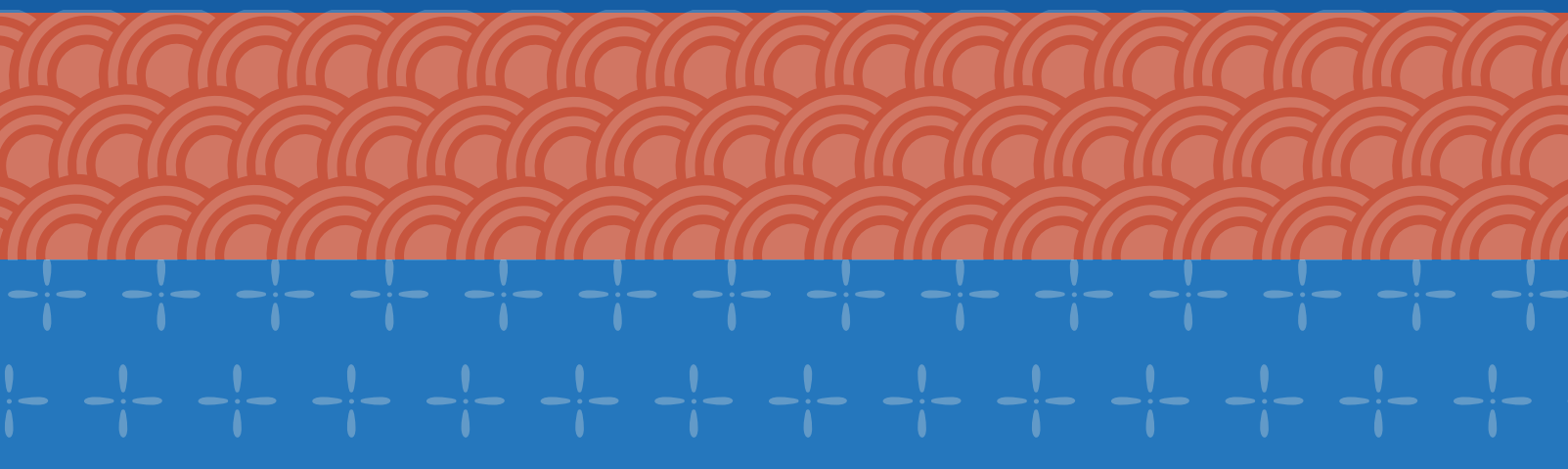


FEMICIDE MONITORING REPORT 2019



PUBLIC DEFENDER OF GEORGIA | 2020



PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA



UN JOINT PROGRAMME
FOR GENDER EQUALITY



FEMICIDE MONITORING REPORT 2019

PUBLIC DEFENDER OF GEORGIA | 2020

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INTRODUCTION

Protection of women's rights and achievement of gender equality still remains challenging in Georgia. Despite improvement of legislation on violence against women and domestic violence, empowerment of supporting services for victims of violence and implementation of numerous awareness raising campaigns, prevention of gender motivated murders of women and enforcement of effective justice on such cases still remains challenging.

Problems related to the complex fight on violence against women and domestic violence and lack of coordination between state agencies is an obstacle for prevention of marginal manifestation of gender violence, femicide. We should underline separately that specific measures in relation to social work in fight on violence against women and domestic violence have not took place and social service is still formally involved in proceeding of cases related to violence against women and domestic violence. Taking mandatory courses focused on violent attitudes and behavior change by abuser is still problematic.¹

We should also mention specific gaps, emerging while response from law enforcement bodies. Response to cases, where the abuser is the person with influence is problematic. In such cases state attitude is altered, response is delayed and created such impression that the starting point of the decision is the interest of abuser and not the rights of the victim.²

Since 2016, Public Defender of Georgia, analyses cases related to women's murder based on gender sign,

attempts of such murders and cases related to incitement to suicide, based on special methodology according to the recommendation of UN special speaker on violence, reasons of violence and their results, Dubrovka Simonovich. Public Defender of Georgia analyzed in details cases of femicide which took place in 2014-2018, prepared reports and prepared appropriate recommendations for agencies.

We welcome the fact that the part of the recommendations was implemented. The fact that the murder against family member and murder based on gender are considered as aggravating measures through legal amendments passed after recommendations, has special importance. Taking into consideration this background it is interesting whether these legal changes influenced particular cases and whether these legal provisions are used in practice correctly.

At this time Public Defender's Office prepared monitoring report for femicide and attempts of femicide of 2019. Methodology of legal analyses of cases includes assessment of justice implementation and statistics, that gives us opportunity to measure achieved progress and reveal still existing gaps preventing the fight against the problem.

We hope that presented findings and recommendations will be considered while planning and implementing state policy against femicide.

1 Report of Public Defender of Georgia on state of human rights and freedoms in Georgia, 2019, p.196. Information is available on the following link: <http://ombudsman.ge/res/docs/2020040215365449134.pdf>

2 Report of Public Defender of Georgia on state of human rights and freedoms in Georgia, 2019, p.197. Information is available on the following link: <http://ombudsman.ge/res/docs/2020040215365449134.pdf>

1. RESEARCH METHODOLOGY

The methodological framework for monitoring gender-related killings of women (femicide) was developed by the Office of the Public Defender, which we also used in the preparation of this report.³

For the purposes of the study, based on the context in Georgia and based on the Latin American Model Protocol,⁴ the Public Defender uses the following definition of femicide:

Femicide is a gender related killing of a woman, in other words, killing of a woman the motive or context of which is related to gender-based violence, discrimination, or subordinate role of a woman, manifested by a sense of entitlement to or superiority over women, by an assumption of ownership of women, by controlling her behavior or any other reason related to gender, also incitement to suicide based on the above grounds.

The fact that a woman is murdered does not automatically mean that a femicide was committed. According to the Latin American Model Protocol for the investigation of the gender-related killings of women femicide constitutes when murder or the death of a woman is linked to a woman's gender, in particular, there must be some indication that the motive or context for the killing was related to gender-based violence and/or discrimination.⁵

As for the motive of crime, during the analysis of court cases, we considered the following signs of the motive of femicide important for the present study, namely:

- Discriminatory or sexist attitude towards the victim;
- Sense of entitlement;
- Control of the behavior;
- Demanding obedience to stereotypical gender roles.⁶

Disobedience to and going against the gender roles assigned to the victim is seen as the reason/motive for the perpetrator to commit the crime.

The monitoring of femicide cases was carried out in three stages. **The first phase of the study** involved requesting statistical information and convictions related to femicide and femicide attempts from common courts,⁷ as well as requesting statistical information, decrees on prosecution and termination of investigations from the General Prosecutor's Office of Georgia.

During the second phase of the study, convictions obtained from the first instance and appellate courts were analyzed to identify a femicide or attempted femicide.

3 Femicide Monitoring Report: Gender related killings of women" Analysis of 2016 Criminal Cases, Public Defender of Georgia 2017

4 Latin American Model Protocol for the Investigation of Gender-related Killings of Women (femicide/feminicide) ("hereinafter "Latin American Protocol") High Commissioner for Human Rights, Latin American Office, ISBN 978-9962-5559-0-2, pp. 13-14.

5 Latin American Model Protocol for the Investigation of Gender-related Killings of Women (femicide/feminicide); High Commissioner for Human Rights, Latin American Office, ISBN 978-9962-5559-0-2, pp. 13-14

6 Detailed information on methodological issues can be found in the 2016 Femicide Monitoring Report. pp. 6-10. Available online at: <https://bit.ly/2KrEn9k> [last visited on April 23, 2020].

7 We have requested information regarding the Articles of the Criminal Code of Georgia, which are applied for the qualification of the femicide cases, in particular: Intentional killing (Article 108), Intentional murder under aggravating circumstances (Article 109), Intentional murder in a state of sudden, strong emotional excitement (Article 111), Intentional infliction of grave injury (Article 117), Incitement to suicide (Article 115), Articles 19, 108 and 19, 109 of the Criminal Code (attempted crime) and Article 118.2, namely, an intentional less grave bodily injury which has caused the loss of life. Unlike previous years' reports for preparing Femicide Monitoring Report of 2019 we have requested from the Supreme Court cases qualified by all paragraphs of Article 117 of Criminal Code of Georgia, qualified by Article 118-4 (Intentionally less grave bodily injury committed against a family member, based on gender sign, against pregnant woman, minor or helpless person, resulting in negligent loss of life of the victim), as well as by article 121 (grave or less grave bodily injury in a state of sudden, strong spiritual excitement and by Article 122 (grave or less grave bodily injury beyond the scope of necessary self-defense). Besides, we were requesting information related to those articles of Criminal Code, where femicide might be also revealed. Namely: Rape of a woman, resulting in the loss of the victim's life (Article 137.b of Criminal Code), A different act of a sexual nature that resulted in the loss of the victim's life (Article 138.3.b of Criminal Code), illegal abortion, that resulted in loss of life (Article 133.3. of Criminal Code), Sterilization against the will, that resulted in loss of life (133'3 of Criminal Code), Female genital mutilation, which resulted in the loss of life (133'3 of Criminal Code), trafficking, that resulted in the loss of life (143'4b), torturer that resulted in the loss of life (Criminal Code of Georgia, Article 144'3.c).

On the third stage of the study, we requested full case materials on verdicts on femicide and attempted femicide cases selected according to the methodology from all three court instances; we have also requested information on the mentioned cases from the Ministry of Internal Affairs to identify shortcomings in the administration of justice.⁸

As a result, the Office of the Public Defender received 18 verdicts from the common courts related to crimes committed in 2019. After reviewing of the verdicts, we requested case materials about 13 cases, femicide and attempted femicide was identified in 10 of them. As to the other 3 cases:

- In one case the fact of incitement to suicide of woman family member was not identified beyond the standard of reasonable doubt and accordingly we consider, that Bolnisi District Court and Tbilisi

Court of Appeals did not make mistake, while issuing not guilty verdict on this case.⁹ Therefore, despite the fact that this case was analyzed in details, due to absence of incriminating evidences in this case and due to presumption of innocence, the case was not included in the report, even in the general and depersonalized form.¹⁰

- One decision of Tbilisi City Court was related to murder of the sister in law by the brother of her husband, because she did not lend money to him. Gender motive was not identified in this case, as it was motivated by the revenge for not lending the money.¹¹
- One more case was not also included in report, despite its detailed review, as gender motive was not identified. The case was related to the intended grave bodily injury caused by mother to the juvenile, which was dangerous to life, it was committed with prior recognition of a minor that resulted in loose of life.¹²

8 Part of the cases were submitted to the Office of the Public Defender in a material form, and two cases were reviewed at the Tbilisi City Court.

9 Prosecution could not confirm with medical document, nor with court-medical expertise conclusion, that the woman, victim of violence in family, took poison. Doctor was claiming in the court that the patient came to clinic with nervous attack and not because of drinking plant poisoning means. Victim was stating that she drunk plant poisoning liquid, used for plant poisoning, because of physical abuse from her husband. But the physical injuries were not confirmed, despite the fact that she was immediately hospitalized, neither any poisoning substances were found in her body. Later victim refused to testify in the court against her husband.

10 Bolnisi District Court, case #1/177-19

11 Tbilisi City Court #1-5700-19

12 Tbilisi City Court #1-885 - 19

2. STATISTICS OF FEMICIDE AND ATTEMPTS OF FEMICIDE

The Gender Department of the Office of the Public Defender of Georgia analyzed totally 10 cases of femicide and attempts of femicide perpetrated in 2019. Out of

the 10 cases analyzed, only 3 relate to femicide, 7 – to femicide attempt.

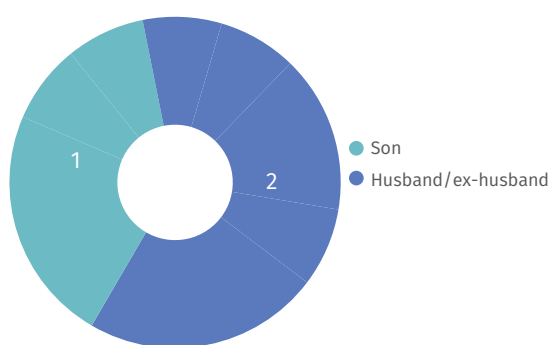


Chart 1: Persons perpetrating femicide

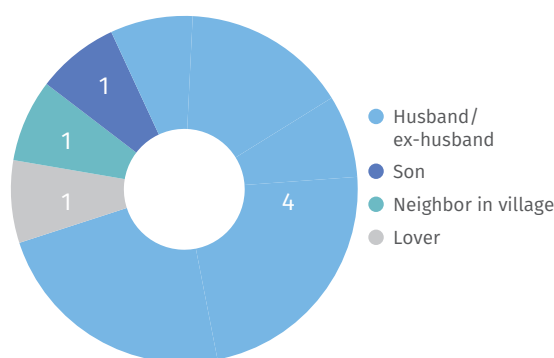


Chart 2: Perpetrators of femicide attempts

Statistics, like in previous years shows, that femicide and attempt of femicide is mostly committed by husbands, from registered as well as from non-registered marriages and by ex-husbands (in one case of femicide and in one case of femicide attempt the crime was committed by ex-husband). In the statistics there are husbands with whom women finished their relations, but the divorce was not official.¹³

In most cases of femicide and attempts of femicide “revenge” or “Quarrel” is considered as motive. Compared to previous years, we should note positively, that in the analyzed cases of femicide and femicide attempt the rate of identification of gender motivation is raised. Namely, in 2 cases of femicide and in 4 cases of femicide attempts, from all 10 analyzed cases gender motivation was admitted.

¹³ Lover means person, who has no sexual relations with the victim, does not leave with her and is not engaged in common household with her.

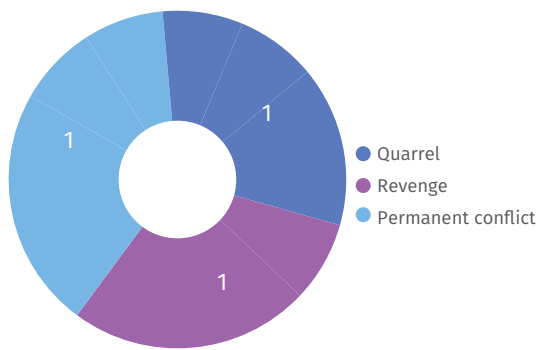


Chart 3: Ground of Femicide

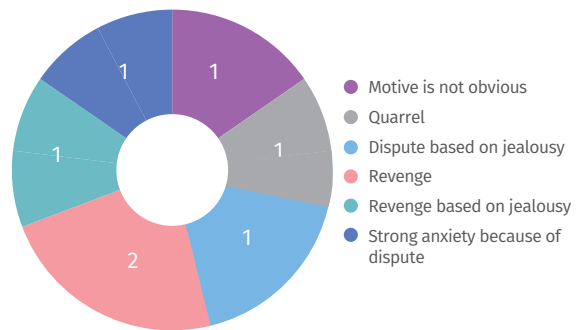


Chart 4: Ground of Attempted Femicide

The tendency is the same like in the previous years and the place of crime is mainly home, this is characteristic

based on the specific of the femicide.

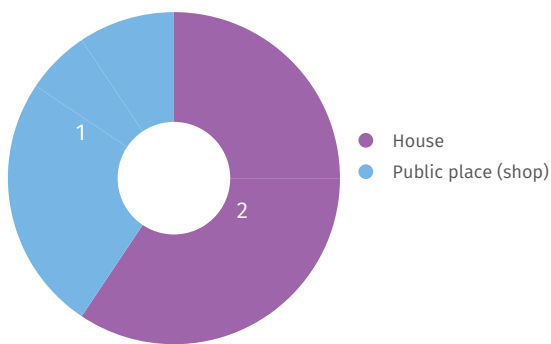


Chart 5: Place of Femicide

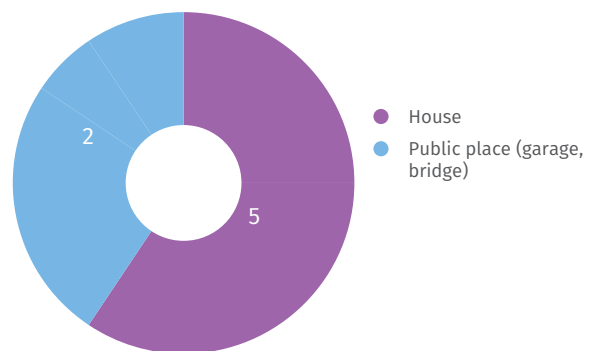


Chart 6: Place of Attempted Femicide

In analyzed cases, weapon of femicide in one case was hand beating, in one case nail cutter,¹⁴ in one case several means were used – firearm, cartridges fired from firearm, grenades.¹⁵

one case firearm and in one case attempt to throw out of balcony.

In 3 cases of femicide attempts weapon of femicide was knife, in 2 cases regular violation of honor and dignity, in

The number of femicide/attempt of femicide cases, committed in the drunk condition are increased – in 7 cases out of analyzed 10, crime was committed in the drunk condition.¹⁶

14 The damage with nail cutter was made to neck and throat area, which led to the accumulation of blood and eventually death by asphyxia.
 15 In the mentioned case the death was caused by beating with the firearm itself on the damaged areas. Before this accused person fired to his wife and the victim avoided them, then abuser throw grenades to the shop where was the victim which did not exploded. Despite the fact that the firing was avoided and the grenade was not exploded and eventually death was caused by the beating with firearm, the previous actions were avoided independently from the will of the abuser; besides the crime committed by all these means affected the qualification of crime as committed with the special cruelty. So, all of three weapons were included in statistics.
 16 In two cases of femicide the accused persons were drunk, 1 was sober. In 5 cases of femicide attempts the accused persons were drunk and 2 were sober.

According to the analyzed cases, femicide/attempt of femicide are committed by unemployed or by persons employed on jobs requiring low qualification, accordingly by individuals with low income.¹⁷

As to the statistics related to conviction of perpetrators, it looks like following:

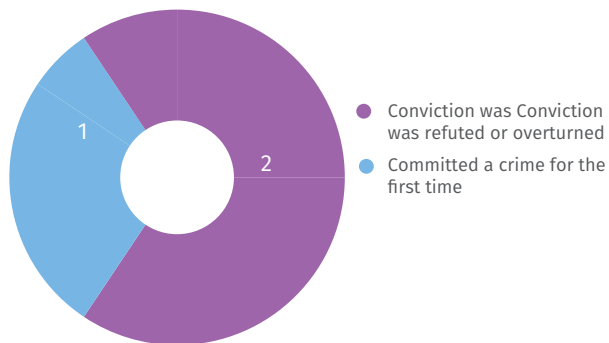


Chart 7: Conviction of perpetrators of femicide

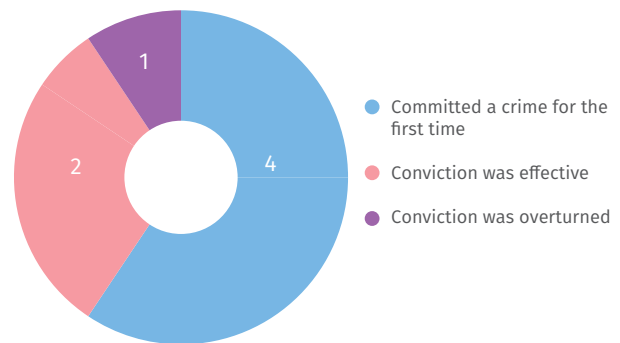


Chart 8: Conviction of perpetrators of attempted femicide

In 2 cases from all 10 analyzed, accused persons, as well as the victim were representatives of ethnic minorities.¹⁸

Qualification of analyzed cases look like following:

Femicide cases:

- Article 11¹-109-2 "f" of Criminal Code (murder of family member)- 2 cases
- Article 11¹-117-6 of Criminal Code (Intentionally causing serious damage to the health of a helpless family member resulting in loss of life) -1 case
- Article 11¹-109-3 "b" (murder of family member with a special cruelty) – 1 case

Cases of femicide attempts

- Article 11¹-117, part 1 of Criminal Code (intentional causing serious damage to the health of family member)

- Article 117, part 1 (intentional cause of serious damage) – 1 case
- Article 11¹-115 of Criminal Code (Incitement to suicide attempt of family member) -1 case
- Article 11¹-133-2 "b" (Incitement to suicide attempt of family member committed repetitively by the person previously convicted for the violence against family members, foreseen by the article 126¹ of Criminal Code) – 1 case
- Article 12-109, part 2 "a" and part 3, "b" (murder attempt prior knowledge of pregnant woman with special cruelty) – 1 case
- Article 19-109, part 2 "a" and part 3 "e" of Criminal Code (murder attempt of family member committed repetitively) – 1 case

17 Education: 1 out of the total number of femicide perpetrators had secondary education, 1 had technical education and 1 higher education. 6 persons of total number of perpetrators of femicide attempts have secondary education and 1 has higher education. Employment: as to the employment 2 perpetrators of femicide were unemployed, one was self-employed; 4 perpetrators of femicide attempts were unemployed, and 3 were employed (watchman, handyman of private company).

18 Despite the fact that accused person and children of the victim were living in Georgia for years, knew Georgian language, reading was still problematic for them. Their native language was Russian and they were testified by investigation with the interpreter; processual documentation was also translated to Russian. Therefore, in this case (Gori District Court, case №1/352-19) accused person, as well as victim were considered as ethnic minorities. Second Case (№1/495-19 of February 28, 2020 of Gori District Court) was related to village inhabited by Azerbaijanis. Accused person, as well as victim belong themselves to the Azerbaijanian community.

3. IDENTIFIED CATEGORIES AND TYPES OF FEMICIDE

In criminal cases of 2019 control of victim actions by crime perpetrator are identified. For example, incitement to suicide of wife because she used social networks¹⁹ or because she is not rising daughter according to the rules existing in patriarchal society (mother was making nail polish to her daughter).²⁰ Motive for femicide was punishment of woman because of inappropriate expressions, as it was inconvenient with patriarchal society.²¹ Disagreement related to the seeing of children by father in case of divorce.²² The reason for attack on wife was also disposal of family income by man on his own, according to his views.²³ The reason for murder attempt was pregnancy of women from other man,²⁴ the

woman's unwillingness to cohabit with her ex-husband and the request to issue a restraining order for violence against her.²⁵ The cases were man has interest to "take blood" of the husband and fired to his wife, the fact was perceived as killing of the property of the main object of revenge.²⁶

Reason for attack from son over mother was, for example, not taking care on grandchildren by grandmother, the victim refused to offer food to her grandchildren. Reason for beating of bed ribbon mother was lack of desire to look after mother with limited abilities.²⁷

19 Tbilisi City Court case 1/4065-19
20 Akhaltsikhe District Court, case #1/119-19
21 Gori District Court, case 1/152-19
22 Akhaltsikhe District Court #1/119-19
23 Gori District Court, case 1/71-20
24 Tbilisi City Court, case #1-4791-19
25 Tbilisi City Court, case #1-4065-19
26 Gori District Court, case #1/495-19
27 Signagi District Court, case #1/138-19

4. SHORTCOMINGS EXISTING AT THE STAGE OF INVESTIGATION

4.1. Stereotype attitude

Stereotype attitude from the side of investigator towards victim is identified as problem at the investigation stage. Namely, interest towards her private, sexual life, even when it is not essential for determination of case circumstances. In the case of Gori District Court²⁸ the man, who was the lover of the woman, killed by her husband, was testified. The accused person was claiming that the reason of crime was that his ex-wife was raising their common child in “inappropriate” environment and his child has contact with the lover of mother.

Assistant of the Detective of Shida Kartli Police Department’s Detective Unit of Ministry of Internal Affairs of Georgia asked ex-lover of the killed woman following question: “During your relations with N., was there any intimate relations in presence of N’s children, in the way that they could see it” or “If any intimate relations took place in your presence?” this question was asked to 11 years old daughter of killed woman and to 9 years son. From all of them the investigation received the same answer “I cannot remember the fact that my mother or grandmother brought home strange men, or any inappropriate actions from their side”.

We should mention the fact, that in this case the investigation was carried out in relation to the Article 109, part 2, “f” (murder of family member) and Article 109, part 3, “b” (intentional murder of woman with the special cruelty). For the mentioned crimes investigation did not need collecting evidences relating the private life of killed woman.

Even in the case if the action of the accused person would be qualified in relation to article 109, part 2, “d” (intentional murder based on gender), that must also involve murder based on jealousy, asking of such question still would not be necessary. Jealousy is the subjective attitude of

the person and often is not based on any proven facts, furthermore the fact of cheating might not even exist and it might be the result of the unjustified jealousy of the murderer. In this case where it is impossible to prove fact of cheating, it cannot be a precondition for the court not to classify murder as gender based, because it was committed based on unjustified jealousy. Accordingly, in cases of crimes committed on the ground of jealousy, it is not necessary to obtain evidence of the existence of this suspicion. In this case it is important to find out that there was suspicion of cheating in the imagination of the accused person, for what accused person killed the victim. Double checking the fact, whether or not these suspicions justified, with the third persons has no sense at all, as the fact of the cheating might not even exist.

In this case, to identify the motive of murder the statements of accused person relating the fact of his wife’s cheating was enough. Accordingly, for the qualification of case and for defining the punishment there was no need to ask questions to third persons related to the intimate life of the killed woman, especially to her juvenile children.

4.2. Shortcomings while collecting the evidences

In one case of Rustavi City Court²⁹ son wounded mother in the right side of the chest with knife, because the mother showed unhappiness because of bringing grandchildren (children of the accused person) to her home, as she had some disagreement with her daughter in law (mother of child) in the past. The case was qualified in relation to the article 111-117-1 (intentional cause of serious damage to the health).

Advocate of the affected woman made appeal on January 11, 2019. The author of the appeal doubted the qualification of case in relation to the Article 117 of

28 Gori District Court, case # 1/71-20

29 Case #1-133-19

Criminal Code; according to the advocate accused person intended to kill his mother previously. He wounded his mother with the big knife to the chest; advocate said that it was action aiming to kill the woman, he also stated that the son was requesting from his mother transferring the ownership of her house. Advocate was requesting to qualify the case with the article 11¹-19-109, part 3, "c" of Criminal Code (Murder of the family member committed for profit).

Court did not satisfied appeal of the advocate regarding change of qualification, as the localization and quality of the injury was not established by experts.

On this case, conclusion of court-medical expertise was made on February 20, 2019. In the conclusion it was mentioned: "G.B. has crushed-plot wound in the right side of the chest wall, after operation it was found, that: Injury to the chest cavity with damage of organs, traumatic hemopneumothorax, lung trauma, pleural trauma, diaphragm trauma, liver trauma, hemoperitoneum. This damage was caused by an object with a sharp-edged surface and is considered as a life-threatening degree."

Despite the forensic report, no further investigative action was taken to determine the motive referred by the victim's lawyer. Injured party was not interviewed to investigate the motive of committed murder. Additional research was needed to understand what prevented the accused person to kill the victim. For this reason, it was necessary to interview the victim, to ask her additional questions, which did not take place. It is unknown why investigation did not interview her, but it is obvious, that missing of this action had influence over qualification of the case and over conviction of accused person for relatively minor articles. This might be considered as the shortcoming of investigation on the case of femicide attempt.

One more Case, where shortcomings were revealed in the process of collection of evidences, was reviewed by Gori District Court.³⁰ Court changed qualification of case of woman's murder from Article 19-109, part 3, "a" of Criminal Code (intentional attempt to kill two persons) to Article 117, part 1 of Criminal Code. Person accused in this case killed men and wounded his wife with the firearm, in order to take revenge for killing of his uncle. Gori District Court changed qualification of the court to the Article 117

of Criminal Code (intentional grave harm to health).

Gori District Court stated in the verdict of February 2020: "As to the attempt of murder of M.B Court does not refuse the fact, that M.B was standing next to her husband, when N.K. fired on her, and at this moment intention to kill M.B, as well as S.J. was obvious (even indirectly). But even if we will share position of the prosecution that accused person after 5-6 meters leaned behind the wall, how can we face the fact that there were not any obstacles for killing women and the abuser had a gun. He had gun, as well as pistol. How could it happen that heavily wounded woman walked 5-7 meters, even 5-6 meters so that accused person did not fire at her even without aiming?" So, court determined, that at first N.K has intention to kill S.J. as well as his wife M.B. Firearm and pistol are lethal tool, especially the intent to kill was revealed by aiming a weapon loaded with a mortar shell in her head (a vital organ), this fact was not refused by Gori Court. According to the Gori District Court verdict we can conclude, that N.K undertook the decision to kill M.B.

Main part of substantiation of the court decision is directed to the fact that N.K was able to kill M.B at the moment of running away, especially taking into account the fact that he had gun and Makarov system pistol in his hands. Court pays special attention to the fact that M.B. stumbled during the walk. According to the judge the stumble would give to the accused person enough time to fire at her at that moment.

M.B in his testimony to the court stated, that she runed 5-6 meters after the firing at her and after the fact she was wounded, she run 5-6 meters and leaned from the sight of the N.K at the place where building was making corner, the place was not seen from the territory of the pool, where the accused person was standing. Accordingly, N.K could not see her, and he was not able to fire at her. M.B. also stated that the place where the N.K was standing and yard where she was with her husband were divided with wall of two meters. Besides, in order to go to the house of S.J. from the place where the accused person was it was necessary to go to the stairs located in 15 meters and get two the yard through it.

At this case prosecution did not make investigational experiment, which would make it clear whether it was possible to see the edge of the wall where woman ran in the same lightning conditions. Carrying out

30 Gori District Court case, №1/495-19.

investigational experiment would make it possible to prove position of prosecution, according to which N.K undertook the decision to kill woman not voluntary but because he was prevented by existing occasions. We can say that not carrying out investigational experiment is the shortcoming of the investigation and this shortcoming had influence over the court decision to change the qualification of article to the more minor crime.

4.3 Recognition as a victim

We can consider as the positive strategy for cases of femicide and attempts of femicide acceleration of recognition as a victim. In 6 cases out of 10 persons were recognized as victims at the day of issuing the accusation order. In one case the person was recognized as victim in 13 days after the crime took place.³¹ In most cases recognition as victim took place before the issuing of accusation order that means that recognition as a victim is made in very short terms, even after several hours from criminal action.

But there are 3 exceptions from this tendency. All three cases relate to the Shida Kartli and Mtskheta Mtianeti District prosecution cases. In all three cases prosecution recognized person as a victim significantly late:

In one case³² related to the damage caused by nail cutter by husband to his wife that caused the death of the woman. This crime was committed at May 9, 2019. The accusation order was issued on May 11, 2019. The son of the murdered woman, the step son of accused person was identified as the legal successor of the victim by the decision of the prosecutor of July 8, 2019. The killed woman also had three daughters. On June 5, 2019 investigation testified daughters of the killed woman and they supported the decision to recognize their brother as the legal successor. The fourth daughter of the killed woman had the same position on June 17, 2019. Since June 17, 2019 there was no reason to continue selection of successor, it was totally possible to recognize son of the woman as the legal successor. Though, the son of the murdered women was recognized as such after 21 days, on July 8, 2019.

Second case,³³ was related to the murder with the special cruelty of wife by her husband by beating her with weapon at the shop. The crime took place at October 11, 2019, the order of accusation of person was issued on October 13,

2019. The mother of the killed woman was testified on November 12, 2019, approximately after one month since murder took place. She consented to the fact that her second daughter to be recognized as the legal successor of her killed daughter, sister of the killed woman I.G. The brother of the killed woman testified on November 20, 2019 also supported candidacy of his sister I.G. as the legal successor of the victim. Despite this fact, I.G, sister of the victim was recognized as the legal successor of the victim on January 13, 2020, after three months since murder and after two months since listening the position of family members by the order of Shida Kartli and Mtsketa-mtianeti District prosecutor. It is unknown what was the reason for postponing the recognition of legal successor in this case.

In one other Case,³⁴ in the processing of the Shida Kartli and Mtsketa-mtianeti District prosecution, related to serious damage caused to wife, aiming to take revenge against man. In this case crime took place on June 6, 2019. The victim was recognized as such on August 27, 2019 by the Shida Kartli and Mtsketa-mtianeti District prosecutor, after two months after she was testified for the first time on June 12, 2019. Taking into account, that M.B was in the condition enabling to contact her and the case was about recognizing her as victim (status which was undeniable, as the case was related to her physical damage) and not to the recognizing her as legal successor, it is not clear why it took so long for Shida Kartli and Mtsketa-mtianeti District prosecution to issue order on recognition as a victim.

4.4. Qualification by gender sign

Correct naming of crime motive and identification of gender motive still remains problematic at the stage of investigation. In the numerous cases, despite the existence of enough information for identification of such motive prosecution did not named crime as gender motivated.

In the case reviewed by the Akhaltsikhe District Court,³⁵ related to the woman, T.A, who attempted suicide by taking medicines, because her husband, G.N., was systematically humiliating her. At the moment of suicide attempt G.N was convicted in relation to the article 126 of Criminal Code, violence towards wife and family members and this conviction was not refuted or overturned.

31 In one more case reviewed by the Tbilisi City Court, criminal action took place at August 27, 2019, and prosecution recognized woman as a victim on September 9, 2019.

32 Gori District Court Case, 1/352-19

33 Gori District Court case, # 1/71-20

34 Gori District Court Case #1/495-19

35 Akhaltsike District Court case, #1/119-19

Because of this action of G.N was qualified in relation to the Article 111-115 – 2b (Incitement to suicide, through systematic humiliation of honor and dignity of the victim, committed repeatedly).

Because of systematic humiliation from her husband T.A. attempted suicide on March 3, 2019. Since November 30, 2018 for incitement to suicide and suicide attempt, committing this action by gender sign is aggravating circumstance in accordance with the Article 115, part 2, b. From the actual circumstances of the case it is revealed that accused person was calling to the victim “slut”, was unjustifiably accusing her of having an intimate relationship with other men. This circumstance means the jealousy. The accused person was humiliating victim, her honor and dignity based on this motive. Jealousy and psychological and physical violence against woman, was based on stereotype view, that woman is the property of man, and the husband has right to punish wife for such actions, which are considered inappropriate for woman in the patriarchal society. The accused person was explaining violence against woman with the fact that others saw his wife in cars of other men, and the name of his son was humiliated. Besides, mother was covering nails of her daughter with nail polish and was rising her as the “A Woman of Weak Behavior” (Style is reserved). Humiliating of honor and dignity of the woman is the sign that the crime is gender motivated.

Despite the testimony of the witnesses, prosecution never tried to qualify the case in relation to the Article 115, part 2, b of Criminal Code (incitement to suicide attempted with gender sign). The actions were qualified in accordance of Article 115, part 2, a (incitement to suicide repeatedly). The reason for this was the fact that conviction in relation to the article 126¹, of accused person was not refuted or overturned. So, in accordance to the notice, part 2 of the article 11¹ committing of the crime provided by the Article 115 (Incitement to suicide) by the person who was convicted by the Article 126¹ (Domestic violence), was considered as repeatedly crime.

We should mention the circumstance, that the Article 115, part 2, a (the provision in relation of which the crime was qualified) as well as “b” (the criminal action in relation to which the action was not qualified) foresees the same sanction: imprisonment up to six years, restriction of rights related to firearms or without this. Accordingly, in case of qualification of the crime additionally by gender sign or its qualification as an incitement to attempt to

suicide repeatedly, accused person was facing the same punishment. Despite the fact that the sanction would be the same, special meaning would have the correct naming of crime and the state would send message to any person, that the crime committed with gender sign will be recognized by state at first, and then it will be punished. The problem in this case it the fact that actual circumstances were referring to the action with the gender sign and prosecution still avoided to admit existence of such sign. In any case, by missing of Article 115, part2, of Criminal Code in the order of accusation, prosecution deprived the ability of the court to discuss the existence of gender sign in the case.

Because of the fact that in the order of accusation, there was not reference to the gender sign, court was lacking ability to discuss this circumstance to the detriment of the accused person. But still Akhaltsike District Court stated that the incitement to suicide of the victim was motivated by the will to take revenge because of jealousy. But referring to this motive was not qualifying. Referring to this occasion just aggravated the punishment: the accused person was convicted to imprisonment for 5 years. But it should be stressed one more time that for the prevention of crimes with gender sing identification of motive has not less importance than severe punishment of person who committed the crime. Notwithstanding the fact that, in this case accused person was convicted to the strict punishment – imprisonment to 5 years, this does not diminish importance of admitting of gender motive by the court and prosecution.

4.5 Investigating the previous history of violence

Femicide and attempt to femicide are often culmination of gender inequality and systematic gender violence. Accordingly, while qualifying the crime as the femicide and attempt to femicide the fundamental importance has investigating the fact whether the victim was suffering from gender discrimination and violence before the murder. The investigation of crime prehistory is important to identify crime motive and to define the sentence.

According to the information provided by the Ministry of Internal Affairs of Georgia, in four cases of femicide and attempt to femicide,³⁶ from all 10 cases analyzed in the report, the preliminary applications existed.

36 In particular cases the Public Defender already had received information within the scope of processing of the case, and on the other part we inquired additionally letters of Ministry of Internal Affairs: MIA 3 19 0277726, 18/10/2019; MIA 5 19 00638715 13/03/2019; MIA 9 20 02619149 06/11/2020; MIA 8 20 02457580, 16/10/2020; MIA 8 19 01247405, 15/05/2019; MIA 6 19 02523522, 23/09/2019.

In all four analyzed cases previous history of the crime was investigated. One case that was revised by the Tbilisi City Court was related to the incitement to suicide attempt because of systematic humiliation from the side of the husband.³⁷ For this case prosecutor requested for the restraining order, which was also referring to the fact of physical and sexual violence against the victim. The second case was also related to the systematic humiliation of wife, by the man who was convicted for the domestic violence, and this led to the suicide of the woman.³⁸

One more case, where the previous history was investigated, was revised by the Gori District Court.³⁹ The case was related to the killing of the wife by beating with the gun. On October 13, 2019 investigator asked the Khashuri District Unit whether there were orders against accused person. In the written answer of October 13, 2019 Khashuri District Unit of Ministry of Internal Affairs it is mentioned, that the restraining order towards the accused person was not issued. Despite this fact the Khashuri District Unit attached to the letter the order on termination of criminal prosecution. The case was related to the dispute between the accused person and victim, after which accused person crashed the glass, the parts

of the glass hit the victim, as the result she got the minor damage to health. In this case the reason for termination of the processing was lack of sign for criminal action.

In one more case reviewed by the Tbilisi City Court,⁴⁰ accused person tried to kill wife with the knife. At the moment of committing of the crime the person was convicted for the threats against his wife (Article 11¹-115 of Criminal Code) and violence against mother in law (Article 126 of Criminal Code). Because of the conviction for threats against wife the action of the accused person was qualified in relation to the Article 11¹-19-109-3, "e" (Attempt to kill family member committed repeatedly). In the same case prosecution investigated the occasion that before murder attempt the restraining order was issued towards the accused person.

In other cases, the investigators were asking victim or relatives in relation to the previous history of the violence. The witnesses were excluding the possibility of violence against victim from the side of accused person, before the femicide⁴¹ or were confirming the existence of such violence, but were stating that victims were not applying to law enforcement bodies because of fear of accused persons.⁴²

37 Tbilisi City Court, case 1/4065-19

38 Akhaltsikhe City Court, 1-119-19

39 Gori District Court, case # 1/71-20

40 Tbilisi City Court case, #1-4065-19

41 Gori District Court Case 1/352-19; Rustavi District Court Case, #1-133-19

42 Tbilisi City Court Case, 1/4127-19

5. SHORTCOMINGS AT THE TRIAL STAGE

5.1. Qualification of an action based on the grounds of gender and committing a crime against a family member

Compared to previous years, the common courts in 2019 are actively applying Article 53¹ of the Criminal Code to stringent the minimum sentence in domestic crime cases to at least one year. Courts toughen sentences more because a crime was committed against a family member, than because the crime was committed on the grounds of gender.

The same can be said with regard to Article 109 of the Criminal Code. In 2019, the court found guilt in two cases for committing a crime under Article 11¹-109-2 (f) of the Criminal Code (intentional killing against a female family member).⁴³ In one case, Article 11¹-109-2 (f) of the Criminal Code was applied in conjunction with Article 19 of the same Code (attempted murder of a family member).⁴⁴ No conviction under Article 109 2 (d¹) of the Criminal Code (intentional killing on grounds of gender identity) was handed down in 2019, although the Prosecutor's Office made an unsuccessful attempt to take the case to the court under this article.

The application of Article 53¹ of the Criminal Code has increased in the common courts, even though in 2019 two judgements were passed where a crime was committed against a female family member, but nonetheless, the courts applied the minimum sentence against the perpetrator.

One of the cases⁴⁵ of the Tbilisi City Court was related to multiple injuries inflicted on the wife by a husband with

a knife. Later, the husband called 112 and an ambulance; the timely medical care made it possible to save his wife's life. According to the indictment of September 5, 2019, the action of the accused was qualified under Article 11¹-19-109-2 (f) (intentional killing against a family member) of the Criminal Code.

The Tbilisi City Court found that there had been a voluntary abandonment of the crime at the stage of attempt. The Court deemed, that the abandonment of the crime was voluntary, husband E.B. returned home, pitied the spouse, called 112 by the made-up name, and informed the operator about the place where his wife was. Such voluntary act made it possible to avoid the serious outcome – loss of life. After calling 112, the victim was provided with medical treatment, as a result of which the life was preserved.

Due to voluntary abandonment of the act, E.S.'s action shall be qualified in accordance with the action actually committed by him. This though was the severe damage inflicted to the health of the victim. Tbilisi City Court refused to qualify the act of E.S. under Article 117 (3, "e") of the Criminal Code of Georgia (intentional grave bodily injury against a family member). The reason for this was that relevant amendment to the Criminal Code was introduced on September 20, 2019, while the criminal act was committed on July 28, 2019. The Court did not apply the strict norm to the accused retroactively.

The Court also found that there were no aggravating circumstances in the case of E.S., however, there were mitigating circumstances in the case, according to which E.S. repented the crime, cooperated with the investigation, assisted the investigation in finding evidence and had not

43 Gori District Court, Case №1/352-19; Gori District Court, Case №1/71-20.

44 Tbilisi City Court, Case №1-4065-19.

45 Tbilisi City Court, Case №1/4127-19.

been convicted in the past; as a result he was imposed with the lightest sentence under Article 117 (1) of the Criminal Code - imprisonment for up to 3 years.

Both Parts 3 and 4 of Article 53¹ added to the Criminal Code on November 30, 2018, were in force during committing the crime as well as hearing the criminal case. According to Article 53¹ (2) of the Criminal Code, the commission of a crime by one member of the family against another constitutes an aggravating circumstance. Pursuant to Article 53¹ (3) of the Criminal Code, if an offense is committed by one family member against another, the term of imprisonment shall be at least 1 year longer than the minimum sentence for the offense committed under the relevant article or part of the article of this Code. According to part 4 of the same article, if the commission of a crime by one family member against another is a qualifying circumstance under material part of criminal law, the court no longer has the right to aggravate the imprisonment sentence for at least one year for a crime that was committed against a family member.

The Tbilisi City Court correctly refused to apply Article 117 (3, "e") of the Criminal Code (intentional grave bodily injury against to a family member), which did not apply at the time of committing the crime. Nevertheless, both at the time of the crime and at the time of the trial, parts 3 and 4 of Article 53¹ of the Criminal Code were in force, which the court is obliged to apply and impose to aggravate the sentence to at least one year, when the relevant article under the material part of the criminal law does not consider the crime against a family member as a qualifying sign. The court was obliged to aggravate the responsibility for at least one year and sentence the convict not to 3 years imprisonment, which is the minimum amount of the sentence for this crime, but to 4 years imprisonment, instead.

It is noteworthy that in its appeal the Prosecutor's Office did not request to increase the sentence of the convict to at least one year. In spite of the fact that the prosecutor in the appeal sought a qualification of an action under a more stringent article - attempted murder of a family member (Article 11¹-19-109-2- "f"), nothing prevented the prosecution from requesting a tougher sentence as an alternative if the Appellate Court would not satisfy its motion to change the qualification for the action and

would uphold the qualification of E.S.'s action under the first part of Articles 11¹-117 of the Criminal Code.

The Court of Appeals dismissed the prosecutor's appeal and found that E.S.'s action was properly qualified under the first part of Article 11¹-117 of the Criminal Code. Unlike the Tbilisi City Court, the Court of Appeals found grounds for the application of Article 53¹ of the Criminal Code in this case. In its judgment of February 25, 2020, the Chamber of Criminal Cases of the Tbilisi Court of Appeals referred to Article 53¹ of the Criminal Code.⁴⁶ In addition, the judgment of the Tbilisi Court of Appeals of February 25, 2020 states: "The Chamber clarifies that according to Article 297 (g) of the Criminal Procedure Code of Georgia, the appeal is reviewed within the scope of the appeal and the response. **As the judgment in the present case is appealed by the prosecution only in the part of qualification and not in the sentence, the Chamber is deprived of the opportunity to take into account the aggravating circumstances of E.S. - a crime committed by one family member against another - and to impose a more severe punishment**".⁴⁷

Thus, it is clear from this case, that on the one hand the Tbilisi City Court ignored the crime committed against the family member as an aggravating circumstance, and on the other hand, the Prosecutor's Office failed to correct the mistake made by the Court of First Instance in its appeal. As a result, a man who inflicted multiple, including life-threatening injuries to his wife with a knife was sentenced to an inadequately lenient sentence of up to three years in prison, which is the minimum amount under Article 117 (1) of the Criminal Code.⁴⁸

The second similar case was considered by the Signaghi District Court. The case concerned the beating of a 78-year-old mother on a log by a man resulting in the death of the woman. The act was qualified under Article 11¹-117-6 of the Criminal Code (intentional bodily injury against a family member, committed by an offender knowingly against a helpless person, causing the loss of life).

Signaghi District Court, by its judgment of October 8, 2019, found G.K. guilty. It referred to Article 11¹ of the Criminal Code and stated: "It is established that on March 14, 2019, G.K. committed an unlawful act of violence - intentional grave bodily harm - against **a family member**

46 Page 13 of the Judgment.

47 Page 13 of the Judgment of February 25, 2020 of the Criminal Chamber of the Tbilisi Court of Appeals

48 Tbilisi City Court, Case №1/4127-19.

- helpless mother. Thus, all the signs of the crime under Article 11¹, 117 (6) of the Criminal Code of Georgia are at stake.”

Although the Court unequivocally found that one family member had intentionally inflicted grave bodily harm against another resulting in negligent death, the court did not apply the second and third parts of Article 53¹ of the Criminal Code, which required from the judge to determine the aggravating circumstance of a crime committed by a family member and imposition of the sentence of more than one year than the minimum amount determined by the Criminal Code. Article 117 (6) of the Criminal Code foresees imprisonment from 8 to 12 years as the main punishment. Signaghi District Court, despite the requirements of Parts 2 and 3 under Article 53¹ of the Criminal Code, imposed a minimum sentence of imprisonment for 8 years, while Article 53¹ of the Criminal Code imperatively requires imposition of the sentence at least one year longer than its minimum length – i.e. imprisonment for the term of 9 years.

It is noteworthy that the Signaghi District Court took into account the fact that the accused pleaded guilty and cooperated with the investigation; as a result, the convict was sentenced to six years at a penitentiary institution out of 8 years and two years were counted as conditional. Regarding the mitigating and aggravating circumstances, the Court stated: “The Court takes into account the fact that the accused confesses and repents the crime, he has no conviction, has collaborated with the investigation since its launch and helped to establish the truth. As for the aggravating circumstance, the intentional violent criminal act committed by the accused is directed against health, which resulted in the loss of life of the victim. At the same time, he committed an act under the alcoholic influence, which led to the failure to manage the behavior of the accused, resulting in a tragic loss of life of the victim.

Thus, the circumstance that the crime was committed by a family member was not mentioned in the list of aggravating circumstances. Ignoring this circumstance by the court led to the application of a lenient sentence - 8 years of imprisonment, while, according to Article 53¹ (3) of the Criminal Code, a perpetrator of a domestic crime should have been sentenced to at least one more year of imprisonment – 9-years - than the minimum foreseen; this

even if mitigating circumstances such as pleading guilty and cooperating with the investigation existed. The court could, based on the mitigating circumstances, define part of the sentence as conditional, after pursuant to Article 53¹ (3) of the Criminal Code, it imposed a sentence of one more year than the minimum requirement - imprisonment for a term of 9 years. Nevertheless, the Signaghi District Court imposed a minimum sentence of 8 years in prison, out of which 2 years were deemed conditional. In doing so, the court ignored the requirements of the second and third parts of Article 53¹ of the Criminal Code, which led to the imposition of an unreasonably lenient sentence on the person who committed the crime against the helpless mother.

In addition, as already mentioned, the courts can easily qualify an action under Article 109 (2, “f”) of the Criminal Code (killing of a family member); the same cannot be said about Article 109 (2, “d”) of the Criminal Code (intentional killing based on gender). During the reporting period, the prosecutor’s office qualified the action only once under Article 19-109-2 (f) of the Criminal Code (attempted killing on the grounds of gender), but the Tbilisi Court of Appeals did not find the accused guilty.⁴⁹

The case involved systematic violence by a husband against his ex-wife and mother-in-law. The cause of the violence was divorce. On February 10, 2019, the accused L.M. got drunk and ran home to his ex-mother-in-law and had a disagreement with his child. The accused then broke the glass and left his mother-in-law’s house. Police were called the same day. The abuser was issued a restraining order the next day.

On February 11, 2019, L.M., offended by the call to the police, approached his ex-wife N.P. with a knife at her workplace. The ex-husband put his wife in the car with the threat of a knife. N.P. soon jumped out of the car and ran away. L.M. chased his ex-wife and inflicted life-threatening injuries on her chest. In this case, the Prosecutor’s Office applied Article 19-109-2 (“d”) of the Criminal Code (attempted intentional killing on the basis of gender) for the first time. Tbilisi City Court has not found the accused guilty for the attempted murder on the basis of gender. The Tbilisi Court of Appeals upheld the judgment of the Court of First Instance on March 10, 2020 in the part of acquittal of the convict in the attempted murder on the basis of gender.

49 Tbilisi City Court, Case №1-4065-19.

The Court of Appeals in this case offered a narrow definition of the gender sign, according to which a crime is motivated by a gender if a person is killed because she is a woman. According to the court, in this case the attempted murder was motivated by revenge (the victim had the restraining order issued against the accused the previous day by the police) and not by the fact that the victim was a woman. The Court of Appeals categorically ruled out that a gender sign included crimes committed out of revenge or jealousy against a woman.

The Tbilisi Court of Appeals stated: “As for the motive of the act of murder on the basis of gender, it is the gender of the victim. Consequently, the special goal and desire of the perpetrator is to commit murder based on the gender identity. However, for the correct qualification of the action, it is important to separate it from other personal motives (revenge, jealousy, etc.), because, in some cases, the existence of such motives completely excludes the sign of gender”.

The Tbilisi Court of Appeals also stated: “The evidence examined in the Court of First Instance did not prove beyond a reasonable doubt that the attempted murder was committed on the grounds of gender. It should be noted that the victim denies the conflict between her and the accused on the grounds of gender. At the same time, the case reveals the motive of revenge and the defendant’s indignation by the fact that, in his opinion, the victim informed the police on February 10, 2019 about him coming to the apartment and about the conflict with his child.

When qualifying a crime as an aggravating circumstance, it is necessary to establish that the person was aware of such a sign and that this was his intent. In the present case, however, the specific attitude of the accused towards the victim while committing the crime does not imply the desire to intentionally kill a woman, **because she is a woman**. Thus, the Chamber considers that L.M. shall not be found guilty and discharged from criminal liability in the case of attempted intentional killing of L.M. under the gender ground, foreseen by Article 109 (2, “d”).

Consequently, unfortunately, the Court of Appeals significantly narrowed the content of the term “gender sign” and considered it only when a woman is killed because she is a woman. In addition, it failed to define murder with the purpose to revenge as a sign of gender,

when a woman refuses to live with her ex-husband and uses legal measures to prevent violence from him. The court also ruled out jealousy from the gender sign, which is a classic motive of femicide, as it indicates to a man’s possessive attitude towards a woman. Such a narrow definition of the gender sign threatens to leave a number of criminal facts of femicide and attempted femicide without proper qualification in the future.

5.2. Use of measure of restraint

As a positive trend in 2019, it should be noted that the prosecution in all criminal cases has requested the use of detention as a measure of restraint against the accused. The common courts ultimately granted this request of the prosecution in all cases. Even if the pre-trial hearing was extended, the courts extended the detention period used as a measure of restraint.

Using bail as a measure of restraint was an exceptional case considered by the Magistrate Judge of the Rustavi City Court in Gardabani Municipality. The latter sentenced the accused to 4,000 GEL bail in the case of stabbing the mother by the child,⁵⁰ despite the fact that in this case the Prosecutor’s Office requested the use of detention against the accused. The reason for this was the Magistrate Judge citing the non-submission of evidence proving the history of violence between the accused and the victim. The ruling of the Magistrate Judge of 11 January 2019 states: V.B. committed a violent act against the mother, that was dangerous for life and health, nevertheless, the protocol of interrogation of the accused is not presented in the case. It is also unknown to the Court what type of the relationship the accused and the victim had before, whether it was the first case or a recurrence. Therefore, the Court cannot share the opinion of the prosecution that there is a danger of the accused committing a new crime”.

Due to the fact that the Prosecutor’s Office did not provide a history of violence between the accused and the victim, the Magistrate Judge of the Rustavi City Court in Gardabani Municipality considered that bail would eliminate the threat of influencing the witnesses and that of destructing the evidence. Accordingly, the accused was sentenced to bail in the amount of GEL 4,000. The term of depositing the bail was 20 days. In order to secure the bail, the accused remained in custody until the payment was made.

50 Rustavi City Court, Case №1-133-19.

The ruling of the Magistrate Judge was appealed by the Prosecutor's Office on January 12, 2019 at the Tbilisi Court of Appeals. The prosecutor indicated in the complaint that the accused's brother and sister-in-law, who provided incriminating information about the accused during the interrogation, were in danger from the accused. The Magistrate Judge did not take this circumstance into account when the accused was released on a domestic violence case. In addition, the prosecution submitted to the Court of Appeals the minutes of the victim's interrogation, which were not available to the Magistrate Judge at the first hearing of the accused.

The Tbilisi Court of Appeals did not share the Magistrate Judge's findings that it was not confirmed whether this was the first case between a mother and a child or a recurrence. The Court of First Instance had records of the interrogation of the accused's brother and sister-in-law, which accused him in committing a crime; Appellate Court said, that this should have been sufficient to impose detention on the accused. The Court of Appeals in its ruling focused on the specifics of domestic violence, the risks of repeated violence, and changed the bail into imprisonment against the accused.

This case clearly shows the importance of, on the one hand, the timely collection of relevant evidence by the Prosecutor's Office about the prehistory of the crime and their submission to the Court; on the other hand, it demonstrates the necessity of the Courts' understanding that the attempted femicide is the culmination of previous domestic violence and it is always preceded by other violent acts.

5.3. Circumstances taken into account by the court when imposing a sentence

While sentencing in 2019, the Common Courts actively applied Article 50 (5) of the Criminal Code, which states: when imposing a fixed term imprisonment, the court may, by its judgement order the service of a certain part of the sentence and count the other part as a conditional sentence provided the accused (convicted) person admits the crime (unless the person has been caught at the scene of the crime or immediately after the crime has been

committed), names accomplices and collaborates with the investigation authorities. If, except for the conclusion of a plea bargain agreement, a particularly serious crime has been committed, a conditional sentence may be deemed a quarter of the sentence imposed, one third of the sentence, in the case of a serious crime, and half of the sentence, in the case of a less serious crime.

In 3 out of 10 cases the Court applied the exemption under Article 50 (5) of the Criminal Code to the accused for cooperation with the investigation: the convict was sent to a penitentiary institution to serve half of his sentence, and half of the sentence was counted as conditional.

Gori District Court did not apply the exemption under Article 50 (5) of the Criminal Code in two cases of murder of a wife in Khashuri. Defendants cooperated with the investigation in both cases, which made the evidence obtained by the prosecution indisputable, although at the same time, aggravating circumstances were revealed in both cases; namely, in one case, the accused was under the influence of alcohol while stabbing his wife by the nail cutter. In addition, the Gori District Court and Tbilisi Courts of Appeal took into account the convict's behavior after committing the crime, i.e. the convict left his unconscious wife in a pool of blood and continued to drink alcohol.

Gori District Court did not apply Article 50 (5) of the Criminal Code in the case of the second murder in Khashuri. In this case, the court took into account aggravating circumstances, namely, that the convict shot the victim with a firearm and threw a grenade in a crowded place, which posed a threat to others too. Due to these circumstances, the court avoided to count the deprivation of liberty as a conditional sentence.

Currently, the imposition of the 20 years of imprisonment by the Gori District Court for the above-mentioned case of femicide in 2019 is the most severe sentence. The lightest sentence for femicide was imposed by the Signaghi District Court - 8 years, out of which 2 years were counted as a conditional sentence. The most severe sentence for attempted femicide was imposed by the Tbilisi City Court, which was 18 years in prison.⁵¹ The lightest sentence for attempted femicide was imposed by the Tbilisi City Court - 3 years imprisonment.⁵²

51 Tbilisi City Court, Case №1-4791-19.

52 Tbilisi City Court, Case №1/4127-19.

6. ANALYSIS OF RULINGS ON TERMINATION OF CRIMINAL PROSECUTION

Based on the information provided by the General Prosecutor's Office of Georgia,⁵³ the Public Defender of Georgia requested court rulings on termination of criminal prosecution in 6 cases. In all 6 cases, the reason for the termination of the criminal prosecution was insanity.

The Public Defender is cautious when qualifying cases as femicide or attempted femicide that are committed by persons with psychosocial needs in a state of insanity. The reason for this is the difficulty to determine to which extent these individuals perceive the concept of gender.

In addition, it should be noted that the rulings provided on the termination of criminal prosecution and the imposition of compulsory psychiatric treatment sometimes contain almost no indication to the factual circumstances of the case. In particular, such decisions do

not contain any indication of the factual circumstances under which a person with a disability attempted to kill a woman, or the circumstances in which a woman was killed. Some rulings state that a person with a disability attacked a woman for revenge, although it is not explained why the attacker intended to take revenge against the woman.⁵⁴ Another case states that the attacker killed or attempted to kill a family member, although the court ruling does not address the motives for the death.⁵⁵

Relatively informative value carries the verdict of the Rustavi City Court of April 23, 2020, which states that a person with disabilities suffocated his wife with a belt out of jealousy. If the perpetrator of this unlawful act was not in the state of insanity, this crime would be deemed femicide.⁵⁶

53 №13/34799, 29/June/2020; №13/55730 25/September/2020.

54 Gori District Court, Case №10/329-19.

55 Gori District Court, Case №1/501-19; Tbilisi City Court, Case №604/6306-1.

56 Rustavi City Court, Case №1-984-19.

CONCLUSION

Analysis of femicide and attempted femicide cases in 2019 shows that there are still many challenges in the fight against femicide and the administration of justice in such cases. Unfortunately, in 9 out of 10 cases analyzed, various shortcomings are revealed at the stage of investigation or trial, and in this regard, it can be said that only one case is an exception.

From the shortcomings identified at the investigation stage, timely identification of the victim/legal successor was problematic in some cases. The investigation revealed a stereotypical attitude towards the victim and interest in her personal, sexual life, while this was not essential in determining the circumstances of the case. The problem of gathering evidence was identified, which ultimately affected the qualification of the act and the court's finding of a defendant guilty under a relatively light article. The problem was also identification of gender-motivated crimes as such.

Office of the Public Defender welcomes that the investigation has studied the previous history of violence; no problem has been identified in the analysis of cases in this regard. Among the analyzed cases, there are also cases where, despite systematic violence, the victim has not addressed the law enforcement agency. Unfortunately, there are still cases when, despite a victim reporting a case to the police, an extreme form of violence cannot be

avoided. Femicide could not be avoided either in a case where a person was serving a sentence at a penitentiary institution for a domestic crime. This once again indicates to the need to intensify work to correct the behavior of abusers.

The use of bail as a measure of restraint by a court, despite a motion for detention, may be considered alarming in an attempted femicide case. The case revealed a problem with the Magistrate Court's understanding that an attempt of a femicide is the culmination of pre-existing domestic violence and is necessarily preceded by other violent acts. It is noteworthy that this shortcoming was remedied by a higher court ruling.

The problem of the courts' adequate perception of the term crime committed with the "gender sign" remains. In court practice, the words "family member" are more commonly used and easily understood in relation to the crime of femicide, than a reference to a gender sign. Nonetheless, there were two cases where the court did not aggravate the sentence by one year than the minimum term, despite the fact that an attempted femicide was committed against a family member. In addition, neither did the prosecution appeal the sentence to aggravate the sentence, particularly because the crime was committed against a family member.

RECOMMENDATIONS

To the Government of Georgia:

- Develop timely, adequate and effective compensation rules for victims of violence against women and domestic violence, in accordance with their obligation under Article 30 of the Council of Europe Convention on the Preventing and Combating Violence against Women and Domestic Violence.

To the Interagency Commission on Gender Equality, Violence against Women and Domestic Violence:

- Establish a special working group that will critically analyze the existing prevention system in relation to cases of gender-motivated killings and attempted killings of women, and with the participation of key agencies, including the Ministries of Health and Education, will work specifically to develop and refine the femicide prevention system.

To the High School of Justice:

- Train judges of criminal specialization on the issue of identifying crimes committed on the basis of gender, in relation to the acts provided under Article 53¹ (1) and Article 109 (2, “d”) of the Criminal Code.

To the Supreme Court of Justice:

- Admit and consider cassation complaints related to the interpretation of “gender-based” crimes under Article 53¹ (1) and Article 109 (2) of the Criminal Code, in order to facilitate the establishment of the uniform practice of interpreting such crimes. Change the practice of the Tbilisi Court of Appeals established by its judgment of March 10, 2020, according to which attempted murder motivated by jealousy and revenge is not considered as a crime committed on the grounds of “gender”;
- Develop a method for identifying femicide and attempted femicide cases, which will also be applied by common courts, and produce accurate statistics.

To Common Courts:

- Not impose a minimum sentence against the convict and aggravate the sentence for at least one year, in accordance with Article 53¹ of the Criminal Code, when the crime committed against a family member is not a qualifying circumstance of the action;
- Substantiate in detail in the judgment whether there is a gender ground in the crime and whether the crime was committed under such motive.
- When selecting a measure of restraint, judges should keep in mind that a femicide or attempted femicide is, for the most part, the culmination and it might be preceded by a whole chain of violent acts. In view of these circumstances, assess the risks of impact on witnesses and reoccurrence of the crime;
- Indicate more information about the factual circumstances of the case in the rulings on termination of criminal prosecution and the imposition of compulsory psychiatric treatment. In particular, under which factual circumstances did a person with a disability attempt to kill a woman, or under what circumstances was a woman killed.

To the General Prosecutor's Office of Georgia:

- Ensure granting the status of a victim/victim's successor in a timely manner, where this is still a problem;
- Qualify the action on the basis of gender, when the motive for the crime is to control the action of the woman and the behavior "inappropriate" for her;
- Ensure that all versions submitted by the victim are verified through appropriate investigative action, including additional interrogation of the victim, especially when such additional inquiries or posing clarifying questions, may make it possible to obtain evidence that would affect the change of the qualification of the action;
- Appeal the court rulings to a higher court in order to aggravate the sentence in cases where the lower court does not apply Article 53' of the Criminal Code and all relevant preconditions are in place;
- Examine in a timely manner and to present to the court evidence of a history of violence between the victim and the accused when selecting a measure of restraint.

To the Ministry of Internal Affairs of Georgia:

- Investigators should refrain from verifying the details of the victim's intimate life with third parties, especially minors, when this is not critical necessary for the correct legal qualification of the action;
- Continue training of staff in the territorial bodies of the Ministry of Internal Affairs of Georgia on issues of violence against women and domestic violence. In addition, develop a post-training evaluation document that will make it possible to measure the progress made by trained staff;
- Determine rule of specialization of the investigators on cases of violence against women and domestic violence to protect victims effectively.

ANNEX 1: STATISTICS OF THE GENERAL PROSECUTOR'S OFFICE OF GEORGIA

According to the data of the General Prosecutor's Office of Georgia⁵⁷, in 2019, 8 women were **killed** by 9 persons on the **grounds of domestic crime**. All the facts were investigated by the relevant territorial units of the Ministry of Internal Affairs of Georgia.

Out of these 9 persons, criminal proceedings were initiated against 7 individuals. In 6 cases, criminal prosecution was initiated under Articles 11¹-109 of the Criminal Code, in 1 case - under Articles 11¹-117 of the Criminal Code, and criminal proceedings were not instigated against 2 persons for the death of the perpetrator. Gender-based violence was not identified in any of the cases. It is noteworthy that criminal proceedings were initiated against 2 persons for the intentional murder of 1 woman.

In 2020 the criminal prosecution on the fact of murder of a woman committed on the grounds of domestic crime in 2019, was terminated against one person, due to insanity of the accused, under Article 105 (2, "b") of the Criminal Procedure Code of Georgia.

Age of victims: under 18 - 1 woman; 18 to 30 years - 1 woman; 30 to 40 years - 1 woman; 40 to 50 years - 1 woman; 50 to 60 years - 2 women; 60 to 70 years - 1 woman; Above 70 - 1 woman, respectively.

Territorial distribution of crime: Tbilisi - 2; Kakheti - 2; Shida Kartli - 2; West - 1; Kvemo Kartli - 1, respectively.

As for the relationship between the accused and the victim, in 5 cases the murder was committed by the husband (ex-husband) against the wife (ex-wife), in 2 cases by the child against the mother, in 1 case by the mother against the child, in 1 case by the brother-in-law against the sister-in-law (it should be noted that in one case both the child and the husband were imposed responsibility for the murder of the mother and wife, respectively).

In 2019, 9 women were **murdered for other reasons**. All the facts were investigated by the relevant territorial units of the Ministry of Internal Affairs of Georgia.

Prosecution of specific persons has not been initiated on the mentioned facts, as in 8 cases the identity of the perpetrator has not been established, and in 1 case - due to the death of the perpetrator. The gender sign was not identified in any of the cases.

Age of victims: from 30 to 40 years - 2 women; 40 to 50 years - 1 woman; 50 to 60 years - 2 women; 60 to 70 years - 2 women; Over 70 - 1 woman, respectively; there is no information about 1 woman.

⁵⁷ Letters of the General Prosecutor's Office of Georgia: №13/8998, 12/February/2020; №13/34799, 29/June/2020; №13/55730, 25/September/2020.

Territorial distribution of crime: Kakheti - 3; Tbilisi - 2; West - 2; Kvemo Kartli - 1; Outside Georgia – 1, respectively.

As for the relationship between the accused and the victim, the identity of the perpetrator is unknown in all cases.

In 2019, 2 women were **incited to suicide**. Both facts were investigated by the relevant territorial units of the Ministry of Internal Affairs of Georgia.

Criminal proceedings were initiated against 2 persons under Articles 11¹-115 of the Criminal Code. In 1 of these cases, criminal prosecution was initiated for the fact of committing a crime on the basis of gender.

Age of victims: from 30 to 40 years - 1 woman; 40 to 50 years - 1 woman, respectively;

Territorial distribution of crime: Kvemo Kartli - 1; Samegrelo-Zemo Svaneti – 1, respectively.

As for the relationship between the accused and the victim, in both cases the husband incites the wife to suicide.

In 2019, an **attempted murder** was committed by 11 persons against 12 women on the grounds of **domestic crime**. The relevant territorial units of the Ministry of Internal Affairs of Georgia conducted investigations on all the facts.

Criminal proceedings were instituted against 10 persons under Articles 11¹-19.109 of the Criminal Code. In 1 case, criminal prosecution was not initiated due to the death of the perpetrator. Attempted killing on the basis of gender was identified in 2 cases.

In 2019, criminal prosecution on the fact of attempted murder of a woman committed with a domestic crime sign in 2019, was terminated against 4 persons due to insanity under Article 105 (2, “b”) of the Criminal Procedure Code of Georgia.

Age of victims: from 18 to 30 years - 3 women; 30 to 40 years - 3 women; 40 to 50 years - 2 women; 50 to 60 years - 2 women; Above 70 - 2 women, respectively.

Territorial distribution of crime: Tbilisi - 8; Shida Kartli - 2; West - 1; Kvemo Kartli – 1, respectively.

As for the relationship between the accused and the victim, in 7 cases attempted murder was committed by the husband (ex-husband) against the wife (ex-wife), in 2 cases by the child against the mother, in 1 case by the mother against the child, in 1 case by the son-in-law against the mother-in-law and in 1 case - against another member of the family (towards the person with whom he/she was engaged in a common household).


In 2019, 4 persons committed **attempted murder** of 4 women for **other grounds**. All the facts were investigated by the relevant territorial units of the Ministry of Internal Affairs of Georgia. Criminal proceedings were initiated against 3 persons on the mentioned facts. In all three cases, criminal proceedings were instituted under Article 19.109 of the Criminal Code. In 1 case, criminal prosecution was not initiated due to the death of the perpetrator. The gender sign was not identified in any of the cases.

In 2019, criminal prosecution on fact of attempted murder of a woman on other ground was terminated against one person due to insanity of the accused, pursuant to Article 105 (2, “b”) of the Criminal Procedures Code of Georgia.

Age of victims: under 18 - 1 woman; 18 to 30 years - 1 woman; 30 to 40 years - 1 woman; From 50 to 60 years - 1 woman, respectively.

Territorial distribution of crime: Tbilisi - 2; West - 1; Shida Kartli – 1, respectively.

As for the relationship between the accused and the victim, in 3 cases the attempted murder was committed by an acquaintance, and in 1 case - by a stranger, respectively.



In 2019, 6 women were **incited to attempted suicide**. All the facts were investigated by the relevant territorial units of the Ministry of Internal Affairs of Georgia. Criminal prosecution was initiated against 7 persons under Articles 11¹-115 of the Criminal Code. Out of these cases, criminal prosecution was launched on the fact of committing a crime on the basis of gender. It is noteworthy that criminal proceedings were initiated against 2 persons for inciting one woman to attempt suicide.

Age of victims: from 20 to 30 years - 3 women; 30 to 40 years - 3 women, respectively;

Territorial distribution of crime: Kvemo Kartli - 2; Tbilisi - 1; Samegrelo-Zemo Svaneti - 1; Samtskhe-Javakheti - 1; Kakheti - 1, respectively.

As for the relationship between the accused and the victim, in 6 cases, the incitement to attempted suicide was committed by the husband against the wife, and in 1 case - by the mother-in-law towards the daughter-in-law.

