PROTECTION OF FEMALE VICTIMS OF VIOLENCE IN GEORGIA

Consequences of Strategic Litigation

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Author: Karlo Nikoleishvili

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TABLE OF CONTENTS

Introduction

In the 21st century, violence against women and domestic violence continue to be one of the challenges of the modern world, including in countries with a developed legal culture. The issue and the accompanying problems are even more striking in Georgia, where the patriarchal atmosphere, a society full of religious, cultural and moral stereotypes, often creates an intolerant, stigmatizing social reality for women, leading them to become victims of violence.

Over the past decade, a number of important reforms have been implemented to combat violence against women and domestic violence in Georgia. Those reforms aimed at harmonising both legislation and practice with international standards. However, experience has demonstrated that there are fundamental challenges associated with the inaction or ineffective work of law enforcement authorities in the prevention and subsequent response to violence against women and domestic violence on the one hand, and on the other hand, in identifying gender motive in the qualification of crime, formally granting the status of victim and accessing copies of case materials. Furthermore, the development of legal culture has brought new trends related to the problems of secondary victimisation of victims of violence in the criminal justice process, compensation for damage caused by the offender, the possibility of obtaining state compensation, etc.

Human rights organisations have an important role in the fight against domestic violence and violence against women, as well as in the development of legal culture in Georgia in this regard. The non-governmental organisation "Rights Georgia", with the support of the USAID Rule of Law Program, has been implementing the project – "Empowering Female Victims of Violence through Strategic Litigation" since July 2022. The goal of the project was to protect the rights and support the women and girl victims of domestic violence and domestic abuse, sexual and other violent, as well as gender-motivated crimes. The main objective of the strategic litigation is to change firmly rooted vicious practices and establish a practice which is gender-specific, sensitive, oriented on the protection of rights of women victims and is victimlogically safe, as envisaged by international standards and best European experience.

However, strategic litigation taken separately cannot be effective unless legislation, practices and legal culture focused on the protection of the rights of women victims of

violence are developed in Georgia. Taking into account that common law is not actively applied in Georgia and most of the court decisions are not available (not to mention the practice of administrative authorities), it is important that the results of strategic litigation become known through other means to practising lawyers and interested actors involved in the development of the field. The goal of the above-mentioned analytical paper is to make the progress made by strategic litigation known to a wide audience, which should contribute to further strengthening of the newly established practice.

1. Research Methodology

The methodology of the analytical paper is predominantly based on legal positivism and dogmatics, focusing on the analysis of international standards and domestic legislation regulating the rights and safety/security of women victims of violence. The research paper addresses the international treaties incorporated into the national legislation that are binding on Georgia and their authoritative interpretations, as well as effective human rights protection mechanisms. The research paper also reviews strategic cases conducted with the involvement of "Rights Georgia", analysing the results/consequences of those cases through the prism of the United Nations and the Council of Europe standards.

The analytical reasoning evolves around victimological theories, as one of the main objective of strategic litigation within the project was to reduce the effects of secondary victimisation of women victims of violence and create a gender-sensitive and protection-oriented environment in the justice system. Therefore, without studying the cases in terms of the visions and theories employed in this field of criminology, it is impossible to analyse and present the results of strategic litigation fully.

Overall, the hermeneutic method has been used to review, define, interpret, and determine the content of international standards, domestic legislation, secondary research, and academic literature, giving the analytical work the form of qualitative content analysis.

2. Key Findings and Recommendations

- Lawyers and human rights practitioners working on cases of violence against women and domestic violence should focus on several strategies for preventing femicide or responding to its consequences. On the one hand, if the case has not reached the culminating stage, they should engage actively and apply all possible mechanisms to assess the risks of recurrence of violence in a timely and effective manner, as well as to implement real protection mechanisms. On the other hand, if there is femicide or attempted femicide, it is possible to initiate administrative proceedings in court and request compensation for material and/or moral damage for the failure of the state law enforcement authorities to fulfil the positive obligation of protecting life. Furthermore, if the inaction, incompetence and/or lack of due diligence of the law enforcement authorities led to the death of a woman or posed such a threat to her life, it is important to initiate legal proceedings and appeal to the relevant agencies with the request to impose criminal or disciplinary liability on the relevant police officers or other employees.
- In cases of negligence of duties or inaction of law enforcement authorities, it is important that human rights practitioners appeal to the relevant authorised institutions and initiate criminal investigation or disciplinary proceedings against the representatives of the police and Prosecutor's Office. The above-mentioned, especially if the case is successfully finalised, will have the so-called "chilling" effect on the negligence of duties by law enforcement authorities and will contribute to increasing effectiveness and diligence.
- Based on the existing regulation, the administrative-legal protection mechanisms on cases committed by the representative of the law enforcement authorities against women and cases of domestic violence remain under the jurisdiction of the Ministry of Internal Affairs of Georgia and its subordinate police units. Respectively, the issuing of restraining orders, as well as the control over the execution of restraining and protective orders on acts of violence committed by law enforcement officers, is not ensured by the Special Investigation Service, but by the police. Based on the above-mentioned, all the risks associated with bias and expressing support to law enforcement colleagues by police officers are still present. Therefore, in terms of

strategic litigation, it is important that the issue is addressed both at the domestic level and at the European Court of Human Rights.

- Unlike the approach established by international standards, Georgian legislation associates identifying a person as a victim with granting him/her a certain formal status, which is fully the discretionary authority of the prosecutor. For unknown reasons and as a result of the rules and legacy of the Soviet Union, a person even today acquires the status of a victim only after being identified as a victim by a prosecutor's decree. Litigation practice has shown that timely recognition status of victims of domestic violence and violence against women and granting them appropriate rights from the beginning of the investigation remains a challenge, and, as a rule, additional intervention and support of lawyers is required to obtain the status of the victim. It is important that the existing model of victim recognition becomes the subject of strategic litigation in the future as it, in the existing form, could be found neither in common nor continental European law countries.
- Despite the standard established by the Constitutional Court of Georgia, accessibility of copies of case materials is still a problem for victims and lawyers. Law enforcement authorities often issue criminal case materials without any problem and delay, especially in Tbilisi; however, in other regions, they often refuse to hand over case materials on the basis of unjustified and formal approaches. Strategically, it is advisable that human rights practitioners apply to the relevant agency from the beginning with a justified statement, which is based on the legislative regulation and the interpretations of the Constitutional Court. In case of refusal, the issue could be appealed both to the superior prosecutor and to the court.
- It should also be noted that based on the interpretations of the Constitutional Court of Georgia and Paragraph 2 of Article 18 of the Constitution of Georgia, the essence/content of the victim's right to have access to information and case materials should be expanded and encompass all stages of criminal litigation, including court proceedings and a period after rendering the final decision. In addition, the access of victims to the records of the court hearing should also be ensured.
- Identifying the gender motive remains an essential challenge in criminal litigation practice, both at the investigation stage and at the court qualification stage. Strategic

support of lawyers is still needed to establish definitions determined by international standards and best practices.

- Secondary victimisation of a victim in the process of contact with law enforcement authorities at the investigation stage should be assessed as non-material damage. In case of assessment of the victim's psychological state and confirmation of secondary victimisation, it is essential to conduct strategic litigation in an administrative manner against the law enforcement authority and request compensation for incurred moral damage/harm.
- In the process of litigation practice, there were cases when perpetrators tried to influence the victim through various illegal means, including intimidation, as well as persuade her to withdraw the application submitted to the law enforcement authorities and/or alter the information already provided in the process of interrogation at the investigation stage. It is important to apply to law enforcement authorities with the request to launch an investigation under Article 372 of Criminal Code of Georgia, which foresees penalty for the exertion of influence on the person to be interrogated, witness and victim. It should be noted that the initiation of litigation/proceedings should serve as a strategic deterrent not only to the further actions/acts of the perpetrator but should also have a "chilling" effect on other perpetrators as well.
- There were facts when abusers often used the personal data of women victims to achieve illegal objectives. In the above-mentioned case, it is recommended that the victim files an application to Personal Data Protection Service, reflecting all the information available to her and requests the launch of the inspection for obtaining the information which is not available. Furthermore, human rights practitioners should apply to the Special Investigation Service and request to launch the investigation under Article 157 and Article 157[1] of the Criminal Code of Georgia[1]. The above-mentioned litigations will be effective in the process of investigating cases of domestic violence and violence against women but will also create a so-called "chilling" effect to avoid manipulation of victims of violence with personal data.
- The infrastructure of the buildings of the investigation bodies and existing common spaces do not allow for privacy and cannot ensure the development of a trust-based

[1] Article 157 of the Criminal Code of Georgia foresees criminal liability for disclosure of information on private life or personal data, whereas Article 157[1] envisages criminal liability for disclosure of personal secrets.

relationship between the investigator and the victim. Therefore, the risks of secondary victimisation of crime victims are high. However, as a result of strategic litigation, the practice of interrogating/questioning women victims of violence outside police buildings (including in the office of the non-governmental organisation) has been established.

- The victims of violence against women and domestic violence are subjected to secondary victimisation not only through communication with law enforcement authorities but also directly through the actions and inactions of the judges during the court hearings. It is important to initiate strategic litigation at the Independent Inspector's Office of the High Council of Justice of Georgia, requesting imposition of disciplinary liability on the judge for violating the principle of equality and applying the discriminatory approach.
- The minor children who became the witnesses of the crime are also victims of domestic violence and violence against women. It is important to note that recognition of minor children who witnessed domestic and violence against women as statutory victims is essential, both for the interests of criminal justice and for the compensation of damage. On the one hand, the formally recognition of minors as victims, along with the provision of legal guarantees defined by the criminal procedure legislation, creates an important basis for protecting the child from secondary victimisation. On the other hand, it can serve as a basis for the appointment of examination/expertise to a minor to determine the inflicted damage.
- As a result of the practice established on the basis of strategic litigation, it became possible to question child victims of violence and seized information from their phones not in the police building but in the office of the non-governmental organisation. In the above-mentioned case, the investigation authority took into account the request and the fact that the organisation's office was a familiar place for the children, and they had visited it several times before. Therefore, the initial questioning/interrogation of the minors and seizure of correspondence from the mobile phone was instituted in the office of the organisation in a less traumatising and peaceful environment for the child, contributing to averting secondary victimisation of the children.
- The practice that made it possible to conduct court questioning of children remotely, from a psycho-social service centre for abused children (from so-called "Barnahus"),

to avoid their secondary victimisation should be evaluated as a special achievement of strategic litigation.

- Based on previous practice established in Georgia, the woman, who was willing to determine paternity and initiated the litigation was obliged to pay the costs arising from the necessary examination. However, as a result of strategic litigation, it became possible to impose the burden of proof of denial of paternity and the obligation to pay the respective costs to the potential father. The judge of Tbilisi City Court established an important precedent – when determining paternity, in case an alleged and potential father does not recognise the claim and to confirm his position, he files a motion to submit evidence to the court, he must bear the cost of obtaining the evidence for confirming non-existence of genetic paternity. In this case, the alleged father, as the initiator of the submission of the evidence, will be obliged to cover the forensic examination costs based on Paragraph 1 of Article 52 of the Civil Procedure Code of Georgia.
- The strategic litigation made it possible to restrict parental rights in the exercise of educational mobility through a temporary decree until the final decision on the case was rendered. Implementation of this effective mechanism in practice made it possible not only to exercise the child's right to education and personal development, but it also contributed to the prevention of moral and psychological trauma.
- According to the existing legislation, victims of domestic violence and violence against women have the possibility to receive compensation for non-material damages through civil proceedings/litigation. Newly established practice makes it possible to receive compensation for moral damage directly from the offender both for physical/health impairment arising from domestic violence and violence against women, as well as for psychological suffering and psycho-trauma developed as a result of the violence.
- According to newly adopted normative regulation, the victims of domestic violence and violence against women are entitled to receive state compensation. The normative act envisages compensation of 10 000 GEL for the children of the victims of femicide. Furthermore, the state may provide compensation for damage inflicted on the woman who was subjected to violence, if the convict fails to pay the compensation in accordance with the rules established by the Georgian civil

procedure legislation. Namely, if at least 40% of the amount to be compensated was not paid within 6 months from the start of the enforcement proceedings.

3. The Role of Law Enforcement Authorities in Preventing Domestic Violence and Femicide and Consequences of Their Inaction

Law enforcement authorities play a pivotal role in preventing instances of domestic violence and violence against women in the modern, developed world. Timely and effective interference of law enforcement authorities is crucial, as these types of crime have a tendency towards recurrence and multi-layered development. Unfortunately, the practice made it evident that despite the reforms and measures taken, the fulfilment of the obligation related to the protection of women victims of violence by authorised bodies remains a challenge, and the state's inaction leads to appalling consequences.

International standards on human rights directly and explicitly refer to the positive and negative obligations of the state to protect women victims of violence. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence[2] reads that state parties should refrain from engaging in any act of violence against women and ensure that state authorities, officials, agents, institutions and other actors acting on behalf of the state act in conformity with this obligation. Furthermore, the parties to the Convention should exercise due diligence to prevent, investigate, punish, and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-state actors.[3]

Chapter 6 of the Istanbul Convention is of special importance, as it highlights from the very beginning that the states shall take all necessary measures to ensure that investigations and judicial proceedings in relation to all forms of violence against women and domestic violence are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings. Moreover, the effective investigation and prosecution of relevant offences should also be ensured.[4] The responsible law enforcement authorities shall respond to all forms of violence promptly and appropriately by offering adequate and immediate protection to victims. They shall ensure

[2] Hereinafter also referred to as Istanbul Convention.
[3] The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, Article 5.
[4] The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, Article 49.

prevention and protection against all forms of violence, including the employment of preventive operational measures and the collection of evidence.[5] The state shall take all necessary measures to protect victims of violence, as well as their families, from intimidation, retaliation, and repeat victimisation.[6] Furthermore, the Convention directly refers to the ability of the state to use different mechanisms for the prevention of violence, including prohibitive, restraining and protection orders. However, it is noteworthy that the protection mechanisms offered by the state shall be effective and result-oriented in practice, not just a bare formality.[7]

Other international human rights documents and court decisions integrate the state's positive obligation to protect women victims of violence and its responsibility to exercise due diligence and attention. Among them are the Convention on Elimination of All Forms of Discrimination against Women adopted in the framework of the United Nations organisation, the UN General Assembly Declaration on the Elimination of Violence against Women of 1993,[8] General Recommendation No. 35 on Gender-based Violence against Women of the Committee on the Elimination of Discrimination against Women, updating the General Recommendation No. 19, as well as the Council of Europe recommendation Rec(2002)5 on the Protection of Women against Violence and others.[9]

The General Recommendation No. 35 on Gender-based Violence against Women determines that states will be held responsible should they fail to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for acts or omissions by non-state actors that result in gender-based violence against women. Under the obligation of due diligence, states shall adopt and implement diverse measures to tackle gender-based violence against women committed by non-state actors, including having laws, institutions and a system in place to address such violence and ensuring that they function effectively in practice and are supported by all state authorities/bodies. The failure of a state to take all appropriate measures to prevent acts of gender-based violence against

[5] The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, Article 50.
[6] The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, Article 56.1.a.
[7] The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, Articles 52-53.
[8] UN General Assembly Declaration on the Elimination of Violence against Women, A/RES/48/104, 23 February 1994, article 4.
[9] Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, para. 58.

women in cases in which its authorities are aware or should be aware of the risk of such violence or the failure to investigate, prosecute and punish perpetrators and provide reparations to victims/survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women.[10]

The European Court of Human Rights case law requires separate analysis, as it sets important legal precedents in determining the scope of the state's positive obligation to protect women victims of violence. In this regard, the case Opuz v. Turkey is considered to be the most critical decision and serves as a guiding standard of the European Court of Human Rights. The court, regarding the right to life in the above-mentioned case, explains that the scope of the positive obligation shall be interpreted in a way that does not impose an impossible or disproportionate burden on the authorities. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.[11]

In the opinion of the Court, where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of the above-mentioned duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. Furthermore, it is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge.[12]

The Court's communication should be mentioned separately, where it states that according to the relevant rules and principles of international law recognised by most states, the

[10] Committee on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, 26 July 2017, para. 24.
[11] Opuz v. Turkey, European Court of Human Rights, Application no. 33401/02, 9 June 2009, para. 129.
[12] Opuz v. Turkey, European Court of Human Rights, Application no. 33401/02, 9 June 2009, para. 130.

state's failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional.[13]

The content and scope of the state's positive obligation can be more clearly illustrated in the case – Tkhelidze v. Georgia.[14] The court, when assessing the inactivity of the state in the case related to domestic violence, focused on three questions: whether a real and immediate danger emanating from an identifiable individual existed, whether the domestic authorities knew or ought to have known of the threat, and, should the above two questions be answered in the affirmative, whether the authorities displayed special diligence in their response to the threat.[15]

It is significant that in the case Tkhelidze v. Georgia, the court also discussed the systemic nature of domestic violence and pointed out that several authoritative international monitoring bodies, as well as the Office of the Public Defender of Georgia, attested to this blight on society, reporting that the causes of violence against women were linked to, inter alia, discriminatory gender stereotypes and patriarchal attitudes, coupled with a lack of special diligence on the part of the law enforcement authorities. The domestic authorities responsible thus knew or should have known of the gravity of the situation affecting many women in the country and should have thus shown particular diligence and provided heightened state protection to vulnerable members of that group. The court can only conclude that the general and discriminatory passivity of the law-enforcement authorities in the face of allegations of domestic violence, of which the case Tkhelidze v. Georgia is a perfect illustration, created a climate conducive to a further proliferation of violence committed against women. That being so, the failure of the Georgian state to take preventive operational measures aimed at protecting the applicant's daughter, irrespective of whether that failure was intentional or negligent, undermined the rights of the applicant and her daughter to equal protection before the law.[16]

In the case - A. and B. v. Georgia, the European Court of Human Rights established additional standards and definitions, including those related to positive obligations.[17] The court referring to the precedent established in the case Tkhelidze v. Georgia noted that in the

[13] Opuz v. Turkey, European Court of Human Rights, Application no. 33401/02, 9 June 2009, para. 191.
[14] Tkhelidze v. Georgia, European Court of Human Rights, Application no. 33056/17, 8 July 2021.
[15] Tkhelidze v. Georgia, European Court of Human Rights, Application no. 33056/17, 8 July 2021, para. 52.
[16] Tkhelidze v. Georgia, European Court of Human Rights, Application no. 33056/17, 8 July 2021, para. 56.
[17] A and B v. Georgia, European Court of Human Rights, Application no. 73975/16, 10 February 2022.

present case, the police failed to display the requisite special diligence and committed major failings in their work, such as inaccurate, incomplete or even misleading evidence gathering and not attempting to conduct a proper analysis of what the potential trigger factors for the violence could be. In this connection, the court reiterates that shortcomings in the gathering of evidence in response to a reported incident of domestic violence can result in an underestimation of the level of violence actually committed, can have deleterious effects on the prospects of opening a criminal investigation and even discourage victims of domestic abuse, who are often already under pressure from society, from reporting an abusive family member to the authorities in the future.[18]

Unfortunately, it seems that the fight against domestic violence, ineffectiveness and failure of law enforcement authorities remain a systemic challenge in Georgia. T. Ch.'s case of attempted femicide, where the non-governmental organisation "Rights Georgia" is involved, could serve as an example. Based on the case materials, the ex-spouse inflicted 10 wounds on T. Ch. with an edged (bladed) weapon in the presence of her minor child near the bus stop during the daytime. T. Ch, with the help of passers-by and as a result of timely medical intervention, survived the death.

It is confirmed that the woman had been the victim of physical and psychological violence from his husband for a long time. The violence was committed in the presence of their minor child. It should be mentioned that about a month prior to the case of attempted femicide, the victim, after one of the acts of violence, appealed to law enforcement authorities for help. The investigation under Sub-paragraph "b" of Paragraph 2 of Article 126[1] of the Criminal Code of Georgia was launched, and a restraining order was issued against the perpetrator. However, in the above-mentioned case, the law enforcement authorities did not display due diligence and attention and failed to interrogate/question the victim, her child and other persons thoroughly with the aim of obtaining comprehensive information about the previous instances/history of violence and taking further measures to prevent further attempts of femicide.

Furthermore, the law enforcement authorities did not take into account the health condition and physical problems of the victim and did not study the consequences of psychological violence through the appointment and conduction of a forensic examination. Their lack of

[18] A and B v. Georgia, European Court of Human Rights, Application no. 73975/16, 10 February 2022, para. 47.

due diligence and inappropriate and inadequate assessment of possible risks led to the fact that only a formal restraining order was issued, and no electronic bracelet was used against the perpetrator. The above-mentioned measures were not enough to protect T. Ch.'s right to life.

This case serves as a good example to demonstrate the negligence of the state's positive obligation to protect the right to life, as given the history of many years of violence, there was a real and imminent danger that a life-threatening attack against T. Ch. would be carried out by her ex-spouse. Furthermore, the law enforcement authorities had the chance/opportunity to assess the degree, intensity and possibility of recurrence of the violence by collecting evidence and information in full and accurately about a month before the attempted femicide. They could at least use an electronic bracelet to balance/counter these threats and risks, making it possible to prevent attempted femicide.

It is important to focus on the risk assessment component with regard to the above-mentioned case, as risk assessment remains a challenge in Georgia. The inappropriate and incomplete assessment of the risks led to the fact that the law enforcement authorities did not deem it necessary to use electronic bracelets and other preventive mechanisms and only formally issued a restraining order. It should be noted that Article 51 of the Istanbul Convention reads that the states shall take the necessary legislative or other measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary to provide coordinated safety and support.

The Report on Georgia prepared by the Group of Experts on Action against Violence against Women and Domestic Violence[19] It reads that GREVIO welcomes the introduction of a risk-assessment system in Georgia, which has become an integral part of the management of domestic violence cases.[20] However, the expert group indicates that their attention was drawn to the information reflected in various reports, claiming that police officers do not accurately record the information provided by victims, including facts that could reveal aggravating circumstances or that are crucial to identifying the discriminatory gender

[19] Hereinafter, GREVIO.
[20] Group of Experts on Action against Violence against Women and Domestic Violence, GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Georgia, GREVIO/Inf(2022)28, 13 October 2022, para. 323.

motive, which results in the crime being qualified as less grave. It is also reported that police officers do not ask all of the relevant questions in the risk-assessment checklist and fill out some parts of the assessment themselves. This may result in the failure to identify risks and effectively provide the necessary protection to victims.[21] Concerning GPS electronic monitoring bracelets used in high-risk cases,[22] the expert group placed emphasis on the scarcity of their use.[23]

Taking into account all the above-mentioned and existing challenges in Georgia, it is important for lawyers and human rights practitioners working on cases of violence against women and domestic violence to focus on several aspects in terms of strategic litigation:

- If the case has not reached the culminating stage, they should engage actively and apply all possible mechanisms to assess the risks of recurrence of violence in a timely and effective manner, as well as to implement real protection mechanisms.
- If there is femicide or attempted femicide, it is possible to initiate administrative proceedings in court and request compensation for material and/or moral damage for the failure of the state law enforcement authorities to fulfil the positive obligation of protecting life.
- If the inaction, incompetence and/or lack of due diligence of the law enforcement authorities led to the death of a woman or posed such a threat to her life, it is important to initiate legal proceedings and appeal to the relevant agencies with the request to impose criminal or disciplinary liability on the relevant police officers or other employees.

[21] Group of Experts on Action against Violence against Women and Domestic Violence, GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Georgia, GREVIO/Inf(2022)28, 13 October 2022, para. 326.

[22] Indicators for high-risk cases are the perpetrator's history of violence, violations of restraining or protection orders in the past and the use of weapons.

[23] Group of Experts on Action against Violence against Women and Domestic Violence, GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Georgia, GREVIO/Inf(2022)28, 13 October 2022, para. 328.

4. Shortcomings Identified in the Activities of Law Enforcement Authorities and Their Responsibility

Instances of negligence of duties or inaction revealed by law enforcement authorities during administrative proceedings and/or in the process of investigation of criminal cases related to violence against women and domestic violence have become an integral part of the practice. In order to combat malpractice, it is important to impose criminal or administrative liabilities on the representatives of the police and the Prosecutor's Office, which in the future will have a so-called "chilling" effect on the negligence of duties by law enforcement authorities and will contribute to increasing effectiveness and diligence.

It should be noted that the European Court of Human Rights addressed the above-mentioned issue in two cases against Georgia. The court assessed the protection of procedural positive obligation in the context of a criminal investigation against those police officers who failed to respond promptly and effectively to domestic violence cases. In the case Tkhelidze v. Georgia, the court reiterated that in cases concerning possible responsibility on the part of state officials for deaths occurring as a result of their alleged negligence do not necessarily require the provision of a criminal-law remedy in every case. However, there may be exceptional circumstances where only an effective criminal investigation would be capable of meeting the positive procedural obligation imposed by Article 2 of the Convention. Such circumstances can be present, for example, where a life was lost or put at risk because of the conduct of a public authority that goes beyond an error of judgment or carelessness. Where it is established that the negligence attributable to state officials or bodies goes beyond an error of judgment or carelessness, in that the authorities in question failed to take measures that were necessary and sufficient to avert the risks, the fact that those responsible for endangering life have not been charged with a criminal offence or prosecuted may amount to a violation of Article 2, irrespective of any other types of remedy that individuals may exercise on their own initiative.[24]

However, in the light of the existence of discriminatory overtones associated with violence committed against women, the court in the above-mentioned case considered that there was a pressing need to conduct a meaningful inquiry into the possibility that gender-based discrimination and bias had also been a motivating factor behind the alleged police inaction.

[24] Tkhelidze v. Georgia, European Court of Human Rights, Application no. 33056/17, 8 July 2021, para. 59.

Given that the inactivity of the law enforcement authorities was one of the causes of the descent of the domestic abuse into the killing of the victim and the authorities knew or should have known of the high level of risk that would be faced by the victim if they failed to discharge their policing duties, the court considered that their negligence went beyond a mere error of judgment or carelessness. Furthermore, the prosecution authority disregarded the applicant's numerous criminal complaints and made no attempt to establish the identity of the police officers, to interview them and to establish their responsibility in relation to their failure to respond properly to the multiple incidents of gender-based violence that preceded the killing of the victim. Not even a disciplinary probe into the alleged police inaction was opened, despite the fact of the applicant's having complained to the body in charge of disciplinary supervision of police officers.[25]

The European Court of Human Rights observes that the inactivity and negligence of the law enforcement authorities were one of the main reasons why the domestic abuse was allowed to escalate, culminating in the murder of the victim of violence in the case A and B v. Georgia. Given that the authorities knew or should have known of the high level of risk faced by her if they failed to discharge their duties properly and were thus in a position to establish whether he had been involved in similar incidents in the past or his propensity to violence. The court considers that their inactivity and negligence went beyond a mere error of judgment or carelessness. Consequently, amongst the remedies used by the applicants at the domestic level, the most pertinent for the purposes of Article 35, Paragraph 1 of the Convention were the criminal proceedings instituted against the police officers and public prosecutors involved.[26]

The European Court of Human Rights notes with concern that the competent investigation authority neither made an attempt to establish responsibility on the part of the police officers for their failure to respond properly to the multiple incidents of gender-based violence occurring prior to the victim's murder nor deem it necessary to grant the victim status to the applicant. No disciplinary inquiry into the police's alleged inaction was even opened.[27]

[25] Tkhelidze v. Georgia, European Court of Human Rights, Application no. 33056/17, 8 July 2021, para. 60.
[26] A and B v. Georgia, European Court of Human Rights, Application no. 73975/16, 10 February 2022, para. 43.
[27] A and B v. Georgia, European Court of Human Rights, Application no. 73975/16, 10 February 2022, para. 44.

In addition to the above-mentioned, it is important to extend the issue of the responsibility of the representatives of the law enforcement authorities and to impose criminal or disciplinary liabilities on them, even in those cases, when they failed to conduct an effective investigation into cases of violence against women and domestic violence and femicide, as well as the investigation related mistakes committed by them resulted in cases not being opened, perpetrators not being punished, qualifying actions as less serious crimes or applying lighter sanctions.

The Public Defender of Georgia, in a special report published on femicide cases, focuses on individual cases when inappropriate/incorrect actions, negligence and carelessness of law enforcement authorities, as well as their inaction, significantly damaged the process of investigation and conviction of the perpetrator. For example, the Femicide Monitoring Report 2014-2018 reads that the qualification of the action was influenced by the fact that the investigation failed to provide proper documentation of the victim's injury and failed to gather evidence that would allow medical examination to determine the instrument of the life-threatening injuries.[28] Furthermore, in the 2020 Report, the Public Defender of Georgia refers to the negative consequences the failure of taking samples from all persons related to the femicide case had on the final outcome.[29]

In addition, as mentioned in the previous Chapter, in cases Tkhelidze v. Georgia and A. and B. v. Georgia, the European Court of Human Rights placed emphasis on the consequences of mistakes made during the investigation of the femicide case and on police officers' carelessness. On the one hand, similar shortcomings might have an impact on correctly assessing the level of violence and the launch of the investigation, and on the other hand, it might even discourage victims of domestic abuse, who are often already under pressure from society, from reporting an abusive family member to the authorities in the future.[30]

The criminal actions of investigatory authorities' representatives were also identified in one of the high-profile strategic litigation cases, where "Rights Georgia" represented the interests of the legal successor of the victim. Unfortunately, the investigation authorities made a number of mistakes and did not exercise due diligence to investigate and open the case of the possible murder of a minor girl. Namely, they left the scene of the crime

[28] Public Defender of Georgia, Report on Femicide Monitoring 2014-2018, UN Women, 2020, 13.
[29] Public Defender of Georgia, Report on Femicide Monitoring 2020, UN Women, 2021, 21-24.
[30] Tkhelidze v. Georgia, European Court of Human Rights, Application no. 33056/17, 8 July 2021, § 54. A and B v. Georgia, European Court of Human Rights, Application no. 73975/16, 10 February 2022, para. 47.

unprotected, and the relevant services of the Tbilisi City Hall were able to clean up the crime scene, cut trees and bushes, and remove the existing layout. As a result, it became impossible to restore the scene of the crime to its original condition when it was necessary to carry out a number of investigatory and procedural actions later. In addition, the investigators failed to obtain all the evidence from the crime scene, resulting in the loss of the evidence due to the negligence of police officers. It should be stressed that due to the carelessness of the representative of Samkharauli's Forensic Bureau, the biological samples placed in one of the packages were damaged, and DNA traces of sufficient concentration were not found.

It should be noted that from a strategic point of view, the lawyers of "Rights Georgia" initiated a criminal investigation for misconduct. The last case is of special significance, as the expert of Samkharauli Forensic Bureau was charged. The Prosecutor's Office initially charged the expert with negligence of official duties in October 2023 (Paragraph 1 of Article 342 of the Criminal Code of Georgia), allowing the court to release the expert by imposing a fine or leaving him under house arrest in case the crime was attested. However, after numerous appeals by the family members and lawyers of "Rights Georgia", the Prosecutor's Office on 9 January 2024 specified the charge and reclassified it under Paragraph 1 of Article 370 of the Criminal Code of Georgia, which envisages the charge for impeding to administer the justice, as the expert failed to protect the object of expert examination due to his/her carelessness. The commitment of the above-mentioned action foresees imprisonment as a sentence. It should also be noted that the qualification of the action under this Article is a rare precedent, as the Prosecutor's Office usually considers similar cases as negligence of official duties.

In addition, criminal prosecution of the expert should be considered as an important result of strategic litigation, as it will serve as an important preventive mechanism in the future and will have a so-called "chilling" effect to prevent the recurrence of similar cases.

Furthermore, it should be noted separately that the lawyers of "Rights Georgia" applied to the Public Defender of Georgia, shared the materials of A.I.'s case and requested to assess the efficiency of the investigation and develop respective recommendations. The conclusion developed by the Public Defender's Office reads that the investigation into the alleged crime against a minor does not meet the standard of an effective investigation. In particular, essential investigation activities were not performed, and performing some of those activities at a later stage made no sense or was significantly complicated. It should be

stressed that the Public Defender of Georgia addressed the Prosecutor General of Georgia with a request to initiate a probe into the negligence of official duties and improper performance by the investigators working on the case (prolonged and/or unconducted, as well as on deficient investigatory activities).

5. Law Enforcement Authorities/Police Officers, Who Are Perpetrators of Crimes against Women and Domestic Violence

It was noted in the previous chapters that the international standards for combating violence against women and domestic violence clearly refer not only to positive but also to negative obligations of the state. States are required to pay special attention and have an obligation to respond to cases of violence against women and domestic violence committed by representatives of law enforcement authorities and police officers themselves. In addition to regulations of the Istanbul Convention discussed above, Article 2 (d) and (f), as well as Article 5 (a) of the UN Convention on Elimination of All Forms of Discrimination against Women,[31] read that judicial institutions should refrain from engaging in any act or practice of discrimination against women, as well as from gender-based violence against women, and to apply all provisions of the criminal law to punish such violence. Furthermore, General Recommendation No. 35 on Gender-Based Violence against Women of the UN Committee on the Elimination of Discrimination against Women placed emphasis on the responsibility of the state for the actions and inactions of both state and non-state actors. Namely, according to Paragraph 23, the state parties to the Convention are responsible for preventing gender-based violence acts or omissions by their own organs and agents, including through training and the adoption, implementation and monitoring of legal provisions, administrative regulations and codes of conduct. [32]

The European Court of Human Rights practice and its decision in the case A. and B. v. Georgia, which addresses the femicide committed by a police officer, are of special significance. The European Court of Human Rights considers that the facts of domestic violence and violence against women committed by representatives of law enforcement

[31] Hereinafter CEDAW Convention.
[32] Committee on the Elimination of Discrimination against Women, General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 (1992), CEDAW/C/GC/35, 26 July 2017, para. 23.

authorities are alarming/troubling and require special attention at the stage of the investigation, as the police officer, who is an alleged abuser might enjoy the sense of impunity and use his duty/official status and attributes against a victim/her family members, for example: intimidate with false accusations or use of service pistol. [33] It is also possible that law enforcement authorities deliberately turned a blind eye to the criminal acts committed by their colleagues.[34]

Consequently, the European Court of Human Rights expects the Member States to be all the more stringent when investigating and, where appropriate, punishing their own law-enforcement officers for the commission of serious crimes, including domestic violence and violence against women in general, than they are with ordinary offenders, because what is at stake is not only the issue of the individual criminal-law liability of the perpetrators but also the State's duty to combat any sense of impunity felt by the offenders by virtue of their very office, and maintain public confidence in and respect for the law-enforcement system.[35]

The investigation of violent criminal acts committed by law enforcement authorities remains a problem in Georgia. The problem of irrelevant legal response to cases of torture, inhuman and degrading treatment by police and penitentiary officers, and the prevailing impunity syndrome firmly rooted in law enforcement authorities were especially alarming at the initial stage. The practice of not initiating or initiating an investigation and then "putting it on the shelf" has been widely pursued. [36] The issue has been continuously monitored by the Public Defender of Georgia and local non-governmental organisations, as well as by international actors monitoring human rights protection. [37] A special problem arose from the fact that perpetrators and persons exercising investigative duties were under one umbrella. Considering the existing institutional ties, investigators often had to

[33] A and B v. Georgia, European Court of Human Rights, Application no. 73975/16, 10 February 2022, paras. 44, 48.
[34] A and B v. Georgia, European Court of Human Rights, Application no. 73975/16, 10 February 2022, para. 45.
[35] A and B v. Georgia, European Court of Human Rights, Application no. 73975/16, 10 February 2022, para. 48.
[36] The latter included unilateral, biased, formal and inefficient investigation and much more. See: Independent Investigative Mechanism in Georgia, Achievements and Existing Challenges, Institute for Development of Freedom of Information (IDFI) and Social Justice Center, 2021, 19. (available on: https://shorturl.at/NOQyP retrieved: 23.05.2024).
[37] For reference, please see: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Civil and Political Rights, including: The Questions of Torture and Detention, 23 September 2005, E/CN.4/2006/6/Add.3. Report by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe Following his visit to Georgia from 18 to 20 April 2011, Administration of justice and protection of human rights in the justice system in Georgia, CommDH(2011)22, Strasbourg, 30 June 2011 (available on: https://rb.gy/kw5b4a retrieved: 23.05.2024); Thomas Hammarberg, Georgia in Transition, Report on the Human Rights Dimension: Background, Steps Taken and Remaining Challenges, 2013. Within the framework of the Council of Europe, the issue has also repeatedly been included in the reports of Anti-torture Committee and has been discussed by the European Court of Human Rights. For reference, please see: Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 11 December 2014, CPT/Inf (2015) 42, 15 December 2015. For cases related to the Group of Tsintsabadze, please see: https://shorturl.at/huNUX (retrieved: 05.12.2023).

investigate crimes committed by their colleagues, once again stressing the need to create an independent investigative mechanism.[38]

The long-term advocacy of the above-mentioned issue resulted in establishing an independent investigation body on the basis of the Personal Data Protection Inspector. The investigation body should conduct an independent and impartial probe into individual crimes committed by law enforcement officials. Later, the State Inspector's Service was abolished, and the Special Investigation Service was created to serve the same purpose. The current version of Article 19 of the Law of Georgia on "Special Investigation Service" defines crimes related to violence against women and domestic violence as criminal cases falling under the competence of the independent service. It is significant that domestic violence committed by a representative of law enforcement authorities, as foreseen in Article 126^1 of the Criminal Code of Georgia, falls under the competence of the Special Investigation Service.[39]

The authority of the Special Investigation Service to investigate domestic violence and related crimes committed by representatives of law enforcement authorities serves as a guarantee of the investigation being effective and unbiased. However, it should be noted that in one of the strategic cases conducted by the non-profit organisation "Rights Georgia", a significant shortcoming was identified in terms of ensuring the safety/security of women victims of violence in an independent and unbiased manner. Namely, it is true that the conduction of the criminal investigation falls under the competence of the Special Investigation Service, but the administrative-legal protection mechanisms on cases committed by the representative of the law enforcement authorities against women and cases of domestic violence remain in the auspices of the Ministry of Internal Affairs of Georgia and police units. Respectively, the issuing of restraining orders, as well as the control over the execution of restraining and protection orders on acts of violence committed by law enforcement officers, is not ensured by the Special Investigation Service, but by the police. [40] Based on the above-mentioned, all the risks associated with bias and expressing support to law enforcement colleagues by police officers are still present. Furthermore, placing legal mechanisms of administrative and criminal nature under the

[38] The same.
[39] The Law of Georgia on "Special Investigation Service", Article 19, Paragraph 1 (c)
[40] The Law of Georgia on "Elimination of Violence against Women and/or Domestic Violence, and the Protection and Support of Victims of Such Violence", Article 10, Paragraphs 1^1 and 1^2, as well as Article 16, Paragraphs 6 and 7.

umbrella of different authorities may significantly damage the ability to respond timely and effectively to cases of domestic violence and violence against women.

In terms of strategic litigation, this issue can be judged nationally and at the European Court of Human Rights. However, to achieve this, it is necessary that those persons have the status of perpetrators. It is true that the Ministry of Internal Affairs of Georgia issued a restraining order on the case filed by the organisation, but it was issued on the second day after the investigation by the Special Investigation Service was launched, and during that one day, the perpetrator psychologically abused the victim.

6. Granting the Formal Status to a Victim of Violence

International standards on human rights protection and domestic legislation clearly define the obligation to protect human dignity as a universal value. In relation to victims of violence, the respect of human dignity, first of all, encompasses the recognition of their moral and legal status. Furthermore, Article 6 of the Universal Declaration of Human Rights states that everyone has the right to recognition everywhere as a person before the law. This gives rise to the notion of victim participation and procedural rights for victims.[41] Article 13 of the European Convention on Human Rights ensures access to justice for victims, encompassing access to efficient and effective remedies on a domestic level. The European Court of Justice has reiterated in numerous decisions that victims should have the right to access criminal justice and investigatory procedure[42], which includes the opportunity to play an appropriate role and actively participate in administering justice. A victim shall have the possibility of being represented and expressing her/his position at any stage of the process.

The Constitution of Georgia also recognises a victim as a person before the law. According to the definition of the Constitutional Court of Georgia, "a victim is a person who suffered physical, moral or material damage as a result of a crime being committed. She/he personally experiences the harmful/negative consequences of this or that crime - damage is inflicted to her/his health, property, dignity, or maybe her/his family member became a victim of murder, etc. Therefore, the victim suffers from physical, moral, psychological stress, hardship/difficult times, pain and/or material loss as a result of the particular crime being committed. Accordingly, first of all, it is the interest in restoring, protecting, and compensating the violated rights (life, health, dignity, material and other rights) that makes the victim a subject of the right to a fair trial."[43]

In order to ensure the protection of the dignity of the crime victim, it is important that the recognition of a person as a victim is not related to granting him/her any formal status or finding the perpetrator guilty by the court. It is necessary that the victim is involved in the process and enjoys the relevant rights from the very beginning of the administration of

[41] Wemmers, J.A.: Victims' Rights are Human Rights: The Importance of Recognizing Victims as Persons, Temida, June 2012, 80.
[42] Husayn (Abu Zubaydah) v. Poland, European Court of Human Rights, Applications no. 7511/13, 24 July 2014, § 541; Aksoy v. Turkey, European Court of Human Rights, Applications no. 21987/93, 18 December 1996, § 98.
[43] The citizen of Georgia Khatuna Shubitidze v. Parliament of Georgia, Constitutional Court of Georgia, decision №1/8/594, 2016 30 September, II, 8.

criminal justice.[44] The 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power also states that a person can be considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted.[45]

It is significant that, with regard to the violation of Article 3 of the Convention, the European Court of Human Rights, in a number of cases against Georgia, did not differentiate between persons who were granted the status of victims and persons who did not enjoy the above-mentioned status, and interpreted that failure to provide information about the progress of the investigation to the alleged victims deprived the applicants the possibility to rely on the hierarchical and judicial means in order to challenge the suspension, discontinuation, as well as lack of progress and change of qualification of the investigation in their cases.[46]

Unfortunately, unlike the approach established by international standards, Georgian legislation associates the identification of a person as a victim with granting him/her a certain status, which is fully the discretionary authority of the prosecutor. For unknown reasons and as a result of the rules and legacy of the Soviet Union, a person even today acquires the status of a victim only after being identified as a victim by a prosecutor's decree. It should be noted that the institute of victim recognition could be found neither in common nor continental law countries. Victim identification is based on the concept of the victim in the criminal procedure. As a rule, a victim is considered a victim after filing an application about a crime, and it does not require additional recognition or official granting of status.[47]

According to Paragraph 5 of Article 56 of the Criminal Procedure Code of Georgia, if there are appropriate grounds for recognising a person as a victim or as a legal successor of the victim, the prosecutor shall issue a decree on his/her own initiative, or upon the filing of the relevant application by that person. If the prosecutor does not satisfy the application within

[44] For details, please see: Tandilashvili Kh., Legal standing of the victim in the Georgian criminal proceedings being in the process of internalisation, Research paper, Ivane Javakhishvili Tbilisi State University, 86. available in Georgian on: https://www.tsu.ge/assets/media/files/48/disertaciebi3/Khatia_Tandilashvili.pdf retrieved 23.05.2024.

[45] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985, § 2. Available on: https://www.ohchr.org/sites/default/files/victims.pdf retrieved: 23.05.2024. The EU directive reads the same. Please see: Victims' Directive, Recital 19; European Commission: DG Justice Guidance Document related to the Transposition and Implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA, Ref. Ares (2013)3763804 - 19/12/2013, 10.

[46] Members of Gldani Congregation of Jehovah's Witnesses and Others v. Georgia, European Court of Human Rights, Application no. 71156/01, 3 May 2007, §§ 122-123. Begheluri and Others v. Georgia, European Court of Human Rights, Application no. 28490/02, 7 October 2014, § 140.

[47] For details, refer to: Tandilashvili Kh., Legal standing of the victim in the Georgian criminal proceedings being in the process of internalisation, Research paper, Ivane Javakhishvili Tbilisi State University, 89. available in Georgian on: https://www.tsu.ge/assets/media/files/48/disertaciebi3/Khatia_Tandilashvili.pdf retrieved 23.05.2024

48 hours after it has been filed, the person in question may apply once to a superior prosecutor for recognising him/her as a victim or legal successor of the victim. If a superior prosecutor does not satisfy the appeal, the person in question may appeal the decision of the prosecutor to a district (city) court according to the place of investigation. Thus, the prosecutor, when exercising the discretionary power and deciding to recognise a person as a victim on his/her own initiative, is not limited in time at all. The prosecutor is limited in time only when the victim applies to the prosecutor himself/herself, and the prosecutor has to make a decision on recognising a person as a victim or refusing to recognise him/her as a victim within 48 hours. However, it is significant that the alleged victim should be explained his/her rights, which does not happen before the status is granted.

The Criminal Procedure Code of Georgia does not provide for a specific precondition that could be used by the prosecutor to recognise a person as a victim. The "appropriate ground", defined in Paragraph 5 of Article 56, is vague and unpredictable, granting the authorised person unlimited power. Considering the above-mentioned, having such a statement in the Law is inherently unacceptable. However, in the best-case scenario, the essence of "appropriate ground" should be interpreted by evaluating the content of Paragraph 22 of Article 3 of the Criminal Procedure Code of Georgia, which reads that the victim is the state, a natural or legal person that has incurred moral, physical or material damage directly, as a result of a crime.

Taking into account the ambiguity and unpredictability of criminal procedure legislation in Georgia, it is not surprising that the practice of litigation regarding the recognition of a person as a victim is completely inhomogeneous and, in many cases, vague. This applies both to the grounds of recognising a person as a victim and to the time. With regard to the grounds, it should be noted that in certain cases, it is related to the fact of inflicting damage and, in other cases, to the fact of committing a crime. With regard to time, in certain cases, a person is recognised as a victim at the initial stage of the investigation, and in other cases, after the person carrying out a criminal act is identified as a perpetrator. The first option, of course, is a more appropriate approach because often, recognising a person as an accused is attained long after the launch of the investigation, and the victim of the crime remains

without rights for a long time. However, the victim is not identified and granted a status at all in the process of investigation quite frequently.[48]

Such a nonuniform approach substantially affects the exercise of rights of victims of crime. In compliance with the national normative standard, a victim of crime is capable of enjoying all rights in the process of administering justice only after the prosecutor grants the relevant status to him/her and interprets his/her rights. Prior to that, he/she has no rights, including not being able to get acquainted with the case details, request materials, etc. The victim is completely excluded from the investigation process as long as the prosecutor believes there is no "relevant grounds". In order to exercise rights, the victim must be informed about it. Furthermore, being informed gives the victim a sense of recognition and helps to be protected against secondary victimisation. While the rights are explained to some victims at the initial stage of the investigation, to some, from the moment the person committing a criminal act is recognised as a perpetrator and to others, rights are not interpreted at all, substantially damaging the interests of the victim and placing his/her legal status at risk. For example, it might be vital for the victim to enjoy special protection from the launch of the investigation.[49] Furthermore, it is essential for the victim or his/her legal successor to have access to the case materials from the initial stage and to be informed about the progress of the investigation. Moreover, the European Court of Human Rights even found a violation of Article 3 of the Convention when the indirect victim of the crime was not provided with the information requested by him/her for a long time and was in an information vacuum on specific issues.[50] The European Court of Human Rights interprets that in all cases, the family member of the deceased should be involved in the investigation to the extent necessary to protect his/her legitimate interest. In relation to the effective investigation of the death, the court found a violation when the family member of the deceased was not allowed to engage at an appropriate level, in particular, did not have access to the criminal case materials and was not informed about the investigation progress,

[48] For example, see: Tandilashvili Kh., Legal standing of the victim in the Georgian criminal proceedings being in the process of internalisation, Research paper, Ivane Javakhishvili Tbilisi State University, 96. available in Georgian on: https://www.tsu.ge/assets/media/files/48/disertaciebi3/Khatia_Tandilashvili.pdf retrieved 23.05.2024.
[49] Tandashvili Kh., Legal Standing/Status of the Victim and the European Standards, in the book: Tumanishvili G., Jishkariani B., Shrami E., Impact of the European and International Law on Criminal Procedural Law, Tbilisi, 2019, 324. available in Georgian on: https://icl.ug.edu.ge/publications/pub8.pdf retrieved: 23.05.2024.
[50] Kurt v. Turkey, European Court of Human Rights, Application no. 15/1997/799/1002, 25 May 1998, § 133.

was deprived of the possibility to examine criminal case materials under appropriate conditions.[51]

Considering the above-mentioned, it is not surprising that timely formal recognition of victims of domestic violence and violence against women and granting them appropriate rights from the beginning of the investigation remains a challenge. This problem is evident in most of the cases, where the non-governmental organisation "Rights Georgia" is involved, and, as a rule, additional intervention and support of lawyers is required to obtain the status of the victim. The strategic case of E.A., where the organisation has been involved since February 2023, can serve as an example. It should be noted that the victim of the crime applied to the law enforcement authorities two years before the organisation's involvement in the case, leading to the launch of the investigation. According to the factual circumstances of the case, it is established that in 2020 E.A. got acquainted with a male through a social network. They were in a virtual relationship, which included sharing some intimate photos. When the virtual relationship was terminated, E.A. received messages from the social network pages created under different names, threatening to disseminate these photos and making private photos of her public. In one of the instances, to prevent the dissemination of photos, she even inflicted self-harm, as requested. The situation was further aggravated by the fact that E.A. was a minor during both the commission of the crime and the investigation. Unfortunately, more than two years after appealing to law enforcement authorities and launching the investigation, the investigation authorities had done nothing to identify and prosecute the perpetrator. Moreover, the victim of the mentioned criminal acts was not even granted the formal status. Respectively, her rights were not interpreted to E.A. and she did not have the possibility to follow the investigation. Only after the involvement of the non-governmental organisation "Rights Georgia" did the lawyers apply to the superior prosecutor. As a result, E.A. was granted the status of a victim at the end of February 2023, and the investigation continued actively.

[51] Oğur v. Turkey [GC], European Court of Human Rights, Application no. 21594/93, 20 May 1999, § 92; also, Betayev and Betayeva v. Russia, European Court of Human Rights, Application no. 37315/03, 29 May 2008, § 88, also, Mezhiyeva v. Russia, European Court of Human Rights, Application no. 44297/06, 16 April 2015, § 75.

7. Right of Victims/Their Lawyer to Get Acquainted with and Obtain Criminal Case Materials

Protecting the rights of the victim and his/her interests is essential in criminal justice, regardless of the fact that the relationship between the state and the alleged perpetrator directs this process. The crime can raise feelings of insecurity, social exclusion, fear and aggression in the victim. Therefore, it is important for the state to ensure that the victim does not feel that his/her problem will be left without response or that his/her right/interest will be violated. Furthermore, the state should prevent the victim from experiencing the fear that she/he might face the same/new problem in the future. Every person needs a feeling, hope and guarantee that the state is effective and efficient in preventing the violation of his/her rights and protecting her/his legitimate interests.[52] People should not experience the feeling of insecurity or the feeling that the state is not willing, motivated and effective in performing its primary function of protecting human rights and preventing rights violations.[53]

It is essential that the victim acquires information on time at the initial stage of the investigation in order to realise his/her interests and protect his/her rights in this process. According to the Constitutional Court of Georgia, "In general, the right of the victim to receive information provided by the law and access to case materials serves important interests. In particular, relevant information enables the victim to have an idea about the progress of the case, to engage in it within the scope of his/her authority, and to exercise effective control over the decisions made by the prosecutor at the stage of the investigation, including the decision to terminate the investigation. Also, to form their own positions regarding the existing damage, the fact that was committed, take care of protecting themselves from re-victimisation, or make other appropriate decisions." [54] More informed the victims are about the case, more trust they have in the system, more they cooperate with the investigation bodies and are involved in the process. [55] The victim satisfaction is higher,

[52] The citizen of Georgia Khatuna Shubitidze against the Parliament of Georgia, the Constitutional Court of Georgia, Decision №1/8/594, September 30, 2016, II, 9.
[53] The citizen of Georgia Khatuna Shubitidze against the Parliament of Georgia, the Constitutional Court of Georgia, Decision №1/8/594, September 30, 2016, II, 10.
[54] Samson Tamariani, Malkhaz Machalikashvili and Merab Mikeladze against the Parliament of Georgia, Constitutional Court of Georgia, Decision №1/5/1355,1389, July 27, 2023, II, 20.
[55] Antonsdóttir H.F.: 'A Witness in My own Case': Victim-survivors' Views on the Criminal Justice Process in Iceland, Fem Leg Stud 26, 2018, 326.

and they feel more recognised when the investigation body demonstrates respect and takes care to provide information on time.[56] Whereas, the failure to provide information leads to ambiguity, disrespect and, in some instances, even suffering among the victims, containing signs of secondary victimisation.

It is important that the victim is constantly updated about the actions taken with regard to her/his case after filing an application to the police. Without regular updates, she/he might assume that his/her application is not taken seriously, and nothing is done to investigate the case. The victim needs to see the progress of the case, to experience the importance of being involved in the process, and, despite the traumatic experience of filing the application and being interrogated, to be actively engaged in the administration of justice. Even when there is no advancement in the investigation process, many victims need to know that the investigation is in progress.[57]

Furthermore, "in addition to the fact that through receiving information about the ongoing investigation, the victim may avoid re-victimisation, the possession of information itself represents an important instrument of control of the state institutions. Having information about the progress of the investigation, on the one hand, allows the victim to control the ongoing process, and on the other hand, increases the accountability and transparency of the state institutions, reducing the risks of negligence."[58]

Various international standards have echoed the right to inform the victim (the victim's right to be informed). Article 6(a) of the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states that responding to victims' needs encompasses informing them of their role, the scope, timing, and progress of the proceedings, and the disposition of their cases, especially where serious crimes are involved.[59] The right of the victim to be informed not only by police and prosecutor, as well as by the court, has been reflected in the Recommendations of the Committee of Ministers

[56] Van Dijk J.J.M., Groenhuijsen M.S.: Benchmarking Victim Policies in the Framework of European Union Law, published in: Walklate S. (ed.): Handbook of Victims and Victimology, New York, 2007, 372.
[57] Victim Support Europe, EU Handbook for Policy and Best Practice in relation to Victims of Crime, 2012, 24-25. Available on: https://victimsupporteurope.eu/activeapp/wp-content/files_mf/1385974688NewVersionVSEHandbookforImplementation.pdf retrieved: 23.05.2024.
[58] Samson Tamariani, Malkhaz Machalikashvili and Merab Mikeladze against the Parliament of Georgia, Constitutional Court of Georgia, Decision №1/5/1355,1389, July 27, 2023, II, 38.
[59] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly Resolution 40/34 of 29 November 1985, § 6 a. Available on https://www.ohchr.org/sites/default/files/victims.pdf retrieved: 23.05.2024.

of the Council of Europe on the Position of the Victim in the Framework of Criminal Law and Procedure[60] and later in the documents adopted within the European Union.[61]

It should be noted that the investigation and opening of the crime, first of all, should fall within the state's interest and it is the state's obligation to strive to make the victim's contact with the criminal justice system as smooth and simple as possible. Therefore, the victim should not require effort to request and receive information. Victims often do not know or cannot understand the essence of their procedural rights. Therefore, the state should be responsible for providing the information or, at least, telling the victim what information is available and asking whether he/she wishes to obtain it.[62]

International human rights protection standards do not separately define the victim's right to access with and request case materials. However, the above-mentioned constitutes an essential component of the right to inform the victim of the crime.[63] The right to access case materials is enshrined in the Criminal Procedure Code of Georgia at the domestic legislation level. Namely, Sub-paragraph "h" of Paragraph 1 of Article 57 of the Criminal Procedure Code of Georgia states that the victim has the right to receive information about the progress of the investigation and get acquainted with the materials of the criminal case if this does not contradict the interests of the investigation. Sub-paragraph "j" specifies that the victim has the right to review the case materials no later than 10 days before the pre-trial hearing. The interrelation of these two sub-paragraphs should be interpreted so that the victim shall always receive the case materials no later than 10 days before the pre-trial hearing in any case. Therefore, the restriction of access to information should only be temporary.[64]

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[60] Council of Europe, Recommendation No. R (85) 11 of the Committee of Ministers to Member States on the Position of the Victim in the Framework of Criminal Law and Procedure (Adopted by the Committee of Ministers on 28 June 1985 at the 387th meeting of the Ministers' Deputies).

[61] Please see: council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings (2001/220/JHA), article 4.
Available on: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001F0220 retrieved: 23.05.2024.
also: Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, article 4, 6.
Available on: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029 retrieved: 23.05.2024.

[62] Victim Support Europe, EU Handbook for Policy and Best Practice in relation to Victims of Crime, 2012, 9. Available on: https://victimsupporteurope.eu/activeapp/wp-content/files_mf/1385974688NewVersionVSEHandbookforImplementation.pdf retrieved: 23.05.2024.

[63] Tandilashvili Kh., Legal standing of the victim in the Georgian criminal proceedings being in the process of internalisation, Research paper, Ivane Javakhishvili Tbilisi State University, 128. available in Georgian on: https://www.tsu.ge/assets/media/files/48/disertaciebi3/Khatia_Tandilashvili.pdf retrieved 23.05.2024

[64] For a practical explanation, please see: Samson Tamariani, Malkhaz Machalikashvili and Merab Mikeladze against the Parliament of Georgia, Constitutional Court of Georgia, Decision No. 1/5/1355,1389, July 27, 2023, II, 21. In response to this justification of the representative of the Parliament of Georgia, the Constitutional Court of Georgia interpreted that the victim's interest "to have access to information exists at any stage of the investigation. Moreover, since the victim's feelings, emotions,

Practice shows that over the years, the right to get acquainted with case materials was interpreted word-by-word, and the victims had the opportunity to access the case materials only on the spot, often without a lawyer. Everything else depended on the good will and consideration/sympathy of the prosecutor of the case.[65] To challenge the practice, a draft law was initiated in 2013, which provided for the right of the victim to get acquainted with the criminal case materials and receive copies in whole or in part. Unfortunately, the above-mentioned amendments were not introduced in the Code.[66]

The issue of whether the right to have access to case materials includes the possibility of requesting copies has been judged by the Constitutional Court of Georgia. Based on the decision of December 18, 2020, the court ruled that the normative content of Sub-paragraph "h" of Paragraph 1 of Article 57 of the Criminal Procedure Code of Georgia, which blanketly excludes the victim's ability to receive information about the progress of the investigation and have access to criminal case materials in the form of copies, in relation to Paragraph 2 of Article 18 of the Constitution of Georgia, is unconstitutional.

The Constitutional Court of Georgia placed emphasis on the importance and necessity of accessing the case materials by the victim: "Normally, the victim is the most interested in conducting the investigation, since the crime is the cause of violation of his/her individual rights, significant trauma or tragedy. In a democratic state, where the appropriate response to crime is the burden of the state's responsibility, the victim and the state are allies and have a common goal - identifying the criminally responsible person, administering justice, punishing the perpetrator, and restoring justice. However, the convergence of interests not only does not exclude the need to control the activity of investigation bodies by the victim but also makes it useful and even necessary in individual cases. At the same time, the need for control is increased by factors such as the risk of error or arbitrariness on the part of the persons in charge of the investigation. It is undoubtful that when getting acquainted with the materials of the investigation, the victim, in addition to satisfying his/her curiosity, at

fear of new crime, and vulnerability are greater at the initial stage of being recognised as a victim, the need to receive information on time may be increased. In addition, in certain cases, the investigation might be terminated without holding a pre-trial hearing, or the investigation might be extended for a long period of months or years, depriving the victim possibility to receive relevant information at all. In similar cases, the provision of the law, which grants the possibility to the victim to access case materials 10 days before the pre-trial hearing, does not create a procedural guarantee to safeguard the victim's interest - to have timely access to the case materials and to adequately protect his interests." (Next Paragraph, 22).

[65] Interview with one of the lawyers, see.: Tandilashvili Kh., Legal standing of the victim in the Georgian criminal proceedings being in the process of internalisation, Research paper, Ivane Javakhishvili Tbilisi State University, 130. available in Georgian on: https://www.tsu.ge/assets/media/files/48/disertaciebi3/Khatia_Tandilashvili.pdf retrieved 23.05.2024.

[66] The draft law, please see.: https://matsne.gov.ge/ka/document/view/2083578?publication=0 retrieved: 23.05.2024.

the same time exercises control over the investigation and plans the strategy and tactics of protecting his/her own interests in the litigation process".[67]

The Constitutional Court of Georgia in the above-mentioned decision shared the opinion that "the goal of the right upheld in Paragraph 2 of Article 18 of the Constitution of Georgia - to have access to the information about a person maintained in the public institution, is not just to read the information or visually inspect the relevant documents. It aims to create a mechanism that will allow the interested party to explore the information carefully, check its accuracy, analyse, draw conclusions, disseminate and/or use it for various legitimate reasons. Thus, it is natural that being under time pressure, reading written information in the presence of others, getting acquainted with documents orally or inspecting them visually, and even the possibility of making notes not only does not ensure to exercise the right fully, but devalues its content and makes it completely unrealisable. Therefore, to get acquainted with the information in an appropriate format is a *sine qua non* term for exercising the right to access this information."[68] "The possibility to get acquainted with criminal materials alone and even make written notes manually cannot always entail the possibility for the person (the victim or his/her legal successor) to get acquainted with the information or official document about him/her available in a public institution effectively and comprehensively, thus, diminishing the real essence of the right to access information, and in some cases making it completely meaningless".[69]

It is significant that the Constitutional Court does not consider the possibility of receiving case materials in the form of copies by the victim as an absolute right and, in some exceptional cases, allows the option of restricting it: "the Constitutional Court considers it possible to create such mechanisms by legislation, within which, in each individual case, the body authorised to issue information will assess the risk of harming the interests of the investigation as a result of the dissemination of materials in the form of copies. Therefore, making a decision on the issuance/release of documents containing information will depend on the real need to protect the interests of the investigation and not on hypothetical

[67] Konstantine Gamsakhurdia against the Parliament of Georgia, the Constitutional Court of Georgia, Decision №1/3/1312, December 18, 2020, II, 42.
[68] Konstantine Gamsakhurdia against the Parliament of Georgia, the Constitutional Court of Georgia, Decision №1/3/1312, December 18, 2020, II, 10.
[69] ი Konstantine Gamsakhurdia against the Parliament of Georgia, the Constitutional Court of Georgia, Decision №1/3/1312, December 18, 2020, II, 21.

risks or blanket prohibitions."[70] At the same time, the court specifies that when deciding to provide copies of criminal case materials, the presumption of providing information applies, and the refusal is only possible in exceptional cases.

Thus, it can be said that the normative content of Sub-paragraph "h" of Paragraph 1 of Article 57 of the Criminal Procedure Code of Georgia should be interpreted in such a way that the victim, as a rule, has the right to request and receive the criminal case materials. In an exceptional case, the prosecutor is authorised to refuse to provide case materials to the victim when this is in contradiction to the interests of the investigation. However, the above-mentioned contradiction to the interests of the investigation should be justified and not hypothetically evaluated. It should not contain ready-made (sample response) content, demonstrating the prosecutor's arbitrariness. For example, the risk of inflicting harm to the perpetrator, the risk of exercising violence or otherwise unlawfully influencing witnesses, etc., can be assessed as a conflict with the interests of the investigation. Most importantly, this shall be a necessary and proportionate means of restricting a person's right to access information about himself/herself. It should be noted that according to Paragraph 2 of Article 57 of the Criminal Procedure Code of Georgia, if the prosecutor refuses to provide information and case materials to the victim, as it contradicts the interests of the investigation, and later the reason for the refusal is eliminated, he/she is obliged to inform the victim and provide him/her information on the progress of the investigation and familiarise him/her with the criminal case materials.

The strategic litigation cases conducted by the non-governmental organisation "Rights Georgia" demonstrate that the practice is still ambiguous and access to copies of case materials is often a problem for the victim and his/her lawyers. Law enforcement authorities often issue criminal case materials without any problem and delay, especially in Tbilisi; however, in other regions, they often refuse to issue case materials on the basis of unjustified and formal approaches. The organisation employs a strategic approach, and the lawyers apply to the relevant agency from the beginning with a justified statement based on the legislative regulation and the interpretations of the Constitutional Court.

It is interesting to review some examples in this regard. The lawyers of "Rights Georgia" were involved in the strategic litigation case of M. Kh. from an early stage and, from the very

[70] Konstantine Gamsakhurdia against the Parliament of Georgia, the Constitutional Court of Georgia, Decision №1/3/1312, December 18, 2020, II, 48.

beginning, requested to hand over copies of the case materials in order to carry out their duties efficiently. However, the prosecutor of the case refused to meet the request. In the decree, he relied on the provision of the decision of the Constitutional Court of Georgia, which stated - "the burden of the body responsible for conducting the investigation encompasses the proper protection of investigation materials and information about the progress of the investigation. Respectively, it is logical that it is the discretion of the investigation bodies to take decisions on the dissemination of information, as well as assess the inherent risks associated with its dissemination." [71] The prosecutor, when justifying the refusal to hand over copies of the materials, also indicated that the dissemination of the materials might result in hampering the investigation process and interfering with it, as well as intimidating persons to be interrogated in the capacity of witnesses and destroying the evidence. At the given stage of the investigation, criminal prosecution was not initiated against the alleged perpetrator, and he was free. Consequently, as a result of the dissemination of the case materials, he could exert influence on the witnesses, including the victim, and destroy his incriminating evidence. The situation was aggravated by the fact that the alleged perpetrator was an employee of the Ministry of Internal Affairs.

It should be noted that certain aspects of the prosecutor's justification required attention, although most of them were irrelevant. First of all, the letter through which the same decree was sent already contained the information about the implementation of separate investigation actions, as well as the collection of evidence, and the risk of their harm/destruction, therefore, no longer existed. Furthermore, placing emphasis on future risks on the part of the alleged perpetrator was groundless since avoiding this was primarily in the interests of the victim and naturally, he/she would not disseminate the information contained in the case files to insure these risks.

Taking the above-mentioned into account, the lawyers of "Rights Georgia" appealed the decree to the superior prosecutor, who, although, on the one hand, did not meet the appeal and ruled that the decision of the subordinate prosecutor was legal and fair at the time of making the decision. However, on the other hand, during the period of appeal, criminal prosecution was initiated, the alleged perpetrator was arrested and imprisoned, and the grounds for refusal had already been eliminated. Considering the above-mentioned

[71] Konstantine Gamsakhurdia against the Parliament of Georgia, the Constitutional Court of Georgia, Decision №1/3/1312, December 18, 2020, II, 34.

circumstances, the prosecutor deemed that the victim's lawyer should have access to all copies of the evidence attached to the case.

The strategic litigation case of the minor girl, E.A., where the lawyers of "Rights Georgia" got involved almost three years from the beginning of the investigation, needs to be addressed separately. Both the prosecutor and the superior prosecutor refused to hand over copies of the case materials to the lawyers. The prosecutor of the case refused to hand over the copies of the case materials to the lawyers, not in the form of a substantiated decree, but in the form of a letter. The letter mentioned the basis for the refusal stiffly, without any real justification, indicating that the transfer of the materials was not appropriate, as the fact related to the disclosure of information on the private life of the minor girl was investigated and to serve the best interests of the victim, in case of hand over of the copies, there was a threat that the case materials might be disseminated, including those related to personal life and data, thus hampering the process of investigation.

The above-mentioned justification of the prosecutor is completely irrelevant, as the personal data concerns the minor herself and, therefore, she, and also, with her consent, the lawyer[72], has the right to make them public. Furthermore, the reason indicated by the prosecutor will be present throughout the whole process and will not be eliminated at any stage. Respectively, the victim and her lawyers representing her interests will be deprived of the possibility of having access to the criminal case materials in the form of a copy throughout the entire criminal proceedings, undermining the constitutionally guaranteed right to have access to information about oneself maintained in the public institution.

The above-mentioned decision remained unaltered both by the decree of the superior prosecutor and the decision of the judge of the Investigation and Pre-trial Panel of Tbilisi City Court, which did not include any new or different reasoning/justification and limited herself/himself to the same argumentation.

The issue that the decision on refusal to hand over copies of the case materials to the victim and her lawyers in E.A.'s case needs to be addressed separately. Paragraph 3 of Article 57 of the Criminal Procedure Code of Georgia foresees the possibility of appealing the prosecutor's refusal only once and to the superior prosecutor. However, the Constitutional Court of Georgia deemed the normative content of the mentioned norm unconstitutional,

[72] In the above-mentioned case, the lawyer should observe the requirements of Article 7 of the Law of Georgia on "Personal Data Protection".

excluding the possibility of appealing the superior prosecutor's decision on the refusal to access and receive copies of criminal case materials.[73] The above-mentioned case established a precedent that, within the framework of the existing regulation, referring to the decision of the Constitutional Court of Georgia, the refusal of the superior prosecutor can be appealed in the court of first instance.

Regarding the risk of disseminating the case materials in the future in the above-mentioned two cases, as the basis for the restriction of the right, the interpretation of the Constitutional Court of Georgia is also important: "the interest of the victim - to use the information for the purpose of keeping the public informed, to draw attention to the case, which, depending on the importance of the case, may allow for more scrutiny, public judgment and criticism, cannot be excluded. The importance of such publicity and control might exist or grow with increased interest if the victim himself/herself is deprived of the possibility to exercise his/her rights fully, for example, when the victim is a minor and is in a penitentiary institution, etc."[74]

The right to get acquainted with the criminal case and obtain copies of the materials is relevant and important not only at the investigation stage but also during the hearing of the case in court and after rendering the final decision. Having access to the minutes of the court hearing, which is not directly defined by the criminal procedure legislation but also arises from the interpretation of Paragraph 2 of Article 18 of the Constitution of Georgia, is of utmost importance for the victim. It should also be noted that in most EU member states, the victims have the right to access the minutes of the court hearing.[75] In some cases with the involvement of the non-governmental organisation "Rights Georgia", there were instances when in order to effectively exercise the right to defence and also file complaints in the ethics or disciplinary commissions, it became necessary to request access not only to case materials but also to minutes of the court hearings. In general, it should be noted that the practice is heterogeneous in this regard. Namely, the victims could access the minutes of the court hearing without delay in Tbilisi, even if the minor was involved in the court hearing. However, Gori district court refused to issue the minutes of the court hearing in one of the strategic cases. The letter prepared by the judge's assistant stated that based on

[73] Samson Tamariani, Malkhaz Machalikashvili and Merab Mikeladze against the Parliament of Georgia, Constitutional Court of Georgia, Decision №1/5/1355,1389, July 27, 2023, III, 1, a..
[74] Samson Tamariani, Malkhaz Machalikashvili and Merab Mikeladze against the Parliament of Georgia, Constitutional Court of Georgia, Decision №1/5/1355,1389, July 27, 2023, II, 38.
[75] See: https://fra.europa.eu/en/content/victims-rights-trial retrieved: 23.05.2024.

Paragraph 3 of Article 195 of the Criminal Procedure Code of Georgia, the court should grant parties access to the minutes of the court hearing, and in compliance with Paragraphs 5-7 of Article 3 of the same Code, the victim was not the party. The lawyers of the organisation "Rights Georgia" appealed the decision to the court manager, however, the latter, on completely unclear grounds, forwarded the complaint to the judge reviewing the case for further response. With regard to the above-mentioned case, it should be noted that further hearing/discussion of the strategic case continued in Tbilisi Court of Appeals. During the hearing of the case at the court of higher instance, the lawyers of "Rights Georgia" applied to the Chamber of the Court of Appeal and requested the minutes of the hearing of the first instance. The judge met the request and the lawyers representing the interests of the victim received audio records of the hearing (from Gori District Court). Additionally, it should be noted that the victim needed the minutes of the hearing to appeal the actions of the perpetrator's lawyer to the Ethics Commission of the Georgian Bar Association, as his actions during the case hearing in the court of the first instance, on the one hand, aimed to discredit the victim's lawyers professionally, and, on the other hand, posed a threat for secondary victimisation of the crime victim.

Cases where the victim and the lawyers representing his/her interests applied to the city court requesting copies of the case materials, which were already completed and final decisions were issued, should be addressed separately. It was necessary to request copies of the case materials in order to file a claim on compensation for damage to the victim of violence. In similar cases, the lawyers of "Rights Georgia" did not encounter any obstacles, except for the courts of Tsageri and Zestafoni, which did not meet the request of the victim and her lawyer to issue copies of the closed case materials after the court announced a final decision. Unfortunately, in the above-mentioned case, the organisation could not appeal the court's position, as the victim herself refused to continue the proceedings further.

Finally, it should be noted that based on the criminal procedural legislation of Georgia and as a result of the interpretations of the Constitutional Court of Georgia, the law enforcement authorities have the obligation to inform the victim at the stage of the investigation and grant her/him the access to case materials, including in the form of providing copies. The above-mentioned right can be restricted only in special cases through the justified decree of the prosecutor, where the individual circumstances of the case will be taken into account, excluding question marks regarding the proportionality of interference with the right. The

fact that the decision can be appealed not only to the superior prosecutor but also to the court, based on the decision of the Constitutional Court of Georgia, is a protective mechanism against the prosecutor's unjustified refusal to grant access to the case materials. It should also be noted that based on the interpretations of the Constitutional Court of Georgia and Paragraph 2 of Article 18 of the Constitution of Georgia, the content of the victim's right to have access to information and case materials should be expanded and encompass all stages of criminal litigation, including court proceedings and a period after a final decision is rendered. In addition, the victims' access to the minutes of the court hearing should also be ensured. It is a step forward that the practice of litigation, except some cases, has already demonstrated a positive trend of interpreting the existing legal regulations in this way.

8. Identifying and Determining Gender-based Motives in the Process of Qualification of a Crime

When qualifying an act as a crime, it is crucial to identify its objective and subjective components. The motive and intent of the crime, as a subjective aspect of the act's composition, have a substantial impact on qualification. The motive can be both a grounding circumstance of criminal wrongfulness and a qualifying sign of aggravating liability.[76]

To serve the goal of this analytical work, it is particularly important to identify the motive of gender intolerance as a special qualifying circumstance of the crime, leading in some instances to the aggravation of the crime and, in other cases, it is taken into account when defining the penalty. Namely, committing a crime on the basis of gender is a special sign of aggravating liability for premeditated murder (Sub-paragraph "h" of Article 109 of the Criminal Code of Georgia), leading to suicide (Sub-paragraph "a" of Paragraph 2 of Article 115) and intentional grave bodily injury (Sub-paragraph "j" of Paragraph 3 of Article 117). Regarding other crimes, identifying the gender motive should be considered an aggravating circumstance pursuant to Article 53[1] of the Criminal Code of Georgia.

In order to qualify an action as a crime committed on the grounds of gender intolerance, it is important to study and evaluate the individual circumstances of each case. Furthermore, in identifying the gender sign and determining its content, it is important to interpret the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. The Preamble reads that the parties to the convention recognise the structural nature of violence against women as gender-based violence and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.[77]

Paragraph "d" of Article 3 of the Istanbul Convention defines the concept of "gender-based violence against women" and indicates it shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately. Gender-based violence refers to any harm that is perpetrated against a woman and that is both the cause

[76] As an example, see: Tskitishvili Temuri, Motive and Its Importance in Criminal Law, German-Georgian Criminal Law Journal, 3/2021, 116-134. available in Georgian on: https://dgstz.de/storage/documents/uGNqPMtL8g2C6Rse98td3ME9P0JirrLtnRi5w6ZX.pdf retrieved: 23.05.2024.
[77] The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, preamble.

and the result of unequal power relations based on perceived differences between women and men that lead to women's subordinate status in both the private and public spheres. This type of violence is deeply rooted in the social and cultural structures, norms and values that govern society.[78]

Considering that the Convention establishes the obligation to prevent violence against women in a broader context in order to achieve equality between women and men, the authors deemed it necessary to interpret the term "gender".[79] Paragraph "c" of Article 3 of the Istanbul Convention defines the term "gender" separately and notes that it stands for the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.[80] It should also be stressed that in order to overcome gender roles, as well as to prevent violence, Article 12 of the Convention calls on changing the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men. [81]

It is essential to determine the motive of the crime, and therefore, the state is obliged to ensure an effective process of administering criminal justice. It is important to review the practice of the European Court of Human Rights, which, although it concerns the obligations imposed on the state in the process of identifying the motive of racism and hatred, but the mentioned standard can be generalised to cases of femicide and, in general, can be applied when the determining the motive of gender-based intolerance. In the case of Nachova and Others v. Bulgaria, the Grand Chamber of the European Court of Human Rights indicated that when it comes to violent incidents, especially deaths, the state has an additional duty to unmask any racist motive. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. The court reiterated that the authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering

[78] Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, § 44.
[79] Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, § 43.
[80] The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, article 3, § c.
[81] Also see: Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, § 44.

the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence.[82]

In the case Škorjanec v. Croatia, the European Court of Human Rights has also noted that in practice it is, admittedly, often extremely difficult to prove a racist motive. The obligation on the respondent state to investigate possible racist overtones to an act of violence is an obligation regarding the means employed rather than an obligation to achieve a specific result.[83]

Despite the international obligation to conduct an effective investigation to determine the motive of the crime, the problems in this regard are evident in Georgia. The Public Defender of Georgia, in the reports on femicide monitoring, regularly points out the challenges in the qualification of gender-based crimes both at the investigation stage and when making decisions in court.

According to reports, despite the positive trend in the fight against domestic violence and violence against women, it becomes more and more difficult to identify a gender-based motive at the investigation stage. Frequently, this is preconditioned by the fact that the only evidence indicating gender-based overtones is the information provided by the perpetrator during the investigation. After aggravating liability, perpetrators change their testimony while hearing the case in court.[84]

The Public Defender of Georgia also observed inappropriate professional conduct of law enforcement authorities and ineffective investigation. For example, in one of the cases, the carelessness of the prosecutor's office and the negligence of the circumstances resulted in a person not being convicted on a special qualifying basis.[85] The Public Defender of Georgia also points to the diverse judicial practice and identifies various challenges in determining gender motives in the decisions. However, the decisions of individual courts are positively evaluated, as they give detailed definitions of gender, and judges justify the commission of crimes based on gender intolerance in compliance with international standards.[86] The

[82] Nachova and others v. Bulgaria, European Court of Human Rights, Applications nos. 43577/98 and 43579/98, 6 July 2005, § 160.
[83] Škorjanec v. Croatia, European Court of Human Rights, Application no. 25536/14, 28 March 2017, § 54.
[84] For reference, see.: The Public Defender of Georgia, Femicide Monitoring Report 2014-2018, 14-15. available on: https://ombudsman.ge/res/docs/2020070314085795380.pdf retrieved: 3.05.2024.
[85] The Public Defender of Georgia, Femicide Monitoring Report 2019, 16-17. available on: https://ombudsman.ge/res/docs/2021061415064722095.pdf retrieved: 23.05.2024.
[86] For reference, see: The Public Defender of Georgia, Analysis of Case of Femicide and Attempted Femicide that Occurred in 2021, 25.
available on: https://ombudsman.ge/res/docs/2023071314513662215.pdf retrieved: 23.05.2024.

court practice of identifying the gender traits in murder cases committed on the grounds of jealousy also varies.[87]

Against the background of the shortcomings identified by the Public Defender of Georgia and the diverse court practice, it is not surprising that the non-governmental organisation "Rights Georgia" encountered the problem of determining the motive of gender intolerance/gender-based violence and granting the crime special qualification in the process of investigation and court hearing in cases on domestic violence and violence against women, having strategic importance.

The lawyers of "Rights Georgia" represented the interests of the victim's legal successor and minor children in the Bodbe femicide case both at the investigation stage and during the case hearing in court. Based on the case materials Sh. Kh. killed his wife, M.A. by firing from a hunting rifle on September 4, 2022. Taking into account the factual circumstances of the case, it was evident that Sh.Kh. treated his wife as his possession, namely, the woman had to agree any action in advance with Sh.Kh and obey his rules. She could leave the house only with her husband's consent and for the period he determined. The conflict that led to the murder arose precisely because the woman, who was visiting her parents in Tbilisi, left the house without informing Sh.Kh.

Despite the existing circumstances, on September 6, 2022, Sh.Kh. was charged under Article 11^1, Article 19 and Paragraph "j" of Article 109 of the Criminal Code of Georgia without any reference to the crime being committed on a gender basis. Taking into account that the circumstances of the case clearly indicated that the murder was committed on a gender basis, the lawyers of "Rights Georgia" applied to the prosecutor's office to specify the wording of the charges. In response to the request of the lawyers of "Rights Georgia", the prosecutor issued a new decree on criminal charges on December 4, 2022, requalifying the act committed by Sh.Kh. and reflecting gender traits. The Sighnaghi district court judge also shared the above-mentioned qualification.

The lawyers of the non-governmental organisation "Rights Georgia" were also involved in the case of the incitement to the suicide of the woman in Gori municipality, where they encountered the problem of identifying the gender motive and correctly qualifying the

[87] For reference, see: The Public Defender of Georgia, Analysis of Case of Femicide and Attempted Femicide that Occurred in 2021, 25.
available on: https://ombudsman.ge/res/docs/2023071314513662215.pdf retrieved: 23.05.2024.

crime. According to the case materials, G.Sh. systematically humiliated and insulted his wife - A.Ts., which was manifested in verbal and physical abuse, threats of destruction of life and cruel treatment such as throwing a thinly dressed woman out of the house on cold winter days and forcing her to spend the night in a cattle stall. The testimonies of the witnesses also confirmed that G.Sh. believed that his wife should accommodate his frequent alcohol/drug addiction and not make any remarks or complaints. The woman did not have the right to divorce and live in peace. All the above-mentioned led A.Ts. to commit a suicide attempt. With the timely intervention of the surrounding persons and medical personnel, the woman survived the suicide attempt. Considering the above-mentioned factors, the prosecutor correctly identified the motive of gender intolerance in the case and finally charged G.Sh. under Article 11^1, Sub-paragraph "a" of Paragraph 2 of Article 115 of the Criminal Code of Georgia, which envisage incitement to attempted suicide accompanied with intimidation or cruel treatment of the victim or by degrading of the victim's honour or dignity, committed on the basis of gender, as well as under Sub-paragraph "a" of Paragraph 2 of Article 126^1.

Although it was evident that the crime was committed on the basis of gender, the Gori District Court, in its decision, did not share the position of the prosecutor's office and considered that the gender traits could not be identified through the evidence presented by the prosecution, since the violence inflicted on A.Ts. by G.Sh. was not motivated by gender intolerance but rather by excessive alcohol consumption.

Based on the request and support of the lawyers of "Rights Georgia", the Prosecutor's Office appealed the decision of the Gori District Court to Tbilisi Court of Appeals. The higher instance court changed the decision of the lower instance court on the basis of valid reasoning and justification, highlighting the gender motive in the case of incitement A.Ts. to suicide. Namely, the Court of Appeals shared the position of the Prosecutor's Office that the factual circumstances confirmed G.Sh.'s intention to demonstrate his dominant role as a man in the family. He considered his wife to be his possession and his subordinate. The Court of Appeals noted that G.Sh.'s numerous illegal acts over a long period of time, his indifferent attitude towards the emotional and mental state of the victim, and sleeping at home while the victim asked for help from the cattle stall next to the house, were nothing more than the perception of the convicted to treat his wife like an object, even if she was on the edge of incitement of a suicide.

9. Protection of a Victim from Secondary Victimisation

The process of protecting and supporting women victims of violence is comprehensive, and all aspects require special attention. A comprehensive approach encompasses the protection of the victim from secondary victimisation, which might be inflicted not only by the perpetrator but also by the perpetrator's lawyer, representative of the law enforcement authority, prosecutor and even the judge involved in the proceedings.

Involvement in legal proceedings is a stressful and embarrassing experience for everyone, and the process is even more dramatic and traumatic for victims of violence. Therefore, it is of utmost importance to create a gender-sensitive environment at both the investigation and court trial/hearing stages and to ensure that women victims of violence are treated with respect. International standards of human rights protection form the legal guarantee of the above-mentioned. Paragraph 3 of Article 18 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence stresses that measures taken by the state shall aim at avoiding secondary victimisation and address the specific needs of vulnerable persons, including child victims, and be made available to them.[88] According to Sub-paragraph "a" of Paragraph 1 of Article 56 of the Istanbul Convention, the states shall take the necessary measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimisation.[89]

Furthermore, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[90] also requires treating victims with compassion and respect for their dignity. [91] Moreover, a process of administering justice tailored to the needs of victims should be conducted in a way that minimises inconvenience to victims, protects their

[88] The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, article 18, § 3.
[89] The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, article 56, § 1, sub para-a.
[90] UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly resolution 40/34, 29 November 1985. available on: https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx retrieved: 23.05.2024.
[91] UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly resolution 40/34, 29 November 1985, Article 4, available on: https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx retrieved: 23.05.2024.

privacy, when necessary, and ensures their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation.[92]

Against multiple reforms and measures implemented at law enforcement authorities, unfortunately, it remains a challenge in Georgia to create an adequate, gender-sensitive and less traumatic environment for women victims of violence both at the stage of investigation and court hearing.

9.1. Secondary Victimisation of Women Victims of Violence at the Stage of Investigation

The UN Convention on the Elimination of All Forms of Discrimination against Women defines the obligation of institutions involved in the process of administering justice to refrain from engaging in any act or practice of discrimination against women and apply criminal legislation against it.[93] Moreover, they shall ensure that all legal procedures in cases involving gender-based violence against women are impartial and fair and not affected by prejudices or stereotypical gender notions.[94]

General Recommendation No. 33 on Women's Access to Justice of the CEDAW committee includes important provisions about the protection of victims of violence from secondary and re-victimisation at the investigation stage. The document places emphasis on criminal legislation as an important instrument for the realisation of women's rights, including the right to have access to justice. The Committee recommends that participating states take effective measures to protect women against secondary victimisation in their interactions with law enforcement and judicial authorities and consider establishing specialised gender units. Also, use a confidential and gender-sensitive approach to avoid stigmatisation, including secondary victimisation in cases of violence, during all legal proceedings, including during questioning, evidence collection and other procedures relating to the investigation.[95]

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[92] UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly resolution 40/34, 29 November 1985, Article 6 (d), available on: https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx retrieved: 23.05.2024. Council of Europe Committee of Ministers, Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence, 30 April 2002, § 44.

[93] Convention on the Elimination of All Forms of Discrimination against Women, United Nations General Assembly, 18 December 1979, article 2, §§ d and f.

[94] CEDAW, Vertido *v. Philippines*, § 8.9 (b); *R.P.B. v. Philippines*, § 8.3; Committee on the Elimination of Discrimination against Women, General recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, 3 August 2015, § 18 (e), 26, 29.

[95] Committee on the Elimination of Discrimination against Women, General recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, 3 August 2015, § 51 (c), (g). Also for cases of sexual violence, please refer to: Training Guide for

The Recommendation on the Protection of Women against Violence adopted in the framework of the Council of Europe defines that states shall ensure that the police and other law-enforcement bodies receive, treat and counsel victims in an appropriate manner, based on respect for human beings and dignity. They shall handle complaints confidentially. Victims should be heard without delay by specially-trained staff in premises that are designed to establish a relationship of confidence between the victim and the police officer and ensure, as far as possible, that the victims of violence have the possibility to be heard by a female officer should they so wish.[96] The states shall also ensure the possibility of creation of special conditions for hearing victims or witnesses of violence in order to avoid the repetition of testimony and to lessen the traumatising effects of proceedings. [97] The states shall also ensure that rules of procedure prevent unwarranted and/or humiliating questioning for the victims or witnesses of violence, taking into due consideration the trauma that they have suffered in order to avoid further trauma.[98] Furthermore, measures shall be taken to protect victims effectively against threats and possible acts of revenge. [99]

At the national level, Article 4 of the Criminal Procedure Code of Georgia encompasses only a regulation of a general nature on the obligation to protect the dignity of a victim as a participant of the process. In addition, a special provision/wording can be found in Article 6.9 of the Georgian Police Code of Ethics, stating that "a police officer shall support the crime victim directly, treat her/him delicately and decently, respect his/her dignity, take into account his/her interests to the extent possible."[100] The violation of the above-mentioned norm leads to the imposition of disciplinary liability on the police officer.[101] Despite existing regulations, treating victims with respect and preventing secondary victimisation by law enforcement authorities remains a challenge in Georgia.

Judges and Prosecutors on Ensuring Women's Access to Justice, National Chapter, Georgia, developed under the Project - "Improving Women's Access to Justice in 5 Eastern Partnership Countries" (Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine), 37. available on: https://rm.coe.int/training-manual-georgia-chapter-geo-pdf/16808e9a41 retrieved: 23.05.2024.

[96] Council of Europe Committee of Ministers, Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence, 30 April 2002, § 29.

[97] Council of Europe Committee of Ministers, Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence, 30 April 2002, § 42.

[98] Council of Europe Committee of Ministers, Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence, 30 April 2002, § 43.

[99] Council of Europe Committee of Ministers, Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence, 30 April 2002, § 44.

[100] The Georgian Police Code of Ethics approved by the Order №999 of December 32, 2013 of the Minister of Internal Affairs of Georgia, Article 6.9.

[101] The Georgian Police Code of Ethics approved by the Order №999 of December 32, 2013 of the Minister of Internal Affairs of Georgia, Article 8.

The fact that the treatment of victims in their interactions with law enforcement authorities remains a challenge in Georgia was attested in the strategic litigation on the case of M.Kh., where secondary victimisation of the victim of violence occurred at the stage of the investigation in her interaction with law enforcement authorities. The Special Investigation Service conducted the investigation, as the perpetrator was an employee of the law enforcement authorities.

The victim was in a severe and acute psycho-emotional state in the above-mentioned case. The expert examination confirmed the psychological suffering of the victim arising from the violence. The law enforcement authorities were required to exercise special caution and employ a gender-sensitive approach in this situation. However, as the organisational practice in relation to this case demonstrated, the woman victim of violence was subjected to secondary victimisation during the interview conducted at the Special Investigation Service. This was further confirmed by the assessment of the psychologist who, as a result of the organisational mutual cooperation with "Rights Georgia", provided psychological support to the victim to cope with the trauma arising from the victimisation.

In this particular case, the secondary trauma inflicted on the victim was obvious, which should also be evaluated as moral harm/damage from a legal perspective. It is essential to conduct strategic litigation in an administrative manner against the law enforcement authority and request compensation for incurred moral damage/harm. However, as a result of experienced trauma and negative interaction with the system, the women victims of violence refuse to initiate new legal disputes. In order to strike a balance in the existing situation, at the request of the lawyers of "Rights Georgia", the female investigator got involved and overtook the case investigation, ensuring the creation of a gender-sensitive environment tailored to the interests of the victim.

Perpetrators frequently try to influence the victim through various illegal means, including intimidation, as well as persuade/force her to withdraw the application submitted to the law enforcement authorities and/or alter the information already provided in the process of interrogation/questioning at the investigation stage.

The non-governmental organisation "Rights Georgia" was involved in a strategic criminal case of R.G., who, with the involvement of third parties, tried to contact a woman victim of domestic violence and her minor children with the aim of influencing their position. The

perpetrator also attempted to meet his minor children after school and affect the content of the testimony to be given in court through communication with them. The fact that upon the application of the victim, the law enforcement authorities launched a criminal investigation under Article 372 of the Criminal Code of Georgia, which foresees penalty for the exertion of influence on the person to be interrogated, witness and victim, is a strategic step forward. It should be noted that the initiation of additional criminal proceedings should serve as a strategic deterrent not only to the further acts of the perpetrator but should also have a "chilling" effect on other perpetrators as well. However, it is significant that there is a very low rate of initiation of legal proceedings under Article 372 in similar cases.

A precedent established at the request of "Rights Georgia" in the strategic litigation of A.Ts. should be addressed separately and evaluated as an important mechanism for protecting a victim from secondary victimisation at the stage of an investigation. As mentioned above, to protect the victim from secondary victimisation, essential importance is given to the environment and infrastructure, where she/he is interviewed/interrogated at the stage of the investigation. Unfortunately, the infrastructure of the buildings of the investigation bodies of the Ministry of Internal Affairs of Georgia cannot ensure that women victims of violence are interrogated in a safe environment where it will be possible to develop a trust-based relationship between the investigator and the victim. Moreover, the common spaces in the buildings of the investigation bodies do not allow for privacy. It was essential to create a calm, safe and confidential environment in the process of interrogation in the case of A.Ts., which involved the incitement to the suicide of the woman through acts of violence and systematic humiliation of her honour and dignity. To serve the above-mentioned purpose, the lawyers of the organisation appealed to the investigation body and requested to interview the women victim of violence in the office of "Rights Georgia", instead of the premises of investigation authorities. Taking into account the severe psycho-emotional state of the woman, the trauma arising from instances of violence and the importance of the infrastructural environment in the process of recalling and restoring the actual circumstances of the crime, the law enforcement authority met the request of the lawyers of "Rights Georgia" and conducted the interrogation/questioning in the office of the organisation.

9.2. Protection of Privacy, Personal Data and Personal Reputation of a Victim

The cases of domestic violence and violence against women, especially crimes against sexual liberty, often involve details of private life and personal data. The patriarchal environment and cultural and social reality full of stereotypical and stigmatising attitudes towards women firmly rooted in Georgia often make details of the personal and intimate lives of women into topics of interest and then criticism. Details of personal life often become the subject of public and social scrutiny, followed by accusations, insults and even inhumane and degrading treatment against women. As a result, women who are victims of violence are subjected to secondary victimisation.

Unfortunately, abusers and those interested in the case often use personal data to influence victims. They try to persuade victims and witnesses to withdraw the application filed with the law enforcement authority, change their testimony and/or position, and achieve other illegal intentions/purposes by threatening to disseminate personal information. To protect the interests of women victims of violence in similar circumstances, it is essential to ensure strategic litigation through administrative and criminal proceedings.

The severity of this issue was especially striking in one of the complex and strategically important cases conducted by the non-governmental organisation "Rights Georgia". In compliance with the factual circumstances of the case, M. Kh. suffered physical, sexual and psychological violence from her partner. It should be noted that the victim, together with her minor children, lived with her own mother and sister, who did not possess any information about the relationship of M. Kh with the abuser. The above-mentioned factor hampered the victim as she feared she would become a victim of criticism and reprimand from family members, relatives and society. Therefore, it was fundamental for M.Kh to protect privacy and personal data, especially after the administrative and criminal proceedings were initiated against her abusive partner on the facts of domestic violence and violence against women.

The perpetrator and his relatives took advantage of the above-mentioned fact. Namely, they provided information about M. Kh.'s personal life to family members, relatives, and employers of the victim, as well as to journalists. Furthermore, they also shared personal data of a special category with her children's school principal. An important factor in the case was that the abuser himself, his sister, brother and father were employees of the

Ministry of Internal Affairs of Georgia, and they had access to important personal data about the victim.

The lawyers representing the victim's interest applied to the Personal Data Protection Service and requested the imposition of administrative liability on relevant persons/authority for processing personal data illegally.

The Personal Data Protection Service divided the case into two parts. In one case, the Service refused to consider the application on the grounds that it involved the processing of personal data for clearly personal purposes and was not covered by the Law of Georgia on "Personal Data Protection."[102] However, the part of the case related to the processing of M.Kh's personal data in the form of collection and dissemination by the Ministry of Internal Affairs of Georgia (persons employed at law enforcement authorities) was considered admissible.

Unfortunately, it should be stressed that in the process of examination of the victim's application by the Personal Data Protection Service, certain indications/signs of ineffective exercise of authority were evident. First of all, it should be noted that the persons authorised to make a decision used the deadlines for admission of the application foreseen in the legislation to the extent possible. Moreover, they identified the shortcomings in the application twice on various grounds. The above-mentioned led to the application being delayed, and the application registered on September 26, 2022, was admitted by the Service almost a month later, on October 20.[103] It is also significant that the Service, when identifying the shortcomings initially, requested/instructed the applicant to submit the following information: what kind of information was accessed in the databases of the Ministry of Internal Affairs of Georgia? Who and when accessed the information? However, it was apparent from the beginning that it was impossible to collect specific information due to her inability to access the database of the Ministry of Internal Affairs of Georgia. The Personal Data Protection Service established a negative tendency and practice, as after

[102]According to Sub-paragraph "a" of Paragraph 2 of Article 2 of the Law of Georgia on "Personal Data Protection", the law does not cover the processing of data by a natural person for personal purposes and/or within the framework of family activities/actions, which is not related to his/her entrepreneurial and/or economic, professional activity or performance of official duty. Data processing for personal purposes and/or within family activities may include, among others, correspondence, processing of addresses, and Internet activity (including social networks), which is carried out within the scope of these activities.

[103] It should be noted that in the first case, the Service fully used the 10-day period to identify the shortcomings and identified the shortcomings on the application registered on September 26, 2022, on October 6. After providing additional information by the organisation, the Service identified the shortcomings again on October 17, and only on October 20, the case was partially processed.

admitting the application, it was possible to start inspecting the legality of the processing of personal data by the representatives of the law enforcement authorities,[104] saving time in this particular case.

At the same time, it is significant to stress that M.Kh., in her application, also requested to inspect/examine the legality of the processing identification and contact information of her relatives and acquaintances. The Service refused to deem the application admissible in this part either, stating that an unauthorised person submitted the application. However, it is important to stress that it was requested to examine the issue not only within the framework of the application review but also through conducting the inspection on its own initiative. Unfortunately, the authority did not use its discretionary power to carry out an unplanned inspection on its own initiative, which would be inherently important in terms of achieving an effective result.

Overall, the Personal Data Protection Service's inactivity and the ineffective conduct of the administrative proceedings resulted in the expiration of the two-month limitation period for the imposition of administrative liability, and the administrative authority terminated the administrative proceedings.[105] Finally, it should be noted that the strategic litigation carried out by the Georgian Personal Data Protection Service was ineffective in terms of legal effectiveness. However, human rights practitioners should take into account the experience that, when filing an application in the Personal Data Protection Service, they should focus on reflecting the information available to them in the application as much as possible and request the launch of the inspection for obtaining the information, which is not available. Thus, human rights practitioners should not allow the Service to waste the period of limitation for establishing an administrative offence in an attempt to obtain significant factual circumstances from the applicant.

In parallel with the above-mentioned litigation, the human rights practitioners representing the interest of M.Kh. applied to the Special Investigation Service with the request to launch an investigation into the illegal acquisition, storage, use, dissemination, or otherwise

[104] The Personal Data Protection Service was authorised to do so on the basis of Sub-paragraph "c" of Article 49 and Paragraph 1 of Article 58 of the Law of Georgia on "Personal Data Protection".
[105] According to Paragraph 1 of Article 38 of the Administrative Offenses Code of Georgia being in force until November 30, 2022, "an administrative penalty can be imposed no later than two months after the day that an offence is committed, but if the offence is continuing, no later than two months after the day it is detected."

providing access to secrets of personal life and/or personal data.[106] In the above-mentioned case, the actions of the perpetrator's family members and close relatives contained the signs/indications of the crime foreseen in Article 157 and Article 157[1] of the Criminal Code of Georgia, resulting in significant damage in the form of secondary victimisation of the victim of domestic violence. However, the Special Investigation Service launched a criminal investigation based only on Article 157[1]. The investigation of the case has not yet been finalised.

In conclusion, it should be noted that, on the one hand, the strategic litigation initiated by the organisation around this issue has not been finalised in the process of working on the analytical document, and therefore no real tangible results have been achieved. However, on the other hand, it should be stressed that the initiation of the litigation itself had a significant deterrent effect against the manipulation of the information on private life and proved to be preventive as it discouraged further dissemination of data. Moreover, it is expected that the initiation of the same litigation in similar cases will create a so-called "chilling" effect and will serve as a preventive mechanism for influencing the litigation via disclosure of the secrets of the personal lives of the victims of violence.

9.3. Protection of Victims from Secondary Victimisation at the Stage of Court Hearing

General Recommendation No. 33 on Women's Access to Justice of the CEDAW committee states that women should be able to rely on a justice system free of myths and stereotypes, and on a judiciary whose impartiality is not compromised by those biased assumptions. Eliminating stereotyping in the justice system is a crucial step in ensuring equality and justice for victims and survivors.[107]

Stereotyping compromises the impartiality and integrity of the justice system in all areas of law, which can, in turn, lead to miscarriages of justice, including the secondary victimisation of complainants.[108] Particularly more is required for judges who should ensure the protection of victims of violence during the court hearing.

[106] According to Sub-paragraph "d" of Paragraph 1 of Article 19 of the Law of Georgia on "Special Investigation Service", this criminal act constitutes a criminal case falling under the jurisdiction of the Special Investigation Service.
[107] Committee on the Elimination of Discrimination against Women, General recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, 3 August 2015, § 28.
[108] Committee on the Elimination of Discrimination against Women, General recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, 3 August 2015, § 26.

Stereotyping and gender bias attitudes upheld by judges may have far-reaching consequences, for example, in criminal law, where it results in perpetrators not being held legally accountable for violations of women's rights, thereby upholding a culture of impunity.[109]

Judges should play a special role in the process of protecting women victims of violence from secondary victimisation during court hearings. On the one hand, they should ensure the creation of a gender-sensitive victim-centred environment, avoiding the attacks of the perpetrator and the lawyer representing his/her interests, and, on the other hand, they should not become the causes/sources of secondary victimisation themselves. A judge should listen to a victim carefully and should not ask unjustly intrusive, embarrassing, or overly repetitive questions. A judge should pay attention to his/her own verbal and non-verbal communication and refrain from any facial expressions and movements that assess the behaviour or statement of the victim. She/he should exercise patience and avoid expressing frustration, even if the victim appears to be not cooperative/refuses to testify. A judge should exercise patience and give the victim time to tell her story in her own words. It could happen that a victim forgets important details. A judge should explain to the victim the importance of her testimony without blaming her.[110] The questioning of a victim by a perpetrator or his lawyer that reinforces stereotypes should be stopped through an objection by the prosecutor or ruling by the judge. A judge and a prosecutor should be attentive to signs that the victim/witness is becoming upset or overwhelmed during questioning and request a short break.[111]

It is also essential to control courtroom behaviour and prevent the perpetrator from using tactics to manipulate the victim or disrupt the proceedings (e.g. interrupting victim testimony, accusing the victim). If the judge notices the perpetrator using such tactics, she/he should state it for the record and advise the perpetrator to stop the behaviour or risk contempt of court. Furthermore, it should be clear to all parties that emotional

[109] Committee on the Elimination of Discrimination against Women, General recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, 3 August 2015, § 26.
[110] Anna Costanza Baldry and Elisabeth Duban, Improvement the Effectiveness of Law Enforcement and Justice Officers in Combating Violence Against Women and Domestic Violence, Training of Trainers Manual, Council of Europe, 1 June 2016, 52-52. available on: https://rm.coe.int/16806acdfd retrieved: 23.05.2024.
[111] Anna Costanza Baldry and Elisabeth Duban, Improvement the Effectiveness of Law Enforcement and Justice Officers in Combating Violence Against Women and Domestic Violence, Training of Trainers Manual, Council of Europe, 1 June 2016, 59. available on: https://rm.coe.int/16806acdfd retrieved: 23.05.2024.

outbursts and facial or body expressions (such as sighing, eye rolling, etc.) will not be tolerated. If the warning is not taken into account, remove the party from the courtroom.[112]

Unfortunately, the practice related to court proceedings in ongoing cases involving violence against women and domestic violence has identified that the victims are subjected to secondary victimisation not only through the activities of the perpetrator and his lawyer but also directly through actions and inactions of the judges. The non-governmental organisation "Rights Georgia" encountered the above-mentioned problem in the strategic litigation case of M. Kh. In particular, the judge of the Chamber of Administrative Cases of Tbilisi Court of Appeals was hearing an appeal about the request to revoke the electronic surveillance of the perpetrator. The remote hearing was conducted with a substantial violation of the norms of ethics and the adversarial principle between the parties, including through exercising a discriminatory attitude towards the victim of domestic violence.

In the process of the court hearing, the appellant, while stating his position, had an attempt to humiliate the victim and her lawyer and discredit her professionally. He talked about issues that were not related to the case but aimed to have a negative impact on the victim of violence. The judge did not request the representative of the abuser to adhere to norms of professional ethics and court order. Moreover, the judge herself entered into a confrontation with the victim's lawyer, asked her to be silent instead of meeting her legal request and pointed to the possibility of turning off the microphone.

The victim, due to the psychological, sexual and physical violence committed against her, was under stress in the process of the court hearing; it was difficult for her to speak freely, and she seemed to be anxious and scared. In addition, she had to formulate her own viewpoint in the presence of the abuser. The judge interrupted the victim, who was in such a situation and urged her to finish, as well as to refrain from explanations/interpretations. In addition, the judge voiced insulting and humiliating remarks towards the victim several times.

The legal situation in Georgia and the existing regulatory framework, unfortunately, do not envisage effective mechanisms to respond to the instances of secondary victimisation of women victims of domestic violence by judges. Taking into account the above-mentioned

[112] Anna Costanza Baldry and Elisabeth Duban, Improvement the Effectiveness of Law Enforcement and Justice Officers in Combating Violence Against Women and Domestic Violence, Training of Trainers Manual, Council of Europe, 1 June 2016, 59. available on: https://rm.coe.int/16806acdfd retrieved: 23.05.2024

circumstances, the non-governmental organisation "Rights Georgia" used the only prospect at its disposal - filed a complaint with the Independent Inspector's Office of the High Council of Justice of Georgia. The organisation, in the framework of the strategic complaint, requested to impose disciplinary liability on the judge, as her conduct challenged the principle of equality. Furthermore, the judge had a discriminatory approach, as well as a humiliating and insulting attitude towards the victim of violence, which contradicts the high status of the judge and undermines the authority of the court. The Independent Inspector's Office finalised the investigation with regard to the complaint, elaborated conclusions and sent it to the High Council of Justice, which has not considered it yet. "Rights Georgia" did not have a chance to study the content of the conclusions, as the Independent Inspector's Office refused to share the document.[113] Finally, it should be noted that the effectiveness of such strategic litigation is dubious in practice. However, the monitoring of judges' attitudes and subsequent actions revealed that applying to the Independent Inspector and initiating disciplinary proceedings has the so-called "chilling" effect on the conduct of judges and has a positive impact on the creation of a gender-sensitive and victim-friendly environment during court hearings.

[113] The lawyers of "Rights Georgia" appealed the Inspector's refusal to hand over the report to the organisation in court. The court of first instance did not accept the application; however, as a result of the appeal, the matter was returned to Tbilisi City Court for review. On November 17, 2023, the court of first instance dismissed the litigation, noting that disputes of this type did not fall within the jurisdiction of the common courts.

10. Child Victims of Domestic Violence

Violence against children constitutes an enormous problem not only in Georgia but also in developed countries. Separate studies conducted worldwide have revealed that in the year leading up to the study, more than half of children between the ages of 2 and 17 have been victims of emotional, physical or sexual violence.[114] Furthermore, children already belong to a vulnerable group, and abusers actively use this fact to their advantage and to cover up their crimes, leading to a low rate of identification/detection of violence against children. For example, according to a meta-analysis of global data, cases of physical violence reported by children are 75 times higher and cases of sexual violence 30 times higher than the data recorded in official reports.[115]

The hidden and invisible nature of violence against children is even more acute in cases of domestic violence. Social studies/surveys conducted in different countries reveal that children are also exposed to inappropriate treatment in families where one intimate partner abuses another.[116] Maltreatment (including violent punishment) involves physical, sexual and psychological/emotional violence; and neglect of infants, children and adolescents by parents, caregivers and other authority figures, most often in the home but also in settings such as schools and orphanages.[117]

In addition to the fact that children might become victims of direct physical, sexual or psychological violence, they are also indirectly affected by violence between parents or family members.[118] Moreover, witnessing violence can involve forcing a child to observe an act of violence or the incidental witnessing of violence between two or more other persons, and it should be assessed as a form of emotional or psychological violence.[119]

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[114] Hillis S., Mercy J., Amobi A., Kress H., Global Prevalence of Past-year Violence Against Children: A Systematic Review and Minimum Estimates, Pediatrics (Evanston), 2016-03, Vol.137 (3), p.e20154079-e20154079.

[115] Stoltenborgh M., van IJzendoorn M.H., Euser E., Bakermans-Kranenburg M. J., A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World, Child Maltreatment, 2011, 16(2), 79-101. Stoltenborgh, M., Bakermans-Kranenburg, M. J., Van Ijzendoorn, M. H., & Alink, L. R., Cultural–geographical differences in the occurrence of child physical abuse? A meta-analysis of global prevalence, International Journal of Psychology, 2013, 48(2), 81-94.

[116] For reference, please see: Brigitte Gilbert, Anna Stewart, Emily Hurren, Simon Little, and Troy Allard, Dual-system Involvement: Exploring the Overlap Between Domestic and Family Violence and Child Maltreatment Perpetration, Journal of Interpersonal Violence, Volume 37, Issue 9-10, May 2022, 6733-6759.

[117] World Health Organisation, Seven Strategies for Ending Violence against Children, 2016, translated by Initiative for Social Changes (ISC), 2019, 14. available on: https://inspire-strategies.org/sites/default/files/2020-06/Georgian.pdf retrieved: 23.05.2024.

[118] Marina Meskhi, Violence against Children, Needs Assessment, Georgian Young Lawyers Association, 2018, 9.

[119] World Health Organisation, Seven Strategies for Ending Violence against Children, 2016, translated by Initiative for Social Changes (ISC), 2019, 14. Available on: https://inspire-strategies.org/sites/default/files/2020-06/Georgian.pdf retrieved: 23.05.2024.

The situation in Georgia is especially striking as the share of tolerance towards the violence against children in the society is high. Moreover, the majority of people in Georgia believe that using harsh parenting, as a tool for child discipline is more effective than non-violent parenting techniques.[120] The situation is further complicated by the fact that violent actions against minors in the family are deemed as an internal family business. Most people in Georgia are reluctant to accept the idea of the "authorities" interfering with family affairs, even when there may be violence in the family.[121]

Public distrust towards the victims of sexual violence is particularly alarming: over 90 per cent of Georgians do not believe that parents and family members are responsible for sexual violence against children.[122] A similar attitude makes the identification/detection of sexual violence against children even more difficult and creates risks of secondary victimisation at a later stage.

Violence against children has an acute impact on their later life, physical and psychological development. Exposure to violence at an early age can impair brain development and damage other parts of the nervous system, as well as the endocrine, circulatory, musculoskeletal, reproductive, respiratory and immune systems, with lifelong consequences. Strong evidence shows that violence in childhood increases the risks of injury, HIV and other sexually transmitted infections, mental health problems, delayed cognitive development, poor school performance and dropout, early pregnancy, reproductive health problems, and communicable and non-communicable diseases.[123]

In light of these consequences and risks, the state's efforts to detect and respond to cases of violence against children, including domestic violence, are particularly important. In the process of implementation of criminal justice, it is important to focus initially on aspects such as granting the status of a victim to children victims of domestic violence (family violence), which should later serve as a solid fundament/basis for protecting their rights and interests. The issue of protecting minor victims from secondary and re-victimisation in

[120] Violence against Children in Georgia, National Survey of Knowledge, Attitude and Practices, Analysis of Child Protection Referral Procedures and Recommendations to the Government, UNICEF, 2013, 12-13.
[121] Violence against Children in Georgia, National Survey of Knowledge, Attitude and Practices, Analysis of Child Protection Referral Procedures and Recommendations to the Government, UNICEF, 2013, 13.
[122] Violence against Children in Georgia, National Survey of Knowledge, Attitude and Practices, Analysis of Child Protection Referral Procedures and Recommendations to the Government, UNICEF, 2013, 13.
[123] Quoted: World Health Organisation, Seven Strategies for Ending Violence against Children, 2016, translated by Initiative for Social Changes (ISC), 2019, 15. Available on: https://inspire-strategies.org/sites/default/files/2020-06/Georgian.pdf retrieved: 23.05.2024.

the process of administering justice should be addressed separately, as they already belong to a vulnerable group, which is further aggravated by the trauma received.

10.1. Recognising Child Witnesses of Violence/Femicide as Victims

Exposure to physical, sexual or psychological violence and abuse between parents or other family members has a severe impact on children. It breeds fear, causes trauma and adversely affects child's development.[124] Consequently, those children who have not been physically or sexually abused but who have become victims of psychological violence due to exposure to such facts should be considered as the victims of domestic violence. Therefore, Article 26 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence notes that states shall take the necessary legislative or other measures to ensure that in the provision of protection and support services to victims, due account is taken of the rights and needs of child witnesses of all forms of violence.[125]

The term "child witnesses", for the purposes of the Convention, refers not only to children who are present during the violence and actively witness it, but to those who are exposed to screams and other sounds of violence while hiding close by or who are exposed to the long-term consequences of such violence. The states are required to solve the problem related to recognising those children as victims and ensure their support.[126] It should be noted that children are at risk of violence in the future. There is a heightened level of danger when such cases come before the legal system, and perpetrators may intensify the violence or direct the abuse towards the children.[127]

The Public Defender of Georgia, in the Femicide Monitoring Report of 2020, considers that the recognition/identification of children and minors of murdered women, who witnessed femicide or heard the voice of the victim, as victims by the Prosecutor's Office of Georgia is

[124] Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, para 143.
[125] The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, article 26, para 1.
[126] Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, para 144.
[127] Choudhry Sh., Woman's Access to Justice: Guide for Legal Practitioners, 2018, 40. Available on: https://rm.coe.int/methodology-womens-access-to-justice-geo-pgg/16809c8285 retrieved 18.02.2024.

a step forward.[128] However, despite the progress and development, the non-governmental organisation "Rights Georgia" has encountered several cases in the process of strategic litigations when the Prosecutor's Office of Georgia refrained from recognising minors who witnessed violence as victims. For example, in the case of femicide in Bodbe, Sighnaghi municipality, where a minor child actually witnessed the murder of her mother by his father, the Prosecutor's Office of Georgia refrained from recognising the child as a victim. The Prosecutor's Office granted the victim status to the minor child only after involvement and repeated requests of the lawyers of "Rights Georgia". In another case, the Prosecutor's Office of Georgia refused to grant victim status to minor children who were in public transport with their mother when their father killed her (mother) with an edged (bladed) weapon. Unfortunately, the lawyers of the organisation got involved in S.K.'s femicide case at a later stage of appeal, and the provision of strategic support was procedurally late/delayed.

It is important to note that recognition of minor children who witnessed violence in the family and violence against women as victims is essential, both for the interests of criminal justice and for the initiation of civil proceedings for the compensation of damage. On the one hand, the recognition of minors as victims, along with the provision of legal guarantees defined by the criminal procedural legislation, creates an important basis for protecting the child from secondary victimisation. Furthermore, it can serve as a basis for the appointment of examination/expertise to a minor to determine the inflicted damage. On the other hand, the final decision and the victim's status allow the minor to file a civil application/claim and request compensation for incurred damage.

10.2. Protection of Child Victims of Violence from Secondary Victimisation at the Stage of Investigation and Court Hearing

The main international standard in the field of protection of the rights of minors is enshrined in the United Nations Convention on the Rights of the Child. Article 3, which is the cornerstone of the Convention, states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative

[128] As an example, the Public Defender of Georgia cites concrete cases of Gori District Court, including the one related to recognition as victims of those children who, apart from witnessing the crime, heard the sound of a firearm when their father killed their mother. See: The Public Defender of Georgia, Femicide Monitoring Report 2020, UN Women, 2021, 40. available on: https://ombudsman.ge/res/docs/2022070609293527273.pdf retrieved: 23.05.2024.

authorities or legislative bodies, the best interests of the child shall be a primary consideration.[129] The above-mentioned principle encompasses minors who are involved in the administration of justice, both perpetrators/convicts and victims and witnesses. Safeguards for the protection of minor victims from secondary and re-victimisation in the process of administration of justice have been reflected in various international human rights documents. Special emphasis should be placed on the UN Economic and Social Council (ECOSOC) Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.[130] The standard of protection of child victims from secondary and re-victimisation, both at the level of principles and safeguards, was reflected in the Juvenile Justice Code.

First of all, it should be noted that to protect minor victims from secondary victimisation, enshrined at the international and national standards level; special attention should be paid to the environment and existing infrastructure, where investigative and procedural actions are conducted. Furthermore, the right of a child to be heard, defined by various international standards, is related to the environment. Namely, a child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens, and separate waiting rooms.[131] The European Court of Human Rights, in one of the cases against the United Kingdom, stressed that the formality and ritual of the Crown Court must at times have seemed incomprehensible and intimidating for the child, depriving him/her the right to fair trial.[132] In addition, the study has confirmed that the environment where a child is interrogated affects communication, concentration, and memory, especially in preschool children.[133]

Therefore, it is important that the questioning/interrogation of a child is conducted in a comfortable, convenient and secure environment, taking into account his/her age, level of

[129] UN Convention on the Rights of the Child, General Assembly resolution 44/25, 20 November 1989, Article 3, Para 1.
[130] UN Economic and Social Council (ECOSOC) Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.
[131] Committee on the Right of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 20 July 2009, para. 34.
[132] T. v. The United Kingdom, European Court of Human Rights, Application no. 24724/94, 16 December 1999, para. 86.
[133] Quoted: Natadze Mariam, Kelbakiani Anton, The Role of Psychologist in the Process of Interrogation/Questioning of Child Victims and Witnesses, Report, 2020, 42.

development and cognitive abilities. The above-mentioned space should be arranged separately, isolated, and devoid of additional noise so that no one disturbs the child or interferes in the process of questioning/interrogation, and additional, unexpected contact is avoided. The space should be devoid of formality and ritual components, avoiding the creation of an intimidating and incomprehensible environment for a child. In contrast, a dedicated questioning/interrogation space should be child-friendly and should not attract unnecessary attention. The room might be equipped with a few items appropriate for the child's age and gender, such as drawing papers and pencils. However, they should be used only to relieve the tension and calm down a child. [134]

Unfortunately, the studies conducted in Georgia have identified that neither the investigation authorities nor the judicial system,[135] can provide a special infrastructural environment to protect children's interests and prevent their secondary victimisation.[136] Therefore, lawyers and professionals involved in the process must make additional efforts to prevent the secondary victimisation of children. In this regard, it is important to review the individual strategic activities carried out by the non-governmental organisation "Rights Georgia".

One of the strategic cases involved femicide in Bodbe, Sighnaghi municipality. The victim's minor children were actual witnesses of the femicide. From the moment of involvement of the lawyers of the organisation, it was evident that the children were in a severe traumatic situation and required careful and delicate treatment to avoid their secondary victimisation. The children were not questioned/interrogated at that stage of the investigation. Although they expressed willingness and readiness to provide important information to the law enforcement authority, they did not want to go to the police station. Considering the aforementioned and the infrastructural environment in the police buildings, the lawyers of the organisation appealed to the investigation authority and requested to interview the children in a sensitive and less traumatising environment - in the office of "Rights Georgia". The investigation authority took into account the request and

[134] Also see: Tell Me What Happened, Questioning/Interrogation of Child Victim and Witness, Manual for Trainers and Professionals, Public Health Foundation of Georgia, 2014, 72. available on: https://elfiles.emis.ge/uploads/34385/conversions/Momiyevi_Ra-_Moxda-compressed.pdf retrieved: 23.05.2024.

[135] An exception is Rustavi City Court, where with the support of UNICEF, a special interrogation room adapted to the protection of children's interests was arranged, which is also used as a waiting area for children.

[136] See: Natadze Mariam, Kelbakiani Anton, The Role of Psychologist in the Process of Interrogation/Questioning of Child Victims and Witnesses, Report, 2020, 42-44. The special report of the Public Defender of Georgia, Protection of Procedural Rights of Juvenile Defendants, Witnesses and Victims in Criminal Justice, was developed jointly with the organisation – "Initiative for the Rehabilitation of Vulnerable Groups", 2020.

the fact that the organisation's office was a familiar place for the children, and they had visited it several times before. Consequently, the initial interview of minors took place in the office of "Rights Georgia", in an environment tailored to their interests. The representatives of the State Care Agency, namely, a psychologist and a social worker, attended the questioning at the lawyers' request. Moreover, it became necessary to extract the correspondence from the mobile phone of one of the victim's minor children, as the murdered woman also used this phone to communicate with her mother-in-law and husband. With the involvement and support of the lawyers of "Rights Georgia", the extraction of correspondence from the mobile phone was instituted in the office of the organisation in a less traumatising and peaceful environment for the child, contributing to averting secondary victimisation of the children.

One aspect of the same case should be assessed as an effective result of the strategic work of the lawyers. Namely, after the meeting and extracting the correspondence from their phones, the children declared that it would be extremely difficult and painful for them to go to court, talk about the same issues again and testify against their father. Here, the rule established by the UN Economic and Social Council Resolution at the international standards level should be taken into account. According to the rule, states should limit the number of interviews: special procedures for the collection of evidence from child victims and witnesses should be implemented in order to reduce the number of interviews, statements, hearings and, specifically, unnecessary contact with the justice process.[137] The organisation's lawyers held consultations on the above-mentioned issue with the representatives of the Prosecutor's Office of Georgia, whose response and communication with the perpetrator's lawyer made it possible to consider the testimony of the children indisputable and, therefore, it was no longer necessary to interrogate the children of the femicide victim in court.

As mentioned above, both the police and judicial system face the challenges of providing a friendly and sensitive space for questioning of minor victims. In one of the strategic cases, the non-governmental organisation "Rights Georgia" provided legal support to the minor girl E.V.. The investigation was divided into two cases. The first case addressed the violence committed by the mother against her minor child, while the second case investigated the

[137] UN Economic and Social Council (ECOSOC) Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, para. 31 (a).

alleged fact of sexual abuse against the girl. It was revealed that the 9-year-old child was in a severe traumatic state. According to psychologists, her state made it impossible to question her about the alleged fact of sexual abuse. Furthermore, the girl's objection made it impossible to conduct a forensic medical examination on her. In the existing situation, as well as taking into account her critical psycho-emotional state, it was dubious that she would testify against her mother during the court hearing. Considering all the above-mentioned, the lawyers of "Rights Georgia" approached the responsible judge with a request to interrogate the minor remotely from the psycho-social service centre for abused children[138], with the support of a psychologist and other relevant specialists. The psychologist got involved in the case early and, together with the organisation's lawyers, ensured the child's preparation for the court hearing prior to the questioning. In addition, she also took effective actions in advance to ensure the child's adaption to the space. The lawyers of "Rights Georgia" also presented to the court the materials reflecting the phone communication of the minor's parents, confirming the mother's negative attitude towards her daughter. Therefore, at the initiative of the lawyers of the affected child and with the mediation of the Prosecutor's Office of Georgia, the court made a decision to remove the accused mother from the courtroom and conduct the interrogation without her presence.[139] The actions mentioned above yielded results, and, on the one hand, the 9-year-old child was able to testify to the court, and on the other hand, it was possible to prevent her secondary victimisation.

In conclusion, it should be noted that the Juvenile Justice Code of Georgia provides mechanisms for the protection of child victims/witnesses from secondary victimisation, such as remote interrogation and removal of the accused from the courtroom. However, the practice that made it possible to interview children outside the traumatic infrastructure of the police, in a safe and sensitive space (including the office of a non-governmental organisation) and to conduct the interrogation from a psychological and social service centre for abused children (from so-called "Barnahus") should be evaluated as a special achievement of strategic litigation.

[138] See: "The Concept of the Centre for Psychological and Social Services for Child Victims of Violence" approved by the Decree N1825 of September 17, 2020, of the Government of Georgia

[139] Paragraph "a" and Paragraph "d" of the Law of Georgia, Juvenile Justice Code foresee the possibility of remote questioning/interrogation in order to ensure the protection of his/her best interests, as well as removing the perpetrator from the courtroom on a temporary basis. However, conducting child interrogation/questioning from a special centre with the active involvement of psychologists and other specialists should be evaluated as a result of strategic litigation.

11. Identification of Paternity

Identification of paternity, on the one hand, is aimed at the child's personal self-determination and constitutes a key aspect of identity, and on the other hand, it is important for women/mothers, as it creates the basis for proceedings to receive from the father the necessary financial support for the upbringing and development of the child in the form of child-support payments (alimony). The child's right to have information about his biological father is enshrined in Article 12 of the Constitution of Georgia, namely in the right to free personal development. Furthermore, the European Convention on Human Rights incorporates the above-mentioned right in Article 8. The European Court of Human Rights has reiterated in several cases that everyone should be able to establish details of their identity as individual human beings, which includes the legal parent-child relationship. [140] However, it is also important that contrary to the child's self-determination, the alleged and potential father has the legitimate right to have at least the opportunity to deny paternity of a child who, according to scientific evidence, was not his own.[141]

The issue related to the identification of paternity and imposing child-support payments (alimony) poses a problem in abusive relationships. Men, as a rule, after applying administrative restraining mechanisms or imposing criminal liability on them, first refuse to recognise their children and then participate in their upbringing and development and pay child-support payments (alimony). The problem is even more striking against the background that women are subject to economic violence in Georgia. One of the main reasons why women are unable to initiate legal proceedings against abusive husbands/partners arises from economic dependence on them and fear of further financial retaliations.

Taking into account the above-mentioned, it is essential that, on the one hand, all women have access to practical and effective legal mechanisms to establish paternity and, on the other hand, to impose and enforce child-support payments (alimony).

The Civil Code of Georgia regulates the identification of paternity in Georgia. Article 1189 of the Civil Code of Georgia specifies that the filiation between a child and the married

[140] Mennesson v. France, European Court of Human Rights, Application no. 65192/11, 26 June 2014, para. 96.
[141] Mizzi v. Malta, European Court of Human Rights, Application no. 26111/02, 12 January 2006, para. 112.

parents shall be confirmed by a joint statement of the spouses or by the statement of one of the spouses and by the certificates of the child's birth and the parent's marriage, whereas Article 1190 reads that filiation between a child and unwed parents shall be determined by a joint statement of the parents and the certificate of the child's birth. If the parents' joint statement is not available or if it cannot be submitted, paternity may be determined by a court based on the application of one of the parents, the guardian (custodian) of the child or the person who provides maintenance for the child, as well as on the application of the child after the child attains the age of majority. The court determines paternity according to the results of biological (genetic) or anthropological tests conducted for determining the paternity of a child. If it is not possible to determine paternity, the court takes into account whether the mother and the person applying for determination of paternity (the person indicated in the application) cohabited and jointly kept a household before the birth of the child or whether they jointly raised and/or maintained the child, or any other evidentiary documents and/or facts fully confirming the acknowledgement of paternity by the person indicated in the application.

It should be noted that the existing regulation, which provides for determining paternity through the court according to the results of biological (genetic) or anthropological tests, poses significant obstacles to women's access to justice. Namely, the costs of conducting forensic examinations at a specialised expert institution are considered as the costs related to the case review[142]. The cost of determining biological paternity (for a living person) through DNA analysis amounts to 2000 GEL based on the Decree of the Government of Georgia.[143] In practice, these costs have to be incurred by women who apply to court to determine paternity. Georgian legislation only provides an exemption from the customs fee payment. In the best-case scenario, after the successful completion of the court proceedings, if the claim is met, the legal costs will be compensated by the other party - the child's father.[144] However, even in this case, a number of practical challenges related to its enforcement arise.[145]

[142] Civil Procedure Code of Georgia, Article 44, Sub-paragraph "g".
[143] "Service Tariffs of Legal Entity of Public Law – Levan Samkharauli National Forensics Bureau" approved by Decree №14 of January 16, 2023, of the Government of Georgia.
[144] Civil Procedure Code of Georgia, Article 53, Paragraph 1.
[145] See: Elene Sichinava, Maka Nutsubidze, Keti Chutlashvili, Implementation of Community/society-oriented Justice in Case of Divorce and Determination of Paternity, Ilia Law House (Iliasi), 2023, 26, in Georgian.

Studies have revealed that the payment of forensic examination fees for determining paternity has become a significant obstacle to women's access to justice. Given the difficult financial and economic situation, women often refuse to apply to the court to determine paternity or have to take an additional loan or break to do additional work, collect money and cover the fees in this way.[146]

In one of the two strategic cases with the involvement of "Rights Georgia", the alleged father admitted the child's biological paternity, and therefore, it did not become necessary to organise an examination. In the second case, which involved the determination of the biological father of K.M.'s child, the judge of the Panel of Civil Cases of Tbilisi City Court took into consideration the justification of the organisation's lawyers and instructed the alleged and potential father to cover in advance the expert costs necessary for determining paternity.

In conclusion, it should be noted that the judge of Tbilisi City Court, with the above-mentioned decision, established an important precedent – when determining paternity, in case an alleged and potential father does not recognise the claim and to confirm his position, he files a motion to submit evidence to the court, he must bear the cost of obtaining the evidence for confirming non-existence of genetic paternity. In this case, the alleged father, as the initiator of the submission of the evidence, will be obliged to cover the forensic examination costs based on Paragraph 1 of Article 52 of the Civil Procedure Code of Georgia.

[146] Elene Sichinava, Maka Nutsubidze, Keti Chutlashvili, Implementation of Community/society-oriented Justice in Case of Divorce and Determination of Paternity, Ilia Law House (Iliasi), 2023, 21-29, in Georgian.

12. Educational Migration of Children of Victims of Domestic Violence and Violence against Women

Women victims of violence and their children often suffer from continuous persecution and psychological, moral or economic harassment from the perpetrators. In response to the initiation of administrative or criminal proceedings, male abusers often use all means and mechanisms at their disposal to retaliate against women, including abuse of parental rights, even against the best interests of a child.

It is often vital to change the permanent residence and move to a new, safer place for victims of domestic violence. When it is necessary to keep the children away from the abusive parent, they change their place of residence together with their mother. The change of place of residence is accompanied by the need to change the school. This often poses a problem as it requires the consent of the abusive parent.

The strategic case of S.K. with the involvement of the lawyers of the non-governmental organisation "Rights Georgia" is very important in this regard. According to the case materials, S.K. worked abroad for several years, and she left her child with her husband, the child's father. She systematically experienced economic and psychological violence from her husband during this period. The father did not take care of his child and did not keep sanitary and hygienic norms, constantly neglecting the child's interests. Considering all the above-mentioned, S.K. returned from emigration, took her child from his husband's family, and moved from Kakheti region to Imereti. To prevent her husband's violence, she applied to the law enforcement authorities with the request of issuing a restraining order against him.

It should be noted that along with the negligence to observe sanitary and hygienic norms, the exercise of the child's right to education was also disregarded during the cohabitation of the child with his/her father. The minor often missed school and fell behind the curriculum. The issue of changing the school and continuing to study in one of the schools of Imereti region arose after the child moved to live with his/her mother. However, the mother failed to do so because the school principal refused to give permission to move the child from school without the father's consent. Despite the fact that the lawyers of "Rights Georgia" appealed the above-mentioned fact to the Ministry of Education, Science and Youth of Georgia, the issue could not be resolved positively.

In the existing situation, on the one hand, the minor suffered from the stress of not being able to go to school and not socialise with her peers on a daily basis. On the other hand, her right to education was fundamentally restricted. Moreover, due to the number of absences, the question of the child's expulsion from school in Kakheti region would soon arise. Taking this into account, the lawyers of "Rights Georgia" applied to the district court with a request to restrict parental rights. However, taking into account that the litigation would be extended in time and the restriction of the child's right to education would damage her/his interests further, the lawyers developed a strategy within the framework of the claim/application review. They appealed to the judge of the district court and requested to issue a temporary decree restricting the parental right in the part of receiving education. The judge relied on Sub-paragraph "b" of Paragraph 1 of Article 355 of the Civil Procedure Code of Georgia while reviewing the motion in order to address the restriction of the child's rights quickly and effectively. The judge took into account the father's disapproval of the change of school against the best interests of the child, as well as the fact that the child had already missed school for a month and restricted the father's right to exercise parental authority in the part of receiving education until the announcement of final decision.

Later, the same judge took into account the previous practice of parental neglect by the abuser - a completely unjustified restriction of the child's right to education. In order to safeguard the best interests of the child provided for by the Convention on the Rights of the Child, the Georgian legislation and the "Code on the Rights of the Child of Georgia", and guided by the principle of common and equal participation of both parents in the upbringing and development of the child, as well as taking into account the child's opinion and wishes, restricted the father's representative role in the part of receiving education (mobility).

The above-mentioned litigation was strategically important, especially the part on the restriction of parental rights through the issuance of the temporary decree. It is important to note that the court made a final decision on the claim related to the restriction of parental rights almost 10 months after the issuance of the decree on the temporary restriction of the right. Therefore, in case of failure to implement this effective mechanism in practice, the child's right to education would be restricted to such an extent that it would damage not only the child's ability to receive education and personal development but would also lead to moral and psychological trauma.

13. Compensation for Damage

Recovery is usually essential after becoming a victim of a crime. Although victims strive for restitution, most crimes leave an indelible mark/sign on their lives - physically, psychologically, mentally, and morally. In such a case, one of the most effective mechanisms to balance the victim's situation is to receive financial compensation.

Compensation for the victim might be provided both for material and non-material damages. However, apart from legal and economic purposes, compensation has a purely victimological objective. Imposing liability on an offender to compensate for the incurred damage is a recognition of the fact that not only material but also moral damage was inflicted on the victim. After that, the victim no longer needs to justify himself/herself and explain the reasons or consequences of becoming a victim. The compensation for damage makes the victim stronger, helps her/him to overcome psycho-emotional trauma, and prevents her/him from secondary and re-victimisation.

The modern and developed world recognises the possibility of the victim receiving compensation for the damage directly from the offender, as well as from the state. Of course, the first addressee of the compensation request is the person who committed the criminal act because he/she is the main cause of material or non-material damage. However, there are cases when it is impossible to identify the offender and impose criminal liability on him/her, or due to insufficient evidence or taking into account other factors, the court cannot confirm the fact that a specific person committed the crime, or, in the extreme case, the perpetrator is insolvent, and it becomes impossible to enforce the charges imposed on him/her.[147] Naturally, in similar cases, the state might get involved in the compensation process and it might commit itself to providing compensation.

13.1. The Compensation for the Damage by the Offender

The consequences of crime impact the state of the victim immensely. Physical injuries and psychological traumas might lead to long and expensive treatments, as well as might cause the limitation or loss of professional abilities/capabilities or the inability to continue work

[147] Citation: Tandilashvili Kh., Legal standing of the victim in the Georgian criminal proceedings being in the process of internalisation, Research paper, Ivane Javakhishvili Tbilisi State University, 2021, 39, in Georgian. available on: https://www.tsu.ge/assets/media/files/48/disertaciebi3/Khatia_Tandilashvili.pdf retrieved: 23.05.2024.

due to the traumatic experience. Therefore, receiving compensation by the victim should be considered as a necessary precondition for maintaining an appropriate lifestyle.

Taking into account the above-mentioned, the right of the victim to compensation for damage has been reflected in various international standards. Article 8 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (of 1985) states that offenders should make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimisation, the provision of services and the restoration of rights.[148] Furthermore, the Declaration calls on the states to review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.[149] The Council of Europe Recommendation of the Committee of Ministers on the Position of the Victim in the Framework of Criminal Law and Procedure (of 1985) reads that a criminal court should be able to order compensation by the offender to the victim. [150] Furthermore, legislation should provide that compensation may either be a penal sanction, or a substitute for a penal sanction or be awarded in addition to a penal sanction.[151] If compensation is a penal sanction, it should be collected in the same way as fines and take priority over any other financial sanction imposed on the offender.[152] Recommendation of the Committee of Ministers on Rights, Services and Support for Victims of Crime also addresses the compensation issue and notes that in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time. When claiming compensation from the offender in the course of criminal proceedings is

[148] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985, para 8. available on: https://www.ohchr.org/sites/default/files/victims.pdf retrieved: 23.05.2024.
[149] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985, para 9. available on: https://www.ohchr.org/sites/default/files/victims.pdf retrieved: 23.05.2024.
[150] Council of Europe, Recommendation No. R (85) 11 of the Committee of Ministers to Member States on the Position of the Victim in the Framework of Criminal Law and Procedure (Adopted by the Committee of Ministers on 28 June 1985 at the 387th meeting of the Ministers' Deputies), para. 10.
[151] Council of Europe, Recommendation No. R (85) 11 of the Committee of Ministers to Member States on the Position of the Victim in the Framework of Criminal Law and Procedure (Adopted by the Committee of Ministers on 28 June 1985 at the 387th meeting of the Ministers' Deputies), para. 11.
[152] Council of Europe, Recommendation No. R (85) 11 of the Committee of Ministers to Member States on the Position of the Victim in the Framework of Criminal Law and Procedure (Adopted by the Committee of Ministers on 28 June 1985 at the 387th meeting of the Ministers' Deputies), para. 14.

irreconcilable with the national legal system, member states should provide for alternative ways through other legal proceedings.[153]

The Istanbul Convention should be addressed separately. Paragraph 2 of Article 5 of the Convention states that parties shall take the necessary legislative and other measures to exercise due diligence to provide reparation for acts of violence perpetrated by non-state actors against women.[154] Moreover, Paragraph 1 of Article 30 clarifies that states shall take the necessary legislative or other measures to ensure that victims have the right to claim compensation from perpetrators for any of the offences established in accordance with the Convention.[155] This Paragraph establishes the principle that it is primarily the perpetrator who is liable for damages and restitution.[156]

As mentioned above, international standards allow the compensation of the victim, including within the framework of criminal procedure. The latter substantially improves the condition of the victim as, on the one hand, he/she is exempt from additional contact with the justice system, additional costs and bureaucracy; on the other hand, she/he faces less fear, pain and re-traumatisation. Overall, integrating the compensation system into the criminal justice system considerably reduces the risks of secondary and re-victimisation. The Parliament of Georgia had an attempt to introduce a legislative regulation in 2013 that would allow the imposition of compensation on the convict in favour of victims of domestic violence.[157] Unfortunately, the Parliament of Georgia did not approve this part of the draft law. As of 2010, after the enactment of the new Criminal Procedure Code of Georgia, it is no longer possible to submit a civil lawsuit and request compensation for damage in the framework of criminal proceedings. Consequently, the only option for the crime victim to be compensated for damage by the perpetrator is the initiation of separate civil proceedings.

[153] Recommendation CM/Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime, Council of Europe, 15 March 2023, article 13, para. 1.
[154] The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, article 5, para. 2.
[155] The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, Article 30, para. 1
[156] Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, para 165.
[157] Draft Law of Georgia on introducing amendments into the Law of Georgia on "Criminal Procedure Code of Georgia" – rights of the victim, Paragraph 4 of Article 4, available on: https://matsne.gov.ge/ka/document/view/2083578?publication=0 retieved: 23.05.2024.

Although the compensation for damage through civil proceedings does not contradict international standards, the litigation practice demonstrates that the existing model fails to respond to modern challenges. Victims usually do not go to court[158], which might be preconditioned by the lack of funds for covering additional legal services, litigation being time-consuming and emotional, lack of information, the anxiety of having additional communication with the abuser, and other threats of secondary victimisation.[159]

Against the background of the lack or absence of precedents and the scarcity of judicial practice, it was a challenge for victims of domestic violence and violence against women to file civil lawsuits against perpetrators and to receive compensation for non-material property damage inflicted as a result of the crime. Therefore, one of the priority areas among the cases with the involvement of the non-governmental organisation "Rights Georgia" was the provision of strategic litigation in this regard. As a result of the efforts and work of the organisation's lawyers, important court precedents were established – the women were able to request and receive compensation for non-material property damage from abusive family members.

The civil case of A.I. and her minor child E.K. needs to be addressed separately. According to the case materials, the victim A.I., in the presence of her minor children, repeatedly experienced physical violence and intimidation from her husband. This could be confirmed by the court decision, recognising the woman and her minor child as victims. It should be noted that the victims had not suffered such physical /injuries, which could serve as the basis for requesting compensation for non-material damage; however, the psychological trauma inflicted by the husband to A.I. and her minor child was significant. According to the conclusion of the psychologist, A.I. experienced chronic stress while living with her husband. At the initial stage, she suffered from emotional numbing related to past violence or intimidation, loss of ability to understand her own feelings and anxiety in the face of

[158] Khatia Thandilashvili cites statistical data in her research paper. Based on the above-mentioned statistical data, 196 476 crimes were registered in 2016-2019, out of which law enforcement agencies opened 83 926 crimes. Only 171 lawsuits were filed in 8 courts of Georgia requesting compensation for incurred damage in the period between 2010 to January 22, 2020. 102 cases out of 171 were resolved in favour of the victim: 75 lawsuits were fully satisfied, 16 - partially, and in 11 cases, an agreement was reached. It should be noted that the data provided by the researcher concerned all categories of crime. These data on cases of violence against women and domestic violence should have been even more minimalistic. See: see: Tandilashvili Kh., Legal standing of the victim in the Georgian criminal proceedings being in the process of internalisation, Research paper, Ivane Javakhishvili Tbilisi State University, 226-227. available in Georgian on: https://www.tsu.ge/assets/media/files/48/disertaciebi3/Khatia_Tandilashvili.pdf retrieved 23.05.2024.

[159] Tandilashvili Kh., Legal standing of the victim in the Georgian criminal proceedings being in the process of internalisation, Research paper, Ivane Javakhishvili Tbilisi State University, 228-230. available in Georgian on: https://www.tsu.ge/assets/media/files/48/disertaciebi3/Khatia_Tandilashvili.pdf retrieved 23.05.2024.

stress. She was extremely emotional and permanently burst into tears. The minor child talked about the traumatic experience, traumatic stress and the anxiety arising from the traumatic experience, as well as generalised anxiety disorder.

The City Court relied on Article 413 of the Civil Code of Georgia when discussing the issue related to the provision of compensation for non-property damage. Article 413 of the Civil Code of Georgia states that monetary compensation for non-property damages may be claimed only in the cases precisely prescribed by law, in the form of reasonable and fair compensation. In cases of bodily injury or harm inflicted to a person's health, the injured party may claim non-property damages as well. The Court relied on the interpretations of the Supreme Court of Georgia in the motivational part and indicated that the moral damage arising from the encroachment on the body and/or health might not result from the offence but could be a concomitant consequence of it (such as the inability to lead an active life, changing the lifestyle and rhythm, nervous tension, leading to the inferiority complex or other negative feelings). However, in such cases, confirming that the victim's moral feelings and spiritual suffering result from encroachment on health is obligatory.[160] According to Paragraph 2 of Article 413 of the Civil Code of Georgia, the basis for compensation for moral damage is the encroachment of merit -health (enshrined in the norm), as a result of which the victim experiences spiritual suffering and mental stress. The injury inflicted on the body or harm to health should mean an impact that encroaches victim's body or the internal processes of his/her body or organism.[161] The court noted that violence can take different forms, but it always leads to serious damage to a person's health, development and socialisation. The immediate consequences of violence include: acute psychological problems - excessive aggression, fears, depression, feelings of helplessness and inferiority, and others.

Based on the court's interpretation, if property damage can manifest in damage or destruction of personal property or in action when a person loses his/her property, moral damage is the damage that manifests in the person's mental suffering, spiritual pain, and emotional loss. It is impossible to evaluate this loss accurately to determine the equivalent of spiritual pain. Therefore, the court evaluates it using its own evaluation categories.

[160] The Decision of the Supreme Court of Georgia №as-1232- 2021 of February 18, 2022.
[161] The Decision of the Supreme Court of Georgia №#as-1156-1176-2011 of January 20, 2012.

The court, in the above-mentioned case, found that the abuser's actions affected the emotional state of both applicants. It has affected the development and socialisation of the minor. Namely, the brain of the minor being in the process of development was affected. The child's age at the time of the commitment of the action and the fact that a family member - the spouse - carried out these actions against her mother repeatedly should be taken into account. The court found that as a result of physical suffering, unlawful violent treatment and intimidation of A.I., the perpetrator inflicted damage to the mental state of his wife and minor child, which in the above-mentioned case equals to inflicting damage to body or health. Taking this into account, the City Court instructed the convict to pay 7000-7000 GEL in favour of the victims as compensation for incurred non-material damage.

The City Court also met the request for compensation for non-material damage in the strategic litigation case of K.V. In particular, based on the criminal conviction case, the court considered the fact of inflicting light injuries and psychological suffering on K.V. as prejudicial. In the above-mentioned case, the Court was also guided by Article 413 and Article 992 of the Civil Code of Georgia and instructed the perpetrator to pay compensation for inflicted moral damage in the amount of 10 000 GEL. It should be noted the Ambrolauri District Court, on the same legal grounds, instructed the perpetrator to pay compensation for inflicting non-material damages in favour of his ex-partner and the minor children in the amount of 15 000 GEL in the strategic litigation cases of P.J. and his minor children, B.R. and N.R.

13.2. State Providing Compensation for Damage to Victims of Violence against Women and Domestic Violence

Compensation for the damage to the victim is important from the material, moral, and victimological points of view. However, victims of crime frequently fail to receive compensation directly from the offender because the existing process of litigation imposes a heavy burden on the victim, the offender is insolvent, or for some other reason. Therefore, the international community was in need to find alternative ways of receiving compensation.

In most countries, the challenge of compensating the crime victims for inflicted damage has been overtaken by the state, and today, a number of countries foresee the possibility of

providing state compensation to the victims. The above-mentioned approach is based on two main legal foundations and principles: 1. Given that the state has a monopoly on criminal proceedings/litigation and the fight against crime, it should also assume the liability that arises from the state's failure to protect the people from crime. One of these liabilities can be providing compensation for the inflicted damage.[162] 2. The principle of the welfare/social state and the idea of social solidarity obligate the society to take certain responsibility and pay compensation to the crime victims as relatively vulnerable people and people who are in hardship/face difficulties.[163]

The idea of paying state compensation to crime victims has been quickly reflected in international standards. In 1983, the Committee of Ministers of the Council of Europe adopted the European Convention on the Compensation of Victims of Violent Crimes.[164] The Convention entered into force in 1988. It should be considered as a first step in codifying and further harmonising state compensation, defining the main guiding principles. According to the Convention, compensation for damage by the state is considered as the last alternative when compensation is not fully available from other sources.[165] The state should contribute to compensating those who have sustained serious bodily injury or impairment of health or death.[166] The compensation for damage is envisaged by the convention in case of loss of earnings, medical and hospitalisation expenses and funeral expenses, and, as regards dependants, loss of maintenance.[167]

After adopting the Council of Europe Convention, the issue of state compensation for crime victims was reinforced in the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. [168] After the Council of Europe and the United Nations, the European Union also issued the Directive on Compensation to Crime Victims. [169]

The standard established by the Istanbul Convention, which is binding for Georgia, is particularly important for the purposes of the above-mentioned analytical work. According

[162] Buck, K., State Compensation to Crime Victims and the Principle of Social Solidarity, Eur. J. Crime Crim. Law. Crim. Justice, Vol. 13, Iss. 2, 2005, 150.
[163] Buck, K., State Compensation to Crime Victims and the Principle of Social Solidarity, Eur. J. Crime Crim. Law. Crim. Justice, Vol. 13, Iss. 2, 2005, 151. Katsoris, N.C., The European Convention on the Compensation of Victims of Violent Crimes: A Decade of Frustration, Fordham Int. Law J., Vol. 14, Iss. 1, 1990, 189.
[164] European Convention on the Compensation of Victims of Violent Crimes, Strasbourg, 24.XI.1983.
[165] European Convention on the Compensation of Victims of Violent Crimes, Strasbourg, 24.XI.1983, Article 2.
[166] European Convention on the Compensation of Victims of Violent Crimes, Strasbourg, 24.XI.1983, Article 2.
[167] European Convention on the Compensation of Victims of Violent Crimes, Strasbourg, 24.XI.1983, Article 4.
[168] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985, para. 12-13.
[169] Council Directive 2004/80/EC of 29 April 2004 relating to Compensation to Crime Victims.

to Paragraph 2 of Article 30, the state compensation shall be awarded to those who have sustained serious bodily injury or impairment of health to the extent that the damage is not covered by other sources such as the perpetrator, insurance or state-funded health and social provisions. This does not preclude parties from claiming regress for compensation awarded from the perpetrator, as long as due regard is paid to the victim's safety.[170]

The above-mentioned regulation establishes a subsidiary obligation for the state to compensate. The conditions relating to the application for compensation may be established by internal law, such as the requirement that the victim first and foremost seek compensation from the perpetrator. The drafters emphasised that state compensation should be awarded in situations where the victim has sustained serious bodily injury or impairment of health. It should be noted that the term "bodily injury" includes injuries which have caused the death of the victim, and that "impairment of health" encompasses serious psychological damages caused by acts of psychological violence, as referred to in Article 33.[171]

Despite the obligation established by the international standard, Georgia ensured the provision of state compensation for victims of domestic violence and violence against women only at the end of 2022, when the Decree of Government of Georgia N523 of November 9, 2022, approved the "Rules on Defining Amount and Issuing Compensation for Victims of Violence against Women and/or Domestic Violence".

According to the above-mentioned Rule, the State Care Agency was defined as the authorised institution for damage compensation. [172] It issues state compensation in two cases. On one hand, the rule envisages compensation of 10 000 GEL[173] for the children of the victims of femicide in case of death of the victim of violence against women and domestic violence. The minor children of the victim, at the time of the crime being committed, have the right to request compensation both during the period of being minors

[170] The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, article 30, para. 2.
[171] Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Treaty Series - No. 210, Istanbul, 11.V.2011, para 166.
[172] Decree of Government of Georgia N523 of November 9, 2022, approved the "Rules on Defining Amount and Issuing Compensation for Victims of Violence against Women and/or Domestic Violence", Paragraph 4 of Article 5.
[173] In the case of more than one child, the compensation amount will be distributed proportionally and the corresponding share will be awarded to the child applying for compensation.

and within 3 years after reaching adulthood.[174] On the other hand, the Rule foresees compensation in the event that the victim of violence against women and domestic violence requested the perpetrator to pay compensation for non-material damage through civil litigation, which was met on the basis of the court decision. However, at least 40% of the above-mentioned decision could not be enforced within 6 months from the start of the enforcement proceedings. [175] In the above-mentioned case as well, the limit of compensation issued by the state is determined in the amount of 10 000 GEL.[176]

The non-governmental organisation "Rights Georgia" was the leader, who applied to the State Care Agency within the framework of strategic litigation and requested compensation in the amount of 10 000 GEL for the minor children of the victims of femicide. In addition to the fact that all these administrative proceedings were successfully completed, it is strategically important to note the fact that, according to the practice established by the State Care Agency, compensation was awarded to the minor children of the victims of femicide that occurred before the adoption and implementation of the Rule, who were still minors or 3 years had not elapsed after reaching the age of adulthood.

[174] Decree of Government of Georgia N523 of November 9, 2022, approved the "Rules on Defining Amount and Issuing Compensation for Victims of Violence against Women and/or Domestic Violence", Paragraph 4 of Article 4 and Paragraph 3 of Article 5.
[175] Decree of Government of Georgia N523 of November 9, 2022, approved the "Rules on Defining Amount and Issuing Compensation for Victims of Violence against Women and/or Domestic Violence", Paragraph 1 and Paragraph 3 of Article 4.
[176] Decree of Government of Georgia N523 of November 9, 2022, approved the "Rules on Defining Amount and Issuing Compensation for Victims of Violence against Women and/or Domestic Violence", Paragraph 1 and Paragraph 2 of Article 5.