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Meeting: 1483rd meeting (December 2023) (DH)

Communication from NGOs (Georgian Young Lawyers' Association (GYLA), European Human Rights Advocacy Centre (EHRAC) and Union Sapari) (20/10/2023) in the case of Tkhelidze v. Georgia (Application No. 33056/17).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1483e réunion (décembre 2023) (DH)

Communication d'ONG (Georgian Young Lawyers' Association (GYLA), European Human Rights Advocacy Centre (EHRAC) et Union Sapari) (20/10/2023) dans l'affaire Tkhelidze c. Géorgie (requête n° 33056/17) ***[anglais uniquement]***

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DH-DD(2023)1312: Rule 9.2 Communication from an NGO in Tkhelidze v. Georgia.
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Rule 9 (2) communication to the Committee of Ministers of the Council of Europe in respect of the execution of the

Tkhelidze Group of Cases (№ 33056/17)







Georgian Young Lawyers' Association (GYLA)

European Human Rights Advocacy Centre (EHRAC)

Union Sapari

October 20, 2023

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1. Introduction

1. This group of cases consists of the first two femicide judgments against Georgia. Both cases are representative of the systemic discrimination by the law enforcement authorities in Georgia in failing to adequately respond to protect victims of domestic violence, and State's failure to investigate the inaction of the law enforcement authorities (violations of Article 2 in its substantive positive and procedural limbs taken in conjunction with Article 14 of the Convention). On 15 June 2023, the European Court of Human Rights held that there was a violation of Article 2 under its substantive positive and procedural limbs taken in conjunction with Article 14 of the Convention in the case of *Gaidukevich v. Georgia (app. no. 38650/18)* as well. GYLA and EHRAC, as legal representatives of the applicant, submit a separate request regarding the enhanced supervision of this case.
2. The Georgian Young Lawyers' Association (GYLA), Union Sapari and the European Human Rights Advocacy Centre (EHRAC), (altogether hereinafter- "*The signatory organizations*") as legal representatives of the applicants in these cases, present this communication pursuant to Article 9(2) of the Rules of Committee of Ministers ("*CM*") for the supervision of the execution of judgments for consideration at 1483rd meeting (December 2023).
3. The submission provides an initial update on the status of individual measures, including the steps of the investigation. It further lists a number of further general measures necessary to be taken by the State as part of effective implementation of this group of cases. The submissions also provide comments to the Government's action plan of 6 October 2023.

2. Brief summary of the Court's judgements

4. The case of ***Tkhelidze v. Georgia*** concerns the femicide of M.T., a university professor, by her ex-husband L.M. following a prolonged period of domestic violence. Despite more than eleven reports of violence and threats made to the police M.T. and her relatives in a six-month period, not a single protective measure was put in place. This case is representative of the systemic discrimination by the law enforcement authorities in Georgia in failing to adequately assist victims of domestic violence. In this case, the Court embedded its consideration of discrimination into the right to life complaints for the first time in a domestic violence case, and was robust in its criticism of the authorities' 'major failings', representing a highly progressive judgment. The Court found that "[i]n flagrant disregard for the panoply of various protective measures that were directly available to them, the authorities failed to display special diligence to prevent gender-based violence against the applicant's daughter, which culminated in her death" and that action constituted a systemic failure (§57). The Court also held that, in the light of discriminatory overtones associated with violence against women, there was a pressing need to conduct a meaningful inquiry into the possibility that gender-based discrimination and bias had also been a motivating factor behind the alleged police inaction (§60).
5. The case of **A and B** relates to the murder of a 19-year-old woman by her former partner, a police officer, who fatally shot in a local park with this police firearm, following a prolonged period of domestic violence. She was represented by her mother and minor son in this case. In its judgment, the Court found violations of both Articles 2 (in its substantive and procedural limbs) and 14 of the ECHR, arising from the authorities' failure to take protective measures after being notified of the perpetrator's abuse of the victim, and the failure to conduct an effective investigation into the conduct of the police officers and prosecutor, including the failure to examine the gender-bias that may have motivated the conduct of the law enforcement officials. The Court determined that there was a "pressing need to conduct a meaningful investigation into the response of law enforcement and their inaction, which might have been motivated

by gender-based discrimination, in the face of the victim's complaints", and underlined that the fact that the perpetrator was a police officer and abused his position as such embolden his self-determined "impunity", meant that the need for effective investigation was "all the more pressing".

6. The Court also found it inadequate that the perpetrator's prosecution and conviction did not examine the role of gender-based discrimination in his murder of the victim; nor did the domestic courts consider whether the tolerance of this violence against the victim was conditioned by gender bias, or whether the relevant police officers had acquiesced or connived in the perpetrator's gender-motivated abuses. The Court found it "particularly troubling" that the perpetrator was able to use his position in law enforcement to carry out the abuse, in what was *"clearly a lasting situation of domestic violence which means that there could be no doubt about the immediacy of the danger"* to the victim.

3. Individual measures

3.1. Individual measures concerning Tkhelidze v Georgia

7. In the case at hand, we note the steps taken by the investigative bodies as described in paras 5-8 of the Government's Action Plan. However, to date no one has been charged despite the continuation of the investigation under Article 342(2) CCG for nearly two years. On 12 October 2023 Union "Sapari", the legal representative of Taliko Tkhelidze, formally contacted the Prosecutor's Office to inquire about any developments in the criminal case but no response has been received. The information obtained from verbal communication on October 2 2023 and the Communication by the State confirm that no one has been held accountable as of yet.
8. As mentioned in the Government's Action Plan (para. 5), the investigation on the criminal case No074221121803 on the fact of neglect of official duty by employees of the Ministry of Internal Affairs was commenced on 22 November 2021, only after the Final Judgment of ECtHR.
9. The applicant's lawyers reviewed the given copies of the case files on 29 August 2023. Apart from what the Government has disclosed in their Action Plan, there was no substantial progress revealed in the investigation.

3.2. Individual measures concerning A and B v. Georgia

10. On August 16, 2023, the applicant's representative lawyer requested copies of the criminal case materials and sought updated information with several questions from the prosecutor's office. On August 23, the prosecutor's office granted access to the criminal case materials; however, they did not provide the updated information in their letter.
11. On September 6, 2023, the applicant's lawyer received copies of the criminal case materials and was orally informed about specific issues by the investigator. After analyzing the criminal case materials, GYLA would like to express its concern regarding the inactivity of the prosecutor's office. The investigative authorities have only conducted a few investigative actions since April 13, 2022, when the case was sent to the GPO. These actions could have been completed promptly within a few months. The investigation has not even included interviews with the suspected prosecutors, despite clear evidence of their omissions as testified by witness statements and documentation. Furthermore, no investigative actions involving their participation have taken place.
12. Regarding the police officers who failed to protect the victim and displayed a mocking attitude towards her, the investigation has not even inquired whether they are still employed in law enforcement, nor has it determined their current positions and potential influence over the case. Furthermore, no additional investigative actions have taken place involving their participation, and the investigative authorities have not seized their electronic devices that may contain additional information relevant to the investigation.
13. The most concerning issue is the clear refusal by the authorities to initiate criminal prosecution against law enforcement officers, whose omissions have been attested to by numerous witness statements, documentation, and even judgments from the ECtHR and domestic courts.
14. Taking into consideration the investigative steps taken by the authorities, more particularly, the repeated actions that do not intend to reach an aim, are therefore only taken in order to formally continue the

investigation. The investigative steps taken by the authorities, more particularly, the repeated actions that do not intend to reach an aim, are therefore only taken in order to formally continue the investigation. In light of all of the aforementioned, including the content and time periods between the investigative actions, along with several pieces of direct evidence[1] that could enable the investigation to conduct different types of investigative actions, it can be concluded that the ongoing domestic-level criminal investigation is not in accordance with the procedural limb of Article 2 of ECHR, and it is merely an attempt to provide artificial cover and a false sense that the state is complying with its obligations under Article 46 of the Convention.

4. General measures

15. The signatory organizations welcome the commitments and measures taken by the Georgian Government in order to combat domestic violence and femicide. Nevertheless, it is submitted that these steps are not yet sufficient to overcome the prevailing systemic challenges, and their effective implementation in practice remains questionable.
16. This section provides information regarding systemic issues, which call for structural, systemic solutions as general measures in the framework of this group of cases:

4.1. Ineffective use of preventive mechanisms;
4.2. Deficiencies regarding the accountability of the law enforcement officials;
4.3. Deficiencies of the domestic courts;
4.4. Alarming statistical data on femicide cases in Georgia;
4.5. Deficiencies of different general measures adopted by the Government.

4.1. Ineffective use of preventive mechanisms by law enforcement

- *Police failure to appropriately/accurately record victim statements*

17. The shortcomings regarding the appropriate/accurate recording of the victim statements have been highlighted in the previous Rule 9(2) submission.[2] It is noteworthy that, on 2 March 2023 in its Concluding Observations on the sixth periodic report of Georgia, the Committee on the Elimination of Discrimination against Women explicitly outlined the following: *"The low prosecution rate in cases of gender-based violence against women, the limited capacity of the judiciary to apply gender-based motives introduced in 2018 into criminal law provisions as an aggravating circumstance to certain violent crimes, the fact that law enforcement authorities generally only record a summary of victims' and witnesses' statements, and the lenient sentences imposed on perpetrators of gender-based violence against women."*[3]
18. The U.S. Department of State outlined in its 2022 report (published in 2023) the shortcomings regarding *"a tendency of some police to ask women what they had done to prompt domestic violence against them.*

[1] The Statements of: G.Gh., A.J., N.E., Kh.J., G.B.; The documents signed by the law enforcement authorities, who allegedly committed the crime; The Statements and/or call recordings of deceased ("C" as referred in the judgment by the Court);
[2] Communication from NGOs (26/10/2022) (Georgian Young Lawyers' Association, Union Sapari, European Human Rights Advocacy Centre, International Partnership for Human Rights) in the case of Tkhelidze v. Georgia (Application No. 33056/17), §§16-18, available: https://hudoc.exec.coe.int/eng?i=DH-DD(2022)1182E [10.10.2023].
[3] United Nations, Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Georgia, CEDAW/C/GEO/CO/6, 02.03.2023, para. 25(d), available: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FGEO%2FCO%2F6&Lang=en [10.10.2023]

A number of victims reported instances of insensitive attitudes from police officers."[4] It is submitted that the absence of important factual circumstances serves as a barrier to identifying the discriminatory gender motive or other aggravating circumstances.[5]

19. The aforementioned challenges affect the accurate classification of crimes, subsequently influencing the severity of sentencing. Improper qualification excludes the aggregative element of the crime, disrupting the proportionality between the criminal offense and its punishment, hindering the achievement of the criminal justice system's objectives. According to thorough research conducted by the PDO, prosecutors and judges have exhibited erroneous crime classifications, even when all factual circumstances were transparent and corroborated, sometimes even by the accused.[6] This issue is a challenge in itself; however, the failure to appropriately and accurately record victim statements increases the risk of ineffective investigations and misjudgments. The failure to accurately record victim statements denies the victim the right to speak up at the very first and critical stage of the proceedings. As recognised by the ECtHR, it is very difficult for victims of gender-based violence to report this violence.[7] Hence, when they do they need to have their voices accurately heard.

- *Police failure to follow/complete risk-assessment checklist*

20. According to the Action Plan of the Government of Georgia, *"[a]s of 1 May 2023, the restraining order and risk assessment tool is operating in an updated form. The aim of the mentioned changes is to increase the effectiveness of combating violence against women and/or domestic violence and domestic crime and to create an even more effective mechanism for supervising the abuser. The above-mentioned changes were preceded by the evaluation of the mechanism for assessing the risks of the recurrence of violence by the experts from the NGO "Global Rights for Women" with the support of UN Women, as well as by the workshops with the representatives of the police units, non-governmental sector and the Public Defender's Office of Georgia (hereinafter - "PDO")."*[8]
21. The signatory organizations welcome such measures taken by the Government, however, in order to increase the effectiveness of the mechanism, it is necessary to gradually integrate it into the practical activities of the police. In 2023, the Public Defender of Georgia has repeatedly underlined that *"[d]espite these measures, the law enforcers are often unable to perceive systematic nature of cases of violence against women and domestic violence and the police reaction is fragmental, incapable of preventing repetition of violence. In several cases, the authorities failed to prevent femicide/attempted femicide and recurrence of violence although investigations had already been launched or MIA had already been notified about violence."*[9]

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[4] The U.S. Department of State, 2022 Country Reports on Human Rights Practices: Georgia, 2023, p. 39.
[5] Communication from NGOs (26/10/2022) (Georgian Young Lawyers' Association, Union Sapari, European Human Rights Advocacy Centre, International Partnership for Human Rights) in the case of Tkhelidze v. Georgia (Application No. 33056/17), §18, available: https://hudoc.exec.coe.int/eng?i=DH-DD(2022)1182E [10.10.2023].
[6] The Public Defender of Georgia, Special Report on Analysis of Femicide and Attempted Femicide Cases of 2021, 2023, p. 17.
[7] *Tkhelidze v. Georgia*, no. 33056/17, 08.10.2021, § 54.
[8] Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), Action Plan, 06.10.2023, §§55-56, available: https://hudoc.exec.coe.int/ENG?i=DH-DD(2023)1193E [10.10.2023]
[9] Written Submission for 84th Session of the Committee on the Elimination of Discrimination against Women (CEDAW) by the Public Defender of Georgia, 09.01.2023, §12, available: https://www.ombudsman.ge/res/docs/20230111211345692956.pdf [10.10.2023]

- *Shortcomings related to applying Electronic Monitoring Bracelets*

22. The failure of the law enforcement authorities to appropriately/accurately record the victim statements and follow/complete the risk-assessment checklist serves as an obstacle for the effective application of electronic monitoring bracelets. More specifically, if the police accurately recorded the victim statements, and completed the risk assessment checklist, this would enable a more targeted and effective use of monitoring devices based on the identified risks to and needs of the victim. The shortcomings regarding the identification of motive of the gender-based discrimination is outlined by the General Prosecutor's Office of Georgia.[10]
23. In the case of *Tkhelidze v. Georgia*, the Court mentioned that "[w]hilst the domestic legislative framework provided for temporary restrictive measures in respect of the abuser, the relevant domestic authorities did not resort to them at all."[11] The same conclusion was reached by the Court in the case of *A and B v. Georgia* as well.[12] In 2022, the Committee of Ministers *"[w]elcomed the introduction of a risk assessment tool and an electronic surveillance system as important safeguards for preventing recurrence of violence and protecting victims; underlined however that stronger efforts should be deployed for ensuring effective application of these and the other deterrent mechanisms in practice; encouraged the authorities to step up their efforts aimed at improving communication with victims."*[13]
24. In the special report of Analysis of 2021 Femicide and Attempted Cases, the Public Defender of Georgia outlined that the interviewed women had not been provided with appropriate information regarding their rights by law enforcements authorities, *"[n]or were the victims informed about the possibility to have electronic surveillance imposed on the defendant.*"[14]
25. Referring to paragraph 60 of the Action Plan of the Government and Article 10^1(6) of the Law of Georgia on The Elimination of Violence against Women and/or Domestic Violence, and the Protection and Support of Victims of Such Violence, the application of electronic surveillance requires the consent of a victim. Taking into account the sensitivity of gender-based violence, and the risks of retaliation by perpetrators against victims who report violence to the authorities, the Signatory Organizations request the Government to provide more information with regards to standards and methods while adopting this consent-based approach.
26. The insufficient application of electronic surveillance can be observed from the information provided by the Government. More particularly, the Ministry of Internal Affairs has 350 electronic monitoring bracelets at its disposal, as mentioned in the previous submission.[15] The Action Plan underlines that *"[i]n the period between 1 May 2023 to 31 August 2023 (the period after the implementation of the changes), electronic supervision was filled out for a total of 51 persons."*[16] The application of 51 electronic

[10] Prosecutor General's Office of Georgia, Human Rights Protection Department, Gender-based Discrimination Motive in Cases of Violence against Women and Domestic Violence, 2022, p. 26, available: https://pog.gov.ge/uploads/0e107821-Gender-Analysis-2022.pdf [10.10.2023]
[11] *Tkhelidze v. Georgia*, no. 33056/17, 08.10.2021, § 55.
[12] *A and B v. Georgia*, no. 73975/16, 10.05.2022, § 48.
[13] The Committee of Ministers, CM/Del/Dec(2022)1451/H46-14, H46-14 Tkhelidze group v. Georgia (Application No. 33056/17), 1451st meeting, 6-8 December 2022 (DH), para. 4.
[14] The Public Defender of Georgia, Special Report on Analysis of Femicide and Attempted Femicide Cases of 2021, 2023, p. 21.
[15] Communication from NGOs (26/10/2022) (Georgian Young Lawyers' Association, Union Sapari, European Human Rights Advocacy Centre, International Partnership for Human Rights) in the case of Tkhelidze v. Georgia (Application No. 33056/17), §27, available: https://hudoc.exec.coe.int/eng?i=DH-DD(2022)1182E [10.10.2023].
[16] Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), Action Plan, 06.10.2023, §64, available: https://hudoc.exec.coe.int/ENG?i=DH-DD(2023)1193E [10.10.2023]

monitoring bracelets in light of alarming statistics of femicide/attempted femicide also mentioned by the Government in para. 82 of the Action Plan and other types of gender-based violence is not sufficient.

4.2. Deficiencies regarding the accountability of the law enforcement officials for inadequate responses to victims of gender-based violence

27. In 2022, the Committee of Ministers invited the Government to *"provide concrete information on the domestic practice in respect of ensuring accountability of law-enforcement officials for their failure to respond properly to complaints on gender-based violence."*[17] Additionally, the CM notes further outline the following: *"[a]part from mentioning a possibility of launching disciplinary proceedings for non-compliance with the requirements of risk assessment and issuing of restraint orders, no concrete information was provided by the authorities about the practice of bringing law-enforcement officials to account for their failure to respond duly to victims' complaints. The authorities should provide information on the measures taken and planned in this regard, including by submitting statistical data on the disciplinary and criminal proceedings launched and sanctions imposed, along with the information on the examination into the gender-based discrimination as a possible motivating factor behind such inaction."*[18]
28. Nevertheless, again in 2023, the Action Plan of the Government lacks information regarding the domestic practice in respect of ensuring accountability of law-enforcement officials for their failure to respond properly to complaints of gender-based violence, and only lists legislative documents in this regard.
29. The practice clearly demonstrates the need for the CM to call on the Government to provide specific examples of cases in which law enforcement officials have been found liable for the failure to effectively respond to complaints of gender-based violence despite the plethora of evidence (refer to §16 of this submission). Holding law enforcement officials accountable, especially those which have not reached international Courts/organizations, is even less likely to take place. Such a vicious practice sows a sense of impunity among law enforcement officials and undermines the effectiveness of the criminal justice system. Despite numerous recent cases[19] demonstrating omissions and negligence in the official duties of law enforcement officials in the context of gender-based discrimination, neither the GPO nor the MIA has published any information regarding the accountability of the perpetrators. Therefore, the signatory organizations assume that the state has refrained from providing the CM with requested statistical information because such examples simply do not exist or are notably scarce.
30. The Committee on the Elimination of Discrimination against Women expressed concerns that women and girls who are survivors of gender-based violence, including conflict-related sexual violence and domestic violence, are often reluctant to report such violence owing to prevailing gender stereotypes, fear of stigma or reprisals, and lack of trust in law enforcement mechanisms and State support services.[20] Under Article 8 of the ECHR convention the State has the obligation to protect the victim from retraumatization during the investigation procedure, which can be caused by stereotypes, using guilt-inducing and moralizing remarks likely to discourage trust.[21] Therefore, it is important to hold law enforcement accountable for mistreatment of possible victims of crime.

[17] The Committee of Ministers, CM/Del/Dec (2022)1451/H46-14, H46-14 Tkhelidze group v. Georgia (Application No. 33056/17), 1451st meeting, 6-8 December 2022 (DH), para. 6.
[18] The Committee of Ministers, CM/Notes/1451/H46-14, H46-14 Tkhelidze group v. Georgia (Application No. 33056/17), 1451st meeting, 6-8 December 2022.
[19] The Public Defender of Georgia, Special Report on Analysis of Femicide and Attempted Femicide Cases of 2021, 2023, p. 21.
[20] CEDAW/C/GEO/CO/6, para 15.
[21] *J.L. v. Italy*, no. 5671/16, 27.08.2021, §§ 141-142.

31. Georgia still faces challenges in ensuring that law enforcement is held responsible for the mistreatment of the victims.[22] In a number of cases against law enforcements, late, missed or poorly conducted investigative actions were revealed. The alleged victims were not involved in the investigation process. The investigation does not offer such security measures to the victim, which would be a stimulus for cooperation with the investigators. Additionally, in numerous cases, the investigation did not try to obtain neutral and objective evidence.[23] In some instances, not all the witnesses were questioned and not all available evidence was gathered.[24]
32. In response to the information set out in the Government's Action Plan on the role of the Special Investigation Service (paras 123-124), it is notable that only one case of gender-based discrimination was identified by the Special Investigation Service in 2022.[25] As for the General Inspection of the Ministry of Internal Affairs of Georgia, no statistics regarding discrimination are available on their website. Within the framework of a specific case (Application no. 54409/21), Union Sapari asked for statistics on the basis of gender discrimination, if there were any complaints against police officers of the Ministry of Internal Affairs, to which they answered on July 12, 2023 by letter MIA 6 23 02081069 that such statistics are not generated.

4.3. Deficiencies of the domestic courts approach in gender-based violence cases

- *Failure of Prosecutors office to identify gender-based violence*

33. In 2018, the term "Crime committed on the basis of gender" was incorporated into various articles within the Criminal Code of Georgia. These articles include "intentional killing," "incitement to suicide," "intentional infliction of serious harm to health," and others. This addition classifies such crimes as "crimes committed under aggravating circumstances," This implies on the one hand that the state, when qualifying the crime under this article, must be able to see the gender-based violence in the country, its nature, scope, content, circumstances and etc, which allows the state to gain insight into the prevailing situation regarding gender-based violence within the country and to determine the necessary actions to combat it effectively.
34. On the other hand, it indicates the fact that the crime is committed under aggravating circumstances and the offender receives a greater punishment than he would have received in the case of a non-gender-motivated crime. Therefore, it is crucial for the Prosecutor's Office to make precise determinations when categorizing crimes, as this directly influences the accurate determination of the appropriate penalties for the perpetrator.
35. However, in the context of Georgian legal practice, it appears that the Prosecutor's Office often fails to accurately classify gender-based crimes. Consequently, this inconsistency hampers their capacity to identify cases of gender-based violence and determine when and where the special laws related to gender aggravating motives should be invoked. This is also mentioned in the reports of the Public Defender.[26]
36. As a result of monitoring by the Public Defender of Georgia, violence against women cases were qualified by the General Prosecutor's Office of Georgia on the basis of gender in not even half of the cases studied. In the rest of the cases, despite the fact that as a result of studying the case materials, there were definite signs of a gender motive for committing the crime, the action was not qualified under a special article.[27]

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[22] The Public Defender of Georgia, The Special Report on Effectiveness of Investigation on Criminal Law Cases of Ill-treatment, 2019, p. 30, available <https://www.ombudsman.ge/res/docs/2019062010290641301.pdf> [19.10.2023].
[23] *ibid*, p. 12.
[24] i*bid*, p. 20.
[25] The Special Investigation Service, The Annual Activity Report 2022,, 96, available <https://sis.gov.ge/uploads/files/6459199c809a2_sis2022-annual-report.pdf> [19.10.2023].
[26] The Public Defender of Georgia, Analysis of 2021 Femicide and Attempted Femicide Cases, 2023, p. 15, available: <https://www.ombudsman.ge/res/docs/2023092012185795453.pdf> [19.10.2023].
[27] *ibid*.

37. In one case the motive for the act committed was that the perpetrator thought that as a woman, the victim had to keep the house clean and when she did not, he physically abused and tried to kill her. The prosecutor did not qualify this act as violence on the basis of gender.[28]
38. In another case, the perpetrator stated himself that he tried to kill the victim because she refused to engage in sexual activity with him. The prosecutor did not qualify this act as violence on the basis of gender either.[29]
39. Moreover, under Article 273 of the Criminal Procedure Code of Georgia, in the case of incorrect qualification of the crime, the judge has the right to change the qualification only in favor of the accused. Therefore, wrong qualification of the prosecutor's office leads to the qualification with lighter rules of action and subsequently the appointment of a lighter punishment.[30] This highlights the necessity for the prosecutor to have the appropriate qualifications.

- *Failure of domestic courts to identify and define gender-based violence*

40. Identifying gender-based motive is problematic for the domestic courts as well. In 2022, the Committee of Ministers expressed concerns regarding the low rate of granting of motions for detention as a restraint measure (around 51% of motions satisfied by courts).[31] The rate has increased, but not significantly. According to the Prosecutor's Office, in 2022 the courts only granted 57% of such motions.[32]
41. In the previous Action Plan, the Government of Georgia outlined: "[o]n 25 October 2022, the Government adopted two standalone action plans - 'National Action Plan on the Implementation of the UN Resolutions 1325 on Women, Peace and Security' (2022-2024) and the 'National Action Plan on Combating Violence against Women and Domestic Violence and Measures to be implemented for the Protection of Victims (Survivors) (2022-2024)."[33] It is noteworthy that the National Action Plan on Combating Violence against Women and Domestic Violence and Measures to be implemented for the Protection of Victims (Survivors) (2022-2024) itself makes reference to remaining problems with regard to mobilization of enough evidence to reveal the gender-based motive albeit the constant training and specialization of law enforcement officers."[34]
42. The evaluation of actions by the judges is also challenging. Of the cases studied by the Public Defender of Georgia, in only some of them did the trial courts find guilty verdicts for gender-based femicide and attempted femicide. The State's communication itself indicates that gender was upheld as an aggravating factor in only 65% of the cases.[35]
43. As mentioned above, as in previous years, the question of whether the crime committed on the basis of jealousy against a woman belongs to the crime committed on the basis of gender is still problematic. Jurisprudence on this issue is still mixed.[36] For example, in one of the cases litigated by Union "Sapari"

[28] *ibid*, p. 18; Cited: Mtskheta District Court No. 1/254--21.
[29] *ibid*, p. 16; Cited: Tbilisi City Court, Case No. 1/4041--21.
[30] *ibid*, p. 17.
[31] The Committee of Ministers, CM/Notes/1451/H46-14, H46-14 Tkhelidze group v. Georgia (Application No. 33056/17), 1451st meeting, 6-8 December 2022.
[32] The 2022 Activity Report of the Prosecutor's Office of Georgia, 2023, p. 84, available: https://pog.gov.ge/uploads/37982b9a-saqarTvelos-prokuraturis-2022-wlis-saqmianobis-angarishi.pdf [10.10.2023]
[33] Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), Action Plan, 06.10.2023, §25, available: https://hudoc.exec.coe.int/ENG?i=DH-DD(2022)1152E [11.10.2023].
[34] The Decree of the Government of Georgia, National Action Plan on Combating Violence against Women and Domestic Violence and Measures to be implemented for the Protection of Victims (Survivors) (2022-2024), p. 15.
[35] Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), Action Plan, 06.10.2023, §34, available: https://hudoc.exec.coe.int/ENG?i=DH-DD(2022)1152E [11.10.2023]
[36] The Public Defender of Georgia, Analysis of 2021 Femicide and Attempted Femicide Cases, 2023, p. 25, available: <https://www.ombudsman.ge/res/docs/2023092012185795453.pdf> [19.10.2023].

the courts did not identify gender-based violence, when the perpetrator set his partner on fire because of jealousy.[37]

44. Moreover, there were cases where, despite the fact that the crime was committed on the basis of gender, the court either completely omitted any mention of gender, or the use of the gender sign was not substantiated.[38]

- *Lack of adequate training of judges*

45. With regards to the mentioned action plan, the Public Defender of Georgia outlines that even though the Action Plan includes particular measures to prevent violence, it does not consider judges as one of the target groups in terms of awareness raising and professional development.[39] In respect to domestic violence, the importance of training of judges was highlighted by the UN Human Rights Committee as well.[40]
46. It is stated in the communication by the State that in 2018-2022 only Prosecution services held educational activities on gender-based violence,[41] while the judges only attended conference on femicide along with representatives of state authorities, international and NGOs and members of parliament.[42] Therefore, as mentioned above, judges were not specifically addressed. Moreover, unlike prosecutors, judges do not need a certain specialization in order to judge a case of domestic or gender-based violence. Consequently, a judge not accordingly educated might be deciding an above mentioned case and there is high risk of misunderstanding or misinterpreting the terms.

4.4. Alarming statistical data on femicide cases in Georgia

47. According to the National Statistics Office in Georgia, in 2022, in a total of 1802 criminal cases, 1579 cases had signs of discrimination, 1065 people were charged, and 522 of them were found guilty (gender identity was deemed an aggravating factor in 399 of these cases).[43] According to the Ministry of Internal Affairs of Georgia, violence against 6583 female individuals was recorded in 2022.[44] According to the report of the Information and Analytical Department of the Ministry of Internal Affairs of Georgia, 335 female victims were recorded from 1 January 2023 to June 30 of the same year.[45] Besides, 3423 female representatives are victims of domestic violence.[46]
48. It is extremely alarming that in 2023, particularly on September 19, that an active employee of the Ministry of Internal Affairs in Tbilisi killed his former wife and mother-in-law in the presence of two minor children,

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[37] Decision of Supreme Court of Georgia, №879ა3-22, 28 Feb, 2023, available in Georgian: <https://www.supremecourt.ge/ka/fullcase/44407/2> [19.10.2023]

[38] The Public Defender of Georgia, Analysis of 2021 Femicide and Attempted Femicide Cases, 2023, p. 22, available: <https://www.ombudsman.ge/res/docs/20230920121857954 53.pdf> [19.10.2023]

[39] The Public Defender of Georgia, The Situation in Human Rights and Freedoms in Georgia 2022, 202.

[40] United Nations, Human Rights Committee, Concluding observations on the fifth periodic report of Georgia, CCPR/C/GEO/CO/5, 13.09.2022, para. 24.

[41] Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), Action Plan, 06.10.2023, §§ 40-41, available < https://hudoc.exec.coe.int/ENG?i=DH-DD(2022)1152E [11.10.2023]

[42] *ibid*, §48.

[43] National Statistics Office of Georgia, Joint Report of Data on Crimes Committed on Grounds of Intolerance with Discrimination Basis, 2022, available: https://www.geostat.ge/media/51738/Hate_2022.pdf [12.10.2023]

[44] Ministry of Internal Affairs, Domestic Violence Restraining Orders 2022, available: https://info.police.ge/uploads/63d8e70e9a8b2.pdf [12.10.2023]

[45] Ministry of Internal Affairs, Violence against Women Restraining Orders 2023, available: https://info.police.ge/uploads/651d4c8cdc77b.pdf [12.10.2023]

[46] Ministry of Internal Affairs, Domestic Violence Restraining Orders 2023, https://info.police.ge/page?id=786&parent_id=102 [12.10.2023]

and according to the information of the Special Investigation Service, an investigation has been initiated.[47] The man also hurt himself and passed away on 11 October 2023 at hospital.

49. On 6 October 2023, an assassination of a 14-year-old girl by an adult man who was in an unregistered marriage with her[48] turned out to be resonant for the society. The defendant was arrested, so were the family members of the deceased girl and defendant. The charges include gender discrimination and intolerance.[49]
50. Statistical data holds practical importance as it can illustrate a wider picture of the challenges. Therefore, it is crucial for the Georgian authorities to establish a proper system for collecting and analyzing statistical data. The signatory organizations welcome the government's inclusion of an integrated policy and data gathering as one of the main directions in the Action Plan. However, the issues on which statistical data is collected are not unified and are too limited to identify different patterns of domestic and gender-based violence, hindering the implementation of adequate measures against it. The adopted statistical data collection system does not include data from domestic courts and the protective orders issued by them, despite the fact that they are no less important than the restrictive orders issued by the police. The CM underlined that further sustained and robust action is required to address the root causes of femicide and other serious gender-based crimes. These root causes will remain unidentified if the data collection system excludes the gathering of information pertaining to the following: 1. The motives of violence, 2. The location of the crime scene, 3. The ethnicity of the victim/perpetrator, 4. Prior convictions and past incidents of the defendants, 5. The social status of the victim/defendant, and more. The majority of these indicators are not included in the statistical data collection system, which should be created by 2024 according to the action plan.
51. The Human Rights Protection Department of the Prosecutor's Office of Georgia ("*OPGHR Department*") analyzed a broader range of issues in their studies.[50] However, they only examined a small portion of cases, which limits the state's ability to present the entire picture and to determine the strategic measures that could sufficiently enhance the effectiveness of law enforcement authorities and other state agencies addressing gender-based violence.
52. It's noteworthy that despite the CM's request, the government has not provided comprehensive statistical information regarding gender-based crimes. For example, the state has not mentioned that half of the acquittals in the country are related to domestic violence cases, where the victims are mostly women. The provided statistics indicate that in 2022, 1054 persons were prosecuted for domestic violence and violence against women based on gender discrimination. However, there is no statistic indicating how many of them were found guilty by the court, the ratio of sentences, or the percentage of recidivism. This information is important to assess the ongoing execution of judgments and the progress made by the state.
    The Government's Action Plan does not contain statistical information regarding protective orders or the rate of violation of restraining/protective orders by perpetrators, nor does it include information on the statistics of violations of the electronic surveillance system. This type of information is important to assess how effectively preventive measures are implemented on the national level and whether the law enforcement system is prepared to offer victims real-time effective protection from alleged abusers.

4.5. Deficiencies of other different general measures referred to in the Government's Action Plan

- *Deficiencies of State compensation mechanism*

[47] See the article of Formula, available: https://formulanews.ge/News/97670 [12.10.2023]
[48] See the Statement of the Ministry of Internal Affairs, 11.10.2023, available: https://police.ge/ge/kakhetshi-momkhdar-ganzrakh-mkvlelobis-faqtze-politsiam-dzebnili-piri-daakava/15992 [12.10.2023]
[49] See the Statement of the Ministry of Internal Affairs, 11.10.2023, available: https://police.ge/ge/qvemo-qartlis-politsiam-qortsinebis-idzulebisa-da-danashaulis-sheutkobineblobis-braldebit-erti-piri-daakava/15996 [12.10.2023]
[50] Available at:<https://pog.gov.ge/uploads/007f81e3-Femicide-2014-2022-ENG.pdf> [13.10.2023]

53. In 2022, the Government of Georgia approved the rules for determining the amount and awarding compensation for victims of violence against women and/or domestic violence, which was undoubtedly a positive change. However, the system still requires further improvements. As stated by the PDO in its latest parliamentary report, the preconditions and amount of compensation are problematic. The rules do not address cases where prosecution terminates due to the mental illness or death of the perpetrator before the verdict is issued.[51] Therefore, the current regulations exclude the possibility for some victims to receive compensation.

- *Challenges before witness and victim coordinators*

54. Victims and witness coordinators offer vital emotional support to victims of gender-based violence. However, according to the PDO, both MIA and GPO lack a sufficient number of employees to effectively respond to the increasing crime rate. The coordinators themselves mentioned the heavy workload as a challenge. Ignoring their needs could decrease the quality of their service, given the heavy emotional demands of their job. It is noteworthy that there is no distinction in competence between MIA's and GPO's victims and witness coordinators, and it is not foreseeable how criminal cases are distributed between these bodies. In addition, one of the main challenges is the geographic coverage of the coordinators' services, as municipal regions are not adequately covered, particularly in areas where their services are most necessary.[52]

- *The Council for Reviewing Complaints of Victims of the Encroachment of Life*

55. The Government states, in paragraph 37 of their Action Plan, that on 5 December 2022, the PGO established the Council for Reviewing Complaints of Victims of the Encroachment of Life (hereinafter referred to as "the Council"). However, they have not provided the number of complaints the Council has reviewed and how they have facilitated investigations. According to the Government, the Council has been operational for almost one year. It not known whether the Council has made any decisions that were submitted to the Prosecutors General and what the final decisions were. In order for such a body to operate effectively, victims should be well-aware of its functions and mandate. Another issue is how many victims/successors of the victims have been informed of the existence of such a body and what the authorities have done to raise awareness regarding the mentioned body.
56. The Council needs to demonstrate readiness to comply with its mandate to benefit the progress of investigations and lead to tangible outcomes. Femicide cases presented before the ECtHR are characterized by a number of crimes committed by representatives of law enforcement at the national level. Therefore, it is especially challenging to achieve justice in such cases due to the lack of willingness of the state to hold law enforcement officers and prosecutors accountable. Additionally, it is noteworthy that such cases are often characterized by deliberate attempts to conceal the truth and avoid accountability. The council needs to demonstrate its usefulness, especially in the context of combating femicide, and not become another source of frustration for the victims or their legal successors. Otherwise, its existence would be akin to the existence of the legislation that was in place at the time of the violations but failed to adequately protect the victims.

- *Increased risks and causes of revictimization*

[51] The Public Defender of Georgia, The Situation in Human Rights and Freedoms in Georgia 2022, 202.
[52] The Public Defender of Georgia, The Situation in Human Rights and Freedoms in Georgia 2022, 204.

57. The Government in the Action Plan refers to the Study of OPGHR. It is noted that the victim's refusal to testify is one of the challenges identified by the OPGHR Department in their research.[53] However, they do not provide information on the basis for this challenge or the root cause of this phenomenon, even though the victim logically should have an interest in adequately informing law enforcement bodies.
58. In Georgian society, the attitude towards individuals who cooperate with law enforcement agencies is negative. Consequently, the victims, who often serve as the sole witnesses to the crime, become subjected to revictimization through emotional and psychological violence, often from different groups of people, including the family members of the perpetrator. Additionally, the victims fear the consequences that may arise when the offender is released from prison, leading them to avoid cooperating with the investigation to prevent further harm. It would be insightful if the state could provide statistics on the instances of female victims experiencing revictimization after the offenders are released from prison. Therefore, the government should not blame the victim for noncooperation, but instead provide them with adequate guarantees to ensure their safety.
59. The government aims to have zero tolerance for domestic and gender-based violence crimes within society. However, this zero-tolerance concept is not fully embraced within the law enforcement system. According to the execution report presented to the Georgian Parliament, the General Prosecutor's Office (GPO) has established an action plan for plea bargaining in cases related to domestic violence. Plea bargaining involves the prosecutor's office offering reduced sentences to domestic violence offenders, thereby increasing the risk of revictimization. In practice, the victim's consent is necessary for plea bargaining, making the victim susceptible to targeting by the perpetrator or their relatives, who seek lenient penalties. The challenges associated with plea bargaining have also been highlighted in the PDO's report.[54]

5. Conclusions and recommendations

60. The signatory organizations repeat the need for the recommendations listed in Section 5 of the Rule 9(2) (dated 26 October 2022), and request the Committee of Ministers to adopt the following further general recommendations for the Government’s attention:

The Effective prevention of and response to domestic violence:

61. Ensure that the state has purchased a sufficient number of electronic bracelets and has an effective mechanism for its implementation.
62. Address causes of revictimization and increase numbers of victim and witness coordinators;
63. Effectively investigate the criminal cases law-enforcement officers were allegedly involved in responding to femicide cases, and conduct a comprehensive study, including an examination of the official position of the individuals involved in the criminal case, particularly the law enforcement officers whose omission caused the victim's death. The council should take measures to ensure that such individuals cannot interfere with the investigation.

Ensure effective collection and analysis of statistical data

64. Establish an electronic system for the comprehensive gathering and analysis (including through disaggregation based on the relevant criteria), of statistical data. Ensure that the statistical results are collected and analyzed in a manner that enables the assessment of subsequent reforms and their impact on the implementation of court judgments.

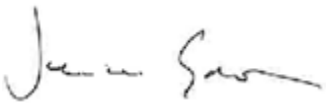
Ensure effective cooperation with international and domestic stakeholders to combat domestic violence and violence against women

[53] Available at:<https://pog.gov.ge/uploads/007f81e3-Femicide-2014-2022-ENG.pdf> [13.10.2023] p.47.
[54] The Public Defender of Georgia, Special Report on Analysis of Femicide and Attempted Femicide Cases of 2021, 2023, p. 21.

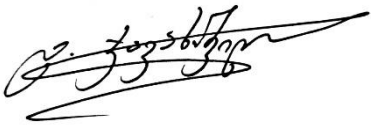
65. Provide a timely and appropriate response to the requests of NGOs for public information;
66. Establish a viable framework for cooperation between municipal and central authorities and raise awareness of domestic and gender-based violence in municipalities.

On behalf of all the signatory organizations

Jessica Gavron
Co-Director, EHRAC



Davit Javakhishvili
Head of International Litigation Team



Baia Pataraia
Director, Union Sapari



DGI
06 NOV. 2023
SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Dear Sir/Madame,

Under submission of Rule 9 (2) on 23 October regarding communication on the Committee of Ministers of the Council of Europe with regard to the execution of judgments on the Tkhelidze Group of Cases prepared by the Georgian Young Lawyers' Association (GYLA) European Human Rights Advocacy Centre (EHRAC) and Union Sapari (N33056/17) with this letter we would like to submit the written communication from the prosecutor on individual measures concerning Tkhelidze v. Georgia (No074221121803).

In paragraph 7 of the communication, we stated that we obtained information from verbal communication on October 2 2023 that no one has been held accountable yet. Moreover, we mentioned that we contacted the Prosecutor's Office to inquire about any developments in the criminal case but no response has been received.

We received the answer to our letter and we are sharing written communication from the prosecutor which confirms that no one has yet been charged.

Yours Sincerely,

Baia Pataraia

Director, Union Sapari

