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## Communication of the Public Defender of Georgia on the Tkhelidze group of cases

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 the Action Plan (27/10/2022) and Action Plan (06/10/2023) (hereinafter the 2022 Action Plan and the 2023 Action plan, respectively) of the Government of Georgia, provides information requested in the latest decision of the Committee of Ministers and evaluates implementation of general measures by the Government in the course of the execution of the judgements of the Tkhelidze group of cases.

### **General measures**

#### **Gender Equality Institutional Mechanisms**

3. The 2023 Action Plan describes the functions and activities of the Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence at the Human Rights Council of the Government of Georgia (hereafter the Inter-Agency Commission).<sup>1</sup> The work

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<sup>1</sup> Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraphs 15-18.

of the Inter-Agency Commission was assessed by the PDO in its 2021 report on effectiveness of gender equality mechanisms in Georgia. The report revealed that the Inter-Agency Commission lacked effectiveness caused by different reasons including its somewhat ambiguous mandate, weak role in defining the government’s vision/strategy and lack of human and financial resources.<sup>2</sup> In general, the report pointed to the “need for institutional strengthening and firm structures for national gender equality mechanisms to ensure their smooth and systemic operation”.<sup>3</sup>

4. The 2023 Action Plan also mentions Gender Equality Councils in municipalities.<sup>4</sup> The 2022 report of the PDO evaluated the functioning of these gender equality bodies. According to the report, barriers in the work of Gender Equality Councils include insufficient financial and human resources and lack of sensitivity, in-depth knowledge and expertise of decision-makers and executives.<sup>5</sup> In particular, the report revealed the need to retrain members of the Gender Equality Councils and employees of the municipalities on gender equality, women’s rights and gender mainstreaming.<sup>6</sup> The report also noted lack of information among women about the Gender Equality Councils.<sup>7</sup> Moreover, it was found that only a few municipalities had budget directly allocated for gender equality while most municipalities faced challenges in implementation of research, processing of data and development of evidence-based policies.<sup>8</sup>

5. The Committee on Elimination of Discrimination Against Women (CEDAW) also expressed concern that “institutions for the advancement of women’s rights and gender equality remain weak owing to a lack of coordination and available human, technical and financial resources, in particular as regards the gender equality councils in some municipalities”.<sup>9</sup>

### **National Legislation**

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<sup>2</sup> The Public Defender of Georgia, Assessment of Effectiveness of Gender Equality Institutional Mechanism in Georgia, 2021, pages 8-9, 13, available at: <https://bit.ly/39cUWWI> [last accessed 30.10.2023].

<sup>3</sup> The Public Defender of Georgia, Assessment of Effectiveness of Gender Equality Institutional Mechanism in Georgia, 2021, page 30

<sup>4</sup> Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkheldze v. Georgia (Application No. 33056/17), paragraph 29.

<sup>5</sup> The Public Defender of Georgia, Evaluation of Gender Equality Policies of Municipalities, 2022, page 6, available at: <https://tinyurl.com/yru8ssy5> [last accessed 30.10.2023].

<sup>6</sup> The Public Defender of Georgia, Evaluation of Gender Equality Policies of Municipalities, 2022, page 6.

<sup>7</sup> The Public Defender of Georgia, Evaluation of Gender Equality Policies of Municipalities, 2022, page 6.

<sup>8</sup> The Public Defender of Georgia, Evaluation of Gender Equality Policies of Municipalities, 2022, page 7.

<sup>9</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Georgia adopted by the Committee at its eighty-fourth session (6–24 February 2023), paragraph 17, available at: <https://tinyurl.com/38tn2tpx> [last accessed 30.10.2023].

6. National legal framework plays a crucial role in combating femicide and gender-based violence. The importance of national legislation and legislature is also stressed in the CEDAW's latest concluding observations on the sixth periodic report of Georgia.<sup>10</sup>

7. The 2023 Action Plan mentions the launch of a thematic research to ensure the harmonization of the criminal law legislation of Georgia with the Istanbul Convention.<sup>11</sup> While the PDO welcomes initiation of harmonization efforts, national criminal legislation remains flawed at present. In particular, the most significant shortcoming is still the absence of a free and voluntary consent in definitions of sexual crimes.<sup>12</sup> The CEDAW also expressed concern over “the slow progress in reviewing legislation on gender-based violence against women, in particular the adoption of a definition of rape that is based on a lack of consent”.<sup>13</sup> Apart from this issue, another important defect in criminal legislation is the failure to provide the possibility to remotely question victims or temporarily take defendants away from courtrooms in cases of sexual crimes and gender-based violence.<sup>14</sup> This shortcoming creates a risk of secondary victimization through forcing a victim to be in presence of an alleged offender. In this connection, the 2022 Action Plan refers to an amendment to be made to the Criminal Procedure Code of Georgia.<sup>15</sup> The amendment envisages, inter alia, the introduction of remote questioning of a witness and the opportunity to temporarily take defendants away from courtrooms in cases of domestic violence.<sup>16</sup> Although such changes are needed to address the problem of secondary victimization, the amendment has not even undergone the process of adoption with first reading despite being initiated about a year ago.

8. The 2022 Action Plan cites definition of violence against women contained in the Law of Georgia on “the Elimination of Violence Against Women and/or Domestic Violence and the Protection and Support of Victims of Such Violence”.<sup>17</sup> This Law also provides definition of

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<sup>10</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Georgia adopted by the Committee at its eighty-fourth session (6–24 February 2023), paragraph 8.

<sup>11</sup> Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraph 23.

<sup>12</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 203, available at: <https://tinyurl.com/37whcu5d> [last accessed 30.10.2023].

<sup>13</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Georgia adopted by the Committee at its eighty-fourth session (6–24 February 2023), paragraph 25

<sup>14</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 203.

<sup>15</sup> Action Plan (27/10/2022) - Communication from Georgia concerning the group of cases of Tkhelidze v. Georgia (Application No. 33056/17), paragraph 17.

<sup>16</sup> Please view the explanatory note of the amendment: <https://tinyurl.com/3vcxcts4> [last accessed 30.10.2023].

<sup>17</sup> Action Plan (27/10/2022) - Communication from Georgia concerning the group of cases of Tkhelidze v. Georgia (Application No. 33056/17), paragraph 14.

domestic violence which contravenes the Istanbul Convention. In particular, it defines domestic violence as “the violation of constitutional rights and freedoms of one family member by another family member through neglect and/or physical, psychological, economic, sexual violence or coercion”.<sup>18</sup> This provision does not encompass domestic violence between unmarried partners not living together and not running a joint family business since such partners are not regarded as family members under the aforesaid Law.<sup>19</sup> Such a regulation is incompatible with the Istanbul Convention according to which “domestic violence shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”.<sup>20</sup>

9. The PDO would also like to comment on some positive developments. In 2022, an amendment to the Law on Legal Aid introduced the right to free legal aid for insolvent victims of domestic violence at any stage of criminal proceedings.<sup>21</sup> Moreover, according to the 2023 Action Plan, the authorities approved the rules for determining the amount and awarding the compensation for victims of violence against women and/or domestic violence.<sup>22</sup> While introduction of these regulations is welcome, the PDO would like to nevertheless note the space for their improvement. In particular, the conditions and coverage of the aforesaid compensation rule fails to fully meet needs of victims. The rule fails to extend compensation to cases in which prosecution is terminated due to a defendant’s death or insanity/mental state.<sup>23</sup> The compensation is also not granted if a victim fails to submit required/correct documents. However, victims are not allowed to rectify this mistake.<sup>24</sup> Moreover, the state will grant compensation only when the amount is less than 40% of the amount determined by a court judgment.<sup>25</sup> As to the right to free legal aid, it only applies to a part of victims of

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<sup>18</sup> Article 3 of the Law of Georgia on “the Elimination of Violence Against Women and/or Domestic Violence and the Protection and Support of Victims of Such Violence”.

<sup>19</sup> Article 4(g) of the Law of Georgia on “the Elimination of Violence Against Women and/or Domestic Violence and the Protection and Support of Victims of Such Violence”.

<sup>20</sup> Article 3(d) of Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

<sup>21</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 202.

<sup>22</sup> Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkheldize v. Georgia (Application No. 33056/17), paragraph 24.

<sup>23</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 202.

<sup>24</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 202.

<sup>25</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 202.

domestic violence and cases of violence against women are completely excluded from its scope.<sup>26</sup>

### **Policy Documents**

10. The Action Plans refer to different policy documents.<sup>27</sup> In particular, they mention approval and adoption of the National Strategy for the Protection of Human Rights in Georgia for 2022-2030.<sup>28</sup> After receiving the draft of this document, the PDO provided feedback. However, the final version of the Strategy was adopted by the Parliament without incorporating the PDO's suggestions, including the recommendation to single out fight against femicide in separate sub-chapter and separately determine corresponding objectives and indicators therein.

11. The government refers to development of the 2023-2024 Action Plan for Measures to Prevent Femicide.<sup>29</sup> The PDO provided feedback on this document. The PDO's main comment was that this document should encompass measures to prevent violence and victim protection. Without such an approach, the PDO considered that the Action Plan would be ineffective and without an added value. Unfortunately, this position was not reflected in the Action Plan.

12. The 2022 Action Plan also mentions "National Action Plan on the Implementation of the UN Resolutions 1325 on Women, Peace and Security" (2022-2024) and the "National Action Plan on Combating Violence against Women and Domestic Violence and Measures to be implemented for the Protection of Victims (Survivors)" (2022-2024).<sup>30</sup> Unfortunately, both of these documents were approved belatedly.<sup>31</sup> With respect to impact areas covered by the former action plan, the PDO would like to note low level of participation and empowerment of women in the fields of peace and security. In particular, women make up only 7% of Georgian armed forces and there were only 2 women (20%) among members of the delegation

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<sup>26</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 202.

<sup>27</sup> Action Plan (27/10/2022) - Communication from Georgia concerning the group of cases of Tkhelidze v. Georgia (Application No. 33056/17), paragraphs 20-27; Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraphs 19-22.

<sup>28</sup> Action Plan (27/10/2022) - Communication from Georgia concerning the group of cases of Tkhelidze v. Georgia (Application No. 33056/17), paragraph 20; Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraph 19.

<sup>29</sup> Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraph 22.

<sup>30</sup> Action Plan (27/10/2022) - Communication from Georgia concerning the group of cases of Tkhelidze v. Georgia (Application No. 33056/17), paragraphs 20-27.

<sup>31</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 196.

participating in the Geneva International Discussions in 2022.<sup>32</sup> Moreover, IDP women are insufficiently engaged in decision-making processes as they lack information on their rights and programmes for women empowerment and support.<sup>33</sup> As to the latter action plan, the PDO welcomes that it contains important measures for violence prevention, victim protection and support. However, the document fails to include judges among target groups of awareness raising and professional development.<sup>34</sup> This is a concerning shortcoming in light of the national judiciary's mistakes and struggles in dealing with cases of gender-based violence.<sup>35</sup>

13. Another important policy/strategy document, although not mentioned in the Action Plans, is the National Concept of Gender Equality approved by the Parliament in 2022. Unfortunately, the National Concept overlooks such important matters as femicide, sex education and definitions of terms regarding gender.<sup>36</sup>

### **Response to Gender-Based Violence**

14. The Action Plans mention the rising annual rate of criminal prosecutions for domestic crimes from 2014 to 2021 and the highest rate of criminal prosecution on the basis of gender-based discrimination in 2022.<sup>37</sup> The increase in rate of prosecution can be generally regarded as step taken forward to combat such crimes by holding perpetrators accountable. However, more effort is needed as indicated by statistics and prevailing challenges in responding to gender-based crimes. In particular, the 2022 statistics of the number of murders/attempted murders of women (25 and 37 cases respectively) surpassed the number of cases from previous years.<sup>38</sup> The 2023 Action Plan itself states that “despite the reforms implemented and measures taken, there was no sharp reduction in the number of cases of killings of women (femicide)”.<sup>39</sup> Thus, the Government has yet to overcome the problem of high number of gender-based

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<sup>32</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 199.

<sup>33</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 200.

<sup>34</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 202.

<sup>35</sup> Please view paragraphs 18 and 21 below.

<sup>36</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 196.

<sup>37</sup> Action Plan (27/10/2022) - Communication from Georgia concerning the group of cases of Tkhelidze v. Georgia (Application No. 33056/17), paragraph 29; Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraphs 81, 87.

<sup>38</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 203.

<sup>39</sup> Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraph 92.

crimes mentioned in the latest decision of the Committee of Ministers.<sup>40</sup> Similarly, the CEDAW also expressed concerns over the high incidence of domestic and sexual violence and the recent resurgence of femicide cases after a period of decrease between 2014 and 2019.<sup>41</sup>

15. The recent case of murder of a 14-year-old girl clearly demonstrates that the authorities' practice and policy to address and respond to child marriage, femicide and other forms of gender-based violence are still inefficient.<sup>42</sup> The victim had been deprived of liberty and forced into an unregistered marriage with an adult man who killed her.<sup>43</sup>

16. In terms of proper prosecution of gender-based crimes, the PDO studied cases in which the prosecution incorrectly classified a criminal action as a deliberate infliction of serious bodily injuries instead of an attempted murder.<sup>44</sup> The indicative criteria/factors for distinguishing these two crimes are established in the Supreme Court judgment.<sup>45</sup> However, the prosecution still failed to make a correct distinction and bring appropriate charges in some cases of attempted femicide despite presence of the indicative criteria/factors, such as the method and the weapon of crime commission (e.g., using gasoline), number of injuries and their locations (e.g., chest or abdominal area) and the offender's post-crime behavior (e.g., preventing others from helping a victim).<sup>46</sup>

17. As to identification of a gender-based hate motive, the prosecution still struggles to identify gender-based discriminatory motive in criminal actions and classify them under a specific provision of the Criminal Code. In particular, the Prosecutor's Office of Georgia classified criminal actions as committed with gender-based motive and applied a specific legal provision in 6 out of 14 cases studied within the femicide monitoring by the PDO.<sup>47</sup> However, materials/evidence also indicated the existence of gender-based motive in the rest of the cases.<sup>48</sup> As an example, the prosecution failed to identify a gender-based motive and bring

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<sup>40</sup> The Decision of the Committee of Ministers adopted at 1451st meeting, 6-8 December 2022, CM/Del/Dec(2022)1451/H46-14, paragraph 3.

<sup>41</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Georgia adopted by the Committee at its eighty-fourth session (6-24 February 2023), paragraph 25.

<sup>42</sup> Public Defender's Statement on Murder of 14-Year-Old Girl, available at: <https://tinyurl.com/2p9xvt8j> [last accessed 20.10.2023].

<sup>43</sup> Relatives of Man Accused of 14-Year-Old Girl's Murder Sentenced to Pre-Trial Detention, available at: <https://civil.ge/archives/563484> [last accessed 20.10.2023].

<sup>44</sup> The Public Defender of Georgia, Analysis of 2021 Femicide and Attempted Femicide Cases, 2023, pages 12-15, available at: <https://tinyurl.com/z5wzjcct> [last accessed 30.10.2023].

<sup>45</sup> The Public Defender of Georgia, Analysis of 2021 Femicide and Attempted Femicide Cases, 2023, page 12; the Supreme Court's judgment no. 680ap dated 17 May 2018.

<sup>46</sup> The Public Defender of Georgia, Analysis of 2021 Femicide and Attempted Femicide Cases, 2023, pages 12-15.

<sup>47</sup> The Public Defender of Georgia, Analysis of 2021 Femicide and Attempted Femicide Cases, 2023, page 15.

<sup>48</sup> The Public Defender of Georgia, Analysis of 2021 Femicide and Attempted Femicide Cases, 2023, page 15.

charges accordingly in a case of leading a victim to attempt suicide where the defendant (the father) considered himself to be “a family boss”, blamed the victim (his daughter) for destroying their family and expressed a controlling attitude towards her.<sup>49</sup> To name other examples, the prosecution also failed to identify a gender-based motive in 2 attempted killing/attempted femicide cases. In one of them the defendant attacked the victim for rejecting his offer to have sex, while, in the other, the defendant believed that it was the victim’s (his wife’s) as a woman’s job and responsibility to keep the house clean.<sup>50</sup>

18. The prosecution’s failure to identify a gender-based motive and bring appropriate charges by applying a specific/correct penal provision to gender-based crimes results in bringing softer charges and imposition of softer sentences because the Criminal Procedure Code allows a judge, if the criminal conduct has been given wrong legal classification, to modify the latter only if the modification improves the defendant’s situation.<sup>51</sup>

19. Apart from the Prosecutor’s Office, the national judiciary also struggles to identify/determine gender-based motive in femicide/attempted femicide cases. In particular, the judicial practice still fails to identify such a motive in cases where it is clearly indicated by perpetrators’ jealousy.<sup>52</sup> The Tbilisi City Court delivered, e.g., a self-contradictory reasoning in which the court, on one hand, considered a crime committed out of proprietary attitude to be a gender-based crime but, on the other hand, did not find a gender-based motive in a victim’s murder committed out of revenge due to the wife’s alleged infidelity.<sup>53</sup> In contrast, the Tbilisi City Court did not categorize/recognize jealousy as an indicator of the gender-based intolerance motive at all in another case, in which the defendant would not let the victim to have male students.<sup>54</sup> Thus, there is a lack of uniform understanding of the gender-based motive in national case law. It should be noted here that the CEDAW criticized “the limited capacity of the judiciary to apply gender-based motives introduced in 2018 into criminal law provisions as an aggravating circumstance to certain violent crimes”.<sup>55</sup>

20. In terms of shortcomings in reacting to gender-based violence, the Committee of Ministers asked for “concrete information on the domestic practice in respect of ensuring accountability of law-enforcement officials for their failure to respond properly to complaints on gender-

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<sup>49</sup> The Public Defender of Georgia, Analysis of 2021 Femicide and Attempted Femicide Cases, 2023, page 15.

<sup>50</sup> The Public Defender of Georgia, Analysis of 2021 Femicide and Attempted Femicide Cases, 2023, pages 16-17.

<sup>51</sup> The Public Defender of Georgia, Analysis of 2021 Femicide and Attempted Femicide Cases, 2023, page 17.

<sup>52</sup> The Public Defender of Georgia, Analysis of 2021 Femicide and Attempted Femicide Cases, 2023, pages 22-25.

<sup>53</sup> The Public Defender of Georgia, Analysis of 2021 Femicide and Attempted Femicide Cases, 2023, page 23.

<sup>54</sup> The Public Defender of Georgia, Analysis of 2021 Femicide and Attempted Femicide Cases, 2023, pages 24-25.

<sup>55</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Georgia adopted by the Committee at its eighty-fourth session (6–24 February 2023), paragraph 25.



based violence.”<sup>56</sup> The 2023 Action Plan fails to provide the information requested by the Committee of Ministers. The Action Plan merely describes certain provisions of legislative framework<sup>57</sup> and contains only one paragraph generally stating that the General Inspection of the MIA studies cases of possible indifference of police officers in responding to the victims of domestic violence/violence and initiates disciplinary proceedings in each case.<sup>58</sup> Thus, the Action Plan provides no concrete information (e.g., statistics on ongoing or already decided cases, trends or challenges, etc.) on what the situation is in practice with regards to holding law-enforcement officials liable for their failure to respond properly to complaints on gender-based violence.

### **Prevention and Risk Assessment**

21. In terms of evaluating the risk of repetition of gender-based violence, the 2023 Action Plan describes the updates to the risk assessment tool and the electronic surveillance system.<sup>59</sup> The PDO welcomes these updates that simplified and increased the application of the electronic surveillance system, according to the 2023 Action Plan.<sup>60</sup> The PDO also positively assesses the amendments regarding the electronic surveillance that are planned to be made to the Criminal Procedure Code.<sup>61</sup> At the same time, the PDO notes that functioning of the electronic surveillance mechanism will further benefit from awareness and correct knowledge of both the law enforcement and the society. Indeed, victims’ misconceptions has likely been one of the barriers to application of the electronic surveillance. In particular, some police officers stated that sometimes women refused application of the electronic surveillance as they feared that their movement would be controlled.<sup>62</sup> They also feared causing damage to the electronic surveillance. At one of the meetings between the PDO and the police, one of the policemen said that they warned victims about responsibility to pay for damaging the electronic surveillance/GPS system/technology.<sup>63</sup> However, it was noted at a meeting between the PDO and coordinators for witnesses and victims that victims were not liable for any damage to the

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<sup>56</sup> The Decision of the Committee of Ministers adopted at 1451st meeting, 6-8 December 2022, CM/Del/Dec(2022)1451/H46-14, paragraph 6.

<sup>57</sup> Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkheldidze v. Georgia (Application No. 33056/17), paragraphs 123-125, 127.

<sup>58</sup> Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkheldidze v. Georgia (Application No. 33056/17), paragraph 126.

<sup>59</sup> Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkheldidze v. Georgia (Application No. 33056/17), paragraphs 57-60.

<sup>60</sup> Ibid, paragraph 64.

<sup>61</sup> Ibid, paragraphs 66-69.

<sup>62</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 204 footnote 666.

<sup>63</sup> Ibid.

electronic surveillance/GPS system/technology.<sup>64</sup> Thus, even the authorities, let alone the victims, have had contradictory or incorrect information about the electronic surveillance. Against this background, the PDO welcomes the trainings on the risk assessment tool and the electronic surveillance conducted for the MIA employees and the awareness raising video published on the MIA website and YouTube.<sup>65</sup>

22. Unfortunately, both the law enforcement and the judiciary continue to struggle with risk assessment and prevention of (repetition of) gender-based violence. The CEDAW also noted “a reported lack of adequate recidivism risk assessments by criminal justice authorities and judges”.<sup>66</sup> In 2022, there were still cases in which femicide/attempted femicide could not be prevented although the MIA had already received reports about violence against women.<sup>67</sup> The courts also make mistakes when assessing risks. In one of the cases, for example, a judge applied a bail instead of a custody although the conflict between the defendant and the victim was still unresolved, the defendant had been previously arrested for crimes under Articles 381<sup>1</sup> and 126 of the Criminal Code committed against the same victim and had breached a restraining order.<sup>68</sup> Despite the evident risk, the court released the defendant on bail and the defendant attempted to kill the same victim exactly two months after the release pending trial.<sup>69</sup> In another case, the court replaced a custody with a bail although the defendant continued to show aggression, negative attitude towards the victim.<sup>70</sup>

23. In its previous communication, the PDO mentioned the importance of courses of behaviour change for prevention of recidivism.<sup>71</sup> Unfortunately, provision of such courses still has the same shortcomings previously identified by the PDO. In particular, no course of correction of violent behaviour has been developed for those abusers against whom a protection order has been applied.<sup>72</sup> While such a course is available for the convicts, it is only voluntary.<sup>73</sup> In this

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<sup>64</sup> Ibid.

<sup>65</sup> Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraphs 61-62.

<sup>66</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Georgia adopted by the Committee at its eighty-fourth session (6–24 February 2023), paragraph 25.

<sup>67</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 20.

<sup>68</sup> The Public Defender of Georgia, Analysis of 2021 Femicide and Attempted Femicide Cases, 2023, page 27.

<sup>69</sup> The Public Defender of Georgia, Analysis of 2021 Femicide and Attempted Femicide Cases, 2023, page 27.

<sup>70</sup> The Public Defender of Georgia, Analysis of 2021 Femicide and Attempted Femicide Cases, 2023, pages 28-29.

<sup>71</sup> Communication from an NHRI (Public Defender of Georgia) (19/10/2022) in the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraph 27.

<sup>72</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, pages 202-203.

<sup>73</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 203.

connection, the CEDAW recommended that the authorities “intensify efforts for the prevention of gender-based violence against women, in particular femicide, including by making training programmes for behaviour change compulsory for offenders”.<sup>74</sup>

### **Victim Support Services**

24. The Action Plans refer to the work of the witness and victim coordinator service.<sup>75</sup> In this connection, the PDO considers that more effort is needed to ensure and improve involvement of this service in gender-based violence cases. In particular, the witness and victim coordinators from the MIA provided support to up to 2900 individuals in domestic crime cases and the witness and victim coordinators from the Prosecutor’s Office were involved in 1454 cases in 2022, whereas investigation was launched into 4677 alleged occasions of domestic violence and domestic crimes in the past year.<sup>76</sup> Moreover, it was stated at a meeting with the witness and victim coordinators from the MIA that they sometimes are not involved in cases from the beginning of investigations.<sup>77</sup> Moreover, the witness and victim coordinators of the Prosecutor’s Office note that it is not predetermined whether they or the coordinators from the MIA should be involved in a case.<sup>78</sup> Heavy workload and lack of geographic coverage of this service are also problematic<sup>79</sup> and is probably due insufficient number of coordinators. According to the 2023 Action Plan, the Prosecutor’s Office employes 19 witness and victim coordinators and this number cannot be considered enough in light of the fact that 5274 individuals benefited from the coordinators’ services in 2022.<sup>80</sup>

25. Apart from improper functioning of the witness and victim coordinator service, the PDO has revealed such shortcomings in provision of victim services as their temporary or onetime nature (e.g., one-off cash assistance) and lack of uniform standards on services throughout the

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<sup>74</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Georgia adopted by the Committee at its eighty-fourth session (6–24 February 2023), paragraph 26.

<sup>75</sup> Action Plan (27/10/2022) - Communication from Georgia concerning the group of cases of Tkhelidze v. Georgia (Application No. 33056/17), paragraphs 53-56; Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraphs 70-77.

<sup>76</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 204, footnote 667.

<sup>77</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 204, footnote 667.

<sup>78</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 204, footnote 667.

<sup>79</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 204.

<sup>80</sup> Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraphs 76, 77.

country leading to varying policies and practices of operation and accessibility from municipality to municipality.<sup>81</sup>

26. Another barrier to receiving support services is lack of awareness, despite measures undertaken by the authorities to inform the public about victim's rights and available support services.<sup>82</sup> Within focus group interviews conducted by the PDO, a part of women from 35 municipalities indicated that they did not have information about response mechanisms and/or municipal services for victims.<sup>83</sup> Moreover, it is noteworthy that the CEDAW's last concluding observations mentioned victims' lack of trust in law enforcement mechanisms and State support services.<sup>84</sup> The CEDAW also expressed concern about "the shortage of shelters and crisis centers, the absence of a rape crisis center, underdeveloped systems of psychosocial support for survivors of gender-based violence against women, and barriers for women and girls with disabilities and lesbian, bisexual, transgender and intersex women and girls survivors of gender-based violence to access protection orders and victim support services".<sup>85</sup> Furthermore, the delay in adoption of "the procedures of national referrals for detection, protection, support and rehabilitation of victims of violence against women and/or domestic violence"<sup>86</sup> and the flawed rules on compensation and free legal aid for victims, mentioned above,<sup>87</sup> can also be considered as shortcomings of the current victim support system.

27. Apart from the aforesaid challenges in provision of support services for victims, the PDO would like to refer to a positive legislative development also mentioned in the 2023 Action Plan.<sup>88</sup> In particular, the Law on Elimination of Violence against Women and/or Domestic Violence and the Protection and Support of Victims of such Violence has been amended to the effect that receiving a status of victim is no longer a precondition of eligibility for support

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<sup>81</sup> The Public Defender of Georgia, Assessment of Effectiveness of Gender Equality Institutional Mechanism in Georgia, 2021, pages 34-35.

<sup>82</sup> E.g., paras 72, 75 of Action Plan (27/10/2022) - Communication from Georgia concerning the group of cases of Tkhelidze v. Georgia (Application No. 33056/17).

<sup>83</sup> The Public Defender of Georgia, Assessment of Effectiveness of Gender Equality Institutional Mechanism in Georgia, 2021, page 35.

<sup>84</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Georgia adopted by the Committee at its eighty-fourth session (6-24 February 2023), paragraph 15.

<sup>85</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Georgia adopted by the Committee at its eighty-fourth session (6-24 February 2023), paragraph 25.

<sup>86</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 196.

<sup>87</sup> Please view paragraph 9 above

<sup>88</sup> Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraph 26.

services. The PDO welcomes this amendment as it removed the barrier hindering access to support services.

### **Capacity Building**

28. The PDO welcomes various trainings implemented to improve the capacity of the law enforcement and the judiciary to combat gender-based violence, as described in the Action Plans.<sup>89</sup> However, more capacity building measures should be taken in light of the lack of sensitivity of both the law enforcement and the judiciary. Indeed, the CEDAW mentioned the need to conduct “awareness-raising campaigns to eliminate judicial gender bias and stigmatization of women and girls who are survivors of gender-based violence”.<sup>90</sup> The PDO would also like underline the need to train judges especially considering stereotypical views it observed in reasonings in some court decisions on cases of domestic violence and violence against women.<sup>91</sup> As to the law enforcement, women interviewed by the PDO and living in different municipalities emphasized the lack of sensitivity of the police on the issue of violence against women and domestic violence.<sup>92</sup> As another example of lack of gender sensitivity of the police, the PDO would like to refer to a case of various crimes (including rape, psychological and physical violence) allegedly committed against 18 year old and 19 year old women and minors by a 60 year old man.<sup>93</sup> According to an NGO representing the victims, one of the victims was asked degrading and irrelevant questions and had to talk about (alleged) rape in presence of male police officers during an interview with them and thereby suffered additional stress.<sup>94</sup> It is also concerning that no interview or other investigative actions had been conducted in respect of the other victim as of 27 September, 2023 although the victim had applied to the police on 19 September.<sup>95</sup> The alleged perpetrator was arrested on 29 September i.e., only after the aforesaid NGO issued a public statement.<sup>96</sup>

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<sup>89</sup> Action Plan (27/10/2022) - Communication from Georgia concerning the group of cases of Tkhelidze v. Georgia (Application No. 33056/17), paragraphs 59-65, 76, 78-97; Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraphs 40-43, 119-121.

<sup>90</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Georgia adopted by the Committee at its eighty-fourth session (6-24 February 2023), paragraph 16.

<sup>91</sup> The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 202.

<sup>92</sup> The Public Defender of Georgia, Evaluation of Gender Equality Policies of Municipalities, 2022, page 34.

<sup>93</sup> Please view the NGO's (Sapari) Statement: <https://tinyurl.com/yea8wyk8> [last accessed 30.10.2023]; The man accused by young women of rape was arrested, available at: <https://tinyurl.com/2rznfczw> [last accessed 30.10.2023].

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

## **Public Awareness Raising**

29. The Committee of Ministers “underlined that further sustained and robust action is required to address the root causes of the problem”.<sup>97</sup> In this connection, gender stereotypes can be considered as one of the root causes of gender-based violence, as they, for example, often depict women as weak or obedient and deny women’s place in education, workplace, decision-making, public and political life. Therefore, voicing opposition to such stereotypes and support for gender equality is crucial to fight against gender-based violence. In this connection, the PDO welcomes various awareness raising meetings and campaigns mentioned in the Action Plans.<sup>98</sup> Nevertheless, continued efforts are necessary in this direction as gender stereotypes remain. Thus, the CEDAW concluding observations refer to “persistent gender stereotypes in the education system”,<sup>99</sup> prevailing gender stereotypes and stigma as obstacles to reporting gender-based violence<sup>100</sup> and “sexist and misogynist political discourse, sexual harassment, sexism, threats and intimidation”<sup>101</sup> faced by women in political and public life. In 2022, the PDO unfortunately observed sexist statements/comments made against women involved in public and political life and reinforcing discriminatory views on gender roles of men and women.<sup>102</sup>

## **Statistics**

30. The Committee of Ministers requested the authorities to provide “disaggregated statistical data, accompanied with a qualitative analysis in respect of investigations, prosecutions, convictions and sanctioning for gender-based crimes”.<sup>103</sup> Among the documents providing statistical data is the Study by the Prosecutor’s Office on Legal and Criminological Aspects of

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<sup>97</sup> The Decision of the Committee of Ministers adopted at 1451st meeting, 6-8 December 2022, CM/Del/Dec(2022)1451/H46-14, paragraph 3.

<sup>98</sup> Action Plan (27/10/2022) - Communication from Georgia concerning the group of cases of Tkhelidze v. Georgia (Application No. 33056/17), paragraphs 66, 69, 71-75, 77; Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraphs 45-49.

<sup>99</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Georgia adopted by the Committee at its eighty-fourth session (6–24 February 2023), paragraph 33.

<sup>100</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Georgia adopted by the Committee at its eighty-fourth session (6–24 February 2023), paragraph 15.

<sup>101</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Georgia adopted by the Committee at its eighty-fourth session (6–24 February 2023), paragraph 29.

<sup>102</sup> The Public Defender of Georgia, the 2022 Special Report on Combating and Preventing Discrimination and the Situation of Equality, pages 17-20, available at: <https://tinyurl.com/ycjcv38x> [last accessed 30.10.2023].

<sup>103</sup> The Decision of the Committee of Ministers adopted at 1451st meeting, 6-8 December 2022, CM/Del/Dec(2022)1451/H46-14, paragraph 5.

Femicide 2014-2022, described in the 2023 Action Report.<sup>104</sup> The Study does contain some relevant figures. However, it was stated at a meeting with the Prosecutor's Office that the study provides data on only those cases in which gender-based motive was identified. Thus, the Study does not include actually problematic cases where there were challenges in identification of gender-based motive. Moreover, the document lacks an analytical narrative. In particular, information on trends and challenges is provided as short sentences in bullets on a few slides. Moreover, some information on trends is a just a depiction of the data in written form without further commentary or analysis.

31. The 2023 Action Plan mentions the statistics published by the MIA.<sup>105</sup> In this connection, the PDO notes that the statistics available on the MIA's website do not contain age and sex-segregated data on gender-based crimes and the MIA's statistics on murder of women includes only murders committed in domestic setting. Moreover, the statistics produced by the courts are also problematic. There are inconsistencies in the figures provided to the PDO by the Supreme Court and the lower instance courts. In particular, the Supreme Court's data on the number of cases of murders or attempted murders of women under review in the 1<sup>st</sup> and 2<sup>nd</sup> instance courts never coincides with the total number of cases contained in the data of the lower instance courts.

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<sup>104</sup> Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraphs 32-34.

<sup>105</sup> Action Plan (06/10/2023) - Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraph 78.