GEORGIAN YOUNG LAWYERS' ASSOCIATION

SIGNIFICANT ISSUES OF DOMESTIC VIOLENCE AND VIOLENCE AGAINST WOMEN

TBILISI 2019

USAID
FROM THE AMERICAN PEOPLE

EAST • WEST MANAGEMENT INSTITUTE
Promoting Rule of Law in Georgia (PROLoG)

Georgian Young Lawyers' Association

SIGNIFICANT ISSUES of DOMESTIC VIOLENCE and VIOLENCE AGAINST WOMEN

Tbilisi
2019

Authors: **GVANTSA SAKANELASHVILI**
MERI DAUSHVILI
MERAB KARTVELISHVILI

Authors of the Chapter 7: **TAMAR BOCHORISHVILI**
BEQA TAKALANDZE

Editor: **KHATUNA KVIRALASHVILI**

Tech. Editor: **IRAKLI SVANIDZE**

Responsible for the publication: **SULKHAN SALADZE**
MERAB KARTVELISHVILI

Was edited and published
in the Georgian Young Lawyers' Association
15, J. Kakhidze st. Tbilisi 0102, Georgia
(+99532) 293 61 01, 295 23 53
Web: www.gyla.ge
E-mail: gyla@gyla.ge

CONTENTS

INTRODUCTION

Domestic violence, domestic crimes, and violence against women are one of the most serious and acute issues in Georgia. The particularly tolerant environment for the above violence is promoted by patriarchal attitudes and gender stereotypes.[1]

According to the statistics provided by the Ministry of Internal Affairs of Georgia (MIA), the rate of issuance of restrictive orders into the cases of domestic violence, as well as the number of recorded offences envisaged by Articles 126[1] (Domestic Violence) and Article 11[1] (Liability for domestic crime) of the Criminal Code of Georgia is very high.[2] According to the statistical data on registered offences, domestic violence was among the most common crimes in 2017-2018. It is also significant that every year the number of the offences envisaged by Article 126[1] of the Criminal Code of Georgia rises in comparison to the previous year, which may be due to the increase in identification of these types of violence.[3]

The fight against domestic violence, domestic crimes, and violence against women has become especially important after the ratification of the Council of Europe Convention on *"Preventing and Combating Violence against Women and Domestic Violence"* (hereinafter the Istanbul Convention). The ratification of the international instrument has entailed a number of legislative amendments and the obligations undertaken by the State. Consequently, it is interesting to assess to what extent the current case-law or response of law enforcement agencies is in line with international standards and Georgian legislation.

The aim of the present study is to examine the effectiveness of the State's response to domestic violence, domestic crimes and violence against women by conducting in-depth interviews with relevant agencies and individuals and to analyze the cases litigated by GYLA, judgments and decisions rendered by the court. The examination of the effectiveness implies to provide an assessment of the response of law enforcement agencies to cases of domestic violence, domestic crimes, and violence against women, attitudes and approaches demonstrated by the Prosecutor's Office and the court, and services offered by the State to victim survivors of violence and perpetrators. The State has taken a range of effective steps to improve the response to such cases, in particular, the criminal legislation has been tightened, but there are still a number of shortcomings and challenges.

The study has revealed that in 2018 the rate of identification of offences, such as systematic insult, blackmail, and humiliation increased compared to 2017, but the above-mentioned still remains a challenge. In addition, in some cases, problematic is an inappropriate issuance of restrictive orders which is manifested by issuing the restraining order not for the protection of the victim, but rather against her. This develops the impression that the issuance of the order without an in-depth examination of the case is of formalistic nature. The lack of information about the type, recurrence, and prehistory of the violence in protective orders is also problematic. The response of law enforcement agencies is another challenge, especially when victims do not confirm violence and/or refrain from providing information about a violent act. It is still problematic when victims of domestic violence change their position or refuse to testify during court trials. Another complex issue is perception of domestic violence from the perspective of gender discrimination and determination of a severe sentence accordingly. The quality of substantiation of judgments and decisions rendered by the court on preventive measures is also a challenge.

METHODOLOGY

The study of domestic violence, domestic crimes, and violence against women focuses on two different periods, namely 2017 and 2018. During the period, the Ministry of Internal Affairs of Georgia created the Human Rights Department with the main objective to increase the effectiveness of investigation into the above crimes.

[1] Special Rapporteur on violence against women, its causes and consequences report on the visit to Georgia, p.9. - http://www.parliament.ge/uploads/other/75/75719.pdf

[2] Ministry of Internal Affairs of Georgia; The reply to the request on provision of public information MIA 1 18 00411948.

[3] Ministry of Internal Affairs, Statistics of Registered Crimes, January-December 2017, http://bit.ly/2o0l0so
Ministry of Internal Affairs, Statistics of Registered Crimes, January-December 2018, https://info.police.ge/uploads/5c595f186e358.pdf

For the purposes of the research, the cases of criminal and administrative law managed by GYLA from January 2017 to December 2018, in total - 36 cases were analyzed.[4] We also studied 3 cases filed by GYLA at the international level.[5] The cases conducted by GYLA lawyers were analyzed based on the documentation available into the cases (we requested from the lawyers all relevant materials of the cases: motions, judgments, decisions, verdicts, orders, and records of court trials, if necessary), as well as through the interviews on important issues with the lawyers.

The materials of the cases were analyzed with regards to different stages, namely: an effective response to domestic violence, domestic crimes, and violence against women, the stage of investigation and criminal prosecution, and the deliberation of cases in the court. The analysis has identified the problematic issues which more or less reflect the tendencies into similar cases. The attention was also focused on the individual, but interesting cases and issues.

Within the scope of the study, the court judgments on the imposition of preventive measures in the cases of domestic violence, domestic crimes, and violence against women, as well as final court verdicts were requested from the court of large cities of the country and analyzed. A number of the courts provided incomplete or refused to provide at all the requested information. Ultimately, we have studied 102 judgments of 2017 and 131 court decisions of 2018 period.[6] 54 judgments of 2017 and 77[7] court decisions of 2018 on the imposition of preventive measures provided by the courts were examined according to the randomized methodology (40-50% of the judgments provided).

GYLA politely requested decisions of the courts of large cities / regions of Georgia on the issuance of protective orders. Some of the courts did not provide the complete materials we had requested, but in the long run, we managed to study and analyze 35 judgments held by the courts.[8]

With the view to identification of further issues and shortcomings, in-depth interviews were conducted with victims of violence (13 victims) and lawyers of victims of violence (7 lawyers). Interviews and focus groups were also arranged with prosecutors (15 prosecutors), officials of the MIA (9 representatives of the MIA) and judges (18 judges).[9]

We have also analyzed the national legislation on domestic violence, domestic crimes, and violence against women, as well as relevant international standards. We requested and analyzed relevant public information from the Prosecutor's Office, the Ministry of Internal Affairs and the State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking.

KEY FINDINGS

The key findings regarding gender aspects into domestic crimes and domestic violence:

- The interviews with victims of violence have proved that violence is often caused by the desire of the perpetrator to control the victim's behavior, actions of the victim not approved by the abuser and the subordinate and stereotypical roles existing in the family;
- The victims often name financial dependence on the abuser as the main factor provoking violence, as well as the lack of moral support from the public, traditional and stereotypical approaches and interference of relatives with family affairs;

[4] 18 out of 36 cases analyzed were criminal cases, 16 administrative and two cases were in both directions.

[5] In 2017 and 2018, GYLA sent one case to the European Court of Human Rights out of the cases administered at the international level, and in 2017 one case was sent to the UN Committee on the Elimination of Discrimination against Women.

[6] The study examines the judgments of the following courts: the period of 2017: Tbilisi, Poti, Gori, Zugdidi, Akhaltsikhe, Gurjaani, Zestaponi, Samtredia, Sachkhere and Telavi. Kutaisi and Rustavi City Court refused to provide us with court decisions, saying that processing of the requested information (due to their abundance) would paralyze the courts, which was not at all necessary for the court activities. The period of 2018: Poti, Gori, Zugdidi, Akhaltsikhe, Gurjaani, Zestaponi, Samtredia, Sachkhere and Telavi. The Tbilisi City Court refused to provide us with the court judgments of 2018 period. It is noteworthy that Telavi District Court forwarded only 4 court decisions of that period.

[7] The judgments into domestic violence cases rendered by Telavi, Zugdidi, Samtredia, Zestafoni, Gurjaani, Akhaltsikhe, Sachkhere District and Poti City Court in 2017 and 2018 have been analyzed. The decisions rendered by Gori District Court in 2018 were also analyzed. The Gori District Court did not provide us with judgments held in 2017concerning domestic crimes.

[8] The study analyzes court decisions made by Zugdidi, Poti, Gori, Gurjaani, Akhaltsikhe and Zestafoni courts. Telavi Court has provided only one judgment. The Sachkhere Court did not receive any application requesting the issuance of a protective order in 2017-2018. Tbilisi City Court has been applied twice to issue public information regarding protective orders, however, the court refused to provide the same.

[9] The interviews were conducted in December 2017 - March 2018.

- The interviews and the analysis of the judgments and cases have shown that in most cases abusers are men and women are victims, and mainly violence occurs between spouses / partners;
- The interviews conducted with the lawyers of victims and the judgments examined within the study have revealed that the identification of discriminatory ground in the cases is a problematic issue. Among 102 judgments examined in 2017, the Prosecutor's Office identified the gender discrimination motivation only in 2 cases (2%). As regards the year of 2018, the prosecution identified the discriminatory ground in 3 cases (2%) out of 131 decisions examined;
- The analysis of the court decisions has revealed that the court in none of the cases accepted the argument of the prosecutor regarding the commission of the crime under discriminatory grounds and therefore, the gender motivation for the commission of the crime was not considered as an aggravating circumstance in the determination of the sentence.

Findings in terms of the initial response to violence:

- The interviews have shown that the victims are less likely to appeal to law enforcement agencies during their cohabitation with abusers. Moreover, the reference to the police usually happens not upon the first incident, but after regular and intense acts of violence;
- The examination of the cases litigated by GYLA has revealed that restraining orders in most cases were issued, however, there were the cases when the restraining order was not issued or issued incorrectly not for the purpose of protecting the victim, but rather against her;
- The analysis of the cases managed by GYLA, as well as the court decisions have illustrated that the protective orders include only a general indication of violence and no significant factual circumstances of the act are provided, which hinders the assessment not only of the prehistory of the violence, but also the risks of violence;
- The analysis of the cases conducted by GYLA shows that when both parties involved in domestic conflicts claim that they have been subjected to violence, the police encounter the problem of identification of the victim. In such cases, the restraining order is issued against both the abuser as well as the victim, which indicates that the police finds it difficult to differentiate between the abuser and the victim;
- The interviews have demonstrated that law enforcers did not implement active measures to monitor the implementation of restrictive and protective orders. The identification of any violation of the terms of the restrictive and protective orders was largely dependent upon the victim's initiative. The MIA claims that a monitoring mechanism has been introduced since 2018, but we have not been able to obtain any information regarding it despite our persistent requests. Based on the analysis of the court judgments (on the issuance of protective orders), as well as according to the statistics published by the Ministry of Internal Affairs, the cases of repeated violence after the expiration of the term of the restrictive or protective order are frequent.[10]
- The interviews with the victims, MIA representatives and judges have revealed that children who witness violence are not granted the victim's status and protective mechanisms are not used in their case. The situation is different when minor children directly fall the victims of violence. In such cases, the protective mechanisms are usually applied;
- The interviews and public information have proved that victims of violence usually face the obstacles when they apply for the shelter. In some cases, victims have to go to other cities to obtain shelter, because there are not sufficient places in their cities. In certain cases, victims cannot change their place of residence, even temporarily, due to their employment and / or minor children;
- Another problem is obligating abusers on the basis of a protective order to take/ attend training courses oriented on correction/rehabilitation of their violent attitudes and aggressive behavior, due to the absence of such rehabilitation centers and / or similar services;

Findings related to activities of law enforcement agencies:

- The analysis of court judgments has proved that court judgments are often pronounced against physical violence into cases of domestic crimes. It must be positively assessed that compared to the previous year, in 2018, the statistics of the response to psychological violence has increased, but the identification and effective investigation of such cases is still a challenge.
- The interviews with the MIA officials have illustrated that provision of an effective response from law enforcement agencies is a challenge when the victim refrains from providing information about violence and / or expresses a negative attitude towards the initiation of an investigation;

[10] https://police.ge/adamianisuflebebi/index.html#p=8

- The examination of the court judgments has demonstrated that the prosecution mainly requests the imposition of severe preventive measures. In particular, the prosecution motioned for the use of imprisonment in 115 (88%) out of 131 cases and required bail in the remaining 16 (12%) cases. However, a certain part of the prosecution's motions (27 (21%) out of 131) was accompanied by merely formal and blanket substantiation and was not strengthened with the factual circumstances of the cases;
- The study of the court judgments has shown that in 2018, the policy of the Prosecutor's Office was further toughened in terms of demanding preventive measures. In particular, the examination of the judgments rendered in 2017 has shown that the Prosecutor's Office requested bail in 12 (22%) out of 54 cases, and in 2018, the Prosecutor's Office demanded bail only in 4 (5%) cases out of 77;
- In the majority of the cases managed by the GYLA, the Prosecutor's Office made a final decision, which was expressed in the determination of a charge, but in certain cases, despite the expiration of the reasonable timeframe, no specific results were obtained;
- The analysis of court judgments has shown that despite the strict policy of the State declared in relation to early marriages, plea agreements under favorable conditions were signed with all persons charged with Article 11^1, Article 140 of the Criminal Code of Georgia;

Findings regarding the court's approaches:

- In most cases, the court satisfies the victim's application on the issuance of a protective order, however, judges often fail to substantiate the term determined for the protective order. Often court decisions do not provide any reasoning why the judge applies a specific term of the protective order, be it the maximum or minimum term envisaged by law;
- The study of the court judgments has shown that only a small number of judges (36%) imposed on abusers, alongside with non-custodial measures, additional obligations, such as prohibition to access the victim, restriction of communication, etc.
- The interviews with the prosecutors and judges, as well as the analysis of court decisions, have demonstrated that victims changing their position and / or refusal of the victim to testify during criminal proceedings is a problem, which often leads to an acquittal verdict in favour of defendants;
- The interviews have shown that a particular number of judges are characterized by low sensitivity and insufficient knowledge of gender equality issues, which is a serious problem. The above-mentioned is expressed in the stereotypical beliefs held by some judges regarding the role of the spouses in the family. The interviews with the judges and the analysis of court judgments have illustrated that the absolute majority of the judges interviewed cannot see a gender motivation into the cases and point out that violence is mainly caused by domestic problems;
- The analysis of the court judgments has shown that 43 out of 131 (33%) court decisions delivered into domestic violence and domestic crimes lack in proper reasoning and / or are insufficiently substantiated. The judgments do not include the motivation of the court when imposing a particular type of a preventive measure; The decisions on the use of bail are also unsubstantiated especially when the court does not examine the financial situation of the defendant;
- The analysis of the court decisions has revealed that the court does not provide a comprehensive examination of any mitigating and aggravating circumstances of the sentence. Into 30 cases out of 233 judgments examined, the act was qualified according to Article 11^1 of the Criminal Code (Liability for Domestic Crime), but, only in one case, the Court determined the circumstance provided under Article 53^1 of the Criminal Code – an offence against a family member- as an aggravating factor;
- The court judgments, whether they are administrative or criminal, only in rare cases refer to international instruments or practices. Even in the case of reference, the Court mostly cites the decisions of the European Court of Human Rights, which are not relevant to a specific case, and represent unnecessary and superfluous information;
- The analysis of the court judgments has indicated that in 2018 the rate of plea agreements signed with defendants on domestic crimes and domestic violence cases has reduced compared to 2017. Namely, in 2017, plea agreements were signed with defendants in 36 (37%) cases out of 98 guilty verdicts, whereas in 2018, plea agreements were signed in only 17 (14%) cases out of 124. The foregoing is the indication of tightening the state policy towards domestic crimes;

1. INTERNATIONAL AND LOCAL LEGISLATIVE FRAMEWORK

Having regard to various international agreements, the Council of Europe Convention "On Preventing and Combating Violence against Women and Domestic Violence" was developed on 11 May 2011, which recognizes violence against women as a form of discrimination and obligates the member states of the treaty to introduce relevant legislative amendments and implement specific effective mechanisms and services.

The important document protecting the rights of women and victims of domestic violence was ratified by Georgia in 2017. With the ratification of the Convention, the State has undertaken the commitment to take all necessary legislative and other measures to adopt and implement State-wide effective, comprehensive and coordinated policies at the State's level, encompassing all relevant measures to prevent and combat all forms of violence covered by the scope of the Convention, and offer a holistic response to violence against women.[11]

With the view to bringing the existing legislation in line with international standards, a number of important legislative amendments have been introduced. Specifically, the restrictive and protective order shall be issued not only in relation to domestic violence but also in cases of violence against women; for the purpose of ensuring effective protection against violence, the obligation to submit the restrictive and protective order to the court for their promulgation has been abolished and a restraining order shall enter into force immediately upon its issuance by a police officer; the right to carry a weapon by the abuser has become restricted; forced sterilization, mutilation of women's genital organs and stalking has been criminalized; the term of deprivation of liberty has been increased to a two-year term with regard to domestic violence committed without aggravating circumstances (Article 126^1(1) of the Criminal Code of Georgia (CCG)); commission of gender-motivated crime or an offence committed in a family have been added as an aggravating factor for liability for all respective crimes envisaged by the Criminal Code;[12] female victims of violence, like victims of domestic violence, are granted the right to refer to state shelters; women victims of violence who are not citizens of Georgia or are citizens of foreign countries have the right to a temporary residence permit and such person may not be deported from the country until the final outcome of the legal proceeding. It is also important to note that in 2017, the Government of Georgia issued a Decree pursuant to which the charter of the Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence Issues was approved, based on which an institutional mechanism working on gender equality issues was established within the executive government.[13]

These legislative regulations are a very important step forward to prevent and ensure a proper response to crimes committed against women and domestic violence, and state agencies working actively in this respect must be pointed out. However, unfortunately, there is still a serious gap in the Georgian legislation, such as the absence of liability for sexual harassment. In Georgia, sexual harassment is one of the latent forms of discrimination of women, which places women in a relatively subordinate position unlike men, infringes on their dignity, prevents them from full realization of their potential and maintenance of labour relationships. According to Article 40 of the Istanbul Convention, parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction. The Public Defender of Georgia,[14]and all leading NGOs[15] operating in Georgia have been requesting for several years the determination of a relevant liability for sexual harassment.

On 19 February 2019, the Parliament of Georgia passed the Law on the Amendment of the Law of Georgia "On Elimination of All Forms of Discrimination" at the third reading. The amendment provided the definition of sexual harassment in the law.[16] [17]Currently, the Parliament of Georgia is considering a draft law, and in case of its adoption,

---

[11] The Council of Europe "On Preventing and Combating Violence against Women and Domestic Violence" Article 7 https://matsne.gov.ge/ka/document/view/3789678?publication=0

[12] Article 53^1 of the CCG; https://matsne.gov.ge/en/document/view/16426?publication=205

[13] https://matsne.gov.ge/document/view/3698004?publication=1

[14] Special Report of the Public Defender of Georgia on Fight against Discrimination, its Prevention and Situation of Equality, 2016, p. 17-18 Special Report of the Public Defender of Georgia on Fight against Discrimination, its Prevention and Situation of Equality, 2017, p. 13-14

[15] https://gyla.ge/ge/post/sakhelmtsifom-seqsualuri-shevitsroeba-dasjadi-unda-gakhados#sthash.sL8fxiE0.dpbs https://gyla.ge/ge/post/saia-stambolis-konvenciis-srulyofil-ratificirebas-itkhovs#sthash.iOMa8NJ2.dpbs https://gyla.ge/ge/post/koalicia-tanastsorobistvis-moitkhovs-seqsualuri-shevitsroebis-faqtebze-satanado-reagirebas-da-qalebs-samartlebrivi-sashualebebis-gamoyenebisken-moutsodebs#sthash.vpcHcTZm.dpbs

[16] https://info.parliament.ge/file/1/BillReviewContent/214836? Sexual harassment is any unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

sexual harassment shall become the basis for drawing up a protocol of an administrative offence and imposing administrative responsibility on a violator.[18] The approval of the legislative regulation will facilitate the improvement of women's legal rights, prevention of sexual harassment cases, identification of alleged violations and imposition of appropriate liability.

2. THE SITUATION REGARDING DOMESTIC VIOLENCE, DOMESTIC CRIMES AND VIOLENCE AGAINST WOMEN

The Criminal Code of Georgia[19]and the Law of Georgia "*On Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence"*[20] envisage different forms of violence against women and domestic violence. The interviews with the victims of violence have shown that victims are frequently subjected to regular physical and psychological violence compared to other forms of violence. Abusers often use verbal insults and threats of deprivation of life[21] as a form of psychological violence, and as for physical violence, victims mention beating by abusers.[22]

According to a study conducted by the Institute for Development of Freedom of Information, in 2017, offenders were mostly men and victims of violence women.[23] The analysis of the cases handled by GYLA, conducted interviews and examination of the judgments and verdicts has shown that domestic violence mainly occurs between spouses / former spouses, and in most cases, the perpetrator is a husband /a former husband.[24] Mothers-in-law and fathers-in-law are rarely violators,[25] and in rare occasions, parents, children or siblings are victims.

The interviews with the victims of violence show that, in most cases, victims refer to law enforcement agencies not upon the first occurrence of a violent act, but when violence becomes intense and victims cease the cohabitation with their spouse. According to the victims, the reasons of this vary.[26]

3. PRIMARY RESPONSE TO DOMESTIC VIOLENCE AND THE ISSUES RELATED TO ISSUING A RESTRICTIVE ORDER

According to the legislation of Georgia, to ensure prompt response to domestic violence cases, a restrictive or a protective order may be issued as a temporary measure in order to ensure the protection of the victim and to restrain certain actions of the abuser.[27] Domestic violence cases are characterized by a rather specific nature, thus, a prompt response thereof is of vital importance.

---

[17] The Law of Georgia "On Elimination of All Forms of Discrimination", Article 2, p.3 [1]

[18] https://info.parliament.ge/#law-drafting/17345; The author of the draft law is the Gender Equality Council of the Parliament of Georgia. Pursuant to the procedure of submission of a legislative initiative, the following organic draft laws of Georgia have been presented: "On Amendments of the Organic Law of Georgia "On the Labor Code of Georgia", "On Amendments of the Organic Law of Georgia "On the Public Defender of Georgia" and the draft laws of Georgia: "On Amendments of the Civil Procedure Code of Georgia" and "On Amendments to the Administrative Offences Code of Georgia";

[19] Article 126[1] of the Criminal Code of Georgia;

[20] The Law of Georgia "On Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence", Article 3, 3[1];

[21] In separate cases, psychological violence was expressed in forcing a woman to stand in the corner, prohibition of communication with parents and relatives, and continuous humiliation.

[22] The witness mentions the severe forms of physical violence, such as beating with a piece of wood, inflicting wounds with a knife, burning a mark with heated metal. One of the victims also recalls that the violator had forced her to do hard work, such as fetching reinforced rods, working with a hammer, etc. In case of disobedience, the abuser physically assaulted her.

[23] Statistics on Domestic Violence, https://idfi.ge/ge/domestic_violence_statistics_in_georgia

[24] Only one of the judges interviewed within the study indicates that he/she has considered a case where the victim was a man, and the accused was a woman. In addition, according to GYLA's Criminal Court Monitoring report N12, the GYLA monitors observed 71 court trials determining a preventive measure for domestic violence, and in all of them the victim was a woman. In 60 cases out of 71 – the victim was a spouse / ex-spouse; in 5 cases – a minor child; in 3 cases – the mother; in 2 cases – the grandmother; in 1 case – the daughter-in-law. 70 (99%) of the defendants were men.

[25] The fact that the victim of domestic violence is mainly a woman and the violator is a man clearly indicates that the violence is characterized by a high degree of inequality and its consequences are disproportionate to women.

[26] According to the statement of the victims, the failure to appeal to the police regarding the facts of violence during the cohabitation with the abuser is due to the interests of children, avoiding pressure from the family and relatives, and lack of financial independence. Some of the victims also note the lack of information on their rights. One of the hindering circumstances is the fear of the abuser that he will not forgive the woman reporting to the police and this may bring awful consequences. In some cases, the victims refrain from reporting to the police because of the desperation that nothing will change;

[27] The Law of Georgia "On Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence", Article 10;

The analysis of the cases conducted by GYLA has revealed that in 2 cases of domestic violence, a restraining order was not issued at all. In all two cases, the victims applied to the court, and the court issued a protective order. These facts might be indicative that the police officers failed to examine the incidents comprehensively and provide a relevant assessment. In one case, the restrictive orders were issued incorrectly, which was expressed in the issuance of the order not for the protection of the victim, but against him/her.[28] The ineffectiveness of the response may be due to the lack of competence, which, in some cases, is manifested by incapability to differentiate between the actual victim and the abuser. In this case, the female victim, whose former spouse is accused of physical violence against her, published a post in her own social network, in which she recalled the violence she had experienced from the family members of her former spouse over the years. The police considered the post as the psychological violence against the abuser's family members and issued three restraining orders against different members of the former spouse's family. The restrictive order issued by the police against the victim was appealed at the first instance court, but the court left the restrictive orders unchanged. One of the orders was cancelled by the Court of Appeals, and the remaining two were left unchanged. With the above-mentioned actions, the law enforcement agencies and the two instance courts, created a precedent posing the risk and contradicting the victim's interests, as the victim was unjustly restricted the right to express herself via her social network about the violence she had gone through, and the right to publish her own opinion. The above decision deemed the female victim of violence as an abuser and the victim was prohibited to speak via the public domain about the violence she had been subjected to. In the given case, the law enforcement agencies and the City Court issued the restrictive order absolutely unreasonably. In particular, the order was not aimed at preventing any real, immediate and / or potential violence, but it restricted the victim's freedom of expression in public space and prohibited her to disseminate her views.

Within the interviews held with the officials of the Ministry of Internal Affairs of Georgia, law enforcers indicated that upon the arrival at a crime scene, first, they would gather information about an incident, namely, whether it was domestic violence or merely a family dispute, and this was mainly determined based on the law enforcers' assessment.[29] Due to varied approaches of law enforcement officers to the issuance of a restrictive order and the specifics of crimes against women and domestic violence, it was necessary to provide law enforcers with adequate criteria for the assessment of domestic violence cases and violence against women in order to take into consideration all relevant circumstances in the decision-making process. For this purpose, the Ministry of Internal Affairs, with the participation of GYLA, developed a tool for assessing the risks of violence against women and domestic violence, which became effective in September 2018.[30] The tool allows for collection of comprehensive information on an act of violence and the persons involved therein, and for better identification of the risks anticipated from the abuser. The amendments related to the issuance of the restrictive order are important, but the assessment of their effectiveness in practice requires a reasonable time period and additional research.

The interviews with the MIA employees show that issuance of a restrictive order is problematic if the victim denies the fact of violence. Some police officers believe that it is impossible to issue an order in such a case. GYLA shares the views of those police officers who think that the restraining order may be issued even if the victim does not confirm the violence. Victims may deny violence due to different reasons, such as, the fear of the abuser, the attachment of the victim to the abuser as a result of the psychological stress experienced, etc. The law enforcers should not rely only on the victim's consent, as the victim may not adequately evaluate the circumstances due to the stress she/he is subjected to.

In the interviews, some of the victims highlighted that low sensitivity of law enforcement officers demonstrated towards the cases of domestic violence is a problem, especially if there are not obvious signs of physical assault, as law enforcers do not deem other forms of violence as crime or a serious offence. Moreover, a group of the victims indicated in the interviews a delayed issuance of the restrictive order or the issuance of the order not upon the first report.

As regards the issuance of a restrictive order into the cases of violence against women, the interviews have revealed that identification of the gender discrimination motivation and issuing a restrictive order is a serious problem. Some of the law enforcers mentioned that neither upon issuing a restrictive order, nor during the investigation stage had

[28] We deal with an ineffective response, for example, when a law enforcement officer, instead of the issuance of a restraining order, obtains merely an explanatory statement from the abuser, which is not envisaged by the administrative or criminal legislation and does not ensure a protective mechanism for the victim.

[29] The interview had been conducted before the preparation of the document.

[30] https://matsne.gov.ge/ka/document/view/4262664?publication=0

they dealt in practice with cases of violence committed against women on gender ground. The law enforcers also indicated that they find it difficult to identify the violence on gender ground and do not have sufficient knowledge in this respect. [31]

We applied to the Information-Analytical Department of the Ministry of Internal Affairs in writing and requested the statistical data on restrictive orders issued in the cases of violence against women and the information on the rate of identification of gender motivation in the restraining orders issued. In response to our letter, the Ministry of Internal Affairs informed us that the orders were issued not against discrimination, but any act of violence, thus they did not know how many acts of violence were committed based on gender motive.[32] The explanation was in clear contradiction with the law, according to which a restrictive order may be issued into the cases of violence against women committed based on gender ground.[33] The MIA's reply indicated that the body did not pay proper attention to gender issues and violence against women, and domestic crimes were not examined from gender perspective. After the establishment of the Human Rights Department in the Ministry of Internal Affairs of Georgia, the situation improved in terms of identifying the gender motivation into violence acts against women. Namely, the report 2018 on the activities of the above-mentioned department provides for the number of restraining orders issued against violence acts committed on gender motivation.[34] Although the number of the restrictive orders issued on gender-related violence cases compared to those for domestic violence is relatively low (only 6% of the orders issued), the issuance of the restraining orders on the above crime and recording the corresponding statistics is a step forward.

The analysis of the cases revealed that the restrictive orders or the order protocols did not provide for sufficient factual circumstances of the cases. The documents did not contain adequate information about a form, motivation and repetition of violence, which hindered the identification of recidivism of violent acts, examination of the prehistory of the violence and planning relevant preventive measures. This also complicated the process of collecting and accounting the statistical data and information on violence, which is an important factor for the development of relevant state policies to combat domestic violence, and for identification of the needs.[35] Pursuant to the Decree[36] of the Minister of Internal Affairs of 13 July 2018, the above problem was resolved at the legislative level, in particular, the forms of restrictive orders and restrictive order protocol were developed, and the list of persons authorized to draw up such documents was determined. However, we do not have any information about the quality of implementation of the Decree in practice, and the issue requires further research.

In 2018, like the year of 2017, one of the serious problems was the issue of minor children in domestic violence cases. Underage children who happen to witness violence between their parents are considered indirect victims according to the law, but usually they remain invisible to the system and no response is applied to them. It is important that a child who witnesses violence be granted the victim's status, as well as be offered protective mechanisms and relevant services. The interviews with the victims revealed that in almost every case, the minor children witnessed the violence and they were living in constant fear due to repeated violence existing in the family.

The interviews with the victims as well as the representatives of the Ministry of Internal Affairs, judges of the Administrative Cases Panel show that children who witness violence are not granted the victim's status and protective mechanisms are not applied in their case. The situation is different when minors are direct victims of violence. In such cases, the protective mechanisms are usually provided for them.[37]

4. THE ISSUES RELATED TO ISSUANCE OF A PROTECTIVE ORDER

The analysis of the cases handled by GYLA has demonstrated that the courts mostly issue protective orders, and judges often do not substantiate the term determined for the protective order. The majority of the decisions do not

[31] The interviews had been held before the establishment of the Human Rights Department in the MIA.
[32] The reply of the Ministry of Internal Affairs 10/11/2017 - N MIA 9 17 02714147;
[33] The Law of Georgia "On Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence", Article 3^1(1), "Violence against women includes any act of gender-based violence that results in, or is likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;
[34] https://police.ge/adamianisuflebebi/index.html#p=7
[35] See Special Report of the Public Defender: "Evaluation of Protection Mechanisms from Domestic Violence", p. 5.
[36] https://matsne.gov.ge/ka/document/view/4262664?publication=0
[37] Regarding the issue, please see the Special Report of the Public Defender: "Evaluation of Protection Mechanisms from Domestic Violence", p. 10

indicate why the judge applies a specific term of the protective order, be it the maximum or minimum term envisaged by law. In 11 cases out of 12 filed by GYLA, the court satisfied the victim's request on the issuance of a protective order. In 8 of the above cases, the protective orders were issued for maximum 6 months, and in 3 cases, the court only partially granted the victim's request and issued the order, but not for the maximum term.

The examination of the judgments requested from the courts revealed that the protective orders were issued for a 6 month term in 19 cases out of the filed applications (35 applications), in 9 cases the protective order was issued for less than 6 months, 3 applications were left unconsidered, and in 4 cases, the motion for the issuance of the protective warrant was not granted. It is noteworthy that the court decisions do not provide any reasoning why the court issues the protective order for 6 months or less than 6 months.[38]

In one of the cases litigated by GYLA, the judge demonstrated an unethical attitude towards the victim and the low sensitivity towards the violence,[39] which created the impression that the judge was more sympathetic to the offender, took up the role of his attorney and requested the answers concerning the matters that are the subject of a civil law dispute, rather than of the administrative litigation.

A positive assessment should be given to a case which dealt with the violence committed against a woman. In the given case, the judge shared GYLA's opinion and issued a protective order for stalking, as one of the forms of psychological violence.

Some of the judges have noted in the interviews that when issuing a protective order, it is important to confirm the fact of violence, which can be established by evidence and statements provided by the parties. If abusers confirm the violence, it becomes a sufficient ground for the issuance of the protective order, and if abusers disagree, then the court shall seek the ways to obtain additional information, such as testimonies of witnesses, short text messages containing violence contents, etc.[40]

The majority of the judges indicate that the request for the issuance of a protective order is not granted merely based on the victim's statement. However, one of the judges recalls the case when the violator was so aggressive against the victim during the court trial that the violence was unequivocally confirmed. Another judge noted that if the risk against the victim is obvious, the protective order may be issued only on the basis of the statement. The court trial is also very important because frequently at the court trials are created impressions which help the judge render a decision on the issuance of a protective order.[41]

As regards the refusal to the issuance of a protective warrant, some of the judges indicate that when a restraining order is in force, or it was issued in the past and violence has no longer occurred since then, the protective order may not be issued just to prevent any potential violence, as several orders cannot be issued against one act and stick the label of a permanent abuser on a person.[42] According to the judges, refusal to the issuance of the protective order can be also due to the lack of proof or when at the court trial it is obvious that the purpose of the order is not persecution of violence, but another motivation, for instance, the extension of the term in the crisis center, creating relevant evidence for resolving a family dispute (a child guardianship or other household issues). One of the judges noted that if a criminal proceeding is in progress, then the administrative protection mechanisms should not be applied, since the same act shall not be subjected to both litigation fields.

[38] The protective orders contain only general reference to a form of violence, due to which the significant factual circumstances such as the context of violence, motive, recurrence, etc. are often left beyond the decision making process. Out of the analyzed decisions, the motive of the violence was revealed in 4 out of 35 cases.

[39] The judge asked the victim of violence questions and provided his/her conclusions thereupon: "What if you leave the house? Why do you think of your advantage, it is not yours? Why should you have the priority regarding the house than Ts.? "If you are a victim of violence, then go to the shelter. There are shelters for you, but no shelters are provided for the person recognized as a violator. ""What do you want now… aren't you committing violence yourself now when you want to get rid of the person and stay alone in the three rooms? Isn't it a violence act? ... The person wants to have a space where he can live. ""Don't abuse your right that we can issue a protective order because of his insults against you, and deprive him of his residence."

[40] GYLA has managed one case regarding which the Court did not issue a protective order. The Court did not satisfy the victim's statement even though the case materials contained the statement of the victim as well as the short text messages evidencing the threat. The court did not deem the evidence sufficient to confirm the violence.

[41] In one case, the Court considered the act of psychological violence, verbal insults and intimidation, and coercion by D.S. against his/her child N.S. as the confirmation although no evidence proving the above facts was presented before the court at the trial.

[42] In contrast to the opinions of the judges, in 9 cases of the judgments requested and analyzed in practice, the protective orders were issued in order to avoid any possible threats in the future, even though no violation of the protective or restrictive orders occurred during their validity period.

GYLA believes that commission of a new act of violence must not be a crucial factor for the issuance of a protective order, but the high likelihood and risk of recurrence of violence. The key and primary objective of the restraining and protective orders is neutralization of those risks that might be associated with the recurrence of violence against the victim and not imposition of restrictions on a person for committing an offence. The goal of the protective order is to carry out preventive measures, rather than to punish the offender for the violence.

GYLA does not agree with the assumption that a criminal proceeding may exclude the issuance of a protective order. The criminal investigation into a fact may be already launched, but the violator may not be charged yet or a non-custodial measure be used against him. In such a case, the risk of repeated violence against the victim becomes real.

5. MONITORING THE IMPLEMENTATION OF PROTECTIVE AND RESTRICTIVE ORDERS

The interviews with the victim survivors of violence as well as the lawyers show that restrictive and protective orders have a restraining purpose against physical violence. As regards psychological violence, frequent are the cases when, during the validity term of restrictive and protective orders, psychological violence persists in the form of threats and intimidation of victims through social networks and telephone messages. The frequency of such violations is encouraged by the fact that victims are reluctant to apply to law enforcers[43] in such cases, and they consider it sufficient that physical violence does not occur anymore.

The victims of violence as well as the lawyers of victims indicated that the enforcement of the restrictive or protective orders is not monitored, which can be regarded another factor contributing to the recurrence of violence. According to the victims, as a rule, investigators do not keep contact with them. Only several victims recalled that the investigator contacted them only once and enquired if the violation had taken place. The attorneys of the victims consider that the breach of the term of the restrictive / protective order in some cases largely depends on whether a police officer/judge informs the offender of the essence of the order and whether they warn him/her of any possible liabilities in case of the violation.

As a result of the interviews with the MIA officials, it was revealed that law enforcement officers did not carry out any effective activities for the monitoring purposes, but mostly limited themselves to alerting the victim to report to the police if the offender violated the terms of the order. In some cases, the victims referred to the police if abusers violated the deterrent or protective orders and in such occasions, the administrative liability was imposed on the abuser. Furthermore, some of the officials of the Ministry of Internal Affairs indicated that victims were contacted on the phone for the monitoring purposes.

It is noteworthy that in 2018, the rate of the breach of protective and restrictive orders decreased compared to 2017,[44] but in 2018, the number of repeated violence acts after the expiration of the restrictive or protective order term was still high. This trend has been identified through the analysis of the court decisions (on the issuance of protective orders) requested from the courts and the statistics published by the Ministry of Internal Affairs.[45]

All the foregoing indicates that the mechanism for the monitoring of the enforcement of the restraining and protective orders was weak and depended on the information provided by victims. As for the current situation, the Ministry of Internal Affairs has informed us that the Human Rights Department, created in 2018, has introduced a mechanism to monitor the execution of restraining and protective orders. Moreover, a training course has been developed which shall be taken gradually by employees of the Ministry of Internal Affairs.[46] Within the scope of the study, GYLA requested the information regarding the mechanism monitoring the implementation of restraining and protective orders, but we have not received any information or a document from the Department, which makes it impossible to assess the efficiency of the mechanism.

[43] In 27 out of 35 analyzed judgments, it was identified that the victims had been subjected to constant violence prior to applying for the issuance of the protective order, and that the restraining or protective warrant had been issued against the violators.

[44] https://police.ge/adamianisuflebebi/index.html#p=8

[45] https://police.ge/adamianisuflebebi/index.html#p=8

[46] https://police.ge/ge/qalta-mimart-da-odjakhshi-dzaladobis-riskebis-shefasebis-instrumenti-da-shemakavebeli-orderis-monitoringis-meqanizmi-amoqmedda/11956

6. INITIATION OF AN INVESTIGATION ON DOMESTIC VIOLENCE, DOMESTIC CRIMES AND VIOLENCE AGAINST WOMEN

According to the Criminal Procedure Code of Georgia, when notified of the commission of crime, an investigator and a prosecutor shall be obliged to initiate an investigation. The grounds for the initiation of the investigation into a case of domestic violence, domestic crime and violence against women shall be a report drawn up by a police officer on the act of violence against women and/or domestic violence and the actions taken in this regard, which shall be submitted to a supervising prosecutor.[47] If in the course of considering the issue of the issuance of a restrictive order, the elements of the offences envisaged by Criminal Code of Georgia are identified, the case materials, in parallel with the consideration of the issue on the issuance of the restraining order, shall be forwarded by jurisdiction to a relevant body who shall take a decision on the initiation of a criminal persecution.[48]

The study clearly shows that physical violence usually becomes the basis for the launch of an investigation, and less attention is paid to other forms of violence, such as continuous insult, blackmail or humiliation.[49] The low rate of initiation of the investigation into psychological violence facts has been confirmed by the data provided by the Chief Prosecutor's Office of Georgia, according to which[50] physical violence only was committed against 1099 victims in 2017 and against 1681 victims in 2018; psychological violence only was carried out against 105 victims in 2017 and against 338 victims in 2018; physical and psychological violence simultaneously - against 356 victims in 2017 and 736 victims in 2018.

The foregoing has been also confirmed by the interviews with the prosecutors and judges where the majority of the judges and prosecutors indicate that criminal proceedings are most frequently initiated against physical violence acts, and the rate of launching the investigation into psychological violence is rather low. If an investigation is initiated into an act of psychological violence, the latter is usually accompanied by physical violence, since it is less likely to carry out the criminal proceedings into psychological violence only.

The examination of the court decisions against 233 criminal cases demonstrated that the majority of the cases (62(61%) in 2017 and 77 (59%) in 2018) dealt with physical violence. In a certain number of the cases, physical violence included the signs of psychological violence - 24 (24%) cases in 2017, and 37 (28%) cases in 2018. In some of the cases, other types of violence were reported (16 cases in 2017, 8 cases in 2018), including the establishment of sexual intercourse knowingly by an adult with a person who has not attained the age of 16, the violation of the terms of a restrictive order, an intentional damage of another person's property item, threatening, etc. It is noteworthy that solely the cases of psychological violence did not occur in 2017, whereas in 2018, 9 (7%) offences of such nature were observed (the regular verbal abuse was reported into the cases.).

[47] The Law of Georgia "On Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence", Article 16, Para. 4

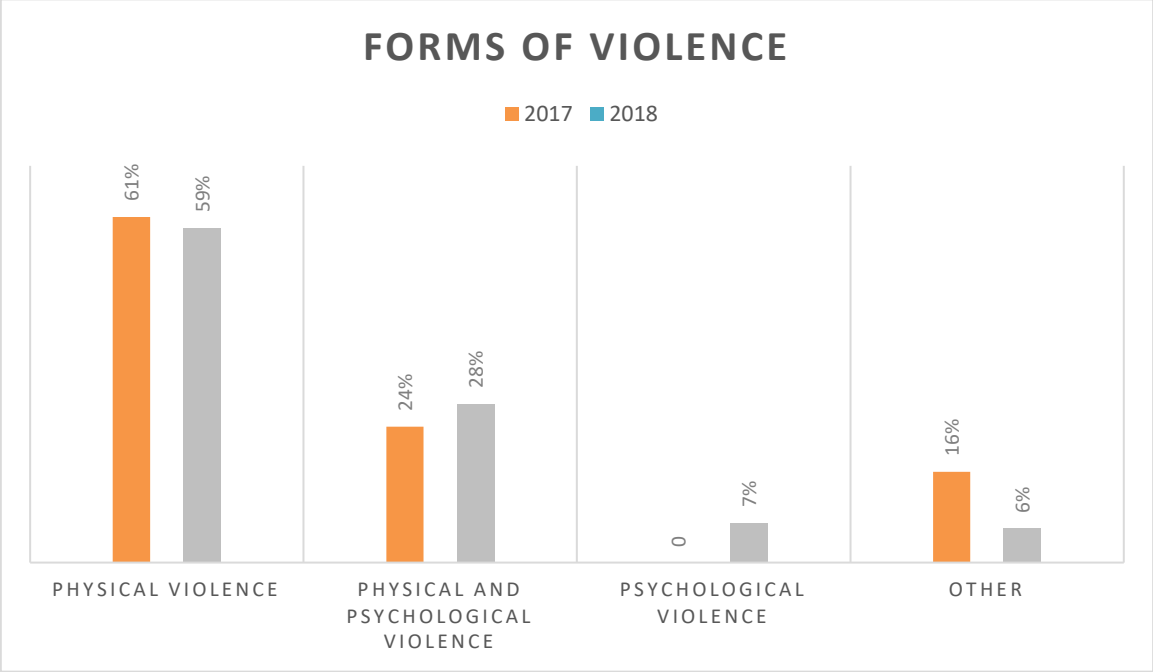
[48] The Law of Georgia "On Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence", Article 10, Para. 3^9,

[49] In the focus groups, the representatives of the Ministry of Internal Affairs unanimously noted that an investigation is always launched on a physical violence act. As for other forms of violence, the issue of launching the investigation is decided based on the documentation drawn up on the spot and after the consultation with the prosecutor, and as they said, it largely depends on the prosecutor who ultimately decides whether to initiate the investigation of not.

[50] The Letter of the Chief Prosecutor's Office of Georgia N13 / 2905

The diagram below illustrates the percentage of the forms of violence identified through the studied judgments.

Diagram № 1



It is true that the judgments concerning the cases of psychological violence sometimes included the indication of mental suffering experienced by the victim, but in a number of the cases, the court decisions did not mention whether the victims sustained the suffering due to regular and systematic insults.

In conclusion, we can say that mostly court judgments into domestic offences are rendered against acts of physical violence. It should be positively noted that the statistics on the response to psychological violence has increased, namely in 2018, compared to 2017, there were the court decisions in which the persons were charged and sentenced only for the commission of psychological violence. It is also noteworthy that the rate of responding to psychological and physical violence has increased.

In connection to the initiation of an investigation into domestic violence cases, the lawyers note that the primary problem is victims concealing information about the violence committed against them. Persons witnessing domestic violence refrain from giving testimony and do not speak about the violence. Some of the lawyers claim that the investigative proceedings and the motions submitted in a range of the cases are ineffective, unsubstantiated and delayed.

A group of the law enforcers in the interviews has noted that when the victim reconciles with the defendant and has no longer complaints, the initiation of the investigation is unnecessary and ineffective. GYLA believes that it is important to launch an investigation in all cases where the signs of a criminal act are obvious, even when the victim reconciles with the abuser. In such cases, less attention should be paid to the cooperation of the victim. The implementation of the zero tolerance policy to combat violence against women, in particular domestic violence, is one of the recommendations of the United Nations Committee on Elimination of Discrimination against Women.[51]

7. THE TYPES OF PREVENTIVE MEASURES APPLIED AGAINST DOMESTIC VIOLENCE ACTS

The criminal prosecution was implemented against the abusers in 16 out of 20 criminal proceedings conducted by GYLA. In 3 cases, the persons responsible for the offence have not been identified yet, even though the reasonable time period has elapsed since the application.[52] In one case litigated by GYLA, although the Prosecutor's Office made the final decision on charging the person, the liability, as GYLA believes, was imposed on the victim, rather than on

[51] CEDAW, X. &Y; Y. v. Georgia, Communication No. 24/2009, Para. 11 (b(ii))

[52] Six months or more has passed since the launch of the investigation into all 3 criminal cases handled by GYLA.

the abuser. In particular, the woman, who had reported to the police about the violence carried out against her by her former spouse, was accused of domestic violence and providing false testimony. It is noteworthy that the prosecution basically relied on the statements submitted by biased witnesses and the key circumstances of the case were left without assessment.

With regards to the cases on which the criminal persecution has been launched, in the majority of the cases the Prosecutor's Office requested remand detention as a restraining measure and substantiated such motions with relevant circumstances. Although the remand detention was requested in one of the cases as a preventive measure, the prosecution failed to present a restrictive order issued against the defendants in the past as the evidence, which could have served as an important proof to justify the motion for the imposition of the detention as a preventive measure.

In 6 cases out of the above-mentioned 16, respectively, were used imprisonment as a preventive measure, in 9 cases were used bail and in one case, an agreement was signed with the defendant on not leaving and proper conduct. In most of the cases where the court imposed bail, the offence had been committed through several episodes and/or the intensity of the violence was confirmed.

In the interviews regarding the preventive measures, the prosecutors indicated that, in most cases, they request the use of remand detention as a preventive measure, as far as other less lenient restraining measures cannot ensure the prevention of the threats from the abuser. Some of the prosecutors indicate that judges, despite the prosecution's request on the imposition of remand detention, in most cases, apply non-custodial measures, save for the exceptional cases, where, for instance, a defendant is serving a conditional sentence. The remand detention is also of special significance when the abuser threatens the victim by deprivation of her life. There is also a risk that the offender may take “revenge” on the victim for reporting to the police. Furthermore, when imposing a preventive measure, prosecutors deem significant the potential continuation of the violent activities by the perpetrator. One of the prosecutors indicated in the interview that the court is becoming more and more critical towards the use of remand detention as a preventive measure. If a restrictive measure is requested, the Court accepts the prosecutor's position in certain cases, and when revising a remand detention, the court takes into consideration the change of the position by the victim[53] and relies on the fact that the offence is less severe, and thus, the prosecutor's opinion is neglected.[54]

The prosecutors' assessment has been confirmed by the analysis of the judgments delivered on the imposition of restraining measures, which GYLA examined. The court decisions indicate that the prosecution filed with the court the motions for only two types of preventive measures: bail and remand detention. In 115 (88%) cases out of 131, the prosecution requested remand detention and bail in the remaining 16 (12%) cases.

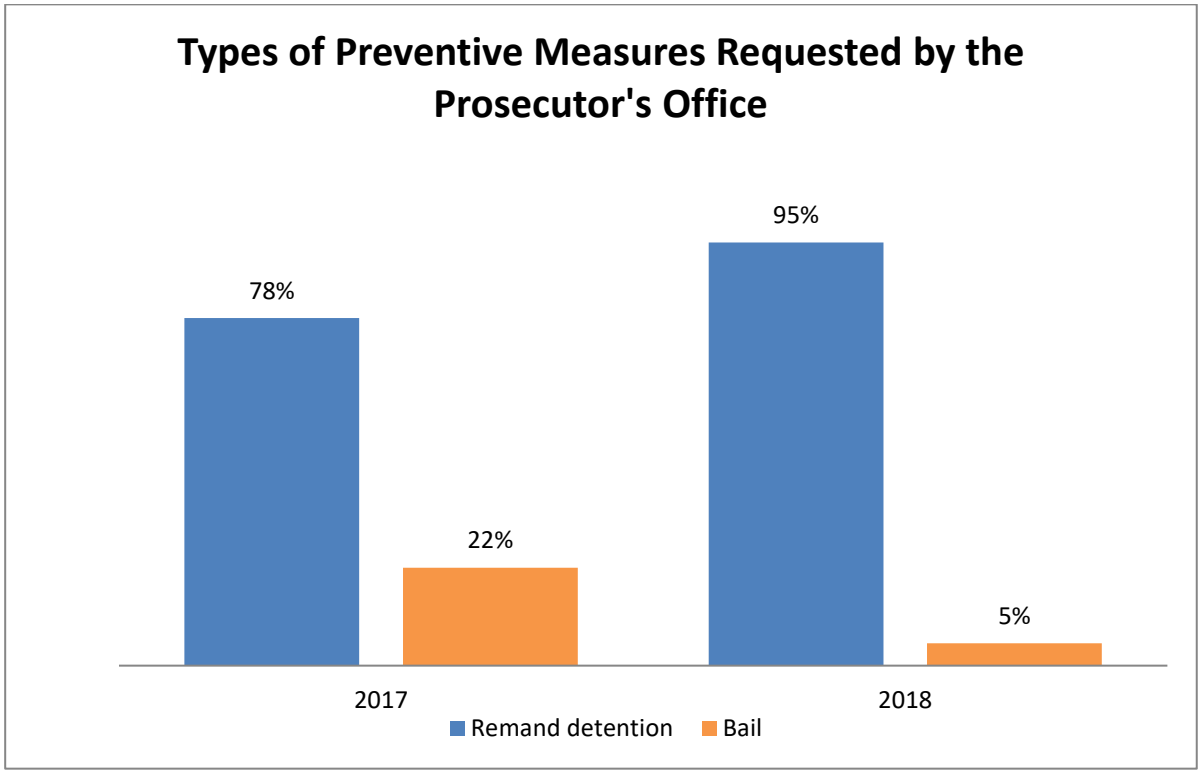
It should be noted that the policy of the Prosecutor's Office has been tightened in the part of requesting restraining measures, namely, in 12 (22%) cases out of 54 judgments of 2017, the Prosecutor’s Office motioned for the bail and in 2018 the Prosecutor's Office demanded bail for only 4 (5%) cases out of 77.

[53] A group of the judges indicates that when imposing a preventive measure or determining a form of punishment, they take into consideration the victim’s opinion, as far as judges are obliged to do so pursuant to the law.

[54] In connection with the use of the measures of restriction, some judges indicate that they mainly apply remand detention, but also note that domestic offences are different and specific from other crimes, which is why the approach is different. Judges impose remand detention when the offence committed is characterized by severity, or when the violence is intense and the abuser assaults the victim absolutely groundlessly.

In the diagram below, you can see the forms of preventive measures motioned for by the Prosecutor's Office.

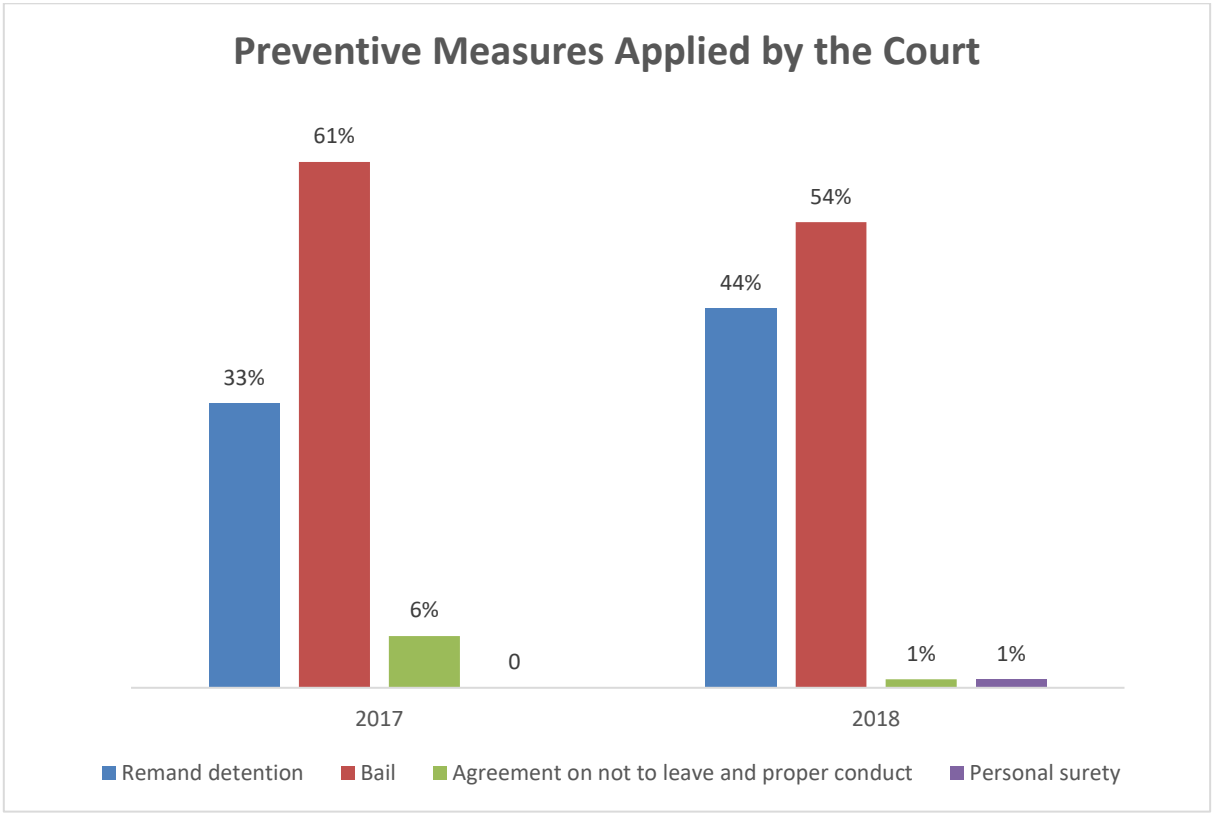
Diagram №2



In 2018, compared to 2017, the use of remand detention as a preventive measure by the court increased by 11%. Specifically, in 2017, the court imposed imprisonment in 18 (33%) cases out of 54, and in 2018, in 34 (44%) cases out of 77. It is also noteworthy that the court most often imposes bail as a restraining measure, though fails to assess adequately the risks and does not examine the financial situation of the defendant in each particular case.

In the diagram below, you can see the preventive measures applied by the court.

Diagram №3

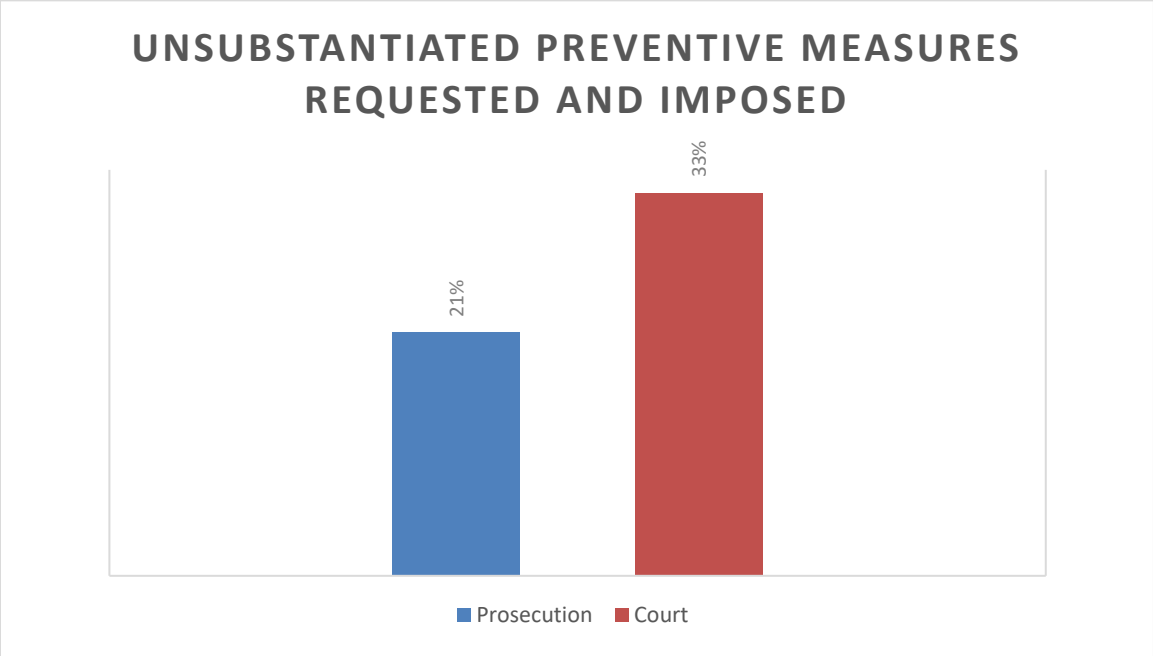


Although Tbilisi City Court did not provide us with the judgments rendered in 2017 and 2018, and the Gori District Court did not send us the judgments of 2017, the GYLA's Criminal Court Monitoring Report N12 and the current monitoring results show that both courts tend to have a strict approach to these types of crime and they often apply remand detention as a type of preventive measure.[55]

As a result of the examination of the judicial decisions on the imposition of preventive measures, it has been revealed that motions of the Prosecutor's Office on the use of preventive measures are not always adequately substantiated. In 27 (21%) court decisions out of 131, the motions of the Prosecutor's Office on the determination of a specific type of preventive measure were unsubstantiated or inadequately substantiated. In the given decisions, the request made by the prosecution for a specific restraining measure was formal, formulaic and was not based on the specific circumstances of the case. This created an impression that the prosecution was automatically following the State's policy in this regard and demanded the use of a severe preventive measure, but in doing so, failed to present a valid justification. This usually served as the prerequisite for the court to determine a more lenient measure of restriction against the accused. On the other hand, 43(33%) judgments out of 131 delivered by the court were unsubstantiated or poorly substantiated. [56]

In the diagram below, you can see the rate of unsubstantiated motions submitted by the Prosecutor's Office and the number of the unsubstantiated restraining measures determined by the Court;

Diagram №4



In 50 cases (64%) out of 78, the court did not apply any additional means of restraint along with the non-custodial measure, and in the remaining 28 (36%) cases imposed the prohibition to access the victim, and, in certain cases, applied other measures cumulatively with the latter, such as the obligation to surrender a passport or other identity documents, the obligation to show up at the investigate body, etc. Based on the specific nature of domestic violence, the court should understand the importance of imposing additional measures when determining non-custodial liability, which will help the court neutralize (further reduce) the risks of continuation of criminal activities by the offender.

[55] Gori District Court – in 2017 – remand detention in 13 cases of 16; in 2 cases- bail; In 1 case - none;
Tbilisi City Court - in 2017 - remand detention in 12 cases out of 19; in 6 cases- bail; In 1 case –the agreement on not to leave and proper conduct; In 2018 - remand detention in 35 cases out of 52; in 16 cases- bail; In 1 case -none;

[56] GYLA deems unsubstantiated or improperly substantiated those judgments in which the Court's motivation is not provided in relation to the use of any type of preventive measures; the judgment does not include the reasoning of the judge why he/she considers that there is a threat to the destruction of evidence, the influence on witnesses or commission of a new offence or why the specific preventive measure is the only way to neutralize the risks; Furthermore, GYLA considers unjustified or insufficiently justified those judgments where the court imposes bail, but does not examine the financial condition of the defendant and the amount of the bail imposed exceeds the material state of the defendant;
GYLA did not assess which forms of preventive measure the court had to impose; the organization just evaluated the substantiation of the judgments.

Interestingly enough to determine to what extent the court's decisions are affected by a restrictive or protective order or orders issued against the defendant in the past (the commission of an offence by a person who had been charged with domestic violence). Pursuant to the existing data, in the cases of 14 defendants, a restrictive / protective order had been issued, and the prosecution requested the imposition of remand detention in 12 (86%) cases. In 9 (75%) cases, the court ordered the accused to be imprisoned, and in other remaining cases imposed bail.

The commission of crime multiple times was identified in 6 cases only. In 3 (50%) of these, the Court did not consider the perpetrators' inclination to violence as a real risk (though it is indicated by its frequency) and imposed on the defendants a non-custodial measure - bail.

The interviews conducted within the study have shown that victim survivors of violence name the sense of insecurity as a major problem. In spite of their appeal to the police, there is a risk that the State cannot properly protect them and their reports of the violence inflicted on them may bring very serious consequences. Due to the close social connection between the abuser and the victim, the risk of continuation of criminal activities and, at least, of psychological violence, rises. In such cases, the omission of the court to determine any additional liabilities when imposing a non-custodial measure on the abuser shall be inadmissible. The State's ineffective response may have a chilling effect on the victims and may diminish the chances of identification of violence committed against the victim.

A group of the judges in the interviews pointed that an automatic application of remand detention into domestic offences is not correct, and they generally impose bail or other non-custodial measures, and remand detention is mainly applied when the offence is recurrent, and the recurrence shall not be confirmed only by a statement of the victim, but there should be a conviction or a restrictive order issued against the abuser in the past.

- "... Remand detention is not applied when a violent act occurs first time, a restraining order has never been issued or the defendant has no criminal record. In addition, the nature of violence act is noteworthy. When the violence is not intense, maybe, merely a slap in the face, or the abuser is characterized as a positive, hard-working person and a good father, then the restrictive order issued in the past may not be even taken into consideration at all and a non-custodial measure be imposed... "
- "... When a perpetrator admits to and is remorseful about the committed crime, mostly bail is applied..."
- "... Due to the importance of the issue or any other factor, domestic crime should not be judged differently from other offences..."

Judge

GYLA shares the position of the judges who claim that remand detention should not be automatically applied, but cannot agree with the arguments that imprisonment can be used only when the offence is repeated, or the recurrence may not be confirmed only based on the reference of the victim, or there must be a conviction or a restrictive order issued in the past. The interviews with the victims have revealed that women apply to law enforcement bodies not upon the first occurrence of violence, but when the violence becomes intense. It has also been identified that the above crime is characterized by a high risk of recidivism, which can lead to grave consequences such as the loss of the victim's life. Based on the foregoing, the use of bail rather than remand detention based on the mere argument that the defendant has not been imposed a restrictive / protective order or the abuser was not convicted in the past shall be unacceptable.[57] Within the scope of the study, it was also identified that the imposition of additional obligations, such as prohibition to access the victim, restriction of telephone communication, etc. in parallel to a non-custodial measure, is a problem.

[57] It should be also noted that there is almost always the risk of influencing witnesses, as the victim and the defendant are members of one family, and the key witnesses are neighbours or close relatives of the accused.

8. THE VICTIM'S POSITION IN DOMESTIC VIOLENCE CASES

One of the most pressing issues highlighted by the lawyers of the victims of violence, prosecutors and judges is victims of violence changing their position.[58]

- "... In approximately 8 cases out of 10, the victims change their testimony. In 5 cases out of these 8, the victims declare that the crime has not occurred, and in the remaining 3 cases, they do not deny the fact, but request to release the abuser. This is due to the fact that victims primarily anticipate that the police will limit themselves to warning the abuser only, and do not expect detention of the abuser... "
- "... There are the cases where the victim not only changes her position, but also hires an attorney to protect the interests of the defendant, who has presumably committed violence against the victim, and seeks to release the defendant from the liability..."

Prosecutor

"... In most cases, the victim changes her position or refuses to provide testimony. This is a growing trend. Originally, the change of the testimony was more frequent, but later victims learned that the simplest and painless way is to refuse to testimony, and now they opt for it. Mainly defense counsels contribute greatly in this regard, since it is unlikely all defendants to be aware that their close relatives may exercise this right... "

Judge

An important factor which determines the above-described behaviour of the victims is the lack of support from parents and the public. In some cases, the family not only refuses to help the victim of violence, but, on the contrary, insists on her tolerating the violence.

The refusal of the victims to give evidence often leads to an acquittal verdict in favour of the defendant. Some of the judges note that if there are other direct witnesses or direct evidence into the case apart from the victim, a guilty verdict is rendered, however, such evidence is very rare in domestic violence cases. As a rule, minor children are not interrogated into the cases, but sometimes if they have already testified during the investigation stage, later they refuse to give testimony at the stage of hearing on the merits. However, one of the judges mentioned a case when the testimony of the minor child served as the ground for holding a guilty verdict. In contrast, one of the judges excluded the possibility of a guilty verdict without a victim's testimony.

Some judges explain that victims of domestic violence change their position due to the immunity that the witnesses of domestic violence can enjoy and add that the exercise of the right prevents the implementation of justice. One of the judges suggests that the victim's testimony should not affect the quality of implementation of justice. The defendant and the victim can go home reconciled, but violence may occur the next day. The victim's position should be taken into consideration to the minimum extent possible.

According to the judge, the court is in a very complicated state when it is fully dependent on the testimony of the victim. It actually means that the implementation of justice depends on the psychological state and the will of the victim and the judge can do nothing at all. Another judge points out that the change of the victim's position may be the result of the financial dependence on the abuser rather than the actual reconciliation.

The fact that the change of the victim's position leads to the acquittal in favour of the defendant has been revealed by the scrutiny of the court judgments. In 2017, 4 judgments out of 102 were acquittal verdicts, among which the victims refused to give testimony against the defendant in 2 cases and this served as the basis for the acquittal

[58] The majority of the judges also indicate that often the victim presents a notarized statement at the stage of the revision of the measure of restriction, in which she indicates that she has reconciled with the defendant and has no longer any complaints against the abuser.
We have requested the information from the Chief Prosecutor's Office concerning the number of the cases where the victims changed their testimony or refused to provide testimony against the offences envisaged by Article 126^1 and 11^1 of the Criminal Code, but the Prosecutor's Office replied that the Office does not maintain any statistics upon the information requested.

decision due to the lack of evidence. In 1 of the above two cases, although the victim informed the Court of the circumstances of the incident, the judge considered that the victim's testimony contradicted the statements of other witnesses, the judge presumably accepted the testimony given by other witnesses and rendered the acquittal verdict. Regarding the remaining 1 case, the prosecutor filed a motion on the termination of the criminal persecution on the ground of transferring the defendant to the mental health facility, which the court finally granted.

As for 131 court judgments of 2018, the acquittal verdict was rendered into 7 cases, among which the victims refused to give testimony in 6 cases. It is noteworthy that in one of the cases, apart from the victim's testimony, there were the statements provided by other witnesses and the expert examination report, which confirmed the commission of the crime, however, the judge indicated that the victim was the only person capable of confirming the consequences of the offence, namely, a strong physical pain, and due to the lack of such evidence, it was impossible to confirm the crime. As for the remaining 1 case, the acquittal verdict was issued due to the insufficiency of evidence.

The judges who consider the immunity of the victim as a problem indicate that the regulation of this issue is necessary to ensure a proper implementation of justice. Some of the judges, like the prosecutors, suggest the abolition of the witness immunity into domestic offences as a way to solve the problem, which may be added as a separate provision to a relevant article.

Some judges think that the solution to the problem might be interviewing victims of domestic violence before a magistrate judge during the investigation stage, and if the victim changes her position, the testimony deposited in the original form will be published /applied. Another judge thinks that improvement of the co-operation of victims and witnesses with the Prosecutor's Office and investigative bodies in order to protect the victims from the influence of defendants might serve as a solution. A group of the judges noted the necessity to minimize the communication between the defendant and the victim by the Prosecutor's Office during the pre-trial detention and highlighted that often, when defendants are imposed a remand detention, they still maintain the telephone contact with victims, which is why the victims change their position and refuse to testify. There was a case when the accused and the victim not only communicated on the phone, but also were seeing each other. Such occurrences prevent the execution of justice, as the victims fall under the offender's influence.

One of the judges also points out that the report of a police officer responding and arriving at the crime scene must be more informative and detailed, so that to be used as a relevant proof and evidence. There were the cases where the police officer who arrived at the spot and witnessed the outcome of the violence was considered as a direct witness and his/her report along with the conclusion of the expert examination was used as the basis for the guilty verdict. The judge thinks it would be better if a patrol police officer were accompanied while visiting the crime scene by a social worker who will have the right to attend the interview of any alleged victim or witnesses.

In contrast to the above, some judges indicate that the victim's right to enjoy the immunity is important and if the right is abolished, the family life of the victim and the offender will be destroyed, because they will not be able to reconcile again after the detention of the defendant. In the opinion of the above judges, when the victim and the violator reconcile, the State and the court should not intervene anymore. When the victim wants to be with her husband again, she must not be forced to testify. If the victim refuses to provide testimony, this means that they get on well again and it is the end to the story. One of the judges indicates that he/she stands against the abolition of the immunity of the witness, since it is the greatest achievement and the international principle, therefore, its cancellation, especially in relation to specific types of cases, will be unreasonable. Generally, the approach of applying different regulations to different crimes is absolutely unacceptable to the judge.

The Council of Europe Istanbul Convention provides for an important standard regarding the position of the victim, according to which the investigation and prosecution of certain offenses under the Convention shall not be entirely dependent upon the victim's report and complaint filed. Moreover, the proceedings may continue even if the victim withdraws her or his statement or complaint.[59] The European Court of Human Rights sets forth the similar standard, which states that the more serious the offence or the greater the risk of committing further offences, the more likely that the prosecution should continue in the public interest, even if the victims withdraw their complaints.[60]

GYLA shares the position of the prosecutors and the judges who do not accept the victim's position unconditionally and completely when the victim does not want to initiate a criminal prosecution against the defendant and/or

[59] The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence; Article 55, p.1.
[60] The CASE OF OPUZ v. TURKEY, No. 33401/02, 9 June 2009, §138-139.

refuses to provide testimony, but make decisions based on other evidence into the case during the investigation as well as criminal proceeding stages. We also highly appreciate the approach that prior to taking into consideration the victim's report, the authenticity of such testimony should be assessed to prove whether or not it has been the result of various factors, for example, the victim might not understand adequately and completely the violence committed against her or be under the influence of the violator or his/her relatives.

Although the applicable criminal procedure law does not envisage private persecution, and the initiation of an investigation into an offence and criminal prosecution against a person is not linked to a complaint of the victim, the confirmative evidence of the victim is one of the crucial proofs, in the absence of which there is a high likelihood of rendering an acquittal verdict.

We agree with the position of the prosecutors and the part of the judges who deem necessary to take relevant measures to address the problem in order not to compromise the implementation of justice and fight against crime. Although we do not support the complete abolition of the immunity of the witness as a way out, we believe that interrogation of the victim before a magistrate judge and the publication of the deposited testimony if the victim enjoys the immunity, can significantly tackle the problem.

Moreover, it will be important if psychological violence case files contained a psychological evaluation report, which may confirm the consequences of psychological suffering as envisaged by Article 126[1] of the CCG. The psychological evaluation report can serve as the evidence for rendering the final decision into the cases where the victim enjoys the right to witness immunity.

The Prosecutor's Office should limit to the maximum extent any telephone or personal communication between the abuser and the victim during the application of a custodial measure, in order to prevent coercion of the victim into refusing to testimony. In addition, the legislator allows the judge the possibility to prohibit the communication between the victim and the offender, namely, according to the Criminal Procedure Code of Georgia, the court may impose any other obligations along with the preventive measures which is necessary to achieve the purpose of the measure of restraint, such as, prohibition to enter certain places and prohibition to approach the victim in the cases where a person is prosecuted under charges relating to domestic violence, domestic crime and violence against women.[61] The interviews with the judges reveal that they less frequently use such additional restraining measures, whereas the law definitely allows them to do so.

9. JUDGMENTS RENDERED BY THE COURT INTO THE FACTS OF VIOLENCE

9.1. Imposed penalties

GYLA handled 20 cases of domestic violence, domestic crimes and violence against women, out of which 14 cases were litigated in the court and the final verdicts announced. In particular, in 13 cases, the defendants were found guilty, and in 1 case only the criminal prosecution was terminated due to the unfitness of the defendant to plead. In 6 cases out of 13 guilty verdicts, the deprivation of liberty was applied, community service in 3 cases, suspended sentence in 3 cases and in one case deprivation of liberty, part of which was suspended sentence.

The analysis of the judgments requested from the court in 2017, the court delivered 102 judgments against 104 accused. Out of these, 3 defendants were acquitted, the criminal prosecution was terminated against one defendant, and in the cases of the remaining 100 defendants, the court applied the following sentences: 41 defendants were imposed a suspended sentence only, in 19 cases the suspended sentence along with the community service was applied against the defendants, and in 13 cases – deprivation of liberty was determined.[62] The community service only was applied against 9 defendants, and only 18 defendants were sentenced to a fixed-term imprisonment (to serve the entire sentence in a penitentiary facility) without a suspended sentence or any other additional punishments.

In 2018, the court passed 131 judgments. Of these, the acquittal verdicts were rendered in 7 cases and guilty verdicts were upheld against 124 persons. The Court applied the following sentences against the defendants: 64 defendants were imposed a suspended sentence only, 9 defendants were imposed both the suspended sentence

[61] Criminal Procedure Code of Georgia, Article 199, p.2;

[62] This includes the cases when deprivation of liberty included partially a suspended sentence against the convicted person, and serving a part of the sentence in a penitentiary institution.

and the community service as an additional punishment, in 7 cases – deprivation of liberty was determined, community service only - in 17 cases, and a fixed-term imprisonment without a suspended sentence or any other additional punishments was imposed on 27 defendants.

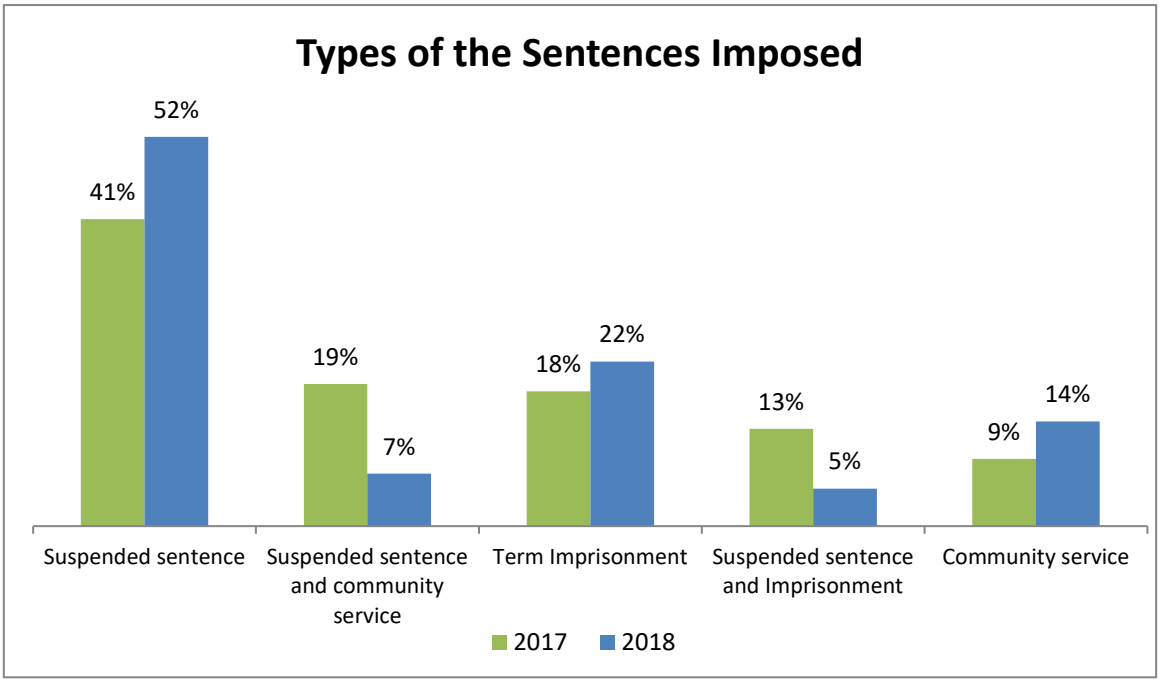
Although the evaluation of the sentences and the contextual side of the decisions rendered is beyond the scope of this study, since this type of assessment requires analyzing evidence and other circumstances, the fact that in 157 (71%) guilty verdicts out of 222, the court applied non-custodial measures raises the question whether the approach is effective to achieve general and personal prevention.

Interestingly that in majority of the cases, the violence occurred in the presence of a minor child. Specifically, during the year of 2017, in 31 (30%) cases, physical, psychological or other forms of violence was committed in the presence of a minor child, and in 2018, 49(37%) domestic crimes were committed against or in the presence of a minor child.

It is noteworthy that in one of the cases, where the defendant was charged with the offence provided for in paragraph 3 of Article 126[1] of the CCG, the Court imposed a fine as a form of additional punishment, which is in direct contradiction to Article 42(5) of the CCG.

The diagram below illustrates the percentage of the sentences applied against the defendants in the judgments analyzed.

Diagram № 6



As the statistics show, the court's approach to the imposition of the sentences has not changed greatly within the one-year interval, as the court mainly applies non-custodial sentences. It is noteworthy that the statistics of 2018 does not include the data of the Tbilisi City Court, as the court did not provide us with the judgments delivered during the period. However, according to the court monitoring results, in most cases (60%), deprivation of liberty was imposed by the court in Tbilisi.[63]

The prosecutors in the interviews have mentioned certain shortcomings in terms of determination of sentences. Some prosecutors note that in certain cases judges impose inadequate sentences and sometimes the applied sentences are quite lenient. The problem becomes obvious especially when the defendant produces a notarized statement of the victim at the court hearing claiming that the victim no longer has any complaints against the defendant, although there is no indication why the victim no longer holds any complaints against the abuser. The victim may not have any complaints due to the fear of the abuser or the request of relatives, and not because of her own will. If the victim has no complaints, then the defendant is imposed a suspended sentence. Moreover, if the

[63] The Tbilisi data covers the period from June 2018 to December 2018. Within the court monitoring conducted in Tbilisi, we attended 13 case proceedings where the verdict was rendered, 10 out of which were guilty verdicts, in 6 cases of these a term imprisonment was applied and a suspended sentence in 4 cases.

defendant has never been detained, then again a suspended sentence is applied. There was a case when, despite the victim's position, the court determined a suspended sentence against the defendant.

9.2. Examination of mitigating and aggravating circumstances

On account of the research, it has been revealed that the judges do not or rarely apply Article 53[1] of the Criminal Code of Georgia as an aggravating circumstance.[64]

- "If the prosecutor, in the introduction and conclusion part of the statement of charge, has highlighted the necessity to apply aggravating circumstances envisaged by Article 53[1] of the CCG when imposing a sentence, the judge may indicate the Article in the judgment. Solely, at the initiative of the court, the foregoing is not used. "
- "In accordance with the amendments introduced to Article 53[1] of the CCG, the Article shall be indicated as an aggravating circumstance in the judgment, but not in all cases, and this does not affect the determination of the sentence, which leads to negative mood in victims."

Prosecutor

The prosecutors believe that the court should always use the aggravating circumstances envisaged by Article 53[1] of the CCG if there is discrimination on the protected grounds and when such motives are confirmed at the court trial. Moreover, an aggravating circumstance envisaged by the Article, in particular, commission of an offence against a family member, must be applied against all other crimes committed in the family, save that Article 126[1] of the CCG. As to the Article 126[1] of the Criminal Code of Georgia, the majority of the prosecutors indicate that the part of Article 53[1] of the CCG, which aggravates a penalty for committing an offence in the family, should not be used together with Article 126[1] of the CCG, as the latter itself includes this ground and its application as an additional aggravating factor may not serve the goal of the law. The prosecutors also indicate that if the Article or a part of the Article of the Private Part of the Criminal Code provides aggravating circumstances as Corpus Delicti, in such a case, the same circumstance under Article 53[1] shall not be taken into consideration when awarding a sentence.

The majority of the judges in the interviews note that an aggravating circumstance envisaged by Article 53[1](2) of the Criminal Code of Georgia - commission of an offence by one member of the family against another member of the family- may be used only in relation to the offences set forth in Article 11[1] of the CCG[65] and not regarding the crimes provided for by Article 126[1] of the CCG, because the latter itself contains the element of commission of crime in the family and its application when awarding a sentence may contradict the law.

A relatively small number of the judges declared in the interviews that they had applied the second paragraph of Article 53[1] of the CCG in connection with the charges under Article 126[1] of the CCG. Another judge notes that he/she takes the above Article into consideration, but does not indicate separately in the judgment. One more judge has pointed out that this aggravating circumstance is used when it is necessary to substantiate a real sentence.

GYLA agrees with the position of the majority of the prosecutors and judges regarding the application of the aggravating circumstance envisaged by Article 53[1] of the CCG. In particular, the first part of the above Article shall be used against an offence committed on discriminatory grounds, as for the second part of the Article, the imposition of the aggravating circumstance which implies a criminal offence against a family member, may be relevant only in case of additional determination of the act under Article 11[1] of the CCG, as far as, according to Article 53 (4) of the

[64] Article 53[1] was added to the Criminal Code of Georgia on 4 May 2017. According to this amendment, commission of crime on the ground of race, skin colour, language, sex, sexual orientation, gender, gender identity, age, religion, political or other views, disability, citizenship, national, ethnic or social affiliation, origin, property or birth status, place of residence or on other signs of discrimination; commission of crime by one family member against another family member, against a helpless person, minor or in his/her presence, with the particular cruelty, with the use of a weapon or under the threat of using a weapon, by abusing an official position shall be an aggravating factor for the liability for any respective crimes envisaged under this Code.

[65] Pursuant to the Article, domestic offence means commission of a crime envisaged by Articles 108, 109, 115, 117, 118, 120, 126, 137, 141, 143, 144, 144(3), 149, 151, 160, 171, 253, 255, 255 (1), 381 (1) and 381(2) of the Criminal Code of Georgia by one family member against another member of the family. The criminal liability for domestic crimes shall be determined pursuant to or in reference to the respective Article of the Criminal Code of Georgia.

Criminal Code of Georgia, if mitigating or aggravating circumstances are considered as a component of corpus delicti under an article or part of an article of the special part of this Code, the same circumstances shall not be taken into account when imposing a sentence. Whereas Article 126^1 of the CCG itself envisages commission of an offence in the family, the use of this offence as an aggravating circumstance may contradict the general rule of sentencing.

The analysis of the judgments has revealed that in both reporting periods, the court, when awarding a sentence, took into consideration and deemed as a mitigating circumstance the confession of the defendant to crime and repentance, reconciliation of the victim and the accused, the financial dependence of the victim and other family members on the accused, health status and the age of the defendant. At the same time, in certain cases, judges paid attention to the nature and specifics of an offence when awarding a sentence, in particular, the statistics on the frequency of domestic violence, prevention of crime, and the attitude of the defendant towards his/her actions. In this respect, the decision of one judge is exemplary who indicates that the defendant is trying to justify the violence committed by him against his spouse and does not regret his actions. The abuser assumes it admissible that if his spouse demonstrates an appropriate behaviour which he does not approve, he can, as a way of punishment, apply against her a form of violence that may cause her pain and suffering. The Court notes that the violence cannot be justified by any prerequisite unless it is used as a proportionate measure against coercion. In the viewpoint of the judge, the attitude of the accused created the basis of the grounded assumption that in case of imposing a non-custodial sentence against the abuser he would continue to commit a similar offence. Taking into consideration all the above circumstances, the judge sentenced the defendant to 8 months of imprisonment for the offence envisaged by Article 126^1 of the CCG.

Another problematic issue is the application of the amendment introduced to the Criminal Code of Georgia in June 2017. In particular, Article 53^1 of the CCG provides for a range of factors which may be used to aggravate a sentence, however, they are not usually applied by judges. In a number of the judgments of 2017, the date of commission of offences was not possible to identify due to the secrecy of such data, which made it difficult to analyze the application of the Article in practice.

As regards the period of 2018, among the judgments studied by GYLA, the Court applied Article 53^1 of the CCG in merely 4 cases. It is noteworthy that the Article was applied incorrectly in 3 out of 4 cases, in particular, one of the circumstances envisaged by Article $53^1(2)$ of the CCG, namely, commission of an offence in the family, was determined as an aggravating circumstance with regards to the offence under Article 126^1 of the CCG. The use of this aggravating circumstance in relation to Article 126^1 of the CCG is not relevant, since, according to Article 53 (3) of the Criminal Code, if mitigating or aggravating circumstances are considered as a component of corpus delicti under an article or part of an article of the special part of this Code, the same circumstances shall not be taken into account when imposing a sentence. In contrast, the judge did not use the above-mentioned aggravating circumstance in the cases where the application of this article would have been legally justified, in particular, against the crimes envisaged by Article 11^1 of the CCG. Into 30 cases out of 233 judgments examined, the offence was classified under Article 11^1 of the CCG, but the aggravating circumstance provided for in Article 53^1 of the CCG - commission of an offence against a family member – was taken into account against only one defendant.

A positive evaluation should be given to a court decision where the judge applied Article $53^1(2)$ of the Criminal Code into the case of domestic offence.[66] In particular, the judge highlighted that whereas the defendant had committed the crime against his family member, his liability should be aggravated, eventually sentencing him to imprisonment for a period of 1 year and 6 months. In addition, deep appreciation should be expressed to those judges who focus on the prehistory and intensity of the violence in particular cases when considering the aggravation of the liability against the abuser.

9.3. Delivering judgments without hearing on the merits

In 2017, 98 guilty verdicts were rendered against 100 defendants. 62 (63%) cases of these were considered at hearings on the merits, and in 36 (37%) cases, a plea agreement was signed with the defendants. In this regard, the Sachkhere, Tbilisi, Poti and Samtredia Courts are noteworthy, where, according to the judgments provided, plea

[66] The case concerned the crimes under Article 11^1, Article 120 of the Criminal Code of Georgia (An intentional less severe damage to bodily health).

agreements were signed in neither of the cases. From 23 court decisions of the Gurjaani District Court, only 3 cases were considered at the merits hearing, and in the remaining 20 cases, plea agreements were signed.

In 2018, 17 (14%) judgments out of 124 guilty verdicts were rendered without a hearing on the merits, based on a plea agreement. It is noteworthy that plea agreements were not concluded in Poti, Sachkhere and Zestafoni Courts, and the highest number of conclusion of plea agreements was detected in Zugdidi. In particular, 7 out of 15 judgments delivered by the Zugdidi District Court were based on the plea agreement, 47% in total.

As for the offence that envisages having a sexual intercourse knowingly by an adult with a person who has not attained the age of 16 (the crime provided for by Article 140 of the CCG), 8 judgments were rendered regarding the offence in 2017 and with all 8 defendants, the plea agreements were signed, and in 4 cases considered in 2018, the plea agreements were signed with all 4 defendants. It is significant that imprisonment was not applied in either of the cases.

In conclusion, we can say that the rate of signing plea agreements into family offences and domestic violence cases has decreased which, in turn, is the indicator of toughening the state policy against such crimes.

Still problematic is the State's policy against the commission of an offence which envisages sexual intercourse knowingly by an adult with a person who has not attained the age of 16 (Article 11^1, 140 of the CCG). In particular, the analyzed judgments show that in all cases the Prosecutor's Office signed a plea agreement with defense lawyers and then the court approved it. Premature marriage has been named by the State as one of the challenges, but we can see that, within the strictest legislation,[67] the Prosecutor's Office still signs plea agreements with defendants and does not impose the liability prescribed by law.

10. IDENTIFICATION OF DISCRIMINATORY MOTIVATION

International Human Rights Law recognizes violence against women as a form of discrimination against women.[68] According to 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. Gender violence is a structural form of violence against women, and violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men."[69] Pursuant to the Latin American Model Protocol, "one of the criteria for determining gender motivation is that the cause of violence is contrary to the traditional beliefs of women's behavior or lifestyle."[70] GYLA provided the definition of gender motivation in 2016 within the study of femicide cases, namely, gender motivation occurs when the motive or the context is 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.[71]

Proceeding from the analysis of the GYLA's cases, as well as the interviews with the lawyers and judges, it has been established that gender motivation is not often identified by the prosecution. According to the GYLA's Criminal Court monitoring Reports N10[72] and N12,[73] one of the problems identified was the fact that despite indications to gender discrimination, the prosecution rarely focused on alleged discrimination ground into the cases of violence against women. The interviews with the prosecutors show that the Prosecutor's Office is working on the issue and we hope that the changed data will be reflected in the subsequent court monitoring reports.

[67] The crime provided by Article 140 (1) of the Criminal Code of Georgia envisages only 7 to 9 years of imprisonment.
[68] The UN Committee on Elimination of Discrimination against Women, General Opinion N19, 1992; Paragraph N1; See also the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Istanbul, 11.05.2011, Article 3 (a); Opuz v. Turkey, Application N33401 / 02, European Court of Human Rights, 09.06.2009, paragraph N200.
[69] Istanbul Convention, Preamble. Cited from "Judgments of 2014 Femicide Case in Georgia" by T. Dekanosidze, The Georgian Young Lawyers' Association, p. 5
[70] Latin American Model Protocol for the Investigation of Gender-related Killings of Women (femicide / feminicide),
[71] "Judgments of 2014 Femicide Case in Georgia" by T. Dekanosidze, The Georgian Young Lawyers' Association, p.10
[72] Thematic Report on Criminal Court Monitoring N10; Pp. 28-32;
http://217.147.239.51/files/news/2008/sasamartlos%20monitoringi%2010.pdf
[73] Thematic Report on Criminal Court Monitoring N12; Pp. 108-111; http://217.147.239.51/files/news/2008/Court%20monitoring%20N-12%20GEO.pdf

The interviews with the victims clearly indicate that the cause of violence is often the abuser's desire to control the actions of a victim and punish the victim for the behavior not approved by the abuser. The grounds of violence such as a poorly ironed shirt, cleaning the house inappropriately, etc, indicate the subordinate position of women and their stereotypical roles[74] in the family, as well as the proprietary attitude towards women, which, in turn, provides for the basis of discrimination.

Some of the prosecutors highlighted in the interviews that discrimination on gender motivation is always examined during the investigation as well as court proceedings into the cases of violence against women and domestic violence. If during the investigating stage, a victim directly or indirectly mentions the gender discrimination or the behaviour of the defendant reveals or his past contains any gender-based violence, it is then reflected in the statement of charge.[75] Ultimately, if a domestic offence has been committed on gender ground, in most cases, the discrimination motive is identified and appealed. However, it is often impossible to confirm gender motivation at the court trial, as victims refuse to give testimony.

In contrast to the statements of the prosecutors, the majority of the judges indicate that gender discrimination motive into an offence committed is not taken into consideration when aggravating the liability. Only one judge pointed out that he/she once aggravated the sentence due to gender discrimination.[76]

The interviews with the victims' lawyers show that there were not any discrimination / gender motives identified into the cases litigated by them, and therefore, the court did not refer to the discrimination as the factor for aggravating the sentence.

Identification of the gender discrimination motive is a problematic issue, and this has been clearly demonstrated by the judgments examined within the scope of the study. Gender discrimination, as the motive, was identified only in 2 (2%) cases out of 102 analyzed judgments of 2017. As regards 131 judgments of 2018, the discriminatory ground was detected by the prosecution in 3 (2%) cases, specifically, the gender motivation was indicated in the statements of charge, but the court presumably did not accept it, as the judge did not refer to the discrimination based on gender as an aggravating circumstance in the judgment and indicated that no aggravating circumstances existed into the case.

Despite the circumstances indicating the discriminatory motivation in some cases (the intensity of violence, proprietary attitude towards the victims, stereotypes about women, etc), the court decisions lack in proper reasoning in this respect. In general, the judgments of the court contain scarce information regarding the motive of the offence. In most cases, the court decisions indicate that the offence has been committed on the following grounds: jealousy, resentment, disagreement, and domestic conflict. Often domestic crimes are committed due to alcoholic / narcotic drug abuse. However, the factual circumstances confirming the above-mentioned motivations are not reviewed in detail.

11. THE CASES LITIGATED AT INTERNATIONAL COURTS

GYLA has conducted three litigations into the cases of domestic violence, domestic crimes, and violence against women at international courts. The two cases of these have been filed with the European Court of Human Rights, and the third has been submitted to the UN Committee on the Elimination of Discrimination against Women. All three cases are a clear illustration of an ineffective response of the State to the violence against women and domestic violence, namely, an inadequate assessment of risks threatening the victim's life and health, non-issuance of a restraining order, non-initiation of an investigation upon the report of a violent act, reluctance to assess an act

[74] In some cases, the cause of violence was an argument or resistance against the violator. According to individual victims, the reason for violence was a poorly pressed shirt or inadequate cleaning of the house. One of the victims recalls that the perpetrator always accused her of the violence and she always tried to seek the reasons in herself.

[75] The other group of the prosecutors indicates that identification of discrimination on gender ground is relatively rare, since it is difficult to obtain relevant evidence based on the specifics and nature of the crime. One of the prosecutors thinks that identification of gender discrimination at this stage is a problematic issue (especially by police officers). There are often the cases where, once an obvious motive has been determined, gender-based violence in no longer mentioned into the case.

[76] The judges primarily indicate the absence of such motives into the cases as the reason. The judges note that disputes often derive from household issues, such as vengeance, jealousy, anger about a behaviour of a victim (e.g. the abuser has become furious seeing that his wife had not done housework properly or stayed at work until late while the children remained unattended), violence against a spouse under alcohol abuse, etc.

as femicide and the failure of the court to take into consideration the gender discrimination motivation when awarding a sentence.

In one case filed with the United Nations Committee on Elimination of Discrimination against Women,[77] the female victim had repeatedly appealed to the police regarding her issue, but the State did not respond effectively to her reports, which eventually resulted in the killing of the victim by her former spouse. The female victim had addressed to the law enforcer on the fact of violence four times in total. Regarding the two reports, no official documents were prepared, and the fact of notifying the police was confirmed only by witness testimonies. Regarding the other two reports, two official documents were drafted. Despite the initiation of an investigation in response to one of the reports, soon the investigation was terminated and neither the circumstances of the case were properly examined, nor the comprehensive investigation was conducted. In the other case, the victim reported the violence through the hotline 112. The police officers who arrived at the crime scene did not issue a restraining order, but conducted a preliminary investigative action into the case during which only the victim and the violator were interviewed, and since the victim denied the fact of physical violence, the preliminary investigative actions were terminated without obtaining any additional information and evidence into the case.

Within 4 days from the above-mentioned fact, her former husband using a cold weapon murdered the woman in her own apartment. Although the perpetrator was found guilty of premeditated murder and was imposed a punishment, the court did not take into consideration the gender motivation when awarding the sentence, even though it was absolutely possible to confirm the discrimination based on the circumstances available into the judgment itself.[78]

As regards one case submitted to the European Court of Human Rights,[79] the abuser was a law enforcement officer. Notwithstanding the appeals submitted by the victim, neither a restraining order was issued, nor an investigation launched against the perpetrator. The rule of separate interrogation of the victim and the abuser was also violated. The law enforcers only obtained the offender's explanatory statement, which is not a legal document and does not have any legal force. The victim submitted the information to the General Inspection, but on the same day, she died due to the wounds inflicted by her former husband with an official firearm.

The other case sent to the European Court of Human Rights deals with the fact of coercing a woman to suicide as a result of domestic violence. Prior to her death, the victim of the domestic violence had addressed to the police 16 times and requested the protection against her spouse / ex-spouse. However, the state authorities failed to provide her with proper assistance. Eventually, the woman was found hanged with the traces of injuries inflicted by her former husband shortly prior to her death. The abuser was charged with coercion to suicide.[80]

From the above litigations, the case submitted to the UN Committee on the Elimination of Discrimination against Women[81] and the one to European Court of Human Rights were communicated in 2018. In all three cases, GYLA argues that the State violated the rights envisaged by Article 2 (Right to life), Article 3 (Prohibition of torture), Article 8 (Right to respect for personal and family life) and Article 14 (Prohibition of discrimination) of the Convention on Human Rights. These cases represent a systemic problem of discrimination against women in Georgia. In the cases of femicide, where women were killed as a result of domestic violence, the victims had reported upon the violence to the law enforcement agencies, but the failure of the State to take appropriate measures led to the fatal consequences.

[77] https://gyla.ge/ge/post/gaeros-qalta-diskriminaciis-aghmofkhvris-komitetshi-saqartvelodan-pirveli-femicidis-saqme-gaigzavna?fbclid=IwAR1E5QSzZsoNpXMa7oOo7cF8vmcnp5b7VzP4Oq3Vpzv6m4Vsye7VfBJQkz8#sthash.PrVvZQAC.8A1YcIt5.dpbs

[78] The verdict showed that the reason for the conflict was the victim's lifestyle not approved by the abuser and the desire to control her actions, which proves the subordinate state of the victim and the gender-distributed roles.

[79] https://gyla.ge/ge/post/saiam-yofili-meughlis-mier-mokluli-salome-jorbenadzis-saqmeze-evropul-sasamartlos-mimarta-96?fbclid=IwAR27SKQw3XsYlZdQdzoXpbZVzQnAv_vD43kIWeqcstYZcqi3tBv4ANYxnLU#sthash.egitM3TK.FUQ6geQx.dpbs

[80] https://gyla.ge/ge/post/qalis-tvitmkvlelobamde-miyvanis-saqme-evropul-sasamartloshigaigzavna?fbclid=IwAR2NMwheEWkBkmLvPPpPxSXrZrmpZI-UbkjcJGVkGa-K2p2QMCDIFxF-BBw#sthash.DdeIonxG.pUystiUw.dpbs

[81] https://gyla.ge/ge/post/gaeros-qalta-diskriminaciis-komiteti-femicidis-saqmes=ganikhilavs?fbclid=IwAR27WFU6wwfN_cl_Uej8rfIfRBMtl7eWSSwm-KtLmG288NRaoJ8G1MDXcE8#sthash.HgReqXLH.MTTfE82E.dpbs

12. OTHER ISSUES IDENTIFIED THROUGH THE RESEARCH

Lack of awareness of victims was identified as a problem within the scope of the research. Victims are not provided with relevant information about the rights granted to them by law. Moreover, victims do not know who to appeal to for the protection in case of violence. The victims indicate that the lack of relevant information is a key factor preventing them from getting rid of abusers.

The law enforcement officials, as well as the victims of violence, have mentioned the issue of **reference to the shelters.** Victim survivors of violence usually are reluctant to use the services of those shelters which are located far from their residential places, or the shelters in their district or town do not have enough places, or the nearest shelters are overcrowded. The congestion of the shelters constitutes a serious problem for law enforcement officers especially when the residence is the property of the abuser, and his separation from the house is problematic and the victim has nowhere to go. For the purposes of the research, we applied in writing to the State Fund for Protection and Assistance to Victims of Human Trafficking and requested the information on the number and the location of the shelters for victims of domestic violence that the Fund owns, the number of places the shelters can offer women and victims of domestic violence and which shelters are highly demanded. According to the data provided by the Fund, there are only five shelters across Georgia. Of these, the most places -23 are in the Tbilisi shelter, 18 places are in the Kutaisi shelter, 22 places are in Gori and the lowest number 10-10 is in Batumi and Sighnaghi shelters, respectively. The information provided by the Fund shows that the highest rate of reference of victims to the shelters was detected in Sighnaghi in 2018, 87 victims applied to the shelter. The second place by the number of references was taken by the Tbilisi shelter, referred by 83 persons.[82] Sometimes, the shelters are addressed by more people than they can accommodate.[83]

In the interviews conducted within the scope of the study, some lawyers noted the **lack of rehabilitation centers or training courses oriented on correction/rehabilitation of violent attitudes and behaviors of abusers** who have not been imposed criminal liability for domestic offences. In 2016, the National Probation Agency developed a "Rehabilitation Programme on Management of Violent Behaviour of Abusers.[84] The programme is aimed at the reduction and elimination of various forms of gender-based violence, the modification of sexist and discriminatory conduct and prevention of recidivism. The programme applies to only probationers. The purpose of the programme for correction and rehabilitation of violent behavior is to prevent the recidivism and ensure the safety of victims, to help abusers understand the responsibility for their violent behaviour and its consequences, as well as to retain positive changes in their attitudes and behaviour. The state that does not provide such services to perpetrators exposes the victims to potential recidivism and a criminal offence.

The problem that the prosecutors has highlighted is the **investigator and the victim not always isolated from other staff members during the interview, due to which the victim finds it difficult to speak and communicate important facts**. In addition, employees of the Ministry of Internal Affairs have not yet eliminated the problem of secondary victimization of victims and blaming them for the abuser's acts. Another problem mentioned is the failure of some investigators to record comprehensively the initial testimony of victims, as a result of which the victims have to visit the police station several times to verify the details.

The interviews have revealed that the prosecutors consider a significant problem the reluctance of the public to report when they witness an act of violence and their unwillingness to cooperate with law enforcement agencies. As a recommendation, they suggest strengthening the liaison between the public and law enforcers and enhance the role of civil organizations for the purpose of raising awareness of society and providing them with information. The prosecutors believe that MIA employees should be provided with appropriate training to conduct various campaigns (meetings with citizens, etc) in order to raise awareness of citizens and gain their trust. The prosecutors also focus on the necessity to inform the public of the Institute of the District Inspectors and improve activities to prevent crime and maintain effective communication with citizens. GYLA agrees with the prosecutors' opinion that it is important to raise awareness of the public regarding violence-related issues and of the necessity to cooperate with law enforcement agencies.

[82] The Fund has calculated the statistical data as of 27 November 2018.
[83] For instance, the Sighnaghi shelter, which has only 10 places, was referred to by 17 victims in June 2018, 15 victims in August, and 13 victims in October.
[84] http://probation.moc.gov.ge/geo/main/index/1398

Moreover, the government should fulfill its commitment and ensure proper implementation of the obligations undertaken pursuant to Article 20 of the Law of Georgia "On Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence" and develop and implement a training course oriented on the rehabilitation of abuser's violent attitudes and behavior. Furthermore, the State should increase the number of places in the most demanded shelters in order to eliminate the problem of the shelters offered to victim survivors of violence.

The analysis of the judgments has shown that in both reporting periods, the litigation of a certain number of the cases was finalized at hearings on the merits, however, some judges in the court rulings referred to the decision-making standards without merit hearing and provided respective decisions of the European Court of Human Rights (such as Natsvlishvili and Togonidze v. Georgia) as reference, which was irrelevant and unnecessary. The judges demonstrated this approach into the cases where the defense lawyers did not object to evidence. Specifically, if defendants accepted and did not deny the evidence, judges considered it as the defendant's refusal to his or her rights and substantiated this by referring to the standards of considering a case without the hearing on the merits.

The court decisions contain very little information on the application of international human rights standards and instruments. In the judgments delivered during the period of 2017, the majority of the judges did not refer to any international document, but there were some judgments citing the Council of Europe's Istanbul Convention. Furthermore, in a few cases, the references were made to the International Convention on the elimination of all forms of discrimination against women and Conventions on the Rights of the Child. In the judgments of 2018, the situation is the same, namely, the international documents and special legislation are not referred to. Only in the exceptional cases, in particular, in 10 cases, the Council of Europe (Istanbul) Convention, UN Convention on the Rights of the Child and other international instruments were provided as reference.

In conclusion, we can say that the majority of the judgments do not mention international instruments or practices. **Frequently, the Court refers to the decisions of the European Court of Human Rights that are not relevant to a particular case.**

CONCLUSION AND RECOMMENDATIONS

Over the years, for the prevention and ensuring an adequate response to domestic violence, domestic crime and violence against women, the State has taken a range of steps, namely, the Parliament of Georgia adopted the Law on Protection and Support to Victims of Domestic Violence in 2006, domestic violence and domestic crime was criminalized in 2012, the Council of Europe's Istanbul Convention was signed in 2014 and ratified in April 2017, which entailed the introduction of important amendments to a number of normative acts and harmonization of the acts with reference to violence against women and / or domestic violence issues; In 2018, the Department of Human Rights Issues was established under the Ministry of Internal Affairs. However, today, the issue of domestic violence, domestic crime and violence against women still remains an acute problem and we are still facing serious challenges in terms of prevention of these offences and provision of an effective response to violations committed.

GYLA's research has proved that domestic violence, domestic crime and violence against women are still a serious challenge for society and state agencies. Domestic violence is often characterized by its recurrence, in some cases, victims appeal to law enforcement agencies late, and in some cases they change and / or refuse to provide testimony. There are cases where law enforcement officers provide delayed and / or improper response. In certain cases, the court demonstrates ineffectiveness regarding domestic violence when it determines an inappropriate restraining measure against the accused for the offence committed, female victims of domestic violence do not feel safe, the state fails to offer perpetrators the services oriented on rehabilitation and/or correction of their violent behavior, etc.

The State should take significant and comprehensive steps to respond to the above challenges, both in terms of education and prevention, as well as to ensure effective response to specific offences.

Recommendations:

For the Ministry of Internal Affairs:

- The mechanism for the implementation of restrictive and protective orders and the list of responsible person / persons should be regulated by a normative act in accordance with the Law of Georgia on "Elimination of Domestic Violence, Protection and Support to Victims of Violence";
- Retraining of relevant staff of the Ministry of Internal Affairs should continue so that they can differentiate easily between the victim and the abuser, psychological violence and gender motivation and conduct an adequate investigation of such offences;
- Protective mechanisms envisaged by law should be applied to both victims and minor children, as the indirect victims witnessing the violence;
- The mechanism for monitoring of the liabilities imposed on perpetrators based on restrictive and protective orders should be strengthened;

For Prosecutor's Office of Georgia

- The Prosecutor's Office should examine to the maximum extent possible the cases of violence against women to find out whether the offence is committed on gender motivation or any other ground of intolerance and, in case of discrimination, make a relevant appeal thereupon in the court;
- The Prosecutor's Office should enhance the fight against psychological violence in cases of violence against women and domestic violence, and confirm in the court psychological suffering, a result of psychological violence;
- The Office should improve co-operation with victims and survivors of violence in order to prevent refusal or change of testimony;
- Properly substantiate any preventive measure requested based on the actual circumstances of a case;
- In parallel to custodial measures, limit any communication between the victim and the abuser to the maximum extent possible in order to prevent any possible influence from the defendant on the victim – the important witness of the prosecution;
- The Prosecutor's Office should tighten the criminal policy in relation to early marriages in order to ensure prevention of this crime;

For Common Courts

- A court decision imposing a protective order should be better substantiated and contain important information on the offence. In addition, the judge should substantiate a specific term determined for the protective order;
- The courts, in all possible cases, should provide comprehensive and substantiated reasoning regarding the application of any mitigation or aggravating circumstances and impose relevant penalties;
- In accordance with the Criminal Procedure Code of Georgia, the practice of imposing additional liability against the defendant along with a non-custodial measure should be introduced, which will ensure the quality protection of victims;
- The justice into the cases of domestic violence, domestic crimes and violence against women should be implemented from gender perspective;

For High Council of Justice

- Ensure the improvement of awareness in the judiciary system of gender-related crimes by introducing relevant training programmes and retraining of judges;

For Government of Georgia

- The Government of Georgia should ensure proper fulfillment of the obligations undertaken pursuant to Article 20 of the Law of Georgia on "Elimination of Domestic Violence, Protection and Support to Victims of Violence" and develop and implement a training course oriented on rehabilitation/ correction of violent attitude and behavior of perpetrators;
- Provide a needs analysis of victims of violence concerning the shelters and ensure additional places for beneficiaries in the most demanded shelters;
- Conduct appropriate informational campaigns on the problem of early marriage to raise public awareness in this regard;

For Parliament of Georgia

- The Criminal Procedure Code of Georgia should be amended to envisage the possibility to examine victims / survivors of domestic violence before a magistrate judge and in case of their refusal to testimony at the stage of a substantive hearing of the case, the testimony should be published in the deposited form and accepted by the court as evidence;
- The Parliament of Georgia should provide the definition of sexual harassment at the legislative level and determine an appropriate liability for the offence;