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Communication of the Public Defender of Georgia

TKHELIDZE v. Georgia (Application no. 33056/17)

Made under Rule 9(2) of the Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the terms of Friendly Settlements

Introduction

1. The Public Defender's (Ombudsman's) Office of Georgia (hereinafter PDO) presents this submission pursuant to Rule 9.2 of the Rules of Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

2. This submission comments on Action Plan (12/04/2022) (hereinafter Action Plan) of the Government of Georgia and provides information on the implementation of general measures by the Government in the course of the execution of the judgement in the case TKHELIDZE v. Georgia (Application no. 33056/17). The submission also addresses certain matters not mentioned in the Action Plan but nonetheless relevant for fight against gender-based hate crimes.

General measures

3. The Action plan states that the highest rate of criminal prosecution on the basis of gender intolerance was recorded in 2021.¹ While the PDO welcomes this development, it is nevertheless noteworthy that the UN Human Rights Committee remains concerned by low rates of prosecution and conviction for violence against women, including sexual violence.² Moreover, the PDO would also like to underline certain negative trends. In particular, the number of cases of inciting women to suicide/attempted suicide and the number of attempted murders of women have increased.³ Moreover, there has been no tendency of decrease in cases of femicide/attempted femicide.⁴ Although police response to gender-based crimes has been somewhat improved, difficulties in identification of gender as a motive in cases of

¹ Action Plan (12/04/2022) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), §8.

² The UN Human Rights Committee, Concluding observations on the fifth periodic report of Georgia, 27 July 2022, CCPR/C/GEO/CO/5, §23.

³ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 121, available at: < <https://bit.ly/3PgjoX2> > [last accessed 17.07.2022].

⁴ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 121.

attempted femicides, identification of an action as committed against a family member and on the ground of gender, and classification thereof according to a specific legal provision still persist.⁵ In 2020 the PDO monitoring revealed, for example, cases where the investigation did not take appropriate steps to establish the gender motive of the crime.⁶ In one of 3 similar cases, no gender motive could be established due to the flawed investigation, and in another case, a plea agreement was reached with the accused so that the motive for the attempted femicide remained completely unknown.⁷

4. The Action Plan noted the need and importance of proper assessment of the risks of recurrence of gender-based or domestic violence.⁸ The Action Plan states that “risk assessment process largely depends on the willingness of the victim to cooperate fully and objectively with the law enforcement agency and to provide full information on the facts of the violence”.⁹ Although victim cooperation is important, it is still up to the authorities to undertake proper risk assessment and to implement all appropriate measures to this end, including provision of information to the victims about the risk of recurrence of violence and efforts to persuade them to collaborate with the law enforcement. In this connection, the Action Plan itself states that “it is important to improve the skills of law enforcement officers involved in the risk assessment process in terms of communicating with victims”.¹⁰ Moreover, besides the matter of communication and cooperation skills, the law enforcers are often unable to perceive systematic nature of cases of violence against women and domestic violence and the police reaction is fragmental, incapable of preventing repetition of violence.¹¹ There have been several instances when the authorities failed to prevent recurrence of violence although investigations had already been launched.¹² There were also cases when risks were not assessed correctly and femicide/attempted femicide could not be prevented although the Ministry of Internal Affairs had already received reports about violence against women and/or domestic violence.¹³

5. The lack of due diligence pertains not only to the law enforcement but to the judiciary as well. In particular, imposition of improperly mild and short sentences by the courts contributes to the repetition of gender-based crimes, often leading to femicide.¹⁴ When imposing

⁵ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 122; Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 18, available at: <<https://bit.ly/3L1xCrL>> [last accessed 17.07.2022].

⁶ Femicide Monitoring Report 2020 by the Public Defender of Georgia, 2021, page 14, available at: <<https://bit.ly/3llqGQR>> [last accessed 17.07.2022].

⁷ Femicide Monitoring Report 2020 by the Public Defender of Georgia, 2021, page 14.

⁸ Action Plan (12/04/2022) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), §17.

⁹ Action Plan (12/04/2022) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), §17.

¹⁰ Action Plan (12/04/2022) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), §17.

¹¹ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 15.

¹² Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 15.

¹³ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 18.

¹⁴ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 18; Report of the Public Defender of Georgia on the Situation of

conditional or short-term custodial sentences, judges often do not assess the risk of repeating or continuing gender-based or domestic violence or committing femicide by convicts against their family members or partners.¹⁵ Judges also apply conditional sentences to those who have already violated the conditions of non-custodial measures of restraint and committed violence against family members.¹⁶ Furthermore, the courts often do not analyze whether the causes (such as alcoholism) of gender-based crimes have been eliminated.¹⁷ Thus, the failure of judiciary to impose proper penalties encourages the recurrence of gender-based or domestic violence which can lead to femicide.

6. Apart from imposition of sentences incommensurate with the gravity of the crime, the courts also struggle to provide proper reasoning and argumentation in their verdicts in cases of femicides. Cases analyzed by the PDO demonstrate that the case law is not uniform – judges understand the content of the gender motive differently from each other.¹⁸ It is a problem for them to define a gender-motivated murder in the judgments and to assess factual circumstances or evidence in accordance with that definition.¹⁹ It is also concerning that most judges do not consider jealousy, assumption of ownership, or prohibition of relationship with other men as circumstances proving a gender motive.²⁰

7. Another factor contributing to repetition of gender-based crimes relates to the course on violent addiction and behavior change. Such courses oriented on the change of violent behavior are essential components for prevention of recidivism. However, the level of participation in the aforesaid course is very low due to its voluntary, non-obligatory character.²¹ Moreover, no course/program has yet been developed for those abusers against whom a protection order has been launched.²²

8. The Action Plan refers to the launch of the electronic surveillance system as a measure used with a victim's consent in the presence of a high risk of recurrence of violence.²³ The PDO notes that the rate of application of the electronic surveillance system in tandem with a restraining order is extremely low.²⁴ In 2021 9,376 restraining orders were issued for domestic violence and 744 restraining orders were issued for violence against women.²⁵ Electronic

Protection of Human Rights and Freedoms in Georgia, 2021, page 122; Femicide Monitoring Report 2020 by the Public Defender of Georgia, 2021, pages 25-29.

¹⁵ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 19; Femicide Monitoring Report 2020 by the Public Defender of Georgia, 2021, pages 25-27.

¹⁶ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 19.

¹⁷ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 19; Femicide Monitoring Report 2020 by the Public Defender of Georgia, 2021, page 25, 28.

¹⁸ Femicide Monitoring Report 2020 by the Public Defender of Georgia, 2021, page 29.

¹⁹ Femicide Monitoring Report 2020 by the Public Defender of Georgia, 2021, page 29.

²⁰ Femicide Monitoring Report 2020 by the Public Defender of Georgia, 2021, page 29.

²¹ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, pages 119-120;

²² Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 120.

²³ Action Plan (12/04/2022) - Communication from Georgia concerning the case of Tkheldze v. Georgia (Application No. 33056/17), §19.

²⁴ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 19.

²⁵ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination

surveillance was imposed on only 14 persons in connection with domestic violence, and on 1 person in connection with violence against women.²⁶ The Action Plan explains this low rate by reference to negative societal stereotypes and lack of awareness of the victims.²⁷ Similarly, in the context of restraining orders, the Action plan states that "the cooperation of victims in the process of fulfilling the obligations set out in the restraining order remains a challenge".²⁸ In this connection, the PDO would like to reiterate that it is the obligation of the government, not the victims, to prevent repetition of violence. To fulfil this obligation, the law enforcement must properly assess the risk of repetition of domestic violence or violence against women. Moreover, the government is obliged to inform victims about the aforesaid risk, to increase their knowledge about the benefits of the electronic surveillance system and restraining orders and to convince them to cooperate with the law enforcement. Similarly, the UN Human Rights Committee also called upon the government to inform "women of their rights and available protection, assistance and redress".²⁹

9. Fight against gender-based crimes and prevention thereof can hardly be successful without raising awareness of the relevant public bodies, victims and the society in general. Despite various trainings mentioned in the Action Plan, lack of gender-sensitivity of the law enforcement is a serious concern, especially in case of women with disabilities. In particular, law enforcers often have stereotypical attitudes towards women with disabilities.³⁰ Investigators, for example, often question the credibility of a testimony given by a woman with a mental health problem and/or intellectual disability.³¹ Women with disabilities often give up on protection of their rights because of this stereotypical attitude.³² Moreover, the state is obliged to raise awareness of the society at large in order to eradicate negative gender stereotypes that often lead to gender-based crimes. To this end, public figures and especially the representatives of the government should refrain from making sexist statements and engaging in sexist behavior. However, such statements and conducts unfortunately took place in 2021.³³

10. In terms of evaluation of the Action Plan, the PDO finds it relevant to refer to the report by the European Implementation Network on implementation of the ECtHR judgements concerning domestic and gender-based violence.³⁴ When assessing the Action Plan, the report states that "the authorities did not foresee plans for the future regarding general

of Discrimination against Women, 2022, page 19; Femicide Monitoring Report 2020 by the Public Defender of Georgia, 2021, page 16.

²⁶ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 19; Femicide Monitoring Report 2020 by the Public Defender of Georgia, 2021, page 16.

²⁷ Action Plan (12/04/2022) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), §19.

²⁸ Action Plan (12/04/2022) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), §18.

²⁹ The UN Human Rights Committee, Concluding observations on the fifth periodic report of Georgia, 27 July 2022, CCPR/C/GEO/CO/5, §24.

³⁰ The Public Defender of Georgia, Assessment of the Needs of Women and Girls with Disabilities and the State of Protection of their Rights in Georgia, 2022, page 11, available at: < <https://bit.ly/3FHfbHI> > [last accessed 17.07.2022].

³¹ The Public Defender of Georgia, Assessment of the Needs of Women and Girls with Disabilities and the State of Protection of their Rights in Georgia, 2022, page 11.

³² The Public Defender of Georgia, Assessment of the Needs of Women and Girls with Disabilities and the State of Protection of their Rights in Georgia, 2022, page 11.

³³ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 20.

³⁴ European Implementation Network, Implementing judgments of the European Court of Human Rights concerning domestic and gender-based violence, 2022, available at: <https://bit.ly/3BkwKgl> [last accessed 07.09.2022].

measures. This is concerning given the nature of the violation and wider concerns raised by Georgian civil society in the context of GREVIO shadow monitoring reports”.³⁵ Moreover, the Report has classified the execution of the judgement in the case of *Tkheldze v Georgia* as a case with limited progress.³⁶ This means that “the authorities have taken some steps forward, but significant measures are still required to address the core issue in the judgment”.³⁷

11. Finally, in the context of the Covid-19 pandemic, the Action Plan states that “the number of reported incidents of violence has not decreased during the pandemic, which is directly related to the measures taken by the MIA together with relevant agencies and international partners during the pandemic”.³⁸ The Action Plan refers to messages sent to the population about alternative ways of reporting to the police and videos about the legal tools and services available to victims of violence in the country.³⁹ The PDO welcomes these efforts. Nevertheless, the PDO would like to note the results of its monitoring conducted in 2021 in the shelters and crisis centers for victims of violence in Georgia.⁴⁰ In particular, the monitoring revealed that ensuring victim awareness on available support services became particularly challenging during the pandemic.⁴¹ According to the monitoring, ensuring employment and thereby economic empowerment of beneficiaries of shelters also became especially problematic.⁴²

12. The PDO would also like to address some matters which are not mentioned in the Action Plan but are nonetheless relevant for fight against gender-based hate crimes.

13. A working group on gender matters has been established within the Georgian Parliament in order to fulfill the EU candidate status requirement according to which the government must “notably consolidate efforts to enhance gender equality and fight violence against women”.⁴³ The working group has prepared a list of necessary legislative amendments which is a positive step forward. The PDO has been involved in this process and hopes that a package of legislative amendments will be prepared improving legislation on domestic violence and violence against women, especially the definition of sexual violence. The PDO also hopes that the work process will encompass assessment of gender equality policy and support services.

14. Indeed, provision of supporting services to victims of gender-based crimes has significant shortcomings. One of the services offered by the state is the Witness and Victim Coordinators Service. However, the involvement of the coordinators in cases of violence against women and domestic violence is very low and formalistic due to, inter alia, the small number of the

³⁵ European Implementation Network, Implementing judgments of the European Court of Human Rights concerning domestic and gender-based violence, 2022, page 22.

³⁶ European Implementation Network, Implementing judgments of the European Court of Human Rights concerning domestic and gender-based violence, 2022, page 10.

³⁷ European Implementation Network, Implementing judgments of the European Court of Human Rights concerning domestic and gender-based violence, 2022, page 9.

³⁸ Action Plan (12/04/2022) - Communication from Georgia concerning the case of *Tkheldze v. Georgia* (Application No. 33056/17), §16.

³⁹ Action Plan (12/04/2022) - Communication from Georgia concerning the case of *Tkheldze v. Georgia* (Application No. 33056/17), §16.

⁴⁰ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 121, footnote 390.

⁴¹ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 121, footnote 390.

⁴² Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 121, footnote 390.

⁴³ Opinion on the EU membership application by Georgia, available at: <https://bit.ly/3RqWVXn> [last accessed 03.10.2022].

coordinators employed by the Ministry of Internal Affairs and the Prosecutor's Office.⁴⁴ In particular, 18 coordinators employed by the Prosecutor's Office worked on 119 cases of violence against women and 1706 cases of domestic violence in 2021 while 14 coordinators employed by the Ministry of Internal Affairs worked on 108 cases of violence against women and 1682 cases of domestic violence.⁴⁵ Moreover, the victim shelters lack basic items/necessities needed for dignified life of the beneficiaries and are not fully accessible for victims with disabilities.⁴⁶ Furthermore, the amount of psychological support resources is insufficient.⁴⁷ Similarly, involvement of social workers in cases of gender-based violence is superficial and very low partially due to absence of the document of national referral procedure for identification, protection, support and rehabilitation of victims of domestic violence and/or violence against women.⁴⁸ In this connection, the UN Human Rights Committee expressed concern over "insufficient protection and support services for victims, including psychological services".⁴⁹ According to the Committee, the government must ensure "adequate access to effective remedies and means of protection, including shelters and medical, psychosocial, legal and rehabilitative support services, without a precondition of obtaining victim status".⁵⁰ Moreover, beneficiaries of shelters for domestic violence victims often lack awareness about available support services according to the monitoring conducted by the PDO in 2021 in the shelters and crisis centers.⁵¹ Furthermore, according to the PDO monitoring of questioning of female victims of domestic violence in court, the judges do not provide information about available support mechanisms to female victims of violence or only provide incomplete information.⁵² It is also concerning that the Parliament of Georgia postponed adoption of timely, adequate and effective compensation rules for victims of violence against women and domestic violence although introduction of these rules could significantly enhance the support of victims.⁵³

15. National legislation plays an essential role in combating gender-based crimes. Georgian legislation addressing such crimes has serious flaws. Contrary to international standards, it fails to include absence of free and voluntary consent in the definition of sexual crimes and to define honor-based violence. The UN Human Rights Committee has also expressed regret "that current legislation fails to include the lack of consent as the core element of the definition

⁴⁴ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 17.

⁴⁵ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 17.

⁴⁶ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 121; The Public Defender of Georgia, Assessment of the Needs of Women and Girls with Disabilities and the State of Protection of their Rights in Georgia, 2022, pages 12-13.

⁴⁷ The Public Defender of Georgia, Assessment of the Needs of Women and Girls with Disabilities and the State of Protection of their Rights in Georgia, 2022, page 12.

⁴⁸ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 17.

⁴⁹ The UN Human Rights Committee, Concluding observations on the fifth periodic report of Georgia, 27 July 2022, CCPR/C/GEO/CO/5, §23.

⁵⁰ The UN Human Rights Committee, Concluding observations on the fifth periodic report of Georgia, 27 July 2022, CCPR/C/GEO/CO/5, §24.

⁵¹ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 19.

⁵² Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 17.

⁵³ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 19.

of rape and to define “honor-crimes”⁵⁴. Moreover, the current legislation fails to define the meaning of an intimate partner, to comprehensively regulate economic violence and to provide certain important guarantees (e.g., involvement of the psychologist) for the victims during court hearings.⁵⁵

⁵⁴ The UN Human Rights Committee, Concluding observations on the fifth periodic report of Georgia, 27 July 2022, CCPR/C/GEO/CO/5, §23.

⁵⁵ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, pages 20-21.