity some perpetrators may hold because of their official position; even more so such cases are also important to promote trust and respect to law-enforcement bodies in the country”

And finally the court noted that for the resocialization of the defendant, based on the necessity of the sentence, principle of proportionality and general and private prevention, A.Ts. should be sentenced for imprisonment.

The acts of A.Ts. were classified under articles **11¹-117.8 and 188.1**, committed with the motive of revenge stemming from the dispute. A.Ts. was imposed imprisonment for **12 years**.

2. Rustavi City Court, case N1-252-14, May 7, 2014

Judge: Maka Gvelesiani

Classification: Article 11¹ -108 of the CCG

O. Sh. And B. Dz. were in *de facto* marriage, had a child and lived in Rustavi. Since November, 2013 **the spouses separated, because O.Sh. had a doubt that his wife “led an unhealthy lifestyle”**. B. Dz. temporarily went to live in another apartment in the same region. According to the assessment of the court, O.Sh. was **upset because of his wife’s behaviour** and decided to kill her with revenge motive.

On 6 March 2014 O.Sh. got the kitchen knife, went to the house of B.Dz., and wounded her to death during the dispute. B.Dz. died as soon as she was taken to the hospital.

The actions of O.Sh. were classified under **Articles 11¹-108 of the CCG** (murder). According to the judgement, the court considers aggravating and mitigating circumstances, the motive and purpose of the crime, unlawful intention demonstrated in the act, the type and methods of committing the act and its unlawful outcomes, the personality of the offender, the conditions of his life, his family and economic situation – that are the standard conditions of the Article 53.3 of CCG. Namely, the court noted that considering the fact that O.Sh. confessed and regretted commission of the crime and cooperated with the investigation, he was **characterized positively** and was not previously convicted; the

court considered that he should be imposed the **type and extent** of a sanction that will ensure restoration of justice and resocialization of the offender.

O.Sh. was sentenced to imprisonment for a term of **7 years and 6 months** (Article 108 of CCG envisages imprisonment for a term of 7 to 15 years).

3. **Tbilisi City Court, case N1/4605-14, September 15, 2014**

Judge: Giorgi Darakhvelidze

Classification: Articles 11¹-109.3.e of the CCG

A plea bargain agreement

J.A. was found guilty by the Tbilisi City Court with the judgement delivered on June 29, 2009, for the attempt of murder with hooliganism motives (Article 19.109.2.c) and was sentenced to imprisonment for a term of 13 years. Based on the Law on Amnesty his sentence was decreased by half, afterwards with the decision of the Permanent Commission of the Ministry of Corrections of December 31, 2013, he was released on parole.

On June 1, 2014, in Tbilisi, during domestic dispute, J.A. wounded his wife for multiple times to death, and left the crime scene after the incident.

A plea bargain agreement was entered into – the judge delivered the judgement without hearing on the merits. J.A. was found guilty in committing the crime stipulated in Articles 11¹-109.3.e (murder committed repeatedly) and was sentenced to 15 years of imprisonment (*Article 109.3 stipulates imprisonment for a term of 16 to 20 years or life imprisonment as a sentence*).

4. **Telavi District Court, case N200100115702991, August 5, 2015**

Judge: Mamuka Tsiklauri

Classification: Article 11¹- 108, 236.2 of the CCG

A plea bargain agreement

On December 6, 2014 E.E. took firearms (that he was carrying illegally) from home with the purpose of killing his wife M.G. E.E. took his wife with a car to the surrounding area of the village Verkhviani of

Sagarejo District, stopped the car in the field, took his wife out of the car, tried to kill her with the gun, but could not fire the shots. After this he moved the car and hit his wife for several times. As a result M.G. died on the scene of the incident.

The prosecutor “**based on the public interest** concludes a **Plea bargain agreement** with the defendant taking into consideration that E.E. confessed to and regretted the crime”.

The court considered that the indictment was well-founded. Taking into consideration the personality of the defendant and his family conditions, the sentence requested in the plea bargain indictment was **legitimate and fair**. The court approved the plea bargain agreement and without hearings on merits, he found E.E. guilty under Articles **11¹- 108** (Murder) and **236.2** (Illegal purchase or storage of firearms).

The court noted that the confession of the defendant is the **mitigation circumstance** and that there are no **aggravating** circumstances in the case.

The defendant was sentenced for **7 years** of imprisonment for commutation of crimes. He was imposed serving the sentence in the penitentiary facility for **6 years and 1 year was considered as a conditional sentence and a probation period**. (*Article 108 envisages imprisonment for a term of seven to fifteen years, Article 236.2 of CCG envisages imprisonment for up to four years*).

The defendant had no prior conviction.

5. **Kutaisi District Court, case N1/797-201417, April, 2015.**

Judge: Giorgi Kashakashvili

Classification: Article 11¹-108 of the CCG

Status of the defendant: inspector-investigator of Zestaponi Regional Division.

In July 25, 2014, the **inspector-investigator of Zestaponi Regional Division of the Ministry of Internal Affairs of Georgia S.S.**, who was drunk, was talking to his **ex-wife** S.J. in Zestaponi, in “Irine’s park”. According to the judgement, during the conversation he got upset and decided to kill S.J. – he shot five times with a service weapon. S.J. died as a result.

In 2011 S.S. kidnapped and married S.J., when she was underage, studying in the 11th grade of school. S.J. used to experience oppression in S.S.'s family. S.S. even had a dispute with S.J. related to her friend, as a result of which, three months pregnant S.J. returned to her parents' house after three months of cohabitation. After this, S.S. started to live with S.J. in S.J.'s parents' house. After two months, in response to the conflict of S.J. and her mother-in-law, who visiting her grandchild, S.S. physically abused S.J. and left her house.

S.S. used to consume alcohol and gamble. During the cohabitation and after the divorce, he threatened with a gun and abused her physically and psychologically. The reason of the conflict was jealousy of S.S., desire to control S.J.'s acts and her relations with other people (including after divorce), problems related to visiting the child and paying the alimony. According to S.S. the reason of the conflict with his ex-wife was her "**lies and wrong life-style**". Because of domestic violence S.J. was subjected to, she applied to Zestaponi police, Prosecutor's Office (applying to the Prosecutor's office is not indicated in the judgement) and General Inspection of the Ministry of Internal Affairs, but these bodies did not provide help to her and did not protect the victim from the abusive ex-husband.

On July 25, 2014, when S.J. returned from the General Inspection of the Ministry of Internal Affairs, where she reported violent actions of S.S., S.S. murdered her in Zestaponi, in so called "Irine's park". After the murder he went to the police, informed about the crime and told his friends there to "take care of the child". He was saying - "what have I done, I did not want to do".

The court did not consider the allegation of S.S. that he was experiencing a sudden, strong emotional excitement when he committed a murder (according to the expert conclusions, 1 expert considered that S.S. was suffering a sudden, strong emotional excitement and 3 experts had an opposing position). His action was classified under Article 11¹-108 of the CCG (murder) and S.S. was sentenced to 11 years of imprisonment.

The court noted that "**for the purposes of the sentence**, namely to restoration of justice, prevention of new crimes and resocialization of the offender; also taking into consideration the motive and the purpose of the crime, unlawful intention demonstrated in the act, the nature and extent of violation of duties, the type and methods of committing an act and unlawful outcomes, the past life of the offender, the actions

after the crime, also the grave outcome of the crime, the court considers that the sanction of S.Ts. should have such a form and length that will serve as the basis for his safe integration into the society in the future and will help him to comprehend the nature of the committed action, the level of threat and reprehensibility of his behaviour, the gravity of the results and finally should decrease the risk of re-occurrence of a new crime that itself will promote restoration of justice”.

6. Judgment of Telavi District Court, case N1/305-14, 25 June, 2015.

Judge: Marine Tsertsvadze

Classification: Articles 11¹-108 of the CCG

N.J. lived in Telavi together with her child. She used to visit her husband I.Ch. in the village once or twice a month. I.Ch. consumed alcohol however, according to the neighbours, he was not aggressive.

On 18 October 2014 I.Ch killed his wife N.J. at home using a knife. I.Ch. injured N.J in the area of throat and the back of the head causing immediate death of N.J. Before the murder they had dispute at home. The child was also present who later went to his aunt’s.

After the murder I. CH. said in front of the village shop: “I have cut my wife’s throat, come and see it”. “Come, I’ve cut the throat of my wife like a pig.” “I have cut my wife’s throat, the head and body are lying separately”. He asked the neighbours to call the police. I.Ch’s clothes did not have traces of blood; he explained that he got ready to go to the police. The court could establish that the defendant tried to find a moral justification of his behaviour and stated that the reason of the killing was the victim’s words “I prefer our child over you” and he was ready to take the responsibility. During the second examination, he pleaded guilty and said that he did not want such a result, but “the wife’s behaviour forced him”. During the court proceedings he used the right to remain silent.

The court stated that there were neither mitigating nor aggravating circumstances in this case. The court found the offender guilty under articles **11¹-108** of CCG and imposed imprisonment for the term of 12 years that, according to the court, corresponded the purpose of sanction, namely prevention of new crimes and further resocialization of the offender (Article 108 of CCG provides imprisonment for a term from seven to fifteen years).

7. **Judgment of Telavi District Court, case N1/59-15, 9 June, 2015 .**

Judge: Marine Tsertsvadze

Classification: Articles 11¹-108 of CCG

T.A. and his wife E.M. lived in a village in Telavi District and had a child. T.A. and his neighbours thought that E.M. had a lover – Z.N. On 16 December 2014 upon returning home together with this child T.A. saw that his wife was at home together with Z.N. and one more person, who were sitting around the table and consuming alcohol. He was surprised that his wife invited the lover at home; he did not initiate the dispute, joined others and began to drink with them. After the guests left he told his wife that he **“tried his best for her to lead a good life but she had a lover”**. As T.A. stated, in response E.M. offended him and told that he could leave her together with the child; the offender lost his mind and inflicted a grave injury to the body of the victim. If he wanted to kill her he could continue the aggression when they were transported together to the hospital. T.A. was arrested in the hospital.

According to the neighbours’ testimony, before going to the hospital, he said: “I’ve killed E. and will kill myself, please take care of the child;” “I wish I had not killed her and had let her go”. The police informed that T.M. told to his neighbours: **“I’ve killed because she was cheating”**. Other witnesses stated that everybody knew that Z.N. and E.M. had a love affair.

According to forensic-psychological expertise, he was not under temporary insanity while committing a crime.

The court did not share the opinion of the defence that he did not have the intention to kill his wife and only wanted to inflict a grave bodily injury. The court found that, being jealous, T.A. wounded E.M. with a knife in the area of breasts causing death of E.M. This act is classified under articles 11¹-108 of CCG. He was imposed imprisonment for a term of 9 years (Article 108 of CCG provides imprisonment for a term of seven to fifteen years). The court stated that the imposed sanction corresponded to the purpose of the sanction, namely prevention of new crimes and further resocialization of the offender.

The court stated that it took into account the mitigating and aggravating circumstances, the motive and the purpose of the crime, unlawful intention demonstrated in the act, the method of commission of the crime and its illegal consequence, the previous life of the offender and

the behaviour after the crime. However the court did not specify which were the mitigating and aggravating circumstances in this case.

8. Ozurgeti District Court, 26 February 2015.

Judge: Bidzina Sturua

Classification: Articles 11¹-108 of the CCG

On 2 October 2014, in the village of D. of Ozurgeti Municipality, T.R. had a dispute with his wife N.R. because of jealousy. During the dispute he took an axe and with the motive of revenge and with the intention of killing, he hit N.R. in her head. She died immediately.

According to presented medical expertise, T.R. was sane when he committed the crime. However, a mental disease – psychogenic paranoid psychosis was developed during the isolation.

The court considered that the motive of the crime was a revenge caused by the conflict between the spouses.

The court considered that the fact that T.R. pleaded guilty and cooperated with the investigation was a mitigating circumstance. There were no aggravating circumstances in the case.

The court noted that the sanction imposed on R.T. should serve the purpose of “his future integration into the society and make him contemplate over the illegal nature of his behaviour, the gravity of the result and finally decrease the risk of future crimes, that will restore justice. Taking into account the foregoing circumstances, for the purposes of public and private prevention” R.T. was found guilty in committing the crime under Article **11¹ – 108 of CCG** and imposed imprisonment for a term of 9 years (Article 108 of CCG provides imprisonment for a term of from seven to fifteen years). T.R. will serve a sentence in the B. Naneishvili National Centre of Mental Health (Khoni, Qutiri) before recovery.

9. Tbilisi City Court, 7 April 2015

Judge: Lasha Chkhikvadze

Classification: Article 117.2 of the CCG

Status of the defendant: previous conviction

On 15 December 2014 R.P initially beat his intimate partner because of jealousy and then hit her with a floor cleaning brush in the head,

causing intentional infliction of grave injury resulting in death.

The court considered that “sincere confession and repenting” were the mitigating circumstances while “previous conviction for intentional crime was an aggravating circumstance”.

R.P. was imposed imprisonment for a term of 5 years that according to the court “fully corresponds the purpose of the sanction, resocialization of the offender, prevention of new crimes and restoration of justice” (Article 117.2 of the CCG provides imprisonment for a term of from 4 to 7 years).

10. Tbilisi City Court, case N1/6524-14, 22 May 2015.

Judge: Giorgi Darakhvelidze

Classification: Article 11¹-108 of the CCG

Status of the defendant: previous conviction

On 28 August 2014, during domestic conflict, a man killed his wife, with whom he was married for 2 years.

On the day of the crime, a neighbour was visiting the defendant and they were celebrating St. Mariam’s day. As the neighbour stated, the convicted and the victim argued over a certain person however the dispute was settled soon. One of the neighbours took the defendant, who was drunk, to the basement to sleep. Afterwards, around evening, when the defendant thought that his wife was asleep, he went upstairs. He was swearing, kicking the door with his legs and requesting his wife to give him a cigarette. She answered that she had no cigarettes and requested to calm down. He tried to break into the door, took the knife and asked: “Do you want me to commit a murder?” The victim asked to leave her. After this the defendant hit his wife with the bread knife. She called for help “please help me”. Hearing her voice the neighbour went down to help and called the ambulance together with another neighbour. The defendant left the home and said: “whoever peaches against me will receive the same treatment”. He saw that the victim was wounded in the breast area and bleeding. He stated that he did not intend to kill his wife and only wanted to scare her. He did not know where she was wounded though he saw her bleeding.

The court did not share the opinion of the defence to change the classification to Article 177.2 (infliction of grave bodily injury that caused

death) – the defendant did not help the victim who was bleeding and left the scene of the crime. These facts clearly indicates the intention to kill her. In addition, the court stated that Article 117.2 provides “negligence in relation to the result. The court considers that this is not true in this case, as if a person wounds another in the chest, near a heart where there are lots of important organs, it is impossible to imagine that he/she does not anticipate the possible result”.

The offender was found guilty under Articles **11¹-108** of CCG and imposed imprisonment for a term of 11 years. There were no mitigating circumstances and a previous conviction was an aggravating circumstance (Article 108 of CCG provides imprisonment for a term from seven to fifteen years).

The court based the sanction on Article 53.3 of the CPCG: when awarding a sentence, the court shall take into consideration the mitigating and aggravating circumstances of the crime, in particular, the motive and purpose of the crime, unlawful intention demonstrated in the action ... method employed and illegal consequence, past life of the criminal, his/her family status (the family status is not prescribed in Article 53.3). In addition, the court also took into account the goals of sanction that is related to restoration of justice, prevention of a new crime and resocialization of the offender. As the offender has previous conviction for a similar crime, there is a grounds to believe that he is inclined to commit crimes against human beings. Accordingly for the purposes of private and public prevention, it is important that the imposed sanction is not light.

11. **Tbilisi City Court, 18 August, 2015**

Judge: Nino Nachkebia

Classification: Articles 11¹-117.2 of the CCG

The status of the convicted: previous conviction

On 25 December 2014 V.M. hit his wife with fists in the face and head, and hit her face against asphalt and inflicted injuries dangerous to life. I. died on 20 February 2015.

According to the witnesses (neighbours), I. together with her husband started to rent a room on 1 December 2014. On 25 December, in the presence of the landlord, V. approached I. and began swearing without giving a reason. Initially he hit his wife on the back of the head, then

began to hit with fists and legs; afterwards he dragged her holding her hair in the street, hit her face against asphalt and continued kicking with fists and legs. I. was bleeding and unconscious. The wife of the landlord asked V.M. not to kill his wife. The landlord stated that as he and his neighbour did not know the telephone number of the police, the third neighbour called the police and the ambulance.

When doctors entered the yard, the man exited the house and washed his hands. He pointed towards the room and said there was his wife beaten by him. The woman was half-naked and unconscious. The doctors asked him to help them take the women out of the room. Hearing this the defendant became agitated, returned to the room and continued beating his wife with hands and legs ordering her to stand up herself. When the police came V. told them that he had beaten his wife as he witnessed how she and the landlord were cheating. Though, he also said he wanted to kill her. V. was arrested on the scene of the crime and the wife was transported to the hospital. I. was in coma for a month and on February 20, 2015 she died. Even if she had survived she would have been gravely disabled and would have a very short life.

According to the testimony of the victim's child, I. and V. lived together in an unregistered marriage since September 2014. I's 2 children lived with them. After one and a half month of the cohabitation, the offender began drinking, beating the spouse and swearing. The children wanted to call the police, however, the mother did not let them to. The woman used to say: "Now he is angry and will calm down". After the offender's request, the children moved to a friend's house to live. They visited the mother when the offender was not at home, as he forbade them to see the mother.

The court stated that there were no mitigating circumstances in the case of V. The fact that V. had previous a conviction and committed a new crime during the probation period was considered to be an aggravating circumstance.

When awarding the sentence, the court stated that it takes into consideration the "mitigating and aggravating circumstances of the crime, in particular, the motive and purpose of the crime, unlawful will demonstrated in the act and the personality of the offender. When awarding the sanction the court took into account that V. had a condition of limited sanity (according to the medical expertise) and a temporary mental disease was developed during the isolation.

The court stated that the type and extent of the sanction imposed on

V. should facilitate the restoration of justice, prevention of a new crime and resocialization of the offender.

V. was found guilty under articles **11¹-117.2** of CCG. He was sentenced to imprisonment for a term of 5 years and 2 years were added out of the unserved sanction imposed earlier. His final sanction constituted 7 years. He was forced to serve the sanction in the B. Naneishvili National Centre of Mental Health (Khoni, Qutiri) until recovery.

12. Khelvachauri District Court, 29 October 2014

Judge: Leila Gurguchiani

Classification: Article 115 of the CCG

A plea bargain agreement

Starting from the beginning of February until 21 February 2014, B.Ts. systematically sent text messages to the spouse of N.P and her mother-in-law abusing the honour and dignity of N.P. As a result which N.P committed suicide on 28 February 2014.

B.Ts. and Khelvachauri District Prosecutor's Office concluded a plea bargain agreement. The court confirmed the plea bargain agreement, recognizing that B.Ts. was guilty under Article 115 of the CCG. Imprisonment for the term of 4 years was imposed as a main sentence, which, under articles 63-64 of the CCG was considered as conditional (and the defendant does not have to serve the sentence in prison). In accordance with Article 42 of the CCG, 2000 GEL of fine was imposed as an additional sentence (*Article 115 of the CCG provides restriction of freedom for the term of up to 3 years or imprisonment for the term of from 2 to 4 years*).

Annex №2

№	Court, judge, date and number of the judgement	Date of the committing the crime	Classification, Article of CCG	The type and measure of the sentence awarded by the Court	The type and measure of the sentence prescribed by CCG	The motive of the crime	Taking into consideration the signs of femicide and/or violence in the family when imposing sanction	Type of judgement	Status of the defendant
1	Tbilisi City Court judge: Khatuna Kharchilava N1/4942-14, 23.01.2015	14.05.2014	Article 111-117.8 of the Criminal Code (intentional infliction of grave injury that caused death) and 188.1 (negligent damage or destruction of another person's property which has resulted in substantial damage)	12 years imprisonment	Article 117.8 of the Criminal Code - 10 to 14 years of imprisonment Article 188.1 of the Criminal Code - a fine or corrective labour for up to a year, or with restriction of liberty for up to two years.	Revenge (originated on the basis of the dispute)	Committing the crime against a family member (Article 11 ¹), was taken into consideration as an aggravating circumstance by the Court when imposing a penalty. It is described in the judgement that the defendant was a domestic offender.	Main trial	Victim's ex-husband. Chief inspector of the security division of special forces of investigation services of the Ministry of Finance of Georgia. Was authorized to carry/store service weapon

2	Rustavi City Court, judge: Maka Gvelesiani case N1-252-14, 07.05.2014	06.03.2014	Article 11¹-108 of the Criminal Code (murder)	7 years and 6 months of imprisonment	Article 108 of the Criminal Code – 7 to 15 years of imprisonment.	Revenge (the defendant was upset because of the “un-healthy lifestyle” of ex-wife)	The judgment does not indicate that the defendant was domestic offender. Although, according to the information, obtained by GYLA, the victim experienced violence and had even called the police for this reason.	Main trial	Victim's ex-husband.
3	Tbilisi City Court, judge: Giorgi Darakhvelidze, case N1/4605-14, 15.09.2014	01.06.2014	Article 11¹-109.3.e of the Criminal Code (murder committed repeatedly)	15 years of imprisonment	Article 109.3.e of 16 to 20 years of imprisonment, life imprisonment	<i>The motive is not identified</i>	The judgement does not examine these facts	Plea bargain	Victim's husband. Had prior conviction for the attempt of murder
4	Telavi District Court, 05.08.2015, case N200100115702991 judge: Mamuka Tsiklauri	06.12.2014	Article 11¹- 108 of Criminal Code (murder); and 236.2 (illegal purchase or storage of firearms)	imprisonment for 7 years. Serving the sentence in the penitentiary facility for 6 years and 1 year as a conditional sentence, probation period.	Article 108 of the Criminal Code – 7 to 15 years of imprisonment. Article 236.2 of the Criminal Code imprisonment	<i>The motive is not identified</i>	The judgement does not examine these facts	Plea bargain.	Victim's husband

5	Kutaisi District Court, April 17, 2015, case N1/797-2014 judge: Giorgi Kashakashvili	25.07.2014	Article 11¹-108 of the Criminal Code (murder)	11 years of imprisonment	Article 108 of the Criminal Code – 7 to 15 years of imprisonment.	<i>The motive is not identified</i>	Domestic violence committed by the defendant before femicide, was partially described in the facts, but the Court did not take this into consideration when imposing a penalty.	Main trial	Victim's ex-husband. Inspector-investigator of Zestaponi Regional Division of the Ministry of Internal Affairs of Georgia
6	Telavi District Court judge: Marine Tsertsvadze 25.06.2015 case N1/305-14	18.10.2014	Article 11¹-108 of the Criminal Code (Murder)	12 years of imprisonment	Article 108 of the Criminal Code – 7 to 15 years of imprisonment.	<i>The motive is not identified</i>	Alleged domestic violence is not examined and taken into consideration.	Main trial	Victim's husband
7	Telavi District Court judge: Marine Tsertsvadze 09.06.2015, case N1/59-15	16.12.2014	Article 11¹-108 Criminal Code (Murder)	9 years of imprisonment	Article 108 of the Criminal Code – 7 to 15 years of imprisonment.	Jealousy (According to the offender neighbor-brothers the victim had a lover).	Alleged femicide signs and/or the domestic violence are not examined or taken into consideration.	Main trial	Victim's husband

8	Ozurgeti District Court 26.02.2015. judge – Bidzina Sturua	02.10.2014	Article 11¹-108 of the Criminal Code (Murder, domestic crime)	9 years of imprisonment , must serve a sentence in the medical facility - B. Naneishvili National Center of Mental Health (Khoni-Kutiri).	Article 108 of the Criminal Code – 7 to 15 years of imprisonment.	Revenge (based on jealousy)	Alleged femicide signs and/or violence are not examined or taken into consideration.	Main trial	Victim's husband. T.R. was same when committing crime and afterwards, he developed mental disorder in isolation - Psychogenic paranoid psychosis.
9	Tbilisi City Court 07.04.2015 ᄂ. judge: Lasha Chkhikvadze	15.12.2014	Article 117.2 of the Criminal Code (intentional infliction of grave injury that caused death)	5 years imprisonment	Article 117.2 of the Criminal Code– 4 to 7 years to imprisonment	Jealousy	The signs of femicide and/or gender violence are not examined	Main trial	Victim's intimate partner. Previously convicted for the intentional crime
10	Tbilisi City Court 22.05.2015 N1/6524-14 judge: Giorgi Darakhvelidze	28.08.2014	CC Article 11¹-108 (Murder)	11 years imprisonment	Article 108 of the Criminal Code – 7 to 15 years of imprisonment.	<i>The motive is not identified</i>	The signs of femicide and/or gender violence are not examined	Main trial	Victim's husband. Previously convicted

11	<p>Tilisi City Court 18.08.2015 judge: Nino Nachkebia</p>	<p>25.12.2014 The date of the death of victim - 20.02.2015</p>	<p>Article 11¹. Criminal Code (intentional infliction of grave injury that caused death)</p>	<p>7 years imprisonment Must serve a sentence in the B. Naneishvili National Center of Mental Health, after - according to the general rules</p>	<p>Article 117.2 of the Criminal Code - 4 to 7 years to imprisonment</p>	<p><i>The motive is not identified</i></p>	<p>According to the witnesses, the victim was experiencing domestic violence. The above mentioned is not examined and had no influence over the sentence.</p>	<p>Main trial</p>	<p>Victim's husband. Previously convicted. The offender was suffering diminished capacity when committing a crime and he had developed temporary mental disorder in the isolation</p>
12	<p>Khelvachauri District Court 29.10.2014 judge: Leila Gurguchiani</p>	<p>28.02.2014</p>	<p>Article 115 of the Criminal Code (incitement to suicide)</p>	<p>Fine with amount of 2000 GEL (imprisonment for 4 years was deemed as a conditional sentence, for 4 years of probation period)</p>	<p>Article 115 of the Criminal Code restriction of liberty up to 3 years or imprisonment for 4 years</p>	<p><i>The motive is not identified</i></p>	<p>The gender-based violence against the victim before the suicide is not examined</p>	<p>Plea bargain</p>	<p>The offender is not husband or ex-husband of the victim. He presumably is an intimate partner/former intimate partner of the victim, or pretended to be one, in order to diminish her dignity</p>

