



FORCED MARRIAGE

Legislation and Practice



**GEORGIAN
YOUNG
LAWYERS'
ASSOCIATION**

Georgian Young Lawyers' Association

FORCED MARRIAGE - LEGISLATION AND PRACTICE

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INTRODUCTION

Forced marriage is one of the most complex forms of violence against women. Although there is no universally accepted definition, forced marriage can be interpreted as a marriage entered into without the consent of one or both partners and therefore against the free will of one of them.¹ Forced marriage, in addition to its unlawfulness, leads to gross violations of human rights, since in the majority of cases, the fundamental rights of the victim such as the right to physical and mental health, access to sexual and reproductive services, education, personal life, liberty, etc become restricted after forced marriage.

International conventions and treaties² recognize the equality of women and men of marriageable age, which they can enjoy at the moment, during and after marriage. The Constitution of Georgia recognizes legal equality and voluntariness in the union of women and men for the purpose of starting a family.³ Despite the criminalization of forced marriage, it remains a challenge in practice. For years, timely and effective response to forced marriage has persisted to be a major problem.⁴

The aim of this study was to analyze the facts of forced marriage in terms of gender, to examine the compliance of criminal law on forced marriage with the requirements of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter referred to as the “Istanbul Convention”), as well as to analyze how effective the response of the state is to the cases of forced marriage.

The study revealed that the victims of forced marriage in Georgia are women. The problem is particularly acute in the Kvemo Kartli region. It is the region where investigations into forced marriage are most frequently initiated.

It is true that the introduction of a special provision and criminalization of forced marriage in the Criminal Code has fulfilled the requirement of the Istanbul Convention, yet preventive actions in this respect, effective awareness-raising activities in the society, and effective response to already identified cases remain a problem.

Imposing an appropriate punishment on those perpetrating forced marriage is still challenging. In three out of the seven verdicts, the court sentenced the defendants to a suspended sentence, which cannot be considered a proportionate punishment for the act committed by the culprits.⁵

The study is followed by recommendations developed for relevant authorities. GYLA hopes that the recommendations and findings will be applied by the agencies to prevent forced marriage, to effectively investigate cases already committed, and to impose a proportionate sentence on those committing forced marriage.

¹ European Union Agency for Fundamental Rights, Addressing forced marriage in the EU: legal provisions and promising practices, 2014, p. 2.

² Convention on Human Rights and Fundamental Freedoms, Article 12. International Covenant on Civil and Political Rights, Article 23.

³ Constitution of Georgia, Article 30, Paragraph 1.

⁴ Report of the Public Defender of Georgia, “On the Situation of Human Rights and Freedoms in Georgia”, 2019, p. 204. Available at: <https://bit.ly/376vGfG> [Last viewed: 26.11.2020].

⁵ Annexes: №1, №2, №7.

METHODOLOGY

For the purposes of the research, the provisions concerning forced marriage envisaged by the national legislation and international instruments, as well as the resolutions and recommendations of the UN Committee on the Elimination of All Forms of Discrimination against Women and the General Assembly of the Council of Europe have been analyzed. With the view to preventing forced marriage, responding effectively to already committed cases, and identifying best practices, GYLA studied the criminal law of several states and the actions taken by the countries for the prevention of forced marriage.

In order to investigate the issue of forced marriage, GYLA requested relevant information from the “Public Safety Management Center” (112), the Ministry of Internal Affairs, the Prosecutor’s Office, the Supreme Court, and the Common Courts of Georgia regarding the crimes stipulated under Article 150¹ (Forced marriage) of the Criminal Code of Georgia (CC).⁶

The case law was analyzed for presenting a comprehensive analysis of forced marriage. In particular, the research team requested statistical information from the Supreme Court⁷ and common courts⁸ concerning the cases reviewed and the court judgments delivered. According to the information obtained, a total of 7 criminal cases against 8 individuals have been considered by the common courts over the past four years.

Based on the obtained information, GYLA studied the situation regarding the initiation, termination, and final outcomes of the investigations into the facts of forced marriage.

⁶ The information was requested by GYLA for the period from 2016 to December 2019.

⁷ GYLA’s statement to the Supreme Court 8-04 / 35-20, dated 11.02.2020.

⁸ GYLA’s statement to Tetrtskaro District Court, 8-04 / 41-20, dated 5.03.2020

GYLA’s statement to Tbilisi City Court, 8-04 / 42-20, dated 5.03.2020.

GYLA’s statement to Zugdidi District Court, 8-04 / 43-20, dated 5.03.2020.

GYLA’s statement to Gardabani Magistrate Court, 8-04 / 44-20, dated 5.03.2020.

KEY FINDINGS

The review of the obtained information has revealed the following trends:

- Criminalizing forced marriage is a necessary yet insufficient measure to eliminate the problem. **The international practice considers prevention as an important component of the fight against forced marriage;**
- **Establishing a minimum age for marriage, maximizing access to education** for girls, and **raising public awareness** are important tools to prevent forced marriage;
- According to the data provided by the Ministry of Internal Affairs, **the investigation was launched on a total of 44 criminal cases from 2016 to 2019**,⁹ among them 2 cases in 2016, 6 cases in 2017, 16 cases in 2018, and 20 cases in 2019;
- In 2016-2019, **most investigations into forced marriage were launched in Kvemo Kartli**. The **total number of investigations into forced marriage initiated in the Kvemo Kartli region during the reporting period amounted to 60%** of all investigations initiated across Georgia (26 out of 44 cases);
- As per the information provided by the Prosecutor's Office, **the proceedings into 19 criminal cases (44%) were terminated**.¹⁰ **According to the data, the investigation into most cases was terminated in Kvemo Kartli (13 cases)**. Furthermore, all investigations launched in the above region in 2016 and 2017 were canceled;
- Criminal proceedings **were initiated against 14 persons (all men)**. The most number of prosecutions (6 persons) for forced marriage was opened for the last four years in the Samegrelo-Zemo Svaneti region;
- The Prosecutor's Office **recognized 14 individuals in total as victims, all of them are women**. Three of those identified as victims are **minor children**;
- During the reporting period, **a total of 7 criminal cases against 8 individuals were adjudicated by the common courts**;¹¹
- The analysis of the court judgments has shown that in **3 out of 7 verdicts - plea agreements were signed with 4 defendants**,¹² **and none of the convicts was sentenced to real imprisonment. The plea agreements ordered 2 defendants to a suspended prison sentence**, among them in one case, forced marriage was committed knowingly against a minor.¹³ In one of the cases, a fine was imposed on two individuals accused of group deprivation of liberty and forced marriage;¹⁴
- Four judgments were delivered after the merits hearing. **Imprisonment as a sentence (real punishment) was applied for two grave crimes** (in one case, coercion of marriage by one member of the family with prior knowledge of a minor,¹⁵ and in the other - a combination of forced marriage and rape¹⁶). **One accused was sentenced to community service, and the other received a suspended sentence;**
- **Pursuant to the court judgment into a forced marriage**, in one case, in addition to the major punishment (imprisonment for 2 years, of which 1 year was considered conditional), **the defendant was ordered to take a mandatory training course aimed at changing his violent attitudes and behavior**.¹⁷

⁹ According to the Ministry of Internal Affairs, the data were provided in accordance with the methodology employed by the Ministry of Justice of Georgia. Criminal statistics review the data concerning the initiation of investigations statically, within only the initial qualification, without dynamically considering further changes.

¹⁰ Letter of the General Prosecutor's Office of Georgia, N13/10842, dated 19.02.2020.

¹¹ Annex №6

¹² Annexes: №1, 2 and 4

¹³ Annex: №2

¹⁴ Annex: №4

¹⁵ Annex: №5

¹⁶ Annex: №3

¹⁷ Annex: №5

INTERNATIONAL REGULATION OF FORCED MARRIAGE

Forced marriage is a gross violation of human rights that disproportionately affects women and girls. This form of violence further promotes such severe forms of violence against women as restrictions of the right to life, education, sexual and reproductive health, and socio-economic rights.¹⁸

The right to marry is a conscious and voluntary act of an individual that is protected by international human rights instruments.

“... The General Recommendation №19 adopted by the Committee on the Elimination of Discrimination against Women stresses out the issue of forced marriage, and the Committee urges the Member States to recognize, within the context of Articles 2, 5 and 10 of the Convention on the Elimination of All Forms of Discrimination against Women, that traditional attitudes, stereotypical roles and forced marriage based on such attitudes are violence against women and calls on the Member States to take all appropriate measures to alter these traditions and stereotypical views. The Committee also urges the Member States to provide the definition of domestic violence in such a way so that harmful traditions and forced marriage are referred to as violence against women.”¹⁹

For years the United Nations has focused on forms of violence known as “harmful cultural and traditional practices.” These forms of violence include mutilation of female genital organs, the killing of infant girls, prenatal sex selection, child marriage, forced marriage, and dowry-related violence, and so-called “honor” crime, and the cruel treatment of widows. The United Nations initially stressed the impact these forms of violence have on women and children, as well as the importance of marriage based on the full and free will of a potential spouse. Since the 1990s, the organization has unequivocally acknowledged forms of violence against women, including gender discrimination and violations of women’s rights. Comprehensive international legal and policy frameworks oblige the Member States to enact, implement, and monitor the legislation designed for the elimination of all forms of violence against women, including “harmful cultural or traditional practices” (hereinafter referred to as “harmful practices”).

The Convention on the Elimination of All Forms of Discrimination against Women²⁰ stipulates that child betrothal and child marriage shall have no legal effect. The Member States must specify a minimum age for marriage, and marriage registration must be compulsory. The General Assembly Declaration on the Elimination of Violence against Women adopted in 1993 declares that “the Member States should condemn violence against women and should not invoke on any custom, tradition or religious consideration to avoid their share of responsibility with respect to its elimination.”

The General Assembly and other intergovernmental bodies of the United Nations have called on the Member States to develop and fully implement laws and other measures to eradicate harmful or customary practices including female genital mutilation, early and forced marriage, and so-called “honor” crimes. The General Assembly has called on the Member States to “review and, if necessary, revise, amend or abolish all laws, regulations, policies, practices, and customs that discriminate against women or have a discriminatory impact on women, and ensure that provisions of multiple legal systems comply with international human rights commitments and principles.”²¹

In April 2009, the Parliamentary Assembly of the Council of Europe (PACE) adopted a resolution calling on the Member States to develop national legislation punishing and prohibiting forced marriage, female genital mutilation, and discrimination on the grounds of sex.²²

¹⁸ United Nations „Child, early and forced marriage, including in humanitarian settings“. Available at: <https://bit.ly/3hxiSn1> [Last viewed: 26.11.2020].

¹⁹ Report of the Public Defender of Georgia “On the Situation of Human Rights and Freedoms in Georgia, 2012, p. 707. Available at: <https://bit.ly/2UOaMwB> [Last viewed: 26.11.2020].

²⁰ The Convention on the Elimination of All Forms of Discrimination against Women, Article 16 (2).

²¹ Report of the expert group meeting, „GOOD PRACTICES IN LEGISLATION ON “HARMFUL PRACTICES” AGAINST WOMEN“, Expert group meeting organized by United Nations Division for the Advancement of Women United Nations Economic Commission for Africa Addis Ababa, Ethiopia 26 to 29 May 2009. Available at: <https://bit.ly/3fvb7wc> [Last viewed: 26.11.2020].

²² The 5th press release of the Council of Europe, “PACE calls for the prohibition and punishment of human rights violations on the basis of gender”, 28/04/2009, available at: <https://bit.ly/2AGVH95> [Last viewed: 19.11.2020].

The in-depth study of the UN Secretary-General published in 2006, “Ending Violence against Women”²³ states that early or forced marriage is still permitted under the law of various countries, and disproportionately small sentences are used in cases of violence against women, and sentences for so-called “honor” crimes are reduced and/or abolished.

Prevention of forced marriage

The criminalization of forced marriage is one yet insufficient way to eliminate the problem.²⁴ An effective and timely investigation of the already committed crime, the prosecution of perpetrators is very important, although over the years the fight against forced marriage is primarily aimed at the prevention of the crime. The international practice observes the following as important levers for the prevention of forced marriage:

- Setting a minimum age for marriage;
- Maximizing access to education for girls;
- Conducting public awareness campaigns.

Setting a minimum age for marriage

International human rights law obliges the Member States to specify a minimum age for marriage in their legislation. The UN Committee on the Rights of the Child and the UN Committee on the Elimination of Discrimination strongly recommend that the states specify a minimum age for marriage that should be 18 years for both girls and boys.²⁵

In most states, the minimum age for marriage is specified. Among the European countries, the Kingdom of the Netherlands has determined not only the minimum age for marriage but also has affirmed that the country does not recognize the marriage of persons under 18 outside the country. The Netherlands may only recognize marriages of minors under 18 abroad once the married persons reach the age of 18.²⁶

Norway has adopted new rules for marriages abroad if at least one of the spouses is a citizen or a permanent resident of Norway. Marriages that take place outside the country may not be recognized by Norway if one of the partners to the marriage is under the age of 18, if the marriage ceremony takes place without the physical presence of both parties or if one of the partners is already married. The first paragraph of Article 17 of the European Convention on Nationality stipulates that “nationals of a Member State who hold the nationality of another Member State shall enjoy the same rights and obligations as nationals of other Member States.”²⁷

Furthermore, in certain cultures, parents and guardians are intensively involved in the engagement and marriage of their children. Therefore, any relevant legislation should explicitly stipulate the criminal liability of those involved in organizing child marriage. For example, under Article 168 of the Criminal Code of Tajikistan, an act of coercing a girl who has not reached the marriageable age by parents or guardians shall be a punishable offense. Marrying a person who has not reached the marriage age shall be also punished by law. The Prohibition of Child Marriage Act of India (2007) provides for severe penalties for those who marry a child. The Act also envisages special sanctions against persons participating in, encouraging or conducting child marriage, or those involved in the celebration and promotion of a wedding ceremony, as

²³ United Nations, Study of the Secretary-General, “Ending Violence against Women: from words to action”, 2006, (A/61/122/Add.1 and Corr.1).

²⁴ Max Wind-Cowie, Philida Cheetham, Thomas Gregory „ENDING FORCED MARRIAGE“, 2012, P.21 Available at: <https://bit.ly/37z9Y3F> [Last viewed: 26.11.2020].

²⁵ Committee on the Rights of the Child, General Comment No. 4, 2003, P. 5. Available at: <https://bit.ly/37xG541> [Last viewed: 26.11.2020].

²⁶ Government of the Netherland “Tackling forced marriage”. Available at: <https://bit.ly/3hBYcKO> [Last viewed: 26.11.2020].

²⁷ Ibid.

well as against those permitting and not preventing child marriage.²⁸

The importance of access to education for girls

Forced marriage mostly takes place in societies with traditional power, based on a patriarchal hierarchy.²⁹ The roles (father, mother, child) that arise in the patriarchal hierarchy and the expectations associated with them legitimize the vicious practice of forced marriage. Consequently, perpetrators do not consider their actions illegitimate. That is why education is one of the main elements to combat forced marriage. Although the UN Convention on the Rights of the Child emphasizes the importance of measures that encourage regular school attendance, many girls still fail to get an education due to multiple factors (e.g., because schools are inaccessible, abusers often do not allow them to continue their education).³⁰

Education promotes women's empowerment, employment, freedom of choice, opportunities for active participation in society, etc. This, in turn, enables women to free themselves from various forms of coercion.

Raising awareness

Raising public awareness is another way to prevent forced marriage. Awareness-raising in communities where forced marriages occur lays the foundation for the acceptance of the view that women have the right to their independence, individual and free choice.

Noteworthy among the public awareness campaigns is the campaign "Marriage against Your Will" conducted in the Kingdom of the Netherlands.³¹ It urges young people who are forced to marry against their will to speak up and get help. The website, created specifically for the campaign, contains information about freedom of choice, services available to victims of forced marriage, and their providers.

For raising public awareness, the "Honor and Safety Platform"³² has also been set up bringing together professionals from various fields, victims of forced marriage, and volunteers working on these issues. The platform holds a one-day national conference twice a year where participants can exchange ideas and learn from each other.

²⁸ Ibid.

²⁹ FRA "legal provisions and promising practices", 2014, P. 32. Available at: <https://bit.ly/2Y7fXKg> [Last viewed: 26.11.2020].

³⁰ Towards an EU external strategy against early and forced marriages, (2017/2275(INI)), 2018, P. I. Available at: <https://bit.ly/2YE03WL> [Last viewed: 26.11.2020].

³¹ Information about the campaign, available at: <https://bit.ly/2KQg2xv> [Last viewed: 26.11.2020].

³² Information about the platform, available at: <https://bit.ly/37zcBm3> [Last viewed: 26.11.2020].

COERCION TO MARRIAGE IN GEORGIAN LAW AND PRACTICE

Regulation of forced marriage in law

According to the Constitution of Georgia, a marriage must be based on the equality of rights and the free will of spouses.³³ The registration of marriage shall be allowed in Georgia from the age of 18.³⁴ Forced marriage is criminalized under Article 150¹ of the Criminal Code (CC).³⁵

Article 150¹ of the Criminal Code appeared in the Code following the amendments introduced therein in 2014 with the view to bringing the Georgian legislation in line with the Istanbul Convention.³⁶ Two more amendments have been made to this article of the Code since its adoption. Currently, both registered and unregistered marriages are punishable by community service for a period of two hundred to four hundred hours and/or imprisonment for up to two years. Forced marriage knowingly with a minor child and/or repeatedly is viewed as the aggravating circumstance under Article 150¹ of the Criminal Code and is punishable by imprisonment for a term of two to four years. According to the Code, **“forced marriage means both physical and psychological coercion. Forced marriage is considered committed from the moment of coercion regardless of whether the offender managed to achieve his goal and whether the marriage is registered or unregistered.”**

Awareness-raising campaign

Preventing forced marriage is as important as responding to already committed crimes. Ensuring the empowerment of women and girls (by providing them with appropriate education), raising public awareness on gender equality is viewed to be the best preventive measures against forced and early marriage. To this end, relevant activities are underway in the country to raise public awareness. Along with the government, the ombudsman and the non-governmental sector are taking actions in this respect.

Among the activities implemented by the state for raising public awareness for the eradication of violence against women is the 16-day campaign against gender-based violence carried out by the government in 2018-2019.³⁷ In 2018, MIA employees held twelve meetings in Tbilisi, Kakheti, Shida Kartli, Kvemo Kartli, Adjara, and Samegrelo as part of the 16-day campaign combating violence against women. The meetings were focused on measures taken to prevent domestic violence and violence against women, mechanisms for ensuring a high-quality investigation into such crimes, and the results achieved by the Ministry in combating violence against women.

The awareness campaign conducted by the government should be positively assessed, yet not sufficient. It is important that the work on raising public awareness be ongoing and permanent. Forced marriage can be prevented by the active discussion of gender equality, women’s rights, and international best practices.

Investigating the cases of forced marriage

An important guarantee for ensuring the safety and protection of the victims of forced marriage is to conduct a thorough and timely investigation. In most cases of forced marriage, with the view to avoiding the likelihood that the victims may refuse to continue with the investigation or change their statements and avoid punishing the perpetrator due to the close relationship between the accused and the victim, the law enforcement authorities must conduct an effective investigation within short timeframes from the receipt of the report of the crime and deliver a final decision (indictment) in a timely manner.

³³ The Constitution of Georgia, Article 30.

³⁴ The Civil Code of Georgia, Article, 1108.

³⁵ The Law of Georgia “On Introducing Amendments to the Criminal Code of Georgia” №2704-Іb, 2014. Available at: <https://bit.ly/35aaa8x> [Last viewed: 26.11.2020].

³⁶ Explanatory note On the Draft Law of Georgia on Amending the Criminal Code of Georgia,” 2013. Available at: <https://bit.ly/35bF28q> [Last viewed: 26.11.2020].

³⁷ The statement by the United Nations Women Organisation in Georgia, “Government of Georgia joins the Global Campaign 16 Days of Activism against Gender-Based Violence”, 2018, Available at: <https://bit.ly/362cqRo> [Last viewed: 26.11.2020]. MIA’s campaign “Do not take childhood away,” 2019. Available: <https://bit.ly/2HuMleD> [Last viewed: 26.11.2020].

Concerning the cases of forced marriage, GYLA requested public information from the Ministry of Internal Affairs³⁸ and the Prosecutor's Office of Georgia³⁹ on the crime envisaged under Article 150¹ of the Criminal Code of Georgia and/or in combination with this Article from January 1, 2016, to December 31, 2019:

1. Number of telephone reports received by the Public Safety Management Center of the Ministry of Internal Affairs (112);
2. Number of cases and persons in relation to whom the Ministry of Internal Affairs started an investigation;
3. Number of cases and persons in relation to whom the investigation was terminated as per the information provided by the Prosecutor's Office;
4. Number of cases and persons in relation to whom the criminal prosecution has been launched;
5. Number of persons who applied to the Prosecutor's Office with a request to be recognized as the victim:
 - Number of the appeals granted;
 - Number of the persons denied to the victim status;
 - Number of the decisions appealed to a superior prosecutor.
6. Number of cases and persons in relation to whom the common courts of Georgia were applied to with the request of concluding a plea agreement.

Concerning the first item on the list of the requested information, the Ministry of Internal Affairs⁴⁰ replied that the Public Safety Management Center "112" does not process any statistical data in the requested form. Accordingly, the above information remains unknown to GYLA, yet the research team obtained statistical information⁴¹ from the Ministry regarding the initiation of the investigation. According to the data, the investigation was launched concerning a total of 44 criminal cases in the period from 2016 to 2019.⁴² **In 2016, the investigation under Article 150¹ of the CC was launched into 2 cases, in 2017, the investigation rate tripled and increased to 6. In 2018, compared to the previous year, it almost tripled again and the rate of the investigation initiation amounted to 16, and in 2019 – it was 20** (see Chart №1).

³⁸ GYLA's statement 8/04-36-20, dated 11.02.2020.
GYLA's statement 8/04-45-20, dated 05.03.2020.

³⁹ GYLA's statement 8/04-33-20, dated 11.02.2020.
GYLA's statement 8/04-40-20, dated 11.02.2020.

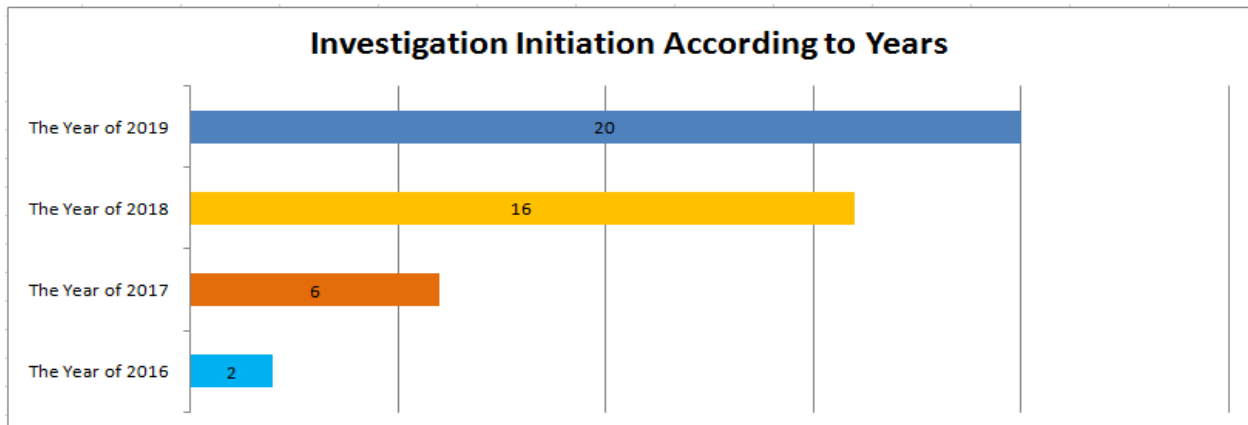
⁴⁰ MIA's letter, MIA12000508895, 26.02.2020.

⁴¹ MIA's letter, MIA 02000688588, 16.03.2020.

⁴² According to the Ministry of Internal Affairs, the data are collected according to the methodology used by the Ministry of Justice of Georgia. Criminal statistics review the rate of the investigation initiation statically, only within the initial qualifications, without dynamically considering further changes.

Chart №1

The chart shows the data of the investigations launched into the cases of forced marriage during four years (Article 150¹ of the Criminal Code).



According to the information provided by the Ministry of Internal Affairs, most investigations in 2016-2019 into forced marriage were initiated in Kvemo Kartli. During the reporting period, the total number of investigations into forced marriage in the region accounted for 60% of investigations initiated throughout Georgia - 26 cases out of 44 (see Table №1).

Table №1

The table shows the statistics related to the launch of the investigation by the Ministry of Internal Affairs of Georgia into the crime under Article 150¹ of the Criminal Code of Georgia by years and territories.

Number of criminal cases investigated under Article 150 ¹ of the CC in 2016-2019				
Region	2016	2017	2018	2019
Tbilisi	0	0	2	2
Adjara	0	0	0	6
Samegrelo-Zemo Svaneti	0	0	1	0
Imereti, Racha-Lechkhumi and Kvemo Svaneti	0	1	1	2
Kakheti	0	0	0	3
Kvemo Kartli	2	5	12	7

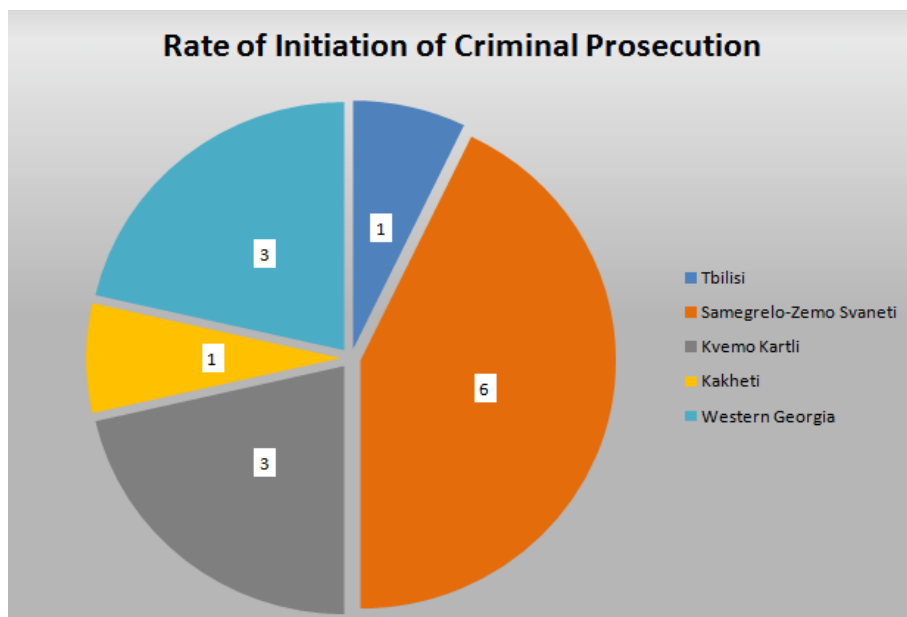
In response to the requested information (item 3), the GYLA was informed by the General Prosecutor's Office that the **investigations (44 cases) into 19 criminal cases (44% of all cases) had been terminated.**⁴³ The **Kvemo Kartli region is distinguished with a high rate of terminated investigations (13 out of 26 cases). Moreover, all investigations launched in Kvemo Kartli in 2016 and 2017 were canceled.**

Within the scope of the ongoing investigations (25 cases), according to the Prosecutor's Office, the **prosecution was launched against 14 people (all of them are men).** Criminal proceedings against the largest number of persons (6 individuals) for the commission of forced marriage was started in the Samegrelo-Zemo Svaneti region during the four-year period (see Chart №2).

⁴³ Letter №13/10842 of the General Prosecutor's Office of Georgia, 19.02.2020.

Chart №2

The chart shows the rate of initiation of criminal proceedings against individuals for forced marriage in the regions in 2016-2019.



With reference to the above-mentioned form of violence against women, the European Parliament deems it necessary for the Member States to enhance their efforts to prevent and combat forced marriage, to deal with already identified cases, and to provide effective guarantees for the protection of victims.⁴⁴ The primary step in protecting victims is to recognize their status and identify them as victims. According to the information provided by the Prosecutor's Office, **in the period from 2016 to 2019, a total of 14 individuals were identified as victims by the Prosecutor's Office, and all of them are women. Three of the victims are minor children and 11 are adults. In 14 of the 25 criminal cases, the recognition of the victims should be evaluated positively, although it is important all victims be granted the victim status, as only in this case they can have access to the progress of the investigation and criminal case materials, which is the only way to fully protect their rights.**⁴⁵

The Prosecutor's Office failed to provide GYLA with information on how many persons applied to the body for the victim status, how many were granted the status, and whether in 2016-2019 the decisions of the Prosecutor's Office refusing the status was appealed with the superior prosecutor. Furthermore, the research team could not get an answer on the number of cases and persons in relation to whom the Prosecutor's Office applied to the common courts with the request to conclude a plea agreement.

Analysis of court judgments into forced marriage

The right to marry on the basis of free will is a fundamental human right and is directly related to other major human rights. Restriction of the above right for girls and women leads to gross violations of other important freedoms. Implementation of prompt justice in cases of forced marriage is a mechanism for protecting the rights of victims.

For the purpose of analyzing the Georgian case law concerning the above-mentioned type of crime, GYLA

⁴⁴ The Resolution of the European Parliament, №14574 (2018), p. 6, 7. 6.

⁴⁵ Criminal Procedure Code of Georgia, Article 57, Paragraph 1, Subparagraph "h".

requested statistical information from the Supreme Court⁴⁶ and common courts⁴⁷ of Georgia on the cases heard by common courts and verdicts delivered. Pursuant to the information obtained, during the four year period, a total of 7 criminal cases against 8 individuals were considered by the common courts, 3 cases - in 2016 and 2018, none in 2017, and only one verdict was delivered in 2019. The majority of them - three criminal cases - were reviewed by the Zugdidi District Court: 2 cases - in 2016, and 1 case - in 2018⁴⁸ (see Table №2).

Table №2

The table shows the number of judgments rendered by the common courts on forced marriage from 2016 to 2019 by years and regions.

Cases heard in court concerning the cases of forced marriage				
Common Courts	2016	2017	2018	2019
Tbilisi City Court	0	0	1	1
Gardabani Magistrate Court	1	0	0	0
Zugdidi District Court	2	0	1	0
Tetritskaro District Court	0	0	1	0

According to the analyzed data, in 2016-2019, a total of 7 court judgments were delivered against 8 individuals. In 3 of these cases (with 4 persons), a plea agreement was concluded and the verdict was rendered without a merits hearing. The plea agreement imposed a suspended sentence in two cases (including in one case, the forced marriage was committed with prior knowledge of a minor), and in one case (against 2 persons) the court ordered the perpetrators to pay a fine as a punishment.⁴⁹

Four court rulings out of seven were delivered as a result of the merits hearing. Of these, **real imprisonment (deprivation of liberty) was used as a punishment in 2 cases.** In one case, forced marriage was committed by a member of the family knowingly against a minor child, and in the other– there was a combination of forced marriage and rape. As a result of the merits hearing of the cases, **in one case the defendant was sentenced to community service for the forced marriage, and in the another case, a suspended sentence was applied** (see Table №2).

⁴⁶ GYLA’s Statement to the Supreme Court, 8-04/35-20, 11.02.2020.

⁴⁷ GYLA’s Statement to Tetritskaro District Court, 8-04 / 41-20, 5.03.2020.

GYLA’s Statement to Tbilisi City Court, 8-04 / 42-20, 5.03.2020.

GYLA’s Statement to Zugdidi District Court, 8-04 / 43-20, 5.03.2020.

GYLA’s Statement to Gardabani Magistrate Court, 8-04 / 44-20, 5.03.2020.

⁴⁸ Letter of the Supreme Court, №3-105-20, 09.02.2020.

⁴⁹ Annex №4.

Table №2

The table shows the information on the articles and sentences applied for forced marriage by the common courts in 2016-2019.

Sentences imposed for forced marriage in 2016-2019 according to the articles and the type of sentence		
Article	The sentence imposed	Type of sentence
Article 151 ¹ of the CC, Paragraph 2, Subparagraph "a"	Imprisonment for 2 years / was considered a suspended sentence	plea agreement
Article 150 ¹ of the CC, Paragraph 1	Imprisonment for 1 year and 6 months / was considered a suspended sentence	plea agreement
Article 143 of the CC, Paragraph 2, Subparagraph "c" Article 143 of the CC, Paragraph 3, Subparagraph "a" Article 25, 150 ¹ of the CC, Paragraph 1	Fine in the amount of GEL 5000	plea agreement
Article 143 of the CC, Paragraph 2, Subparagraph "c" Article 143 of the CC, Paragraph 3, Subparagraph "a" Article 150 ¹ of the CC, Paragraph 1	Fine in the amount of GEL 5000	plea agreement
Article 11 ¹ , 150 ¹ of the CC, Paragraph 2, Subparagraph "a"	Imprisonment for 2 years / 1 year considered suspended	Merits hearing
Article 151 ¹ of the CC, Paragraph 1 Article 137 of the CC, Paragraph 1	Imprisonment for 7 years	Merits hearing
Article 150 ¹ of the CC, Paragraph 1	Community service for 250 hours	Merits hearing
Article 126 of the CC, Paragraph 1 ² Article 150 ¹ of the CC, Paragraph 1	Imprisonment for 2 years / considered suspended	Merits hearing

For victims of forced marriage, along with a prompt and effective investigation of the crime, it is important to obtain a timely decision into the case and a fair sentence on the abuser. Coercion of a minor to marriage, as well as forced marriage, accompanied by systematic beatings or other violence that resulted in physical or mental suffering of the victim,⁵⁰ must not be punished with a suspended sentence⁵¹ since this cannot ensure justice for the victims. Furthermore, concluding a plea agreement and imposing a fine on the fact of unlawful deprivation of liberty of a minor child for the purpose of forcing her to marriage cannot be considered as a punishment commensurate with the gravity of the crime committed.⁵²

The imposition of a mandatory training course aimed at changing violent attitudes and behavior as an additional punishment on the abuser charged with forced marriage should be positively assessed.⁵³

⁵⁰ Article 126, paragraph 1² of the Criminal Code.

⁵¹ Annex №7.

⁵² Annex №2.

⁵³ This additional obligation for the convict who was forcing his daughter to marry was determined by the 2018 judgment of the Tetriskaro District Court. Annex №6.

CONCLUSION AND RECOMMENDATIONS

Despite the steps taken by the state, the cases of forced marriage and the response to them remain a challenge. The study has shown that the victims of forced marriage are women, and the accused are men.

The study revealed that most frequently investigations into forced marriage are launched in the Kvemo Kartli region, yet approximately half of the investigations are terminated. This region has the lowest rate of court judgments and sentencing.

The study has also shown that imposing a proper sentence on defendants for forced marriage is a challenge. Frequent cases of sentencing the accused to a suspended sentence⁵⁴ and/or concluding a plea agreement with the perpetrator cannot be viewed as a proportional punishment for the committed act. The study positively evaluated ordering the accused of forced marriage to take a mandatory training course aimed at changing the violent attitudes and behavior of the abuser.⁵⁵

The analysis of international experience has shown that an effective and necessary way to combat the problem of forced marriage is to raise public awareness. The need to raise awareness is mainly apparent in the regions where the rate of the investigation into the crime is the highest and the severity of the problem is obvious.

GYLA believes that in order to eliminate the identified problems, state authorities should take into consideration the following recommendations:

For the Government of Georgia

- Develop a national policy and strategy document to combat early marriage and forced marriage with the participation of relevant government bodies, civil society organizations, women's groups, community leaders, or other stakeholders;
- When planning and implementing preventive measures against forced marriage, special attention should be focused on the Kvemo Kartli region, where the rate of launching an investigation into forced marriage is very high;
- Ensure access to a comprehensive education for women and girls on gender equality, sexual and reproductive health;
- Provide a relevant platform for girls and young women so that they can exchange information on early and forced child marriage.

For Ministry of Internal Affairs

- Respond effectively and promptly to all cases of forced marriage;
- Ensure that cases of forced marriage are investigated within reasonable timeframes.

For the Prosecutor's Office of Georgia

- Exercise effective oversight over the timely and comprehensive investigation of the facts of forced marriage;
- Ensure that victims of forced marriage are timely granted the victim status and criminal proceedings of cases are executed within reasonable timeframes;
- Abandon the practice of concluding plea agreements with defendants charged with forced marriage.

⁵⁴ Annexes: №1, №2, №7.

⁵⁵ Annex №6.

ANNEXES

Cases of 2016

№1. The case of Gardabani

The case was reviewed at an open court hearing

None of the measures of restraint was applied

Qualification: Article 150¹ of the CC, Para. 1 - Forced marriage

A plea agreement was concluded

According to the plea agreement, the defendant was sentenced to imprisonment for 1 year and 6 months, which was considered suspended, and the probation period was determined for 1 year and 6 months.

In August 2016, between approximately 08:30am to 5:00pm, the accused drove the victim from one village to another with the intention to marry her.

In October 2016, a plea agreement was signed between the prosecutor of the Rustavi District Prosecutor's Office, the accused, and his lawyer. The prosecutor motioned for delivering a verdict without a merits hearing of the case and requested the court to find the accused guilty of committing an act under Article 150¹, paragraph 1 of the CC (Forced marriage).

№2. The case of Z.K.

Zugdidi District Court

The case was reviewed in an open court hearing

It is unknown which type of preventive measure was used and/or whether it was used at all

Defendant – with incomplete secondary education, unmarried, no criminal record

Qualification: Article 150¹ of the CC, paragraph 2 – Forced marriage knowingly against a minor

A plea agreement was concluded

The plea agreement imposed imprisonment for a term of 2 years as the form and size of the sentence, which was considered as suspended and a probation period was set for 2 years.

On January 29, 2016, Z.K. met with the minor K.G. and asked her to get into the car he was driving, and then he offered her to get married. Despite K.G.'s refusal, he still forced her to marry and tried to suppress her refusal through psychological pressure. Z.K. continued coercing minor K.G. into marriage all day long.

On March 7, 2016, a plea agreement was signed between the prosecutor of the Zugdidi District Prosecutor's Office, the accused Z.K., and his lawyer S.J.

The prosecutor motioned for delivering a verdict against Z.K. without a merits hearing of the case and requested to find the accused Z.K. guilty for the crime under Article 150¹, paragraph 2 of the CC.

№3. The case of K.K.

Zugdidi District Court

The case was reviewed in a closed court session

The defendant was sentenced to detention as a measure of restraint

Defendant - K.K. with secondary education, unemployed, widowed, with no criminal record (the court ruling stated: the conviction was overturned)

Qualification: Article 150¹, paragraph 1 of the CC - Forced marriage.

Article 137, paragraph 1 of the CC - rape i.e. sexual intercourse with violence or the threat of violence.

Imprisonment for a term of 7 years was determined as the form and size of the punishment.

Despite depriving the victim of liberty for several days, K.K. has not been charged with the crime under Article 143 of the CC.

K.K. and N.J. met each other online, somewhere in 2015. They maintained a telephone communication until March 21, 2016. On March 21, 2016, N.J. and K.K., as agreed in advance, met each other in the village of D., from where they went to the village of Kh., to a cafe, and from there they went to the grave of K.K.'s deceased wife. At that moment, K.K. proposed to N.J. but was rejected. Despite the refusal, he continued forcing N.J. alternating with physical and psychological pressure.

After the physical and psychological pressure at the grave of K.K.'s deceased wife, on the morning of March 22, K.K. took N.J. to one of the hotels where he had sex with her by using physical and psychological violence.

On March 22, 2016, in the evening, K.K. brought N.J. back to Zugdidi district and took her to the grave of his deceased wife, where he again subjected her to physical and psychological coercion in order to convince her to marry.

After the violence, K.K. took N.J. to the house of a relative of his, where he was still forcing N.J. to agree to the marriage and was forbidding her to leave. K.K. and N.J. stayed at the relative's house until the morning hours of March 23rd. Once family members of N.J. arrived, K.K. ran away from the relative's house.

K.K. was found guilty of committing a crime under Article 137, paragraph 1 of the CC, and Article 150¹, paragraph 1 of the CC.

Cases of 2018

№4. The case of L.Ch. and V.Sh.

Zugdidi District Court

The case was heard in an open court session

Bail was used against both defendants as a form of restraint

Defendant V.Sh. with secondary education, married, no criminal record

Defendant L.Ch. with secondary education, no criminal record

Qualification: Article 143, Paragraph 2, Subparagraph “c” of the CC - Unlawful deprivation of liberty for the purpose of concealing or facilitating another crime

Article 143, Paragraph 3, Subparagraph “a” of the CC - Unlawful deprivation of liberty with a prior agreement by a group of persons

Article 150¹, Paragraph 1 of the CC - Forced marriage

Article 25, 150¹ Paragraph 1 of the CC - Assistance in forced marriage

The plea agreements were signed with the defendants

Both defendants were fined GEL 7,000, which was reduced by GEL 2,000 in accordance with Article 62, Paragraph 5 of the CC, taking into account the term of detention already served (from November 16, 2018, to November 22, 2018). Ultimately, a fine in the amount of GEL 5,000 was imposed on L.Ch. and V.Sh. to be paid to the state budget as the form and size of the punishment.

Approximately in 2015, L.Ch. and D.Sh. met each other. According to the court judgment, they had a love affair, but then D.Sh. decided to end the relationship with him. L.Ch. realized that D. Sh. would not voluntarily become his wife and decided to unlawfully deprive her of liberty in order to force her to marry. To this end, he asked V.Sh. for help.

As agreed, on November 16, 2018, at about 11:30 am, L.Ch., in order to exert psychological pressure on D.Sh. and force her to marry him, with the violence and help from V.Sh. pushed D.Sh. into the car driven by V.Sh. Despite a number of requests from D.Sh., the vehicle was not stopped for her and she was not allowed to go home. She was also pressurized to agree to the marriage.

On December 5, 2018, a plea agreement was signed between the prosecutor of the Zugdidi District Prosecutor’s Office and the accused - V.Sh., L.Ch. and lawyer D.S.

The prosecutor motioned for delivering a verdict against V.Sh. and L.Ch. without a merits hearing.

Based on the motion of the prosecutor, the defendant:

V.Sh. was found guilty of committing a crime under Article 143, paragraph 2, subparagraph “c” of the CC, Article 143, paragraph 3, subparagraph “a” of the CC, and Article 25, 150¹, paragraph 1 of the CC.

L.Ch. was found guilty under Article 143, paragraph 2, subparagraph “c” of the CC, Article 143, paragraph 3, subparagraph “a” of the CC, and Article 150¹, paragraph 1 of the CC.

№5. The case of L.E.

Tbilisi City Court

The case was reviewed in an open court session

Bail was used as a preventive measure

Qualification: Article 150¹, paragraph 1 of the CC - Forced marriage

Community service for a period of 250 hours was determined as a sentence.

On September 18, 2018, at approximately 10:00pm, L.E. arrived at N.I.'s apartment in Tbilisi. He started banging on the door of the apartment and swearing, cursing, and threatening to kill N.I. if she refused to marry him. After opening the door, L.E. entered the flat and threatened N.I. again to cut her throat open unless she married him. With the mentioned actions, L.E. exerted psychological pressure on N.I. to coerce her into the marriage.

L.E. pleaded guilty and declared the evidence at the trial undisputed.

L.E. was found guilty of committing the crime under Article 150¹, paragraph 1 of the CC.

№6. The case of I.O.

Tetrtskaro District Court

The case was reviewed in an open court session

Imprisonment was determined as a preventive measure

Defendant I.O. - with incomplete secondary education, married, no criminal record, unemployed

Qualification: Article 11¹, Article 150¹, paragraph 2 of the CC- Coercion of one family member to marry by another member of the family, committed with prior knowledge of a minor.

Imprisonment with the term of 2 years was determined as the form and size of the punishment, of which 1 year was to be spent in a penitentiary facility, and the remaining 1 year was considered a suspended sentence and a probation period of 1 year.

I.O. was also required to take a compulsory training course focused on changing his violent attitudes and behavior.

In March and August 2018, in one of the villages of Tetrtskaro district, with systematic shouting and coercion, knowing the age of the victim, I.O. was forcing his minor child I.O. to marry S.A. against her free will.

According to I.O., instead of continuing with her studies, her father wanted her to marry her fellow villager against her free will. She had met with S.A., though she did not like him and did not want to marry him. Her family members and relatives were forcing her to marry as well, especially the father, who she could not resist. The father systematically exerted psychological pressure, telling her that if she refused to marry, the villagers would say that I.O. and her father were "bad people." He would repeat this as many times as I.O. refused to marry.

The coercion to the marriage by her father took place in 2016 as well, concerning which an investigation was launched, however, the parents promised I.O. that she could marry with her own free will, which is

why she declared during the interrogation that no one was forcing her to marry, so the investigation was terminated.

In March 2018, I.O. was engaged to S.A., and the wedding date was decided in August (September 8, 2018).

I.O. was found guilty of committing a crime under Article 11¹ of the CC and Article 150¹, paragraph 2 of the same Code.

Case of 2019

№7. The case of M.E.

Tbilisi City Court

The case was reviewed in an open court session

Imprisonment was imposed as a measure of restraint

Defendant - M.E.; no conviction

Qualification: Article 126, paragraph 1² of the CC, Article 150¹, paragraph 1 of the Criminal Code - Systematic beating or other violence that caused physical or mental suffering to the victim, but did not result in the consequence under Article 117 or 118 of the same Code, forced marriage.

M.E. was ultimately sentenced to 2 years of imprisonment, which was considered as suspended and the probation period was determined for 2 years.

N. and M.E. have known each other since September 2017. During the relationship, they became closer to each other and planned to get married in the future. Since April 2018, their relationship has become tense as M.E. got more and more aggressive and jealous, forbidding her to communicate and work with other male colleagues. Because of this, N. categorically refused to marry him and ended the relationship.

At the end of April 2018, M.E. visited N. in her office. Fearing to be embarrassed in front of her coworkers, N., against her free will, got into the car owned by M.E. to have a conversation. M.E. drove the car in the direction of Mtskheta. On the way, he was yelling at her and threatening that N. would become his wife and would not work from that day on, otherwise, he would kill her. With the help of N.'s colleague and her mother, M.E. returned N. to her office, yet he did not allow her to get into the elevator, in particular, he grabbed her arm and pushed her in the direction of his car, at which point security personnel rescued her from M.E.

Later, M.E. stalked N. again at her apartment building and with the psychological pressure made her get into the car. N. categorically refused to marry him. Hearing this, he became furious, started shouting and insulting her, could no longer control the vehicle, and ultimately crashed the car into the wall of the building, for which he again blamed N. and seized her by her throat, causing her to gasp and experience physical pain.

After some time in Tbilisi, M.E., threatened N. to disseminate undesired photos, made her meet him on the first floor of the building, where he grabbed her hand, shook her firmly several times, then took her by her hair and pulled her, and then slapped her twice in the left side of her face. While physically abusing her, he was telling her that they had to go abroad the same day otherwise he would continue the violence and would finally murder her.

As a result of multiple physical and verbal insults, coercion into marriage, and constant unwanted pressure by M.E., N. suffered physical pain and psychological (moral) suffering.

M.E. was found guilty of committing a crime under Article 126, paragraph 1² of the CC, Article 150¹, paragraph 1 of the Criminal Code.