

**Programmatic Cooperation Framework for
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus**



**Training Manual for Judges and Prosecutors on Ensuring Women's
Access to Justice**

COUNTRY CHAPTER FOR GEORGIA

In the framework of the project
“Improving Women’s Access to Justice in the Eastern Partnership Countries”
(Armenia, Azerbaijan, Georgia, Republic of Moldova and Ukraine)

December 2016

The project “Improving Women’s Access to Justice in the Eastern Partnership Countries” (Armenia, Azerbaijan, Georgia, Republic of Moldova and Ukraine) is a co-operative regional initiative between the Council of Europe and the European Union (EU) for the period 2015-2017. As part of the Programmatic Cooperation Framework (PCF), it is funded by the Council of Europe and the European Union and is implemented by the Council of Europe.

The project aims to identify and support the removal of obstacles to women’s access to justice while also strengthening the capacity of each participating country to design measures to ensure that the justice chain is gender-responsive, with a focus on training for legal practitioners.

This project published five country studies on *Barriers, Remedies and Good Practices for Women’s Access to Justice*¹ for Armenia, Azerbaijan, Georgia, the Republic of Moldova, and Ukraine, subsequently bringing together national stakeholders and experts at regional conferences to share experience and good practices, and organised national training seminars for judges and prosecutors, in partnership with national training legal institutions.

The *Training Manual for Judges and Prosecutors on Ensuring Access to Justice for Women* was developed by a group of national and international experts and includes a general common part and a national part specific to the relevant country.

The opinions expressed in this manual are those of the authors and do not reflect the official position of the Council of Europe or the European Union. The reproduction of extracts from this document is authorised on the condition that the source is properly cited.

¹ The country studies on *Barriers, Remedies and Good Practices for Women’s Access to Justice* in five Eastern Partnership countries is available at the gender equality website of the Council of Europe.

Biographies

Maia Bakradze – Ms. Bakradze is an invited trainer in private law at the Training Center of Justice of Georgia as well as the High School of Justice of Georgia, where she leads the course on Strengthening the Judiciary through Gender Equality for candidate judges. Ms. Bakradze has previously worked as a lawyer for 6 years and has 10 years of experience as a sitting judge. She has expertise preparing and delivering law courses and administering projects. Currently, Ms. Bakradze leads courses on procedural law and chairs the Board of the Association Unity of Judges of Georgia. She holds a Master’s degree with honors in Academic Law from the Technical University of Georgia and is the co-author of the Manual for Judges on Administrative Review.

Maia Kvirikashvili – Ms. Kvirikashvili is the Head of the Human Rights Protection Unit at the Office of the Chief Prosecutor of Georgia. She has previously worked as a prosecutor in the same unit as well as with the Prosecution Service of one of the districts of Georgia. She has four years of experience as an invited lecturer and holds a degree in law from the Tbilisi State University as well as an LL.M in Rule of Law for Development from the Loyola University Chicago School of Law.

Natia Merebashvili – Ms. Merebashvili is the Head of the Unit of Supervision over Prosecutors Work at the Chief Prosecutor’s Office. She is an active trainer on domestic violence, juvenile justice, criminal procedure and integrated criminal case management software. She has experience as an international expert in juvenile justice and as a lecturer of criminal procedure law. Previously, she has worked as an investigator at the Investigative Unit of the Chief Prosecutor’s Office of Georgia and has experience as a prosecutor for five years in various units of the office. Ms. Merebashvili holds a Master’s degree in Law from Tbilisi State University.

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As part of the *Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice*, this country chapter for Georgia introduces the obstacles to equal access to justice that women experience in Georgia and proposes approaches to promote a more gender-responsive justice chain. It presents a review of the relevant national and international normative frameworks on the effective protection of women's rights. This chapter provides an analysis of the main spheres in which women frequently experience rights violations. Attention is focused on the role of judges and prosecutors in increasing women's use of the justice system for the protection of their rights, and the measures and tools relevant legal professionals may use to ensure that women are duly protected notwithstanding certain legal and procedural drawbacks and omissions. This chapter also provides an overview of recommendations for identifying and combatting gender stereotypes and offers specific approaches for judges, prosecutors and their trainers, to help ensure that constraints or inconsistencies in legislation, different views of various groups of society, stereotypes, and established historic and cultural causes are not perceived as justifiable reasons for failure to apply international standards for the protection of women's rights in Georgia. The combined use of the general part of the *Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice* and the present country chapter will be used as guidelines to promote prosecutors and judges to be more sensitized towards the violation of women's rights, which in turn will result in an increase in access to justice for women.

Discovering gender bias

In Georgia, the efforts to promote gender equality have existed for a long period, and has gradually become more prominent. Groups of women in Georgia have promoted the principles of gender equality, such as ensuring equal opportunities and freedom of expression, even before such principles were recognized in law. In the nineteenth and twentieth centuries a distinct group of women existed that in the same manner as men were considered to be actively involved in public life. These women confronted the stereotypes that prevailed in Georgian society during that time.² In 1917–1918 the newspaper “The Voice of Georgian Women” was published for the purpose of covering issues related to feminism in support of the feminist movement. Despite the controversy it stirred, the articles published in the newspaper were dedicated to issues such as the role of women in the family, politics and public life, insisting on equality between women and men. The newspaper also covered events related to the women's rights movement taking place in different parts of the world. Georgian feminists closely followed the fight for equality, ongoing in different countries and were supporting like-minded women. In fact, the slogan “Long live women's international

² Barbare Jorjadze, Kato Mikeladze, Barbare Sulxanishvili, Nino Nadiradze and their fellow-fighters were the activists of the feminist movement of that period in Georgia. Due to the resistance to their position and controversial attitudes prevailing in the society, these women, who were by origin from different parts of Georgia, were hiding their true identity and were expressing their liberal ideas and support to each other under the pseudonym. Source: <http://www.feminizmi.org/project/teonagelashvili/>

solidarity” was frequently published on the front page of several editions of the newspaper. These women activists had many supporters, but were outnumbered by their opponents.

On April 9, 1991, Georgia proclaimed its independence and as the post-Soviet transitional period began, the issue of the implementation of legal norms ensuring the protection of women’s rights, became more relevant. Georgia joined different international conventions and covenants and, based on the order of the Government of Georgia adopted in September 24, 1994, the country joined the Convention on Elimination of all forms of Discrimination against Women, which entered into force on November 25 of the same year. Joining the Convention promoted the activities of women’s rights defenders, NGOs and lawmakers in the field, and an improvement of state affairs in the sphere regarding the protection of women’s rights, increasing society’s awareness of these issues. Despite numerous legal amendments, it remains clear that the declaration of women’s rights in law is not sufficient to ensure their proper implementation.

Georgia faces immense challenges to ensuring gender equality. Despite the fact that the national legal framework has continued to improve in a consistent manner, the societal attitudes in Georgia still hinder active involvement of women in the protection of their social, political or economic rights and impede effective enforcement of the legal framework. The Committee on the Elimination of all forms of Discrimination against Women in its concluding observations for Georgia in 2006 and in 2014 expressed its concern regarding the patriarchal attitudes and stereotypes that prevail in the society towards the respective roles of men and women. The situation from the standpoint of societal awareness is still problematic, although the Committee also acknowledges the efforts of the civil society, international organizations and the government, directed towards overcoming of the stereotypes.

A report prepared on the basis of the survey “Public attitudes on gender equality in politics and business” reflects the current mentality on given issues. The survey confirms that perceptions regarding the roles of men and women in the family remain traditional. Georgian society is characterized by a certain family hierarchy and subordination between family members, which is based on the stereotypes and patriarchal attitudes towards these roles. Specifically, the notion that the man should be the main breadwinner in the family is a common perception in Georgia.

It is considered, that the head of the family should be the man, and his main role should be to financially support the family. Of Georgia’s population, 88% believe that the family’s breadwinner should be a man, while only 1% of consider that a woman should also have this role. Only 11% consider that men and women should contribute equally to supporting the family financially. It is noteworthy that there were no major differences between rural and urban areas. More precisely, 86% of the urban population and 90% of the rural population consider that the man should be the breadwinner in the family.

At the same time, it is important to note that the real state of affairs in Georgian families differ from their perception of what should be the “ideal scenario”. Based on the data gathered from the group of people interviewed, 34% of women are the breadwinners for their families. In Georgia, it is believed that a woman should attain self-fulfilment through

her role as mother and housewife. According to 61% of those interviewed, a woman should mainly take care of children and do the household chores, instead of pursuing career development. This opinion prevails mainly among Georgian men (72%), and less among women (52%). However, the overwhelming majority of those interviewed (92%) agree with the statement that the key role of a woman is to take care of her family. With this statement, 93% of men and 91% of women agreed fully.

Moreover, according to 79% of the interviewees a woman is respected more based on her success in the family sphere, rather than on the basis of her career achievements. The majority of the respondents (66%) agreed with the statement, that overall it is better for all involved when a man works, and a woman takes care of the family as a housewife. More specifically, 73% of men and 61% of women agreed/ men (73%), than women (61%) agreed to this statement. Also, the majority of the respondents (72%) consider that a man should be employed and provide income for the family, while the woman should carry out the household chores. This opinion is shared by 66% of the women and 80% of the men.

As the results of the survey show, according to traditional Georgian perceptions, a woman should mainly be obedient to her husband and a good housewife and mother. Consequently, on a social level, a woman is required to obey a man, act in compliance with his wishes, and put her own desires and preferences in second place. Such perceptions are characteristic in male dominated patriarchal societies. Consequently, for the purpose of the empowerment of women and promotion their rights it is necessary to empower women economically in order to increase their awareness regarding their rights. It is also necessary to increase women's self-esteem, so that a culture can be promoted in which women can trust their own capabilities and feel motivated.. Overcoming the challenges associated with gender stereotypes and flawed traditional attitudes is even more difficult.³ It is obvious, that such attitudes and perceptions have a huge impact on the activities of women. Many challenges therefore remain for women to turn to the judiciary or law-enforcement bodies in order to ensure their personal safety, and the protection of labour or property as well as non-property related rights. Despite improving circumstances, women still refrain from filing complaints against their brothers, husbands, father, or direct superiors.

Attaining positive changes in public attitudes as well as the elimination of gender stereotypes, the role of judges, prosecutors, lawyers, law enforcement officers, civil servants, educators and human rights defenders is critical, especially in ensuring women's equal access to impartial and effective justice.

Review of common principles of internal legislation providing equality of people

According to article 14 of the Constitution of Georgia “Everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence”. In 2008

³ http://www.ge.undp.org/content/dam/georgia/docs/publications/GE_UNDP_Gender_Research_GEO.pdf

the Constitutional Court of Georgia interpreted this given statement as the “fundamental principle of the Constitution”. Article 14 of the Constitution establishes not only the right of equality by law, but also the fundamental principle of equality before the law. The purpose of the norm is to establish equality before the law. At first glance, the norm contains an exhaustive list of grounds, on the basis of which discrimination is prohibited, but the purpose of the norm is much broader. A narrow interpretation would be detrimental to the principle and would derogate its importance in the legal sense.⁴

According to paragraph 4 of article 30 of the Constitution of Georgia, the protection of labour rights, fair remuneration of labour and safe, healthy working conditions of minors and women shall be determined by the organic law. This clearly indicates the obligation of the state to define women’s labour rights by the organic law. This is the only reference the Constitution makes specifically to “women”.

Article 36 of the Constitution establishes that marriage shall be based upon the equality of rights, free will of spouses and the need to protect the rights of the mother and child by law.

In 2010, the Parliament of Georgia adopted the law “On Gender Equality”. This Law defines the fundamental guarantees for equal rights, freedoms and opportunities provided for in the Constitution of Georgia. It also determines the legal mechanisms and conditions for their realisation in relevant aspects of public life.⁵

Furthermore, the law contains norms defining “gender’ and “gender equality“⁶ and stipulates the obligation of the state to ensure the equality of rights of men and women in political, economic, social and cultural spheres⁷. Relevant articles of the law stipulate for the equal rights of men and women in areas such as labour relations, education and science, access to information, healthcare and social protection, family relations, the right to equal suffrage and all other relevant guarantees⁸.

Next, a Council for Gender Equality shall be set up to ensure systematic and coordinated work regarding gender-related issues. The Gender Equality Council shall represent the Parliament in the sphere of gender issues and shall develop and submit for approval to the Parliament of Georgia an action plan on providing gender equality, ensuring coordination, in addition to monitoring its implementation. Gender Equality Councils shall be set up by the Supreme representative bodies of the autonomous republics, as well as under the local self-governance bodies. According to the law, the Public Defender of Georgia within the scope of his/her authority, shall monitor the protection of gender equality. Important provisions of the Law on Gender Equality also introduce the requirement that official statistical reports on

⁴ The Decision of the Constitutional Court of Georgia of March 31 of 2008, 2/1–392 <http://constcourt.ge/ge/legal-acts/judgments/saqartvelos-moqalaqe-shota-beridze-da-sxvebi-saqartvelos-parlamentis-winaagmdeg-460.page>

⁵ The Law on Gender Equality, article 1

⁶ The Law on Gender Equality, article 3

⁷ The Law on Gender Equality, article 4

⁸ The Law on Gender Equality, articles 6–11

gender issues shall contain sex-disaggregated data⁹. Despite the fact that the National Statistical Agency¹⁰ does maintain sex-disaggregated data it still remains a challenge for Georgia today as other public agencies do not maintain and publish sex-disaggregated data.

The Law on Gender Equality does not provide a mechanism to ensure that a person can defend her or his rights, but such a mechanism is provided by the Law on Elimination of all Forms of Discrimination, adopted on May 2, 2014. The Law is intended to eliminate every form of discrimination and to ensure the equal the protection of the rights of every natural and legal person by central or local public bodies. Further, the law prohibits discrimination on the grounds of gender, or gender identity.¹¹ It is noteworthy, that the law explicitly states that temporary special measures intended to promote gender equality in situations of pregnancy, maternity, as well as equality for persons with limited capabilities, shall not be considered as discriminatory¹². The direct reference in the law ensures a much more effective application of temporary measures to women and persons with limited capabilities. In certain situations, the law may allow for exclusions which on the one hand, can promote more active involvement of women in the protection of their rights, and on the other hand, simplify the procedure required to seek remedies before the court.

In order to protect one's own rights on the basis of the the anti-discrimination law, a person can apply to the public defender or the court. For this purpose, in November 2014, the Department of Equality was set up under the Public Defender's Office. One of the main functions of this department is to work with cases related to discrimination.

The Law requires all organizations to bring their activities and internal regulations in compliance with the requirements of the law. However, there is no compulsory mechanism in place to oblige organizations to take part in the Public Defender's review and monitoring, and therefore, it depends on the will of the institutions whether they provide the relevant information to the Public Defender's Office upon his request or not. In the event that the requested information is not provided, the organizations are not held liable, hindering the ability to properly consider discrimination cases. The Public Defender does not have the authority to apply sanctions in regards with failure of private companies to cooperate, or provide requested information. The unavailability of such a mechanism hinders the ability to process applications and establishing factual circumstances, related to cases of discrimination.

⁹ The Law on Gender Equality, article 5

¹⁰Independent agency, responsible for maintenance of official statistics in accordance with international methodology and standards – legal entity of public law National Statistical Agency (Geostat). From December 11 of 2009 as basis for its functioning serves the Law of Georgia on Official Statistics. Information is available at:

http://www.geostat.ge/?action=page&p_id=28&lang=geo

¹¹ The Law on Elimination of all Forms of Discrimination, article 1

¹² The Law on Elimination of all Forms of Discrimination, article 2.7

Currently, the application procedure to the court for alleged discrimination takes three months. Also, according to the law if the applicant applies to the court, the Public Defender has to suspend all proceedings. Suspension of proceedings is of conditional character, as according to the law, the court ruling on the case serves as grounds for termination of the proceedings initiated by the Public Defender. Essentially, if a person applies to the Public Defender, and the case is not considered within a three-month period, the person loses the right to apply to the court. This indicates the ineffectiveness of Georgia's current system in regards to the protection of a person's rights. It is important, that lawmakers take this fact into consideration and introduce amendments to the law so that an application to the Public Defender eliminates or puts on hold the time limitation for the application to the court.

Still, the courts have not considered any cases of discrimination on the grounds of gender. The Public Defender's Office has considered several.

For example, one case in which the Public Defender reached a decision was for an organization working against gender-based discrimination named "Sapari". This organization applied to the Public Defender's Office for the purpose of demanding further elaboration and action regarding a sexist advertisement initiated by the Bank of Georgia. The Public Defender's office considered the advertisement to be discriminatory. The advertisement under consideration showed a woman asking her husband for 100 GEL and then 20 GEL. After she asks him for money repeatedly, at the end of the advertisement, her husband is turned into a cash machine. The content of the advertisement confirms the stereotype that a woman is fully dependent on her husband financially and does not generate her own income. Taking into consideration that advertisements can play a positive role in combating stereotypes, promoting the increase of gender equality, and reducing violence against women, the Public Defender of Georgia called upon the National Bank of Georgia, to refrain itself from producing and airing ads of similar sexist content in the future. Rather, advertisements should promote the treatment of women with respect and dignity, portraying them as equals to men.

The second case in which the Public Defender of Georgia elaborated his general recommendation, was related to the complaint of an NGO based on "Article 42 of the Constitution", filed against an internet employment agency. According to research conducted by the above-referred NGO, in the period under examination, 71,360 vacancies were published, out of which 10.01% were compiled using language targeting women, while 24.02% used language targeting men. More specifically, in the postings published on the website www.jobs.ge, the word "man" was used 1,088 times, while the phrase "of pleasant appearance" was used 1,589 times; the word "stable" was used 780 times, while the word "lady" was used 607 times. Thus, the Public Defender noted, that "with the gradual equalization of the roles of men and women, the differences between the potential jobs taken on by men rather than women no longer exist. Although employers still retain stereotypical

attitudes regarding the fact that certain jobs should be carried out by individuals pertaining to a specific gender, this wrongly establishes discriminatory practices at the pre-contractual stage. However, in Georgia it happens often, and there is typically a very rigid approach towards the issue, specifically regarding which job should be done by men and which jobs are more suitable for women. The perceptions that employers have in regards to gender roles impacts the words used in job postings published in the media, and they quite often result in the hiring of employees on discriminatory grounds”. According to the Public Defender, the fact that the internet employment agency did not filter the job announcements containing discriminatory language, employers were able to use discriminatory practices at the hiring stage. On the other hand, by publishing these job announcements, the agency itself directly promotes discriminatory practices.¹³

It is important that during review of any case in the court or in the investigative bodies, judges, prosecutors and investigators address and respond to discriminatory or sexist statements made by either the parties in the matter.

It should be evaluated as a good practice that according to the information disclosed by the human rights defenders in the social networks, there are cases, when judges in the course of trials try to respond to such statements, regardless of whether or not the subject of dispute concerns cases of gender-based harassment or discrimination more broadly.

Labour rights of women

In Georgia labour relations are mainly regulated by two laws, the Labour Code and the Law on Civil Service. The Labour Code is the organic law, which regulates labour relations and related issues on the territory of Georgia, unless they are otherwise regulated by the special law or international treaties.¹⁴ The Law on Civil Service determines the legal basis of organising civil service in Georgia; regulates relations concerning the execution of civil service and defines the legal status of a civil servant.¹⁵

The main definitions and regulations, determining legal status of the employees are provided in the Labour Code. The Law on Civil Service contains blanket norms, according to which the legislation regulating labour relations extends these norms to the civil service, taking into consideration the specificity of the present law.

The Labour Code prohibits requiring a pregnant woman, a woman who has recently given birth, a handicapped person, or a minor to work overtime without their consent. Overtime work is deemed as the work performed by an employee under agreement between the parties in the period of time, in which the duration of work exceeds 40 hours a week for an adult, 36 hours a week for a minor between the ages of 16 and 18, and 24 hours a week for a minor

¹³ <http://www.ombudsman.ge/uploads/other/2/2501.pdf> The Public Defender’s general recommendation to jobs.ge 2015.

¹⁴ The organic law of Georgia Labor Code, article 1

¹⁵ Law of Georgia on Civil Service, article 1

between the ages of 14 and 16¹⁶. The law also prohibits the employment of a minor, a pregnant woman, or a woman who has recently given birth or a breastfeeding woman for a night job (from 22:00 p.m. to 6:00 a.m.) without their consent¹⁷. Finally, the Law on Civil Service also provides for the temporary relief of a pregnant woman's duties.¹⁸

In regards to paid maternity and parental leave, an equal standard is established in both private and public sectors. An employed person is granted 183 days of paid maternity leave, and 200 days in cases of complicated childbirth or twins. In a given period, they are entitled to receive full remuneration, in addition to state assistance allocated from the state budget in the amount of 1000 GEL.¹⁹ Specifically, the law requires employers to grant a leave for the adoption of a new-born child for a period of 550 days, out of which, the worker is paid while on leave for 90 days. It is interesting however, that the law does not provide a clear answer to whether a father can benefit from paid leave for caring after a sick child or not. At the same time, according to the Order of the Minister of Healthcare of Georgia, for maternity, parental and child care leave, the relevant pay is not extended to family members other than the mother, except for in the event of the death of the pregnant mother or her death during labour. When a baby is born alive, the beneficiary of the assistance is a father or another carer.

Moreover, a woman civil servant may not be dismissed from her work due to staff reduction, long-term incapacity or health condition for the first three years of the child-raising period.

Upon decision of acting governor of Telavi Municipality, E.B. was dismissed from her position on the grounds of staff reduction. At the time of dismissal, she was pregnant, and was 19-20 weeks pregnant. Although she notified the acting governor that she was pregnant only after her dismissal, she requested that the order of her dismissal be abolished, and that she be restored to her previously occupied position, requiring compensation for the lost remuneration. Her claim was not satisfied on the grounds that she did not inform the employer regarding her condition before her dismissal. The Telavi district court upheld the decision, while the higher instance courts reversed the decision and satisfied E.B.'s claim. In the reasoning of its decision, the Supreme Court stated the following:

“According to paragraph 3 of article 36 of the Constitution of Georgia, a child and mother's rights are protected by the law. On the one hand, the Constitution recognizes the need for special protection of the rights of a mother and a child (including the right of a mother to employment). On the other hand, it obligates the lawmaker to adopt relevant regulations. Important guarantees of the protection of rights of women civil servants are provided in the Law of Georgia on Civil Service, namely its article 111, which establishes limitations on the administrations of public institutions in regard to dismissal of pregnant women, employed in civil service. According to paragraph 2 of article 111 of

¹⁶ The organic law of Georgia Labor Code, article 17

¹⁷ Ibid. article 18

¹⁸ The Law of Georgia on Civil Service, article 46

¹⁹ The Law of Georgia on Civil Service, article 19 and the Organic law of Georgia Labor Code, articles 27, 29

the Law of Georgia on Civil Service a civil servant (a woman) may not be dismissed from the service due to staff reduction, long-term incapacity or health condition, as well as the results of certification during pregnancy or for up to three years during the child-raising period. With this regulation for the given issue, the law not only aims to protect the labour rights of pregnant civil servants and the provision of additional social guarantees, but at the same time stipulates to ensure the special protection of the rights of children under 3. International acts also refer to the importance of special protection of these legal values. According to article 8.2 of the European Social Charter, it is considered “as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her a notice of dismissal at such a time that the notice would expire during this period. Although the norm referred to above has not been ratified by the Parliament of Georgia, within the framework of accession to the European Social Charter (Resolution №1876 of the Parliament of Georgia of 01.07.05), Georgia has taken the responsibility to ensure provision of such conditions, which promote the effective implementation of a whole set of rights and principles, provided by the Charter, including the right of an employed women, in case of maternity, to enjoy a special protection (paragraph 8 of Part I of the European Social Charter).”

“At the same time it is noteworthy, that according to paragraph 2 of article 25 of the Universal Declaration of Human Rights (ratified by the Resolution of the Supreme Council of Georgia, dated by 15.09.1991) motherhood and childhood are entitled to special care and assistance. The Cassation Chamber states, that prohibition of dismissal of a pregnant woman from a job only on the legislative level is not sufficient for the proper protection of rights of a civil servant, and on the basis of relevant normative frameworks, public authorities should ensure the effective protection of the rights of pregnant women in practice. The Cassation Court notes, that after E.B. was dismissed from her job, E.B. brought her complaint to the Governor’s Office within the timeline to appeal the decision, stipulated by the act of 21.01.13, in particular on 28.01.2013. As a result of her complaint, the Administration was made aware of the circumstance, and concluded that the dismissal of E.B. from her position was inadmissible on the grounds of article 111.2 of the Law of Georgia on Civil Service. The imperative of effective implementation of governance vests an administrative body with the authority to ensure the compliance of governance acts with current legal space and actual changes, regulating specific relations in a different manner. The principle of legality, stipulated by article 5 of the General Administrative Code of Georgia grants the administrative bodies to void administrative acts (including individual legal-administrative acts) in the event of their illegitimacy.”²⁰

Given that the quality of women’s rights protection is relatively low, it is important that the court undertakes its role and responsibility in revealing facts that violate the rights of women. If the woman’s right to work is violated and the biological sign (pregnancy, breastfeeding, post-delivery care) proceeding from her gender becomes defining, the courts must indicate, that there is a case of difference in treatment on the grounds of gender. In this regard, the decision of the Supreme Court is noteworthy as a good practice of law.

Another example is the case of a pregnant woman who was dismissed from the local self-governance body, municipality administration, on the basis of a letter of resignation she submitted. Later, she contested the letter of resignation. The woman indicated that she had submitted the letter of resignation on the basis of coercion and by false pretences. She explained that a colleague had told

²⁰ Decision of the Supreme Court of Georgia on case #bc388-377(k-13) <http://prg.supremecourt.ge/DetailViewAdmin.aspx>

her that all employees had to submit letters of resignation, and then a new governor would appoint them all again.

The Administrative Chamber of the Supreme Court found in favour of the claimant. In deliberating on the authenticity of the letter of resignation, the court took into account the woman's pregnancy. Further, the court noted that the voluntary resignation of a woman on the seventh month of her pregnancy creates doubt, especially taking into account the circumstance that she might take advantage of paid and unpaid leave during and after pregnancy. The court noted that the state has a particular responsibility in terms of women's rights protection and referred to international acts in the decision. The decision criticises gender insensitive laws.

“As a result of analysis of the local legislation, the Cassation Court concludes that in relation to labour rights of women, including pregnant women, minimum standards of protection are defined. In particular, Georgian legislation does not recognize the guarantees of equal remuneration, efficient norms, mechanisms prohibiting gender discrimination and sexual harassment at work. Moreover, the norms establishing the terms of the maternity leave of working women are also inconsistent with the international standards and do not meet the standards of fair conditions. Taking into account the economic and social background, the local legislation does not sufficiently protect labour rights of women before the birth of a child as well as after the birth. Consequently, realization of one of fundamental rights of women, the right of motherhood is extremely problematic.”

“The Cassation Court considers, that normative acts regulating both public and private labour relations require harmonization of the norms of women's rights protection with international standards, in order to eliminate theoretical assumption of gender discrimination at the normative level.”²¹ –reads the rationale of the decision.

According to the Report of the Public Defender of Georgia for the year 2013 on the State of Affairs in the Sphere of Protection of Human Rights and Freedoms in Georgia, the issues of promotion of women, equal participation in economic development activities and equal pay still remain problematic. Despite the fact that more women are employed, the average remuneration of women remains lower than the average remuneration of men, which is preconditioned by the fact that women are employed in lower positions with smaller remuneration with little opportunity to advance, usually referred to as the “glass ceiling” of employment, which hinders their career development and promotion. According to the same report women are frequently refused employment on the ground of their marital status, possible pregnancy, and for the purpose of avoiding maternity and parental leave related expenses.²²

Thus in 2013, the average monthly nominal salary was 773.1 GEL, while the average salary of women amounted to 585.0 GEL, and for men 920.3 GEL. In 2014 this ratio remained at the same level, with the average monthly nominal salary at 818.0 GEL, with an average of

²¹ Decision of the Supreme Court of Georgia on case bs-463-451(k-13) 18 February 2014.

<http://prg.supremecourt.ge/DetailViewAdmin.aspx>

²² The Report of the Public Defender of Georgia on the State of Affairs in the Sphere of Protection of Human Rights and Freedoms in Georgia, 2013 page 495 and 497, available at: <http://www.ombudsman.ge/uploads/other/1/1563.pdf>

617.9 GEL average for women and 980.0 GEL for men.²³ Consequently, it can be concluded that the remuneration of women is 40% lower than the remuneration for men, which indicates that men dominate on higher ranking and better paid positions. Georgian courts have not considered litigations in the given sphere, although the European standards in this regard are quite stringent. For example, the European Court of Justice finds unequal treatment on the grounds of gender by the employer as unacceptable.

The European Court of Justice Case, *Hill & Stapleton v. The Revenue Commission and the Department of Finance*: the case was brought by two individuals, after the government introduced the manner in which duties and remuneration were to be divided in jobs, in which one position was shared by two temporarily employed persons. In the event of a vacancy, the temporarily employed persons could have been hired in a full-time position. Also, the employees occupying a full-time position once a year received salary increase by one grade. Part-time employees were getting a salary supplement after two years of employment, while full-time employees were getting a salary supplement after one year of employment. Two employees, who were returned to a full-time position, complained in regard to the scheme of calculation of salary supplements. According to the government, different treatment was justified, as it was based on the principle of assigning supplemental payment in the period of full-time employment, even though there was no sufficient evidence confirming that the record of service was calculated by the exact number of hours of work. The ECJ established that this was in fact, a case of discrimination by gender as women were mainly employed in part-time positions. The employer cannot justify discrimination by gender caused by the division of job-related duties because if the employer would change it, it would cause an increase in expenses.

In cases of disputable labour relations, it is advised that judges and human rights organizations pay specific attention to whether a women's labour rights are restricted or not, based on claims of an inability to be promoted or gain a salary increase, a violation of the equal remuneration principle.

Women in the Prosecutor's Office of Georgia and general courts

Gender ratio in the Prosecutor's Office of Georgia

Position	Total	Women		Men	
		Count	Percentage	Count	Percentage
Persons employed in the Prosecutor's Office	871	329	38%	542	62%
Prosecutors	436	128	29%	308	71%

²³ http://www.geostat.ge/cms/site_images/_files/georgian/genderuli%20statistika.pdf

Investigators	96	7	7%	89	93%
Interns	58	31	53%	27	47%
Other employees (advisor, support staff and contract employees)	281	163	58%	118	42%
At decision-making positions (chief prosecutor, the first deputy of the chief prosecutor and deputies, heads of departments and their deputies, heads of administration, district prosecutors and their deputies, heads of investigation department and departments of district prosecutor's office, regional prosecutors.	108	15	14%	93	86%

As of December 2015 the gender ratio in the courts system is as follows.

This information will be updated by the end of the year, in a final version of the manual. Because of some ongoing changes in data.

Position	Total	Women		Men	
Number of Judges (26 Trial and 2 Appeals Courts)	230 (with 68 vacant seats)	122	52%	108	48%
Supreme Court	14	6	42%	8	58%
HCOJ members	14	4	28%	11	72%
Disciplinary Committee	3	1	33%	2	67%
Disciplinary Chamber of the Supreme Court, Members	3	1	33%	2	67%
Court Chairs	29	2	6%	27	94%
Chairs of the Court Chambers	17	3	17%	14	83%
HSOJ Independent Council	6	1	16%	5	84%
HSOJ Directorate	2	1	50%	1	50%

Given the data above, it is clear that women are not well represented in administrative positions within the Georgian judiciary system. Moreover, despite the fact that the majority of judges are women (52%); women judges mainly support male candidates for elected positions. Out of 14 members of the Council of Justice, only 4 are women, 2 out of which are elected by judges, and 2 by the Parliament.

Women's rights in families

The Constitution of Georgia, as well as the hierarchically subordinated legislation establishes the principle of equality between spouses. The Civil Code of Georgia contains definitions of

marriage as well as the conditions of entering into marriage. Marriage is a voluntary union of a woman and a man, which is registered with a relevant territorial office of the Public Service Development Agency of the Ministry of Justice of Georgia. Entry into marriage requires persons to be of a marriageable age (18 years old) and consent of the persons to be married. In domestic relations, the spouses shall have equal personal and property rights and bear equal responsibilities²⁴. The Code contains direct prohibition of discrimination when entering into a marriage and in domestic relations, stating that rights may not be restricted directly or indirectly, and no direct or indirect preference may be given on the grounds of origin, social and property status, racial and ethnic background, sex, education, language, attitude to religion, type and nature of activities, place of residence and other circumstances.

According to the civil Code of Georgia, spouses shall jointly decide issues relating to the children's upbringing and other family affairs²⁵, although the law stipulates, that each spouse has the right to retain individuality during their marriage. Each spouse shall be free to choose his or her activity and occupation, and choose his or her place of residence at his or her discretion unless doing so contradicts family interests²⁶. Spouses retain the right to possess separate property in marriage. Property that each of the spouses owned before the marriage, property inherited or received as a gift during the marriage, as well as articles acquired by spouses for personal use shall be deemed as separate property of the spouse.²⁷

Despite the guarantees stipulated by the law, the patriarchal attitudes prevailing in the Georgian society and family's causes nihilism and a passive attitude towards the protection of women's rights. One survey revealed that 63% of the respondents believe that a good wife should obey her husband, even if she does not agree with him. 56% of women and 72% of men agree with this statement.²⁸ Spouses mainly enter into litigation in order to protect their right to property only after divorce. The practice of entering into marriage contracts otherwise, is not widespread.

Spouses mainly enter into litigations more actively in regard to issues related to the bringing up of children, such as imposition of the duty to pay alimony in the event of divorce, determination of the place of residence of a child and custody over a child, which is granted by the court in the events when parents are in disagreement on a given issue. In such disputes, the courts try to protect the best interests of a child, without violation of parent's rights at the same time

The law stipulates that men and women heirs are equal, but due to patriarchal attitudes and deeply rooted stereotypes, women avoid defending their inheritance rights. Traditionally in Georgian families, attitude towards men and women are different. A woman traditionally

²⁴ The Civil Code of Georgia, article 1152

²⁵ The Civil Code, article 1155

²⁶ Ibid. articles 1155–1157

²⁷ Ibid. articles 1161– 1162

²⁸ Survey on public attitudes in regard to gender equality in politics and business

http://www.ge.undp.org/content/dam/georgia/docs/publications/GE_UNDP_Gender_Research_GEO.pdf

obtained dowry from her parents such as movable property, including furniture, crockery, home appliances, and jewellery. By doing so, it was considered that the parents have fulfilled their obligations towards her, while immovable property such as the house and land would go to the son. Daughters' would not claim their share of this property. This tradition was created from the well-established rule according to which a woman would move to live in her husband's house and the son would stay with his parents. This rule promotes a passive attitude of women in regards to protection of their inheritance rights, especially if women belong to ethnic minorities, residing in regions. In the course of disputes on these given issues, the parties involved in the proceedings often express stereotypical and sexist opinions. Such proceedings are especially fertile "polygons" for judges to not pay their due diligence, in order to promote the elimination of stereotypes established in society, and motivate women to fight more actively for their rights and use the safeguards provided by the law more effectively. The proceedings of domestic disputes are often attended by the supporters of the parties, particularly, parents, sisters, brothers, their spouses and other relatives. During oral hearings the judges should explain and focus on issues, such as equal rights of men and women heirs of the same categories, the opportunity of spouses for equal participation in making the decisions on the issues of family needs and equal obligations of mutual support. They should respond to degrading sexist statements and speeches.

The role of judges is important in the process of establishing agreement on the terms of conciliation between the parties. Judges should pay attention to proposals and terms of the parties motivated by stereotypical views such as: "she is a woman and she does not need more"; "he is a man and he must support his family"; "women have more free time"; "a father's property should be inherited by his sons" and "a son is a successor of a gene (the bearer of the family name)". The judges should indicate to the stereotypical character of each statement to the audience and refer to local and international legal standards.

Access to reproductive healthcare, family planning and contraception

The state promotes family planning through adherence to the principle of gender equality. All citizens of Georgia shall have the right to independently determine the number of children they have and the time of their birth.²⁹ Promotion of reproductive health as one of the key objectives of the state is declared in the law by the Ministry of Health, Labour and Social Affairs of Georgia.³⁰ Promotion of awareness rising in the sphere of reproductive health and gender equality is approved by the Ordinance of the Parliament of Georgia of 2014.³¹

Protection of women's health through the reduction of abortions represents one of the priority objectives of the state. The law also establishes the rules of artificial insemination and defines the rights of single women to motherhood, and the donor.³² The decision of

²⁹ See the law of Georgia "On health care", article 136

³⁰ See the law of Georgia "On public health", article 1

³¹ „On approval of Action Plan for 2014-2016 for the implementation of Gender Equality Policy in Georgia", decree of the Parliament of Georgia of 2014, article 4.3. <http://www.mod.gov.ge/assets/up-modul/uploads/pdf/gender/genderuli-Tanasworobis-erovnuli-samoqmedo-gegma.pdf>

³² See the law of Georgia „On health care", articles 141, 143, 144

Tbilisi City Court, which granted the right to a single woman to use a fertilised embryo without permission of her former spouse, is of precedential importance.³³

Sex selection before birth

According to the survey performed with the support of United Nations Population Fund (UNFPA) “Gender-biased sex selection in Georgia, context, evidence and implications”, assessment of abortion indicators is a current issue, as in clinics and other medical centres, abortions are not properly registered. There is no data on the sex of aborted foetus that could provide direct evidence of its use as a sex selection method. The latest 2010 RHS includes sex selection as a potential reason for abortion, but only 1.4 of women gave it as a reason for their abortion.³⁴

Internal legislation and practice regarding sex selection before birth

Chapter 23 of the Law of Georgia on Healthcare is dedicated to family planning the duration of pregnancy during which an abortion is permitted as well as the conditions of conducting of abortions. At the same time, the state sets as its priority in the reduction of abortions in order to protect the health status of women (38).

In regards to the conditions in which induced abortion may be approved, the Order of the Minister for Labour, defines these rules for the procedures of conducting induced abortions in healthcare facilities of the obstetrical-gynaecological kind and prohibits induced abortion for gender-selection purposes. According to the provision approved by this order, the induced abortion may be conducted either: a) voluntarily (at a woman’s request) up to and including the 12th week of pregnancy; b) according to medical and social indications from the 12th to 22nd week of pregnancy. According to the same order, it is prohibited to conduct induced abortion for the purpose of sex selection except for the case, when it is necessary to avoid sex-linked hereditary diseases.³⁵

Article 133 of the Criminal Code of Georgia stipulates liability for illegal abortion, which means that the abortion was conducted in violation of the rule established by the law and regulatory acts. Consequently, in the case of pregnancy longer than 12 weeks the abortion is permitted only on the basis of medical and social indications and abortion for the purpose of sex selection is prohibited. The perpetrator may be any physical person, including medical personnel involved in the illegal abortion.

Accordingly, the prosecutor and the judge should view the abortion, conducted for the purpose of sex selection when the term of pregnancy exceeds 12 weeks, as offence provided by article 133 – illegal abortion.

³³The decision of Tbilisi City Court of August 21, 2015 <http://www.tcc.gov.ge/index.php?m=443&newsid=723>

³⁴ Survey conducted by the support of UNFPA ,Gender-biased sex selection in Georgia, context, evidence and implications“; 2015. <http://en.calameo.com/read/000713529fba88352dbbb>

³⁵ See order of the Minister of Labour, Health and Social Affairs “On approval of rules of induced abortion”, 2014;

The criminal justice system has limited practice in this direction. In recent years, there has been no criminal case, when a person was charged with illegal abortion, including, the abortion for the purpose of sex selection.

Ensuring medical confidentiality in regard to cases of violence against women

Medical care providers are obligated to protect the confidentiality of information held by them about patients both during patients' lives and after the patients' deaths.³⁶ Medical workers and all employees of a medical institution are obliged to maintain medical confidentiality between the physician and patient, except in cases when a relative or a legal representative of a deceased person, a court, or investigatory bodies demand disclosure of confidential information.³⁷ Thus, the information on the health status of a person is confidential information and can be disclosed to medical personnel only in exclusive cases, listed in the law.³⁸ For example, it is required by law enforcement bodies on the basis of a relevant court decision, or it is deemed necessary in order to conduct a forensic-medical examination, the person who executes the medical procedure is obligated to disclose information on the patient's health condition. Also, medical care providers have the right to disclose information, related to a possible case of domestic violence, and/or the risk of repeated violence. Still, this information can only be provided to relevant state bodies for the purpose of protecting the rights and interests of a patient.³⁹ Information regarding the health status of a person is personal information which must be protected from disclosure by prosecutors and judges. It is desired, that such information be requested only in the case of strict necessity, when it holds crucial importance for the protection of the rights of the victim and/or fair administration of justice with regards to the accused person.

All forms of violence against women as outlined in the Istanbul Convention (including domestic violence (DV), sexual violence, rape, sexual harassment)

Social, criminological and procedural aspects of violence against women

According to sociological surveys, there are key factors that promote traditional thinking, a low level of awareness from the population, impacting domestic violence. These factors contribute to the passivity of women and tolerant attitudes towards domestic violence in Georgia. However, it should be noted that the ideas of subjects of the survey also confirm that along with socio-economic transformation, the situation in Georgia is gradually changing and the new generation does not blindly follow tradition, and are more willing and ready to protect their rights.⁴⁰

³⁶ Law of Georgia "On patient rights", article 27

³⁷ Law of Georgia "On healthcare", article 42

³⁸ Law of Georgia "On medical practice", article 48

³⁹ Law of Georgia „On patient rights”, article 28, law of Georgia “On medical practice”, article 48

⁴⁰ Within the framework of project jointly funded by United Nations Population Fund and the Norwegian government “Combating Gender Based Violence in South Caucasus”, „ACT“, Center of Social Sciences, in cooperation with I. Javakhishvili

Discussion of all forms of violence against women

Georgian legislation, namely the Law of Georgia of 2006 on the **Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence** contains definition of different forms of violence, i.e.:

Physical violence – beating, torture, damage to health, illegal deprivation of liberty or any other action that causes physical pain or suffering, withholding health needs, which leads to damage to health or death of a family member;

Psychological violence – insulting, blackmailing, humiliation, threats, or any other action that violates a person's honour and dignity;

Sexual violence - sexual act by violence or threat of violence, or by taking advantage of the victim's helplessness; sexual act or other acts of sexual nature or child sexual abuse;

Economic violence - an act, which causes restriction of the right to have food, dwelling and other conditions for normal development, to enjoy property and labour rights, to use common property and to administer one's own share of that property⁴¹.

According to the Criminal Code of Georgia, different forms of physical violence contain different elements of crime, such as: premeditated murder (articles 108-109); crimes against health (articles 117-120; and 125-126¹); torture (article 144¹), degradation or inhuman treatment (article 144³); unlawful imprisonment (article 143) and etc.

The package of amendments to the Criminal Code of Georgia has been prepared on the basis of the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence, which stipulates for criminalization of compulsory sterilization (article 133¹).

The Criminal Code criminalizes the following forms of psychological violence: violence, that has caused the victim psychological suffering (article 126); Violence, regular insults, blackmail, humiliation by one family member of another family member, which has resulted in physical pain or anguish (article 126¹); coercion (article 150); threats (article 151), incitement to suicide (article 115).

On the basis of the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence, the Code also criminalizes "chasing" (article 151¹) – an unlawful observation of person, his family member or a relative, as well as establishing unwanted communication, or any other deliberate actions, which are implemented regularly

Tbilisi State University, a group of researchers conducted national survey of issues of domestic violence against women in Georgia; 2010 <http://www.feminizmi.org/wp-content/uploads/2015/02/geo-domestic-violence.pdf>

⁴¹ See law of Georgia "On elimination of domestic violence, protection and support of victims of domestic violence", 2006.

and cause mental anguish and suffering of the victim, committed for the purpose of causing such suffering or fear.

The Criminal Code recognizes the following forms of sexual violence: rape (article 137), violent act of sexual nature (article 138), coercion into sexual intercourse or any other act of sexual nature (article 139), Sexual intercourse or any other act of sexual nature with a person who has not attained the age of 16 years (article 140), lewd acts (article 141).

Domestic violence

Internal legislation regarding domestic violence (detailed discussion of article 11¹ and 126¹ Criminal Code of Georgia; Georgian law of Domestic Violence, Protection and Assistance of Victims of Domestic Violence);

The Law of Georgia on the Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence defines a set of actions which characterise domestic violence, legal and organizational grounds for detecting and eliminating domestic violence, as well as guarantees for the legal protection and support of victims of domestic violence.⁴²

The definition of domestic violence is provided in article 11¹ of the Criminal Code of Georgia, which defines the circle of family members for which the Code applies, and the list of domestic offences, which if committed against a family member by another family member, shall be qualified as domestic crime.

Article 126¹ of the Criminal Code of Georgia refers to two types of actions, each of which separately contains elements of crime; 1. Physical violence of one family member towards another; 2. Psychological violence of one family member towards another.

Consequently, the act of violence of one family member against another, which causes physical pain to the injured, but does not result in any damage to health, is qualified according to article 126¹ of the Criminal Code of Georgia. If the forensic medical examination concludes that the health of the injured is damaged as a result of violence, the action shall be qualified according to the relevant article of crime against health, with indication to article 11¹ (the general article of domestic crime).

Psychological violence of one family member against another is also qualified according to the same article 126¹: insulting, blackmailing and humiliation, which must have a systematic character and cause suffering to the victim or moral damage.

However, if systematic physical violence of one family member against another (e.g.: more than two cases of beatings) is evident, the action of the person goes beyond article 126¹ and must be qualified according to another article-article 126.

⁴² See the Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence , 2006;

*The nature and forms of domestic violence in Georgia;
Criminological overview of domestic violence – annual statistics and
comparative analyses (its level and dynamics, the main forms and reasons,
the main characteristics of the victims and the offenders, sanctions,
identification of risk-groups, etc.);*

For the purpose of the effective prevention of domestic violence, identification of drawbacks in the investigation of cases of violence and determination of the needs related to the elaboration of guiding recommendations for prosecutors, the Chief Prosecutor's Office has examined the cases of domestic violence that occurred throughout the territory of Georgia in 2014 and 2015 in the period between January and September (9 months, comparative analysis)⁴³. The analysis has revealed, that in comparison with 2014, where there were 330 reported cases of domestic violence, the number of cases of domestic violence has doubled in 2015. This trend that shows an increase in cases of domestic violence is partly provided by the fact that numerous campaigns against domestic violence were conducted in 2015, which increased the rate of victims coming forward to law enforcement bodies with cases of domestic violence. In 2014, the rate of reported cases of domestic violence from victims and the willingness to cooperate with law-enforcement was low.

On the basis of the above-referred analysis we can conclude that the **rate of cooperation** of victims of domestic violence with investigation has increased also. From the standpoint of victims of violence who have initiated cases for investigation, this is a position trend. For example, Out of 680 criminal cases, only 25 victims changed their initial testimony in favour of the accused. If we compare this data to the figures of 2014, victims would only cooperate with the investigation until the initial interrogation and in the course of the investigation, victims would change their testimony or refuse to testify against their close relatives. In 2015, victims would change positions in the duration of the investigation less frequently. Consequently, out of 680 registered cases of domestic violence, 414 persons were charged according to various articles for the domestic violence committed against a family member.

This can be attributed to numerous campaigns against domestic violence, conducted in 2015, which presumably increased the trust of victims of domestic violence towards law-enforcement bodies, as well as their motivation to protect their rights and adequately respond to cases of violence. In particular, prosecutors were trained in the main issues of domestic crime: the essence and forms of domestic violence, prevention and identification mechanisms, protective and restraining orders, issues of an application for referral procedures, specifics of communication with victims of domestic violence, and the psychological aspects of domestic violence. Special trainings were provided to coordinators of witness and victim workers in the prosecution system. As for public awareness-raising campaigns, during 2015 in almost 20 cities of Georgia, 35 meetings were held in which 1335 citizens participated. They received

⁴³ See details in "Analysis of violent crime", the Chief Prosecutor's Office, 2016.

information on the essence, results of domestic violence, protection mechanisms, shelters for victims, etc. All this led to a comparatively high level of willingness from victims to better protect their own rights.

In addition to planning and implementing preventive measures for the increase of the degree of availability of justice for women, and the timely and proper response on cases of violence by law enforcement bodies, , adequate criminal policy and penalties are crucial.

Notwithstanding the above, certain shortcomings remain in the identification and effective responses to domestic violence.

The gaps of identification and prosecution of psychological and systematic violence; methodology of obtaining evidence in such cases; improving DV victims access to justice, ways of encouraging victims to collaborate with the investigative bodies.

As it has become clear from the analysis⁴⁴, almost half of the victims of domestic violence have been subjected to such violence from the offender systematically, or on numerous occasions. At the same time, it was identified that under qualification of domestic violence (articles 11¹ and 126 of the Criminal Code) the prosecution has been initiated in regards to only 2 cases of violence. Consequently, we can conclude that at the stage of investigation the relevant authorities **cannot duly identify the facts of domestic violence** and corroborate it with relevant evidence, while the victims of violence indicate in their testimonies, that the family members regularly subjected them to violence. On one hand, this can be caused by the inability of investigators to properly identify the systematic character of violence during interrogation of the victims. On the other hand, this can be caused by the difficulties related to obtaining evidence in cases of domestic violence.

To prove systematic physical violence, the investigation should obtain the relevant evidence. First of all, it is recommended to ask the following to all victims of domestic crime: whether it is the first incidence of violence, or beating, or if other incidents of violence by the abuser had already taken place; when such facts occurred, relevant witnesses that can confirm it, and whether the victim had applied to a hospital or psychologist regarding the situation. If the unity of the relevant evidence from these questions creates reasonable doubt of more than two incidents of violence, the offender must be charged under qualification of systematic violence instead of qualification of one-time violence.

For example, in one criminal case where the accused was charged with systematic beating and verbal assault of the victim which caused them physical pain and mental anguish, a result of, s the action of the accused was repeated in 4 similar cases , where for 2 of the cases, the exact date of the offence cannot be determined, though it is enough evidence to be qualified as systematic violence. During the questioning, the victim named the witnesses of each incident, who were questioned on the case. Further, a forensic-medical examination was made on the

⁴⁴ See details in „Analysis of violent crime”, Chief Prosecutor’s Office of Georgia, 2016.

injury received during the most recent incident of the indicated violence and on the basis of all this, the relevant standard was created to assign proper qualification to the repeated action of the accused.

In the same manner, as in the case of physical violence, obtaining evidence for different incidents of **psychological violence** is quite problematic too, as quite often even the victims of such violence do not fully realize that they are subjects to such violence.

Psychological violence should be expressed in the form of insult, blackmailing, and/or degrading treatment, which should be of systematic character. Insult, blackmailing or degrading treatment can occur separately, or cumulatively. All three actions need to be of regular character, and should cause suffering, i.e. moral damage. Systematic character (for the purposes of article 126¹ of the Criminal Code) is the attribute of only psychological violence. If such action occurs a single-time but is a grave act of degrading nature, depending on its severity and the results, it can be qualified as inhuman, or degrading treatment (article 144³ of the Criminal Code). In the course of investigation, along with other evidence, confirming a case of psychological should include documentation of visits to a psychologist or psychiatrist from the victim of violence.. In order to establish the psychological status of a victim, it is recommended to interview a psychologist or a psychiatrist, if they are available (49).

In all cases of physical violence, it should be determined whether the victim suffers systematic abuse, blackmail or humiliation from the abuser. Also, how the psychological violence is expressed and whether it results in the suffering of the victim in the form of moral hard should be determined.

For example, in one criminal case, an old man systematically verbally insulted, humiliated and did unacceptable actions such as: kissing, caressing and sexual intercourse with the wife of his grandson. In her testimony, the victim explained, that the actions of her husband's grandfather were unbearable, unacceptable, humiliating, degrading and caused her suffering. Further, she named witnesses whom she had told about the situation. As a result, , the man was accused of systematic violence against another member of the family, leading to abuse, humiliations and the victim's suffering.

Cases of domestic violence need to be investigated without undue delays. In the event of the availability of sufficient evidence for a decision, **summary judgments should be adopted without any delays also**. Once a case of alleged domestic violence has been established, the victim should immediately be recognized as the injured party. The benefits of cooperation with the investigation, the need and means of obtaining evidence and the usefulness of conducting a forensic-medical examination should be explained to that person.

The **testimony** of a victim of domestic violence is extremely important evidence. The first interview of the victim is crucial and should be consummate. Interviews of the victim after that should be aimed at obtaining additional information, which the investigator could not have objectively obtained during the first interviewing. STOP HERE.....It is not expedient to interview the injured party additionally for the purpose of different depiction of the circumstances in regard to which the injured party has already testified during the first

interviewing. The methodology employed in the course of interrogation of the injured person should maximally exclude possibility of secondary victimization. The judiciary must make every effort to prevent secondary victimization. It is recommended to avoid repeated questioning of the victim on the grounds that during the initial questioning the investigator did not have well-formulated questions missed important circumstances, etc. The victim must be questioned in the appropriate environment; the interrogation should not be conducted in the common room in the presence of persons who don't participate in the questioning procedurally. During the investigation of cases of domestic violence, the position of the victim should be formulated in writing. It is advised that the prosecutor takes part in the process of clarifying the position for the victim, examining whether their position has changed due to coercion or intimidation by the offender. . In the course of the investigation, the victim should be informed regarding the availability of shelter for victims of domestic violence, as well about the organizations that assist the victims of domestic violence.⁴⁵

During the trial, the prosecutor and judge must ensure the protection of the victim from pressure coming from the accused, which is particularly frequent and easy when it comes to testifying against a family member.

In each case of domestic crime, the following circumstances must be determined:

The relationship of the victim and the accused; the time and place of the offence, the weapon of the offence, the extent of the inflicted injury, the form of violence (physical, psychological, sexual); the intensity of violence (one-time, systematic); the motive of the violence—specifically motives coming from gender-based discrimination; whether it was committed in the presence of minors and/or against them; weapon of the offence (a rifle, a knife, other item, physical influence, etc.); the criminal record of the abuser and information about administrative liability; the condition of the victim at the time of committing the crime (alcohol intoxication, drug effect); the opinion of the victim on the issue of liability of the perpetrator, etc.

In all cases related to domestic violence, the materials of administrative proceedings should be presented to the case file as evidence, only if prior to the initiation of criminal proceedings, administrative measures against the offender were used. It is recommended to interrogate the representatives of the police who took part in conducting administrative proceedings against the offender⁴⁶ as witnesses.

At all stages of criminal proceedings related to domestic violence including interrogation, the best interests of minors, both witnesses and victims of domestic violence are important. Further, the level of their development should be taken into consideration. Minor witnesses and victims may not be interrogated regarding domestic crimes in the presence of their abusive parent(s). In the case of a domestic crime, a person who is supposedly abusive or whose impartiality is in doubt because of the nature of the relationship between the person and the abusive member of the family or other cases of conflict of interest, may not be involved as a

⁴⁵ See recommendation “About conduct of necessary investigative and procedural measures on articles 11¹ and 126¹ of the Criminal Code”, Chief Prosecutor’s Office of Georgia, 2015.

⁴⁶ See recommendation “About conduct of necessary investigative and procedural measures on articles 11¹ and 126¹ of the Criminal Code”, Chief Prosecutor’s Office of Georgia, 2015.

legal representative of a minor in criminal proceedings, and may not read or be provided with the testimony given by the minor (protocol of interview, explanation)⁴⁷.

Domestic courts practice of preventive measures and sanctions

During 2016 (until October 6th), within the framework of article 126¹ (domestic violence, which envisages as punishment custodial restraint for the term of up to 12 years), 127 cases of domestic violence demanded imprisonment as preventive measure for the accused. It should be noted that in 60 cases, the court satisfied the motion of detention; in 67 cases, the accused was sentenced to a non-custodial measure.

Essentially, the reason for imprisonment as a preventive measure towards the accused in cases of domestic violence (article 126¹ of the Criminal Code) is based the existence of the risk of pressure on witnesses. As the witnesses are family members of the accused and/or close relatives, there is a risk of pressure on them from the accused with the objective of giving a desirable testimony in the favour of the accused person. Further, there is the risk of recommitment, where the accused will continue violence against the victim.

As for penalties, the first part of the mentioned article envisions community service work from 80 to 150 hours or imprisonment for up to 1 year as a penalty. The second part envisions community service work from 200 to 400 hours or imprisonment from 1 to 3 years.

In the span of 9 months in 2016, in 171 cases, a suspended prison sentence was applied towards the convicts of domestic violence (article 126¹) as a form of punishment. In 94 cases, the community service work was applied, and imprisonment in the penal institutions was applied in 26 cases.

As a rule, if a victim within this category of crime changes their position in favour of no punishment for the accused after the initial questioning or during the trial, their position often influences the court decision when choosing the form of punishment. However, it should be noted that in certain cases, the position of the victim has not been reflected in the court's decision to determine a punishment for the offender.

For example, in one case, a man beat his wife and the wife's child. Both victims confirmed the beating, however, at the investigation stage as well as during the trial, the victims stated their position in favour of not punishing the accused as this was the first incident on his behalf. Regardless, the court sentenced the accused to 1 year in prison. The defence appealed the verdict and requested relief of the sentence on the grounds that the victims did not claim the punishment of the offender; the accused was 60 years old, had no criminal record and had poor

⁴⁷ Juvenile Justice Code, article 50; 2015;

Law "On elimination of domestic violence, protection and support of victims of domestic violence", article 17; 2006.

health. However, the Appeal Court did not take into account the mentioned mitigating circumstances, including the position of the victims and upheld the judgement of the court .

Sexual violence, rape, sexual harassment

Internal legislation - Criminal Code of Georgia – crimes against sexual freedom and sexual inviolability (articles 137-141), including Rape and Sexual intercourse or any other act of sexual nature with a person who has not attained the age of 16 years; gaps in law and necessity of amendments

The Criminal Code of Georgia stipulates for the criminal liability of offences, committed against sexual freedom and sexual inviolability (articles 137-141), including rape (article 137) and sexual intercourse or any other act of sexual nature with a person who has not attained the age of 16 years (article 140).⁴⁸

On the basis of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), a package of amendments to the Criminal Code of Georgia which offers total amendment of the elements of crime and terms, used in the provisions of given articles was provided.⁴⁹

Investigation problems of sexual violence cases; interview and interrogation of sexual violence victims; psychological aspects;

Victims of sexual violence are most susceptible to the risk of secondary victimization. In practice, most of the problems are associated with the initial or subsequent interview/questioning periods, asking relevant questions and obtaining the maximum amount of information to minimize the risk of secondary victimization.

In these cases, the investigation and procedural guidance should be conducted by a person trained in psychological issues of communication with a victim of sexual abuse. At the same time, it should be noted that in some cases, taking into account the traumatic experience of the victim as well as the gender of the investigator/prosecutor may be crucial. Therefore, with the objective of efficient interaction with the victim, in some cases it may become necessary to involve an investigator/prosecutor of the same gender.

Paramount significance is assigned to the methodology of questioning the victim, which implies the environment where the victim is being questioned. The questioning should not be conducted in the same room with a person procedurally not involved in the questioning; the questions asked to the victim must be formulated so as they do not make the victim feel trauma or offense; the victim should not be asked questions which are not linked to the circumstances

⁴⁸ See the Criminal Code of Georgia, articles 137-141.

⁴⁹ See the draft law “On amendments to the Criminal Code of Georgia”, 2015.

of the case; it is desirable to exclude repeated questions for the victim on the grounds that the investigator did not formulate the questions well, forgot important circumstances, etc. during the initial questioning.

The victim should fully realize the role of the judiciary's support, in which it is desirable to involve the coordinators of the victim and witness in the case.

Information regarding the victim's sexual abuse should be protected from disclosure; it is recommended to warn the witnesses of non-disclosure of the information during the investigation..

As for the judicial review, the Criminal Code of Georgia allows the judge to make a decision by the motion of the party or on their own initiative during the partial or complete closure of the session, with the objective of the protection of the victim's interests, which should be applied in practice to the maximum possible extent.

Juvenile victims of sexual violence; special regulations on interview and interrogation of sexual violence cases involving juveniles

One of the main goals of the Juvenile Justice Code is **to protect the rights of minor victims and witnesses, to prevent the secondary victimisation, and avoid the re-victimisation of minor victims and witnesses.**

In the law enforcement system, a minor witness and victim is viewed as especially vulnerable especially in cases related to crimes against sexual inviolability. When the victim has already been subjected to traumatic experiences, an elevated risk of aggravation of this traumatic stress by the first police or other professional who enter into contact with the child exists.

From the standpoint of obtaining evidence, especially in cases regarding the violation of sexual inviolability and the sexual freedom of a child without violence, challenges arise due to the following reasons:

The offence itself is of a **latent** character – and many cases of these offences remain uncovered for the following reasons: 1. A child does not realise that he/she is a victim of such violence, and that the offence has been committed against him, as the offenders are quite often the persons, that he/she knows, or even family members, and the offence is committed without causing any physical pain to the child; 2. The child is the only source of information, and he/she does not have the opportunity to talk to a person who can help them; 3. A family member is aware about the offence committed against the sexual inviolability of a child, but the adult “covers up” by claiming the perpetrator of the crime is another member of the family (quite often a spouse, or a boyfriend). It is especially difficult to uncover facts of violence against minors, if they are committed by a person that the minor respects and views as an authoritative figure. Minor victims are often the only source of information and their testimonies are potentially the only source of evidence, which reduces the prospects of a desired outcome for the case.

This is especially true in regard to such offences, when sexual inviolability of a minor is violated without violence, or coercion. In the given regard we have to differentiate 2 different types of crimes:

Sexual intercourse or any other act of sexual nature with a person who has not attained the age of 16 years (article 140), which implies the consent of a minor. In the given regard, the key problem is in cases of marrying persons under the age of 16, i.e. early marriages, when we come across cases of sexual intercourse, or any other act of sexual nature with a person who has not attained the age of 16 years. In other cases which are not related to early marriage, a minor does not want to declare their consensual sexual intercourse. Even if a minor declares that they have intercourse, he/she usually refuses to cooperate with the investigation.

Lewd acts (article 141) imply offences committed without applying violence. Investigation of such cases is difficult due to the following reasons: a) as stated above, quite often the minors do not realise, that an offence is committed against them; b) the victim is the only witness of the crime, and his/her testimony is the only evidence c) in the majority of cases, the acts do not leave traces, or injuries that can be identified as a result of forensic-medical examination.

As stated above, interviewing and or the interrogation of a minor and the information obtained as a result of such investigative actions, is of crucial importance for the outcome of the case. Obtaining information is usually quite difficult, and the interview/interrogation process of a minor requires the careful selection of suitable words and expressions. Therefore, it is advantageous to involve relevant specialists, for example psychologists, to obtain important information from a child in these cases.

According to article 52 of the Juvenile Justice Code, if the minor is a witness or a victim of sexual exploitation and sexual abuse, an audio or video recording may be taken during the interrogation and the audio or video recording of the testimony given by the minor may be played (demonstrated) at a court hearing. Apart from this, article 24 of the Code stipulates for measures protecting interests of minor witnesses who have been subjected to sexual violence⁵⁰. To avoid the secondary victimization of the minor victim/witness and at the same time, conduct the questioning with maximum efficiency, the prosecutor has the right to intercede:

- ✓ on questioning by means of devices containing the image and/or voice of the minor, behind an opaque screen or remotely;
- ✓ on questioning of the minor witness with the participation of the attorney of the accused before the trial and video recording of the questioning;
- ✓ on partial or complete closure of the court session;
- ✓ on temporal withdrawal of the accused from the courtroom, if the minor witness refuses to testify in the presence of the accused or the existing circumstances indicate that the minor witness might not tell the truth in the presence of the accused or be subjected to the secondary victimization.

When reviewing such a motion, the judge must make a decision according to the best interests of the minor victim/witness.

⁵⁰ See the Juvenile Justice Code, 2015.

Gender-specific offences

Discrimination on basis of gender – as the motive of crime. Domestic legislation

Article 53, paragraph 3¹ of the Criminal Code of Georgia establishes criminal liability for commissioning a crime on the grounds of discrimination, including sex and gender identity. Although the text of the article does not explicitly state discrimination by gender, it is implied under the phrase “or other discriminatory grounds”.

Gender is a social sign, differentiating men and women, which are not provided by biological dimensions, but rather social ones, specifying the roles of men and women in different societies. Quite often, it is difficult to identify the presence of a gender-discrimination based motive, and attention should be focused on insulting statements, made by the accused, which undermine the reputation of the injured party, disparage a person by his/her gender, stress the designation and role of the person in the society and in their family based on gender, etc.⁵¹

Gaps and problems in identification of Gender motives in offences during investigation process

As a result of an analysis in the motives behind offences, it was identified that the major share of violent crimes are committed as a result of an altercation. In the course of domestic conflicts, jealousy, revenge, mental problems and the sexual orientation of a victim, etc. were the main motives. However, in the course of examining the motives of domestic crime, a main trend suggests an unavailability of cases of violence on the grounds of gender. This indicates a need for improvement of the qualification of the law-enforcement representatives and further efforts in the given regard. .⁵²

In cases where women are murdered, it is important to note that there still remains no examples where gender-based discrimination is the main motive. Instead, the main motives of murder cases appear to be jealousy and revenge.

The outline of gender motives cause difficulties in the course of the investigation. The prosecutor and the judge must have a clear view as to what should be considered as a gender motive.

Gender is a social phenomenon, a difference between a man and a woman, which is caused by our social reality and not the biological one, outlining the traditional roles of a man and a woman in a particular society. Gender means the combination of socially designed roles, behaviours and characteristics, considered appropriate for a man and a woman by a given society. In order to find out whether crime was committed on the grounds of gender-based discrimination, it should be determined whether or not the criminal act of the offender was conditioned by the influence of gender stereotypes. In particular, gender stereotypes for a

⁵¹ See recommendation “On application in practice of part 3¹ of article 53 of the Criminal Code of Georgia as an aggravating circumstance”, Chief Prosecutor’s Office of Georgia, 2016;

⁵² See “Analysis of violent crime”, Chief Prosecutor’s Office of Georgia, 2016;

woman include: creating a family, giving birth to children, taking care of the husband, cleaning the house, taking care of children as the main function of a woman. For men, a gender stereotype is that their main function is the provision of financial support of their family.

Gender stereotyping means evaluating or condemning similar behaviour differently between a man and woman. Stereotypical views are expressed in ideals such as: after a divorce, a woman is required to take care of the children and has no right to private life; a divorced wife is required to live “honestly” so as to not disgrace her former husband; having a sexual partner by a divorced woman is considered to be “going astray”, to be living an “unbridled life”. Under the influence of gender stereotypes, a man who provides financial support of his wife considers her to be his property, which is reflected in the fact that a woman has no right to leave the house without her husband’s permission or consent, communicate with her relatives, freely choose friends, receive education, learn a certain profession, start working, etc. That means a woman is deprived of the right to make decisions on certain issues which concern her private life. Thus, the violent behaviour caused by such gender stereotypes should be considered a gender-based crime.

In all cases of violence against women, the motive of the offence should be established, especially in the case of an aggressive attitude towards the traditional attitudes and roles of women. With the objective of identifying the mentioned motive, attention must be paid to abusive statements of the offender, which cast doubt on the reputation of the victim, and focus on the functions and traditional role in the society and family,.

In order to identify hate motives of the victim, it is extremely important that the initial investigative and procedural actions are conducted correctly. The motives of the offence should be determined by the person responsible for the criminal prosecution, i.e. the prosecutor.

Case discussion: For example, an offender, with the objective of wilful murder, cut with a sword, parts of fingers and the ear, broke the ankle bone, cut the knee and inflicted multiple life-threatening injuries in various parts of the body, including the head of his ex-spouse in daylight hours of a crowded place. Due to the intervention of an outsider, the abuser disappeared from the scene. The hospitalized victim survived due to surgery. According to the testimony of the victim, the situation was preceded by numerous conflicts between them. In particular, after the divorce, the accused was dissatisfied with the fact that the victim used to go to places of entertainment; he demanded that the victim not go to restaurants and solely take care of children as the offender “did not like that the mother of two minor children goes to restaurants very often“. According to the testimony of the defendant, he did not intend to kill his ex-wife, but rather, he wanted to deface herso that she would not have any relationship with anyone and would remain a “worthy mother of their children”.

Accordingly, in the given case the motives of committing the crime by the accused was the will-to control the behaviour of the former spouse and have the means to influence her, proceeding from the fact that the victim was a woman and that her defined role in the society was to bring

up children and not engage in a private life. Committing a crime on the grounds of such a motive, taking into account the particular circumstances, may be qualified as a crime committed by the motive of gender-based discrimination.

Improving access to justice for the most vulnerable categories of women

The law of Georgia “On elimination of all forms of discrimination”⁵³ prohibits any form of discrimination. The aim of the law is to ensure equal exercise of the rights established by the legislation of Georgia, regardless of race, colour, language, sex, age, citizenship, origin, place of birth, place of residence, property and title, religion and belief, national, ethnic or social belonging, profession, marital status, health status, disabilities, sexual identity and expression, political and other opinions or other characteristics.

According to the research “Barriers for women with disabilities in terms of access to justice”, the reason for the ineffective response to the cases of violence along with other factors is firmly rooted in stereotypical attitudes in the society, which have an adverse effect on the quality of the activities of professionals. There are myths that hinder their work. For example, some of these myths are: “Women with disabilities make up stories about alleged violence committed against them” or “Women with disabilities do not know what violence is and it is not useful to interview them.”

*Women with disabilities face a number of barriers, which exclude or ensure by a low standard, their equal or full access to the right of justice. Inaccessible physical environments, low quality of public awareness of the sphere of the rights of persons with disabilities, lack of properly trained law enforcement officials and other professional specialists is directly related to the issue of the inefficient fight against crime.*⁵⁴

According to the above survey, campaigns focused on overcoming mental barriers targeting women victims as well as law enforcement officials are important.

Law enforcement and judicial authorities must create equal conditions to any person for the protection of their own rights. If the victim is a disabled person, upon receiving notification regarding an alleged offence, the representatives of the law enforcement bodies are obligated to immediately initiate investigation and conduct it taking into consideration the best interests of the person with disabilities. The investigator/prosecutor should consider these cases as

⁵³ See law of Georgia “On elimination of all forms of discrimination”, 2014.

⁵⁴ See survey made by NGO “Partnership for human rights” within the framework of EU project: “Violence against women with psycho-social needs in Georgia-main trends; barriers for women with disabilities in terms of access to justice“ 2016, p. 30.

priority, and investigation should be conducted in an effective and speedy manner, without any undue delays. Also, taking into consideration the specificity of such cases, all stages of proceedings should maintain as much confidentiality of specific information as necessary, related to the person with disabilities.

It is recommended, that in the event of the availability of relevant grounds, disabled persons should be assigned the status of an injured party from the initial stage of investigation, so that his/her interests are protected as much as possible.

The Criminal Procedural Code of **Georgia** does not contain specific rules for the conducting of procedural/investigative actions in regard to persons with special needs. Article 117 contains provisions in regard to persons of a given category, and according to this article, examining a deaf-dumb person shall take place with an interpreter that has the relevant skills. If the person examined is deaf, s/he can be asked questions in writing, and if the person is dumb s/he can answer questions in writing. Also, paragraph 3 of article 53 of the Code, which defines rules related to interpretation/translation establishes that given rules shall also apply to a person who interprets sign language. The rules related to the use of a special interpreter also apply in cases when a person has a physical, intellectual disability, or impaired speech. In such cases an interpreter/translator should ensure that he/she translates the testimony of a person in an accurate and full manner. The relevant reference should be made in the protocol of examination/interviewing.

It is recommended, that in the event that a person has problems with mobility, the procedural/investigative actions are conducted at the place of his/her residence, or placement.⁵⁵ Part 3¹ of article 53 of the Criminal Code of Georgia considers committing a crime on the grounds of intolerance as an aggravating circumstance. It implies committing a crime on the grounds of sexual identity, gender identity, religion, disability, national origin and other discriminatory grounds. In the case that the crime was committed on the grounds of any of the above listed motives, the punishment should be determined under an aggravating circumstance with indication to the mentioned article.

A hate crime is obvious, under two cumulative conditions:

- ✓ An action taken against a person is a crime;
- ✓ The main or additional motive of committing a crime is intolerance towards a member of any particular group and/or a person associated with that member, due to a characteristic sign.

In the course of investigation, the position of the victim registered at the initial stage and obtaining proof for the confirmation of the motive are crucial. The indicators of the intolerance motive in committing a crime are objective factors, circumstances or the actions of the offender, which independently or together with other circumstances create the basis for qualifying the action as motivated by hatred.⁵⁶ An example of actions motivated by hatred are under

⁵⁵ See recommendation “On investigation of criminal cases with the participation of persons with disabilities”, Chief Prosecutor’s Office of Georgia, 2016.

⁵⁶ See recommendation “On application in practice of part 3¹ of article 53 of the Criminal Code of Georgia as an aggravating circumstance”, Chief Prosecutor’s Office of Georgia, 2016.

circumstances connected with discriminating comments, gestures or statements made by the offender before, during or after the crime regarding the victim's belonging to a minority, whether it be national, sexual, religious or other.

In the case that it is determined that the crime was determined on discriminatory grounds, the prosecutor should mention this particular motive in the judgement of the guilt of a person and also focus attention to this fact when delivering the introductory and closing speech at the trial and during questioning. As a result of the relevant justification, the judge will take it into account during sentencing, indicating part 3¹ of article 53 of the Criminal Code.

Particular importance is assigned to the discriminatory approach of representatives of law enforcement officials and judiciary and full exclusion of the secondary victimization of the victim in the judicial process. In this regard, the representatives of sexual minorities face particular risk.

Early and forced marriage

In some regions of Georgia, early marriage is a part of traditions and customs. According to the survey conducted in one region, early marriage has become a part of common, everyday life for society. . The reasons causing early marriage in most cases depend on stereotypes, traditions, ethnic, religious and regional factors.⁵⁷

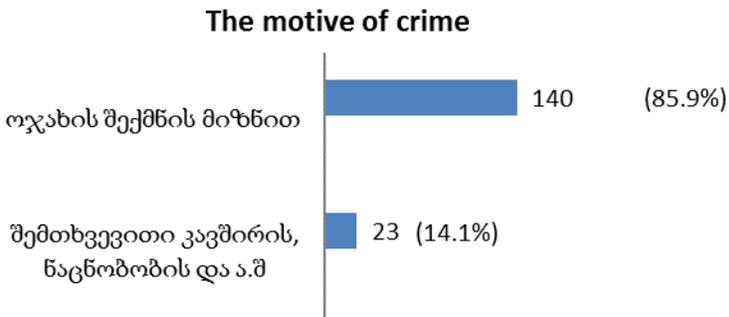
Domestic practices in regard to early and forced marriage. Criminal legislation; Adequateness of domestic criminal policy and sanctions

The Criminal Code of Georgia does not contain provisions recognizing early marriage. The Code criminalizes sexual intercourse or any other act of sexual nature of an adult with a person who has not attained the age of 16 years (article 140), even with the consent of this minor person. As an analysis⁵⁸ of the given article reveals, the key problem arises in the marrying of persons under the age of 16, i.e. early marriages, when we come across cases of sexual intercourse, or any other act of sexual nature with a person who has not attained the age of 16 years. Current law views this act as an offence, stipulated by article 140 of the Criminal Code, imposing the same sanction on persons who had sexual intercourse with persons under 16 without the intention of entering into marriage (quite often, in such cases, there is a big age difference) with persons who have entered into marriage with persons under 16 previously and have children.

Analysis of cases under investigation during 2015 suggest the following: sexual relationships or other act of a sexual character between an adult and a person who has not attained the age of 16, took place during marriage in 85% of cases. Specifically in these cases, the accused was a husband and the victim was a wife.. The relationship was casual without the purpose of creating a family, only in 14% of cases.

⁵⁷ Survey of association HERA XXI (Health Education Rights Alternative) "Reasons causing early marriage", 2014. <http://en.calameo.com/read/004110021a9c9daf4306b>

⁵⁸ Analysis "Sexual intercourse or other sexual act with a person under 16", Chief prosecutor's Office of Georgia, 2016.



In the majority of cases, law-enforcement bodies become aware of the offence after the birth of a baby, when the medical certificate (with indication of the parents' date of birth) is sent from the maternity home to the Civil Registry Agency for the purpose of registration. Consequently, the investigation of the case starts only after the couple have already cohabitated for a certain period of time as a family, and have one or more children. Usually in the course of investigation, the “victim” stresses that the intercourse was consensual, and usually victims try to avoid causing additional financial burden to the family, opposing the start of a criminal investigation. . Usually in such cases, the response of law-enforcement bodies causes negative perceptions from the victims, accused and society, depicting prosecution and law-enforcement authorities acting on behalf of the state, as “monsters attempting to break families”. Due to the abovementioned reasons, initiation of criminal proceedings against a person who enters into sexual intercourse with a person under 16 for the purpose of creating a family, or cohabitation is low.

Due to conditions of low public awareness and the unavailability of relevant awareness raising campaigns, the society does not fully realise as to why such acts are considered a criminal offence, especially if sexual intercourse is consensual on both sides, and the purpose is to create a family. This problem is especially topical in social strata such as ethnically Azerbaijani communities where early marriages are traditional. According to the analysis, every third early marriage is happening in ethnically Azerbaijani communities.

In some cases, the victim and the accused declare that the accused did not know the real age of the victim when marrying her and married her as a woman who attained the age of 16, which is less likely, though difficult to prove the opposite. In this case, the position of the victim is to prevent prosecution against her husband who had sexual intercourse with a person under 16 with the objective of creating a family, or cohabitation.⁵⁹

Example 1 – The law enforcement authorities received a notification from the Civil Registry Agency concerning juvenile childbirth. An investigation started on this fact according to article 140 of the Criminal Code –sexual intercourse of a minor or other act of sexual nature with a person who has not attained the age of 16. The investigation found out, that an adult man aged 19 knowingly married (factual marriage) a person under 16- a girl aged 14, with whom he had

⁵⁹ See “Sexual intercourse or other act of sexual character with a person under 16”, Chief Prosecutor’s Office of Georgia, 2016.

sexual intercourse many times starting from that period. By the beginning of the investigation on the case, the couple already had 1 child. The victim declared, that she voluntarily had sexual intercourse with the accused and did not want her husband to be prosecuted. However, the action of the man was qualified as a sexual offence with a person under 16. Accordingly, he was accused according to article 140 of the Criminal Code and a plea agreement was signed for suspended deprivation of liberty for 5 years and a fine in the amount of GEL500.

Example 2 – In another case, a 58 year old man was accused for engaging in sexual intercourse with a 12 year old victim. *He was charged according to article 140-sexual intercourse of an adult with a minor and other sexual contact distorted in form at the previous knowledge of the offender with one under sixteen years. A judgment was made on the case and the accused was sentenced to 8 years of imprisonment.*

Proceeding from the mentioned two cases, it is obvious that the law views the establishment of sexual intercourse with a person under 16 for the purpose of creating a family and for cohabitation or without the purpose of creating a family in the same manner. The law does not provide the possibility of differentiation of punishment according to the nature and severity of the action. This reality and the attitude of the society in Georgia, caused the formation of Criminal Policy towards persons committing crimes stipulated by article 140 of the Criminal Code of Georgia, according to which, at the stage of preventive measures, a plea agreement “on non-custodial punishment” is signed with persons committing crimes with the purpose of creating a family and cohabitation. The practice of signing plea agreements, among other reasons is due to the fact that in most cases, there is no standard when applying preventive measures according to the Criminal Code of Georgia. The only basis- the threat of recurrence of the crime-is not seriously perceived by the court or society.

Finally, it must be said that within the conditions of the current legislation, in any case the sexual intercourse of an adult with a person under 16 is qualified according to article 140 of the Criminal Code of Georgia, and the issue of mitigating circumstances and adequate punishment is resolved individually for all the accused, taking into account particular factors.

Forced marriage (article 1501)

By the amendments entered into the Criminal Code of Georgia in 2014 (article 150¹), forced marriage was criminalized. , This was stipulated by the relevance of the mentioned problem, specifically in territorial units populated by ethnic minorities, where underage girls particularly, were frequently forced to get married. As a result the minors stop going to school, their right of free choice is violated, and this often leads to domestic violence against them.

Despite the topicality of the issue, after entering the above referred amendments into the law, the proceedings have been initiated only in regard to several cases.

The investigation is mainly initiated on the basis of notification, submitted to the law-enforcement bodies by the Public Defender’s Office, or an NGO, regarding a forced marriage. It should be noted, that the given offence is of a latent character, and a complaint has never been filed by the injured party herself. The victims refrain themselves from testifying against their

parents or relatives. In the event of the investigation of these cases, the potential victims and witnesses deny the forced marriage.

Case discussion:

1 – *The basis for the commencement of the investigation on the case was an application from the Public Defender’s Office submitted to the police, stating that a pupil of the 9th grade is engaged by the initiative of her parents and a wedding is scheduled. Questioned as a witness in the case, the person denied the fact of engagement and expected wedding. According to the witness, no physical and psychological violence, demand of forced marriage and sexual intercourse against her will occurred. The testimony was confirmed by the parents as well. The investigation conducted on the case did not determine the fact of forced marriage and was terminated.*

2- *In this case, the fact of forced marriage was confirmed. In particular: an adult man was prosecuted for taking an underage girl to another city in his own car, forcing her to marry him. For an entire day, he tried to suppress her refusal using psychological pressure. The accused was imposed suspended custodial service for the term of 2 years.*

Besides the existing practice, the purpose of the legislation was to turn parents, members of family, relatives, other persons, who force their children into marriage under the influence of traditions, self-interest or other motives into subjects of this crime. Accordingly, upon the receipt of a notification about forced marriage, an investigation should start and all required investigatory actions should be taken to determine whether the victim was forced to create a family (including unregistered marriage) against her will. The coercion should be expressed in the limitation of freedom of action of the victim, or the physical and moral coercion to do or not to do an action.

In addition to physical coercion, this may be expressed by mental and emotional pressure on the victim for reasons such as: imposing traditions, bringing shame to the family; forced discontinuation of study, threatening that the family will not support her anymore; receipt of benefit from the other party, etc.

The same offense against a minor is an aggravating circumstance and is punished more severely- by imprisonment from 2 to 4 years.

Self-defence in cases of violence against women

The right of victim to self-defence

The criminal law of Georgia provides grounds for the exemption of a woman from criminal liability, if she has been subjected to violence, and committed an offence in the course of self-defence. According to article 28 of the Criminal Code of Georgia (hereinafter “CCG”) a person shall not be considered to have acted unlawfully if he/she commits an offence in self-defence, i.e. injures the wrongdoer during the unlawful infringement to protect his/her or other person's legally protected interests.⁶⁰

⁶⁰ See article 28 of the Criminal Code of Georgia

„The preconditions for the legitimacy of self-defence are: a) assault, which encroaches a person's own, or other persons' legal rights, such as health or life ... b) the encroachment should be at its initial stage, i.e. already initiated, or in the course of occurring (act, committed on the grounds of revenge, or for the purpose of prevention, does not represent self-defence); c) the encroachment should be unlawful, i.e. the right to self-defence exists in such cases as well, when the offender is acting in a non-culpable manner d) the act of self-defence should be necessary, i.e. should be the only measure of defence, and should be directed at prevention, or as a minimum, mitigation of encroachment.“⁶¹

Presently, if the investigation establishes that a woman, who was subjected to violence was acting in self-defence, and on this basis endangered the life or health of the violator, according to article 105, paragraph 1, subparagraph “b” of the Criminal Procedure Code of Georgia the prosecutor shall not commence, or shall terminate the investigation, or criminal proceedings.⁶² *Also, the court may take into account the mentioned basis and stop the criminal prosecution of the person and/or make a judgment of acquittal.*

Discussion of a Case: For example, a 42 year old man T.G. had sexual intercourse with S.G. who had not yet turned the age of 16. . By threatening to disclose this shameful fact, S.G. systematically forced her into sexual intercourse with him for 8 months. T.G. also threatened that if she did not satisfy him, he would kill her and harm the health of the members of her family. S.G. believed that T.G. would carry out the threat. Regardless, S.G. decided to terminate the relationship with him despite the threats, resulting in T.G. being very irritated. As a result, he started to beat her.. During the beating, he wounded her leg with a knife and said he would kill her. The threat of death or harm to her health became immediate and real. S.G. was frightened and at that moment, T.G. dropped the knife. Thus, S.G. took the knife and struck T.G. in the chest in self-defense. As a result, T.G. died. In this case, the prosecution stopped the case against S.G. and deemed that her actions were not unlawful and that she acted within the framework of necessary defence.

In the specific case, the limits of necessary self defence were not exceeded. However, if murder (Criminal Code, article 113) or intentionally grave or less grave bodily injuries (Criminal Code, article 122) are committed as a resulting of exceeding the limits of self defence, the law envisages lighter sanctions (SOURCE 70 here). *Thus, in cases of violence against women, the circumstances preceding the violence and their casual connection with the crime should be studied. Female victims of systematic violence may themselves become wrongdoers against the health and life of the abuser, so it is necessary to investigate whether there is any circumstance justifying their actions.*

⁶¹ See explanatory legal dictionary, p. [http://library.court.ge/gil/index.php?term_id=147]

⁶² See ruling 86 of the Grand Chamber of the Supreme Court of Georgia of December 10 of 2001; Also, see ruling 2 k-624 ap-05 of the Supreme Court of Georgia of January 12 of 2016
<http://www.supremecourt.ge/files/upload-file/pdf/sixli-2006-3-uni.pdf>

Legal mechanism for refusal of a victim to cooperate with investigation

Women subjected to violence, particularly domestic violence and sexual violence, very often refuse from testifying to the investigative authority or court due to various reasons (fear, shame, prevention of dissemination of personal information, traditions, economic dependence on the offender...).⁶³ According to the Criminal Code of Georgia, a female victim of violence from a family member has the right not to testify against her close relative and in this case, the violator will not bear criminal liability for the refusal to testify⁶⁴. Close relatives are defined as: a parent, an adoptive parent, a child, a foster-child, a grandfather, a grandmother, a grandson, a granddaughter, a sister, a brother or spouse (including divorcees). Based on the standards of the law, persons in an unregistered marriage are considered spouses. Cooperation of the victim with the investigatory authority is important for the implementation of effective prosecution of penetrators. The testimony of the victim is direct evidence, which may become basis for the charges against a person. Refusal to testify by female victims of sexual/domestic violence and/or the change of their testimony at the stage of trial may lead to the wrongful liberation, criminal liability and/or justification of the abuser. To avoid this, the investigating authority should search and gather all possible direct evidence (testimonies of witnesses, testimony of medical personnel, medical documentation..). Also, if the victim changes their testimony and/or refuses to testify due to fear of communication with the accused discomfort in his presence, on the basis of a motion of the prosecutor, by the decision of the court, the victim may be questioned remotely.⁶⁵ The mentioned legal means must be used by the authority conducting the process for the support of the victim and avoidance of secondary victimization.

Also, with the objective of enhancing the confidence of victims towards law enforcement authorities, the victim must be informed and involved in the course of the investigation and the results of the trial. At an early stage of investigation, the prosecutor should assign a status to the victim, so that they may take advantage of all the authorities granted by the procedural legislation. Also, the authority conducting the process (prosecutor, judge) must explain the victim's rights in understandable form, including what kind of information the victim may receive at any stage of the course of investigation/trial, regarding commencement and/or termination of the criminal prosecution of the abuser, review of preventive measures, the pre-trial and the date of substantive review. Also, it is necessary to explain to the victim, that in case of any demands, the victim has the right to receive information about leaving by the accused/convicted of the corrections department.⁶⁶

In many cases, the decisive factors causing a victim to refrain from cooperating with law enforcement agencies is the lack of relevant trust in law enforcement as well as fear of expected

⁶³See the Analysis of Crime for the period of 2014-2015 prepared by the Prosecutor's Office , page 10
http://pog.gov.ge/res/docs/holideiinn/zaladobistendenciebi_2015.pdf

⁶⁴ The Criminal Code of Georgia, article 371, Criminal Code of Georgia, article 49;

⁶⁵ The Criminal Code of Georgia, article 243

⁶⁶ The Criminal Code of Georgia, articles 57-58

communication with the abuser. Therefore, it is necessary to involve a coordinator of the witness and the victim from the prosecution system, who will actively work with the victim by providing them with psychological and legal advice to persuade show them the necessity and importance of cooperating with the prosecution authority.

The rights of detained women/accused women

1. Implementation of police control/measures towards female citizens

In the course of the implementation of certain police control measures, the police should take into consideration the gender of a citizen. Frisking shall be conducted by a police officer of the same sex. In the case of an immediate need, frisk and search may be conducted by any police officer with the use of a special device or an instrument, such as a scanner or detector⁶⁷
For. The same rule is applicable in the event of the special examination of female persons. ⁶⁸

2. The procedure of administrative detention and imposition of penalties to women offenders, stipulated by administrative law

The legislation regulating administrative offences provides for certain rules and exclusions in those cases when the person against whom criminal proceedings have been initiated, is a female.

The arrest of a female person committing an administrative offence can be conducted by a person of the opposite sex, although a personal inspection must be conducted by an authorised person of the same sex as the person being searched.⁶⁹

The maximum term for administrative detention is 15 days. This sanction cannot be applied to pregnant women, or women who have children under 12. ⁷⁰

As an attenuating circumstance for administrative offences serve the fact, if the offence is committed by a pregnant woman, or a woman, who has a child under the age of 1.⁷¹

Thus, the legislative norms focused on the protection of human rights should be actively used by the representatives of law enforcement structures and judges in making decisions.

⁶⁷ The Law of Georgia “On police”, paragraph 3, article 22

⁶⁸ Ibid. paragraph 3, article 23

⁶⁹ The Code of Administrative Offences of Georgia, article 248

⁷⁰ Ibid., article 32

⁷¹ Ibid. article 34

3. Women offenders and the specificity of investigative actions conducted with their participation

The Criminal Procedure Law establishes certain rules when the party in the proceedings is a female. Namely, if a personal search implies the undressing of a person, the search shall be conducted by a person of the same sex. Only a persons of the same sex shall conduct this search. **However, the mentioned rule is not imperative.**⁷² If an investigative activity (for example, a forensic-medical examination) requires that the accused female be undressed, upon her request, an expert of the same sex as the person under examination will complete the activity.⁷³ *Thus, unlike a personal search, other investigation action towards accused females may be conducted by a representative of other sex, if the accused does not object. It should be explained to the accused woman , that she has the right to demand conduct of action related to her denudation by a person of her sex.*

The Criminal Procedure Law does not stipulate for a different approach in regards to accused males and females. However, the law states that when deciding on the application of a preventive measure, the court must take the defendant's family status, including the age and needs of children, into consideration

*Also, if in the case of arrest or detention, the accused woman has a minor child, old parents or other dependent persons who will remain without her supervision and support, the prosecutor and the judge must put them under the guardianship of a relative, other person or relevant institution. Thus, the prosecutor and the judge must investigate the family status of the accused woman in detail, including whether she has minor children or not, and take the relevant measures such as the operative involvement of custodial authority so as to ensure the protection of the rights and interest of the minors to health and life. Also, the accused orconvicted women must be informed about the taken measures.*⁷⁴

4. The specificity of imposition of penalties on women offenders

The criminal law provides milder sanctions for pregnant women, mothers of young children and elderly women. Namely, penalties such as community service and the restriction of liberty shall not be imposed on pregnant women, as well as women with a child aged under seven.⁷⁵ This rule is not mandatory and does not depend on the considerations of the court. Though, the Criminal Code takes into account such cases, it is the right of the judge, not their obligation, to take into account the sex of the accused and her parentage. For example, according to article 75 of the Criminal Code, a court may defer the serving of a

⁷² The Criminal Procedure Code of Georgia, article 121

⁷³ Ibid. article 111

⁷⁴ The Criminal Code of Georgia, article 178

⁷⁵ The Criminal Code of Georgia, articles 44, 47

sentence for a pregnant woman for up to one year after labour. Also, when the child attains the age of one year, the court shall exempt the convicted person from serving the outstanding sentence, or substitutes the outstanding sentence with a more lenient sentence. It is recommended that the judge take into account the needs of the pregnant woman and child to the maximum possible extent and actively apply the mentioned legislative norm.

5. The specificity of serving of sentence by condemned women

A convicted woman shall serve her sentence in a special facility for women. If requested by a mother, special conditions may be created for the mother and her child under the age of 3 to live together. In such cases, the penitentiary facility shall provide food, medical services hygiene and sanitary conditions to children under the age of 3 in a prison facility.⁷⁶ Penitentiary facility ensures female convicts with a supply of articles used for personal hygiene.

Female convicts have the right to short visits of a duration and frequency dictated by the law., Further, they have the right to make telephone calls, family visits and video visits. As a form of incentivizing, the law envisages an increase in the number and duration of phone calls. All types of disciplinary measures cannot be applied to pregnant women or mothers of young children.⁷⁷

In Georgia there is only one penitentiary facility for women. In 2015, the Public Defender of Georgia published a special report on conditions in the facility. The report reflected observations of the National Preventive Mechanism, prepared as a result of visit to the facility. At the time, there were 272 women convicts in the penitentiary facility, out of whom 52 were accused, 220 were condemned, 3 women were sentenced to life imprisonment, and one of them was pregnant. The Public Defender issued a number of recommendations to the penal institutions, including ensuring psychological support to accused women, ensuring child care service and the appropriate measures needed for a child born in a penal institution to adapt with the outside world(88). Since imprisonment of the convicted woman may have a negative impact not only to the convict, but to the minor as well, in determination of the type and term of the punishment, *this factor should be taken into account by the prosecutor and the judge.*

6. Women convicts – psychological profile and existing stereotypes

In Georgian society, stereotypes prevail towards former women convicts, causing their estrangement, hindering their re-socialization (89).⁷⁸ The Ministry of Corrections and

⁷⁶ The Law of Georgia the Code of Imprisonment, article 72

⁷⁷ The Law of Georgia the Code of Imprisonment, article 82

⁷⁸ See article about stigmas in the society regarding former prisoners “The way of a woman from prison to the community”, <http://www.newpress.ge/qalis-gza-cixidan-sazogadoebamde>

Probation implements different vocational and educational programs such as hairstyling courses, sewing courses, etc *(90). for the purpose of the promotion of the re-socialization of convicts *However, despite relevant measures conducted by the state, women convicts still experience alienation from society after their release from penitentiary institutions. Therefore, before the judge and the prosecutor make a judgment to convict a woman by imprisonment, the accompanying negative factor must be taken into account.*

Female victims of human trafficking

The criminal aspects of human trafficking

Human trafficking is a modern form of slavery, where the offender takes advantage of the weakness and vulnerability of a person, especially women and children, and obtains proceeds through their exploitation.

Georgia is the country of origin⁷⁹, transit⁸⁰ and destination⁸¹ for female victims of trafficking. Women and children become victims of forced labour. Further, Georgia is the country of transit of women from Central Asia, who are exploited in Turkey. Women from Azerbaijan and Central Asia become victims of trafficking and are used as prostitutes in the Adjara region. Most of identified victims are young women, who were seeking jobs.

In Georgia the most widespread form of trafficking is through the sexual exploitation of women. Also, another widespread form of trafficking is the exploitation of citizens of Georgia as labour abroad.⁸²

Georgia is implementing a wide range of measures for fighting against trafficking, including preventive measures, the identification and punishment of persons involved in trafficking, protection and assistance for victims of trafficking and cooperation between public bodies and non-governmental organizations. According to the results of the efforts of the government of Georgia to eliminate trafficking, Georgia is fully complying with the minimal standards. According to the US State Department report for the year 2016, Georgia is rated as a successful country, belonging to the first cluster of countries.⁸³

⁷⁹ The country of origin – the country, the citizen of permanent resident of which becomes the victim of trafficking

⁸⁰ The transit country – the country through the territory of which occurs trafficking

⁸¹ The country of destination – the country, on the territory of which the victim of trafficking is exploited

⁸² Official statistics of trafficking for the period of 2010-2016 is published at:

<http://www.justice.gov.ge/Ministry/Department/357>

⁸³ See the Trafficking Report of the US State Department for the year 2016, page 176

<http://www.state.gov/documents/organization/258876.pdf>

Human trafficking-the offence, criminalized by the national law

As the legal basis for fighting against trafficking, Georgia follows the Criminal Code of Georgia and the Law of Georgia on fighting against Trafficking, which was adopted on April 28th, 2006. of 2006 and Article 143¹ of the Criminal Code of Georgia criminalizes human trafficking. Trafficking is a complex crime, expressed through the relevant actions and means towards a specific goal. Thus, human trafficking is selling or buying a person, or the implementation of other illegal acts against a person. It is also through achieving the consent of a person who may have been influenced by means of threat, violence or other forms of coercion, kidnapping, blackmail, fraud, deception, abuse of power or vulnerability, giving or receiving payments and/or benefits, recruiting, transportation, hiding, hiring, and transferring for exploitation purposes.⁸⁴

Exploitation can be expressed in the following forms:

- inducing a person to perform labour or other services;
- inducing a person to provide sexual services;
- engaging a person in criminal activities, prostitution, pornographic or other anti-social activities;
- removing, transplanting or otherwise using an organ, part of an organ or tissue of the human body by force or deception;
- subjecting a human being to practices similar to slavery or to modern-day slavery;⁸⁵

According to article 143², trafficking of children is punishable by law. It is not required that the exploitation of children is preceded by the use of force, deception or other means of coercion.⁸⁶

The important legal aspect, is that the informed consent of a person of exploitation is not relevant.

According to article 143³ of the Criminal Code, knowingly using the services rendered by a victim of or person affected by trafficking is a punishable offence. However, it is noteworthy that for the purpose of increasing the rate of declared cases of trafficking, the law exempts a person from criminal responsibility, if he/she voluntarily provided information about the trafficking to the investigative authorities in writing or by using any technical means of communication, and this contributed to the conduct of investigation as long as his/her actions do not contain elements of any other crime.⁸⁷

⁸⁴ The Criminal Code of Georgia, article 143¹

⁸⁵ Legal comments to article 143¹ of the Criminal Code are provided in the document „Guiding principles for investigation and criminal prosecution of cases of human trafficking and treatment of victims of trafficking” (hereinafter referred to as the “guiding principles”) (Annex #)

⁸⁶ The Criminal Code of Georgia, article 143²

⁸⁷ The Criminal Code of Georgia, article 143³

Case Discussion: In August of 2013, A.M. fraudulently brought a citizen of the Republic of Uzbekistan M.T. to Georgia, for the purpose of employment. The accused promised M.T. assistance in starting work at one of medical centres of Batumi as a nurse, with a salary of USD 500. After coming to Georgia, the trafficker confiscated the passport of the citizen of Uzbekistan, limiting her right of free movement, threatening her with physical violence. A.M forced the victim to engage in prostitution and give all money earned in this way to the trafficker. In 2015, the trafficker was found guilty and was sentenced to 12 years of imprisonment.

Other offences, that may represent elements of trafficking, and on which the law enforcement bodies have to focus their attention are: Illegal crossings of the state border of Georgia⁸⁸, making available an area or dwelling place for prostitution⁸⁹, engagement in prostitution⁹⁰ and engagement of minors into anti-social activities.⁹¹ In the course of the investigation of these cases, attention should be paid to whether the victim of the crime or the subject of crime is a victim of trafficking.⁹²

The specificity of investigation of cases of trafficking and criminal prosecution

For the purpose of fighting against trafficking effectively, the investigation should start immediately upon receiving information regarding the case. Preference should be given to conducting a proactive investigation. Cases of trafficking should be investigated in a thorough, effective and objective manner. The investigation should obtain all possible evidence, related to all stages of trafficking, which shall serve as the basis for commencing criminal proceedings.⁹³

There is a stringent criminal justice policy in regards to traffickers, which means that alternative measures and sanctions shall not be applicable to traffickers and the penalties, provided by the law shall be imposed on them.

Investigation of cases of trafficking should be conducted by investigators and prosecutors of relevant qualification and experience, and the case should be reviewed by a judge trained and experienced in this sphere.

For the purpose of the introduction of proactive methods of the identification of victims, special operative measures have been developed for law-enforcement bodies.⁹⁴

⁸⁸ The Criminal Code of Georgia, article 344

⁸⁹ The Criminal Code of Georgia, article 254

⁹⁰ The Criminal Code of Georgia, article 253

⁹¹ The Criminal Code of Georgia, article 171

⁹² See the Guiding principles

⁹³ See the Guiding principles

⁹⁴ Given document is the internal instruction of the Ministry of Interior and is not publicly available.

The issue of assigning to a person “victim status” in cases of trafficking, is decided by the standing task force, set under the Interagency Coordination Council on Fighting against Trafficking⁹⁵ which arrives to a decision within 48 hours from the beginning of the case,⁹⁶ through the application of the unified standard of the identification of victims of trafficking.⁹⁷

The prosecutor assigns the victim of trafficking the status of an injured party in the course of conducting an investigation.⁹⁸ The status of the victim of trafficking is not a precondition for granting the status of an injured party. Also, the right of the victim to have access to support programs and benefits is not dependant on the fact that the victim has been granted the status of an injured party in the proceedings or not.

The law provides special protective measures for the victims of trafficking, such as the legal protection of victims and persons affected by human trafficking, the right to legal counsel, an interpreter, the right to obtain of information pertaining to investigation/criminal proceedings, the right to safety and closed court hearing.⁹⁹

As a guarantee of the protection of the rights of the victim, victims have the right to use at least 30 days to decide whether he/she is willing to cooperate with law enforcement bodies in criminal proceedings related to a respective crime.¹⁰⁰ Interviewing/interrogation of the victims of trafficking should be conducted in such manner, as not to cause secondary victimization. It is advisable, that interviewing/interrogation is conducted by a person of the same gender.¹⁰¹

Victims and persons affected by human trafficking shall be discharged from administrative liability for committing actions under Article 172 and Article 185 of the Code of Administrative Offences of Georgia. Also, the victim shall be discharged from criminal

⁹⁵ See Ordinance N281 of the Government of Georgia of April 10 of 2014 on Approval of the composition and Regulations of the Interagency Coordinating Council responsible for implementation of measures against trafficking <http://www.justice.gov.ge/Ministry/Department/332>

⁹⁶ See the Law of Georgia on Combatting Human Trafficking of April 28 of 2006, article 11

⁹⁷ See the Ordinance #78 of the President of Georgia of February 1 of 2007 on Approval of Unified Standards and Rules for Identification of Victims of Trafficking http://www.justice.gov.ge/Multimedia%2FFiles%2Fsaertashoriso-dep%2FadamianiT_vaWrobi_msxverplTa_identificirebis_erTiani_standartebi_da_wesi_470d.pdf

⁹⁸ Article 56 of the Criminal Code of Georgia

⁹⁹ See the Law of Georgia on Combatting Human Trafficking of April 28 of 2006, articles 13,14, 16

¹⁰⁰ See the Law of Georgia on Combatting Human Trafficking of April 28 of 2006, article 12

¹⁰¹ The Guidelines for interrogation of the victims of trafficking

liability for committing actions under Article 344 (illegal crossing of the state boarder) and 362 (making, sale, use of forged documents).¹⁰²

The state is responsible for ensuring the physical protection and safety of the victims of trafficking. If there is the risk to life and damage to the health of the victim, the Criminal Code stipulates that the state must apply specific protective measures.¹⁰³

The information related to the victim of trafficking is confidential. Information disseminated by prosecution authorities and the court, about the investigation or results of the trial of the criminal case conducted with the qualification of trafficking should not contain personal data of the victim of trafficking, e.g. name and surname. With the objective of the protection of the rights of victims of trafficking, the cases of trafficking can be considered at a closed court hearing upon solicitation of the injured party, or its representative.

The state shall provide shelter, psychological and medical assistance. to victims and persons affected by human trafficking. In particular, citizens of other countries and/or stateless persons who become victims of trafficking, on the basis of the mediation of a service agency or the body conducting the process, will receive a residence permit in Georgia until the end of the process, i.e. the end of the investigation or trial.¹⁰⁴

The state shall provide the victims medical and psychological services. The victim also receives a single-time compensation from the state. The state ensures the inclusion of the victims in different vocational and educational programs for the purpose of their effective rehabilitation

¹⁰² Articles 344, 362 of the Criminal Code; See the Law of Georgia on Combatting Human Trafficking of April 28 of 2006, article 15

¹⁰³ Articles 67-71 of the Criminal Code

¹⁰⁴ See the Law of Georgia on Combatting Human Trafficking of April 28 of 2006, articles 20,21⁴