



GEORGIAN YOUNG LAWYERS' ASSOCIATION

CASES OF DOMESTIC VIOLENCE, DOMESTIC CRIMES AND VIOLENCE AGAINST WOMEN

TBILISI, KUTAISI, BATUMI, GORI
AND TELAVI COURTS
MONITORING REPORT



MONITORING REPORT № 10
PERIOD COVERED: 20 AUGUST 2016 – JANUARY 2017

TBILISI 2017



EAST • WEST
MANAGEMENT
INSTITUTE
Promoting Rule of Law
in Georgia (PROLoG)

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**(Tbilisi, Kutaisi, Batumi, Gori and Telavi Courts
Monitoring Report)**

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INTRODUCTION

The Georgian Young Lawyers' Association (GYLA) has been carrying out the court monitoring project since October 2011. Initially, GYLA implemented its monitoring project at Tbilisi City Court Criminal Chamber. On 1 December 2012, GYLA broadened the scope of monitoring and included in the project Kutaisi City Court as well. In September 2016, monitoring was launched in Batumi, Gori and Telavi City Courts. Identical methods of monitoring have been applied in all five cities.

Beginning from the period (February 2016 to July 2016) covered by Monitoring Report No 9,¹ GYLA started carrying out the monitoring using new methodology, which, inter alia, includes the assessment of access to justice by vulnerable groups (women, persons with disabilities, representatives of religious and ethnic minorities, representatives of LGBT community, etc.) Report No 9 focused, among other issues, on the cases of violence against women and domestic crimes.

In the period from 20 August 2016 to January 2017 inclusive, covered by Monitoring Report No 10, GYLA set apart the cases of violence against women and domestic crimes in the form of a separate report and eventually prepared an individual, topic-based paper. This paper reveals that **the administration of effective and gender-sensitive justice in cases of violence against women and domestic crimes represents a significant challenge for the prosecution and judicial authorities, which creates barriers and obstacles for female victims in applying to courts in order to effectively defend their rights. The activities of the prosecution and judicial authorities are often inconsistent and fragmented, which leaves female victims without support and fails to provide them with a safe environment.**

Ms. Dubravka Šimonović, United Nations Special Rapporteur on violence against women, who visited Georgia in February 2016, says that discriminatory stereotypes in the society and patriarchal attitudes increase the risk of intimate-partner violence. In addition, the risk of violence increases due to women's low awareness of their rights, the occurrence of child and forced marriages and the lack of economic independence.² The Rapporteur notes that the existing standards to ad-

¹ Courts Monitoring Report №9 - <http://bit.ly/2m6TwTJ>.

² Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia, 9 June 2016, 7.

dress gender-based violence are not well-known to prosecutors and judges and, therefore, are not applied in cases of such crimes.³ Hence, it is important to analyse the trends revealed from court trials on cases of violence against women and domestic crimes, taking into account the extent and acuteness of the problem.

This report aims to analyse, based on the trends identified as a result of the monitoring of criminal trials, how effective the State's response is to the facts of violence against women, whether liable persons are identified and appropriate punishment is imposed on them, whether gender views are shared by the prosecution and judicial authorities and whether the security of victims is ensured.

The relevant recommendations for solving the problems identified during the monitoring process are also included in the report. The main purpose of the recommendations is to facilitate access to gender-sensitive justice and improve legal proceedings on cases of violence against women.

METHODOLOGY

All the information in this report was obtained through attending and monitoring the court hearings.

GYLA's monitors used questionnaires prepared especially for this monitoring project. Information gathered by the monitors and the compliance of courts' activities with international standards, the Constitution of Georgia and the current legislation were evaluated by GYLA's analysts dealing with women' rights/gender-related issues and criminal cases.

The questionnaires included both close-ended questions requiring a "yes/no" answer as well as open-ended questions that allowed monitors to explain and record their observations. In addition, GYLA's monitors made transcripts of court hearings and particularly important motions in certain cases, giving more clarity and context to their observations. Through this process, monitors were able to collect objective, measurable data and, at the same time, to identify other important facts. Accordingly, GYLA's conclusions are based on the analysis of all of the information gathered by the monitors.

³ Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia, 9 June 2016, 26.

The courts monitoring covers all stages of criminal proceedings. In addition, taking into account the duration and the various stages of criminal proceedings, GYLA's monitors attended all or most of the court hearings on each individual case.

During the period from 20 August 2016 to January 2017 inclusive, GYLA monitored 132 court hearings on cases of domestic violence, domestic crimes and violence against women, **including:**

34 - first appearance sessions;

3 - imposed imprisonment revision sessions;

27 - pre-trial sessions;

65 - hearings on merits;

2 - plea agreement sessions;

1 - appellate hearing.

GYLA hopes that the information obtained during the monitoring will give a clearer image of the situation at Georgian courts with respect to cases of violence against women and will make a positive contribution to the protection and improvement of women's rights.

SUMMARY OF MONITORING RESULTS AND MAIN FINDINGS

Although the prosecution and judicial authorities carried out legal proceedings with proper professionalism and adequacy in individual cases of violence against women, in overall their activities still cannot be assessed as effective due to numerous violations and gaps.

- In practice, domestic violence is still perceived as private business of a victim and a perpetrator of violence, which deserves more lenient assessment than other crimes of the same gravity;
- Courts still have significant gaps in their activities and in some cases unreasonably lenient preventive measures are applied. **In comparison to the previous reporting period, the percentage of inappropriately applied preventive measures significantly increased with respect to cases of violence against women and domestic crimes.** Namely, unreasonably lenient preventive measures were applied in 8 out of 17 cases where bail was im-

posed (47%).⁴ This fails to ensure the prevention of repeated acts of violence and the safety of victims;

- **Especially alarming and worrisome practice is observed in Kutaisi City Court with respect to the application of preventive measures.** Namely, in none of 14 attended cases, the judges applied imprisonment and limited themselves to imposing bail or other less severe preventive measures that fail to ensure the safety of the victims;
- In the majority of cases, the prosecution requested the application of preventive measures which would appropriately ensure the safety of victims; however, there were exceptions as well, where the prosecution did not adequately assess and measure existing threats;
- In none of the cases related to violence against women, identified as a result of the monitoring, crimes were classified as crimes committed on discrimination grounds (no reference was made to Article 53(3¹) of the Criminal Code of Georgia). As in the previous reporting period, the prosecution did not focus on possible discrimination motives in any of the cases related to violence against women. Despite the circumstances pointing to a discrimination motive, the prosecution and judges carry out their analysis without considering such motives;
- Two cases were identified with respect to violence against women and domestic violence, that were given lenient classification, which points to ineffective and flawed activities of the prosecution;
- **Despite the judgements of conviction and the gravity of crimes, judges are reluctant to impose imprisonment on perpetrators of violence.** As in the previous reporting period, in the majority of cases (21 cases (72%)), the judge applied less severe sanctions than imprisonment. The court had the same approach to the case in which a minor (person under the age of 16), was a victim of violence and sexual abuse. The court imposed a conditional sentence.

⁴ In the previous reporting period, unreasonably lenient preventive measures were applied in 2 out of 10 cases where bail was imposed (20%).

I. TRENDS OF APPLICATION OF PREVENTIVE MEASURES AND IMPOSITION OF SENTENCES ON CASES OF DOMESTIC VIOLENCE, DOMESTIC CRIMES AND VIOLENCE AGAINST WOMEN

1. Brief overview of the legislation

Under Article 126¹ of the Criminal Code of Georgia, violence, systematic insult, blackmail, humiliation by one family member of another family member which resulted in physical pain or anguish and which has not entailed the consequences provided for by Articles 117,⁵ 118⁶ or 120⁷ of the Criminal Code of Georgia, has the content of domestic violence. In addition, the commission of crimes provided for by individual Articles⁸ of the Criminal Code of Georgia, committed by one family member against another, is considered to be a domestic crime. Criminal liability for a domestic crime shall be determined by reference to Article 11¹ of the Criminal Code of Georgia.

It should also be noted that international human rights law recognises violence against women as a form of discrimination against women.⁹ In addition, according to the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women.¹⁰

The court monitoring shows that crimes mentioned above are mostly committed against women. Therefore, these cases are especially important due to the severity and great number of facts of domestic

⁵ Intentional grave bodily injury.

⁶ Intentional less grave bodily injury.

⁷ Intentional light bodily injury.

⁸ 108, 109, 115, 117, 118, 120, 126, 137-141, 143, 144-144³, 149-151, 160, 171, 253, 255, 255¹, 381¹ and 381².

⁹ Dekanosidze T., Judgements of 2014 Femicide Cases, GYLA's research, Tbilisi, 2016, 5, see: United Nations Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation, No 19, 1992, paragraph 1; see also, Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11.05.2011, Article 3(a); Opuz v. Turkey, Application No 33401/02, European Court of Human Rights, 09.06.2009, paragraph 200.

¹⁰ Dekanosidze T., Judgements of 2014 Femicide Cases, GYLA's research, Tbilisi, 2016, 5, see: Istanbul Convention, Preamble.

crimes and violence against women, which often led to women's death as a result of the State's indifference and improper response.

It is important that preventive measures and sentences of appropriate severity be applied to prevent repeated crimes, and protect female victims from new acts of violence and ensure their safety.

The existence of a domestic crime or domestic violence does not automatically necessitate the application of a preventive measure or the most severe measure against a defendant; however, it is important to assess, together with other circumstances, the specificity of the crime and victims' safety issues, which may further establish the basis for applying a preventive measure or a more severe measure.

The courts should also employ the above approach in imposing sentences, where more focus should be made on the nature of crime and the safety of a victim.

2. Applied preventive measures

The monitoring revealed that requesting and applying preventive measures of appropriate severity and adequacy to ensure the safety of a victim is a significant challenge for the prosecution and courts. Although the prosecution's approach with regard to requesting preventive measures is proportionate in most cases, the courts impose unreasonably lenient preventive measures to defendants, which eventually undermines the effectiveness of legal proceedings and leaves victims of violence unprotected.

Despite significant risks and threats in the cases, judges often prioritise not the safety of victims but the positive characteristics of defendants which instill confidence in the judge. Such an approach significantly damages effective functioning of the system of combating violence, and the potential threat to the life and health of violence victims results in re-victimisation.¹¹

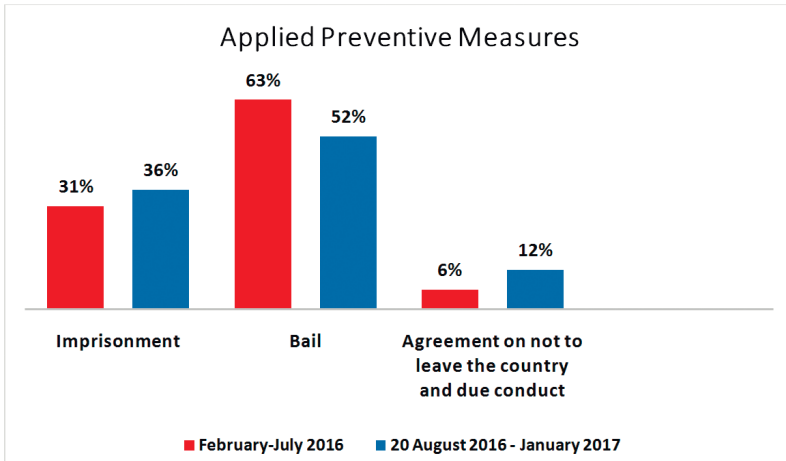
During the reporting period, we monitored 34 first appearance sessions that dealt with cases of domestic violence, domestic crimes and violence against women. In 12 out of 34 above cases, the court ordered the imposition of imprisonment, and in 17 cases ordered bail. Also, in 4 cases agreements on not to leave the country and due conduct was

¹¹ Inflicting harm to a violence victim again.

imposed on defendants, and in 1 case no preventive measure was imposed on a defendant.

The chart below describes the situation during the previous and current monitoring periods (from February 2016 to February 2017) with regard to the application of preventive measures.

Chart № 1



Out of 34 cases mentioned, in 32 cases the defendants were males and in 2 cases females. In addition, in the majority of cases (27 cases), the victim was a woman, a former wife or a partner of a defendant. In 1 case a victim was the mother of a defendant, and in 2 cases the sister of a defendant. **These statistical data indicate that domestic violence disproportionately involves women.** Notably, in 9 cases crimes were committed in the presence of minors.

For the assessment of the risk of a crime it is important that the age of defendants varied from 24 to 60 years, and the age of 79% of defendants is 30 years or older. The court trials revealed that 7 defendants had obtained a secondary education and 3 defendants a higher education. In the rest 24 cases, information on the education of defendants could not be obtained.

Court's approaches

Judges apply less severe preventive measures to defendants in domestic violence cases, leaving the impression that they have inappropriately lenient attitude towards the perpetrators of domestic violence. In 8 (47%) out of 17 cases where the court ordered bail, this preventive measure was unreasonably lenient, which failed to properly and adequately ensure defendant's appropriate behaviour and the safety of a victim and the prevention of repeated crimes.¹²

Especially alarming and worrisome practice is observed in Kutaisi City Court. Namely, in none of the cases the judges imposed imprisonment and limited themselves to imposing bail or other less severe measures. This shows that the approach to the problem of domestic violence is neglectful, surfaced and formal.

Notably, when bail was ordered in the above cases, the financial status of defendants has not been examined in some cases. Namely, in 5 out of 8 cases where unreasonably lenient preventive measures were applied, the material status of defendants was not examined, while this financial sanction and the adverse consequences of bail may further affect the female victim, especially if the defendant and the victim live together.

The following examples illustrate the inappropriate application of preventive measures by the courts:

Example №1

A person was accused of violence against his former spouse. The prosecution stated that the defendant and the victim divorced back in 2011. The reason for separation were frequent conflicts and the fact of battery of the wife during her pregnancy. Although the victim was driving her own car, the defendant, who was also driving his own car, demanded from her to stop the car. The woman obeyed, after which the defendant smashed his fist in her face several times and beat her head against the front part of the car. In addition to physical abuse, the defendant kept abusing the woman verbally and

¹² For example, the background of violence, restraining orders available in case files, and the fact of cohabitation of the victim and the perpetrator of violence constitute the risks that determine the appropriateness of imposition of imprisonment.

spitting. This fact was noticed by other citizens who came to the scene to help the victim. **After this incident, the defendant was messaging the victim threatening to murder her. He was also threatening to rape her in public.**

the prosecution pointed out that the number of acts of domestic violence increased and noted the increasing threat of such crime.

The prosecution further pointed out that this incident was not the only one, however, the victim did not apply to law enforcement bodies before. The defendant kept controlling and oppressing the victim. He perceived his wife as his property. Therefore, based on these facts, the prosecution requested the court to impose imprisonment on the defendant, as there was a serious threat of a new crime by the defendant.

Despite the prosecution's strong arguments, the court did not share the prosecution's position and imposed bail on the defendant in the amount of GEL 2 000.

The judge noted that he could not take into consideration the facts of previous acts of violence as the defendant had not been convicted for any of them. The judge also pointed out that the defendant was not inclined to the commission of a crime and considered that the fear for the loss of property would restrain him from committing a new crime.

The prosecution could not help expressing their discontent and said: *"Should we give an opportunity to the defendant to murder the victim? What else is left [for the defendant] to commit? Well, then the court and the defence should take responsibility for acts that he [defendant] will commit in the future."*

Example №2

A person was accused of physical and psychological abuse of his spouse. Namely, the prosecution stated that the defendant was regularly drinking alcohol over the past few months, aggressively treated his wife, belittled her and subjected her to psychological abuse. An act of crime manifested in the fact that the defendant verbally abused his wife and hit her neck with his hand, during which the victim suffered severe pain. The prosecution also stated that the de-

fendant, being under the influence of alcohol, threatened to murder her. The prosecution noted that the testimonies of the witnesses confirmed that this was not the first case and violence was systematic. Significantly, the presence of patrol officers at the scene was not sufficient to restrain the defendant and the latter again made an attempt to perpetrate violence against his spouse in the presence of police officers. The court trial also revealed that the defendant and the victim had common dwelling. It is against this background that the prosecution requested the court to impose imprisonment on the defendant; however the court ordered bail in the amount of GEL 1 000. The judge took into account the age of the defendant, his personality, the fact of long co-habitation of the defendant and the victim, and considered that bail is an effective measure to restrain the defendant's behaviour.

Example №3

A person was accused of violence against his spouse. Namely, the defendant physically abused during the domestic conflict. The court trial revealed that two restraining orders had been issued with regard to domestic violence, which indicates the systematic character of oppressing the wife. Also, emphasis should be made on the statement of the victim made before the hearing:

"If he commits the same for the third time, I will leave him myself. But for now, why do you want him to be placed in prison? He did not commit a murder. I have been his slave all my life. I don't understand what wrong I did to him. I was doing everything for him. I need to rest, I am a sick woman."

The prosecution requested the court to impose imprisonment on the defendant; however the court ordered bail in the amount of GEL 2 000.

After the hearing, the defendant addressed to his wife in a menacing tone: *"You see what happened? Are you satisfied now?"*

Example №4

A person was accused of violence against his partner. Namely, the prosecution stated that the defendant beat the victim, then doused her with petrol and threatened to burn her alive, and also hit her car with a stone. The court trial revealed that violence lasted for several days. The prosecution requested the court to impose imprisonment on the defendant and emphasised the repeated character of violence and the threat of possible pressure on the victim and the witnesses. The prosecution further noted that the defendant had previous conviction for illegal carrying of arms.

Despite these threats, the judge did not share the prosecution's position and did not consider it appropriate to impose imprisonment, and ordered bail in the amount of GEL 4 000.

In addition to bail, there were 4 cases where the judge applied a less severe measure: an agreement on not leaving the country and due conduct. In one out of 4 cases, this was an unreasonably lenient preventive measure. This one case is noteworthy also because the law did not allow the judge to opt for such measure. In order to impose an agreement on not leaving the country and due conduct as a preventive measure, the crime committed shall not be punishable by imprisonment for a term of more than 1 year.¹³ In the given case, where the judge applied this measure, a person was charged with the commission of a crime provided for by Article 120 of the Criminal Code of Georgia, which is punishable by imprisonment for a term of up to 2 years.

Example №5

The defendant stuck a fork into his wife's hand. The court trial revealed that a restraining order had also been issued previously. The prosecution also noted that even after the police arrived at the scene, the defendant kept being aggressive towards his wife. The prosecution further emphasised the threat of a new crime, as when the defendant was under the influence of alcohol, he insulted his wife.

The defendant asked the judge for forgiveness and said he would not be violent again. He added that when he drank alcohol he be-

¹³ Criminal Procedure Code of Georgia, Article 202.

came jealous. *"Please do not sentence me, pardon me one last time. I will not repeat this again. Once I land in jail, it will be an end for me, I will die. This happened accidentally. I did not mean it."*

The prosecution requested the imposition of imprisonment; however, the judge apparently took into consideration the defendant's reasons and imposed on him an agreement on not leaving the country and due conduct. The law did not provide for the application of such measure in this case.

We also carried out monitoring in Tbilisi Appellate Court on one case of domestic violence, in which the prosecution appealed the judgement of a lower court imposing bail in the amount of GEL 15 000 on the defendant, whereas the prosecution requested the imposition of imprisonment. According to the prosecution, due to the defendant's violence against his former spouse the victim was placed in hospital for three days. The victim suffered serious injuries and the violence was perpetrated in three episodes. The prosecution also noted that, based on the financial status of the defendant, the amount of bail imposed on him was not a restraining mechanism. (It appeared that the defendant had already paid this amount). It was established that the defendant had perpetrated physical abuse before as well, but the victim did not apply to law enforcement bodies on the advice of her friends and relatives. It was further established that the victim tried to divorce the defendant in 2008 but they divorced only in 2014. However, violence did not end. The prosecution divulged the message sent to the victim by the defendant: *"Your life came to an end. You must die and I promise you that you will die, and this will happen very soon."* As stated by the lawyer, the defendant had a right to bear a hunting gun and arms, which indicates an increased threat.

The prosecution again requested imposition of imprisonment on the defendant from the Appeals Court.

The judge noted that there was a real threat of commission of a new crime. The judge also told the defendant that his emotional attitude towards the committed crime added up a negative element to this case. However, the judge upheld the decision of a court of first instance. The main focus was made on the fact that the defendant's children went to a decent school and were financially supported. Supposedly, this was the reason why imprisonment was not imposed on the defendant.

Obviously, the fact that the defendant financially supported his own children did not neutralize the threat of violence for the victim and was irrelevant substantiation for the use of more lenient preventive measure.

Prosecution's approaches

As far as the prosecution's approaches are concerned, although the prosecution requested the application of preventive measures of relevant severity in the majority of cases¹⁴, there were exceptions as well, where the prosecution did not adequately assess and measure existing threats. There was one case identified where the prosecution requested the imposition of bail, which would not ensure the prevention of a repeated act of violence. Under such circumstances, the law deprives the court of the possibility to apply a more severe measure: imprisonment.¹⁵

The example below illustrates ineffectiveness and leniency of the prosecution and courts to cases of violence against women.

Example №6

The defendant accused of violence against his spouse was brought to first appearance session by three police officers. The defendant was aggressive and refused to enter the courtroom because the session was open to public. He also objected to the attendance of the victim. The police officers and the court officers were not able to bring him into the courtroom. The defendant screamed and shouted that he did not want others to hear the case of his family and agreed to attend the trial provided that everyone left the courtroom. In protest, he started taking off his clothes. The defendant was aggressive towards the judge's assistant as well. Even the victim tried to calm him down but the defendant started kicking his legs and swearing at her. The prosecution advised the victim that she did not need such a husband. The prosecution even noted that the defendant would continue abusing his wife after he was released from prison.

¹⁴ In the 8 cases, where GYLA considered the imposition of bail to be an inappropriate measure, the prosecution filed a motion for the imposition of bail only in 1 case. In the rest 7 cases, GYLA suggested the court to impose imprisonment.

¹⁵ Criminal Procedure Code of Georgia, Article 206(5).

Because of this situation GYLA's monitor was not able to attend the hearing but after the proceedings it became known that the prosecution requested the court to impose bail in the amount of GEL 2 000, which was reduced by the court to GEL 1 000.

The victim was content with this decision of the judge and noted that she had taken out a loan from the bank to pay the bail. *"That's great! Today I have collected the amount for bail. I knew how much it would be approximately and took out a loan from the bank. I will go and pay right now in order for him to be released soon."*

InTsinandali a man shot at his former wife from a firearm and then killed himself¹⁶.

On 21 November 2016, defendant A.B. was detained on the charges of illegal purchase, storage, carrying and manufacturing of firearms. On 23 November of the same year, the court imposed bail on the defendant in the amount of GEL 8 000 and secured it by imprisonment. On 1 December, the defendant paid bail and left the penitentiary facility. On 3 December, the defendant psychologically abused his former wife, on the basis of which a restraining order was issued. On 9 December, the defendant killed his former wife in front of his underage children. On the same evening he tried to kill himself. A few days later he died.

We monitored the first appearance session, where the issue of imposition of bail was considered in connection with illegal manufacturing and carrying of firearms by the defendant. At this session, the prosecution did not speak about alleged facts of violence against the former wife; however, if the prosecution possessed this information, this should have been mentioned during the court proceedings and the prosecution should have requested imprisonment.

Despite the above negatively assessed cases, positive approaches of the courts were identified as well, which manifested in the selection of appropriate preventive measure and in taking into consideration the victim's condition.

¹⁶<http://bit.ly/2lr8P9e> ;[9.2.2016].

The example below illustrates such case:

Example N^o7

The prosecution noted that the defendant seized his wife by the throat, pulled her hair, put an armlock on her and hit her several times, due to which the woman received bodily injuries. The prosecution requested the imposition of imprisonment and pointed out that there was a threat of commission of a new crime, as acts of violence were systematic in nature. The prosecution further stated that the woman lived in her husband's house, she did not have her own dwelling and she therefore refrained from disclosing the facts of violence.

The defendant asked the court to apply a less severe measure. The defendant stated that he had not inflicted any injuries to his wife and that it was an accident. He further stated that the reason for the family conflict was his wife's carelessness and indifference to him.

Finally, the court took into consideration the prosecution's arguments, imposed imprisonment on the defendant and noted that domestic violence is a specific crime and there was a threat of re-victimisation if the court applied a less severe preventive measure. The judge further explained that domestic crimes required an immediate response and the application of an adequate measure.

3. Measures applied by courts

In most cases, judgements of conviction are delivered in cases of domestic violence, domestic crimes and violence against women, which means that courts find that a crime of violence was committed; however, the activities of judges are not fully effective since they mostly limit themselves to applying lenient measures.

During the reporting period, we attended hearings on merits on 47 cases¹⁷ and two plea agreement sessions. The proceedings on 29 out of 47 cases have been finalised. In 26 cases, the judge delivered judgements of conviction and in 1 case a partially convicting and partially acquitting judgement.

¹⁷ 65 hearings on merits were conducted on 47 cases.

Although in most cases judgements of conviction were delivered, the adequacy and effectiveness of applied measures is still problematic. Out of 29 cases¹⁸, in 16 cases community service was imposed on the perpetrators of violence, and in 5 cases conditional sentence with a probation period. Only in 8 out of 29 cases, imprisonment was imposed on the perpetrators of violence. The analysis of these 8 cases reveals that an actual sentence was imposed for the crimes that involved systematic acts of violence and the person was brought to criminal liability several times before. However, it is noteworthy that there have been one case where despite the great threats in the case and repeated acts of violence against a woman, the court ordered conditional sentence and did not isolate the perpetrator from the society. Namely, the person was accused of repeatedly perpetrating acts of violence against his former spouse. The prosecution stated that the perpetrator had beaten his spouse twice before this fact, for which community service was imposed on him. Despite this fact, the judge noted that the perpetrator had been characterised positively, he did not challenge the evidence and repented his actions; therefore, the judge did not see the need for isolating him from the society.

It should be noted that at 27 pre-trial sessions on cases of domestic crimes, in 17 cases (63%) the evidence was not challenged by the defendants¹⁹ and they admitted the commission of crime, in 8 cases (30%) the evidence was challenged, and in 2 cases (7%) the evidence was partially challenged.

In several cases, the judge did not impose an actual sentence, one of the basis for which being the fact that the defendant did not challenge the evidence. Hence, the fact that the evidence was not challenged is supposedly considered to be one of the mitigating circumstances in the imposition of a sentence.

In Court Monitoring Report No 9 (February 2016 to July 2016), we discussed a case of violence against a woman, where the correctness of classification of the crime was questioned. In this reporting period, a partially convicting and partially acquitting judgement was delivered on this case. The judge acquitted the perpetrator of unlawful deprivation of liberty, but negatively assessed the facts of violence and threatening and delivered a convicting decision in this regard. Finally, the perpetrator was sentenced to imprisonment for one year.

¹⁸ These cases include sentences imposed on the basis of plea agreements.

¹⁹ The defence refused to have the evidence publicly and orally examined.

The example below illustrates the case identified in the previous reporting period:

Example N°8

We monitored one of the cases related to an act of violence perpetrated against a spouse both at first appearance and pre-trial sessions and hearings on merits.

at the first appearance session the prosecution stated that a conflict occurred between the defendant and the victim, due to which the victim called the patrol police. After this incident the victim changed the door lock, although in vain. The defendant went to the victim's house and demanded to open the door, otherwise he threatened to kill himself. patrol police was called and a restraining order was issued against the defendant, which prohibited the defendant to approach the victim. Despite the above, the defendant again went to the victim's house, tied her hands at the back with an extension cord and put her on the bed. Then he released gas in the room. Although the victim asked him to let her go, the defendant kept telling that she deserved death. In addition, the defendant broke the door lock to prevent the victim from opening it, took away her mobile phone and went to another room. The victim was not able to move for about 10 minutes, but later she managed to free her hands, took advantage of her husband's negligence, opened the damaged door lock and called her neighbours for help. The defendant continued to threaten her with a knife. The victim managed to call the patrol police, although the defendant forced her to call again and cancel the previous call. The victim obeyed. Patrol police came anyway but the defendant told them that the call had been cancelled. The victim asked the patrol police for help and said that her husband forced her to cancel the call. The defendant was arrested. The prosecution explained that he would kill the victim if other circumstances had not prevented him to.

At the pre-trial session, where the issue of leaving in force the imprisonment imposed on the defendant was discussed, the judge stated: *"He [defendant] tied victim's hands with an extension cord and then tried to suffocate her."*

At the hearing of the case on merits, the prosecution repeated the above information both in the opening and the final statement. Despite the above, the defendant has been charged under three

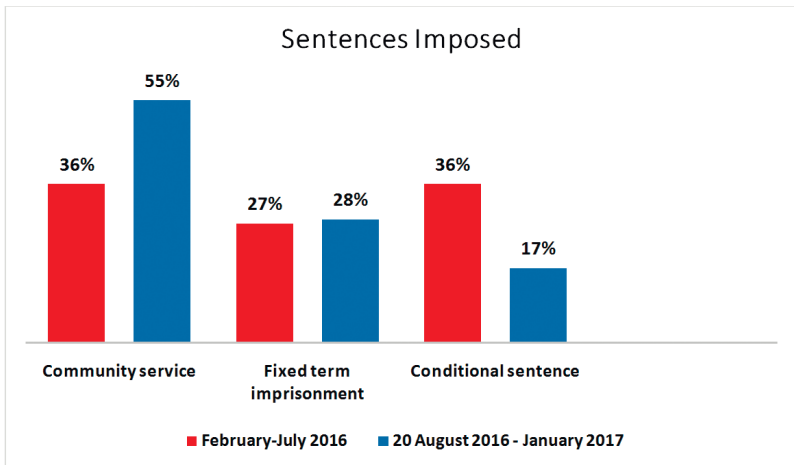
articles: unlawful deprivation of liberty by dangerous violence for life and health and/or threatening with the commission of such violence; threat; and coercion.

GYLA thinks this was possibly an attempted murder. Defendants actions indicate the intended murder and the action committed with this motive.

Although the examination of the imposition of the sentence and the substance of the decisions delivered is outside the scope of this research, the fact that in most of the cases (72%) sanctions less severe than imprisonment are applied gives reason to believe that the cases of domestic crimes and violence against women are not approached adequately and the suffering of victims is not assessed properly.

The chart below describes the situation during the previous and current monitoring periods (from February 2016 to February 2017) with regard to sentences imposed by the courts.

Chart N° 2



Sexual intercourse of an adult with a child under 16 years

GYLA monitored a case regarding sexual intercourse between an adult and a minor. At the same time, the victim was a victim of domestic violence, with the perpetrator beating the victim in her face several times. The defence stated that the defendant did not know that starting a family with a person under the age of 16 was punishable. The defence further noted that the victim had no claims and asked the court to apply a lenient sanction.

The judge apparently took into consideration the defence's observations and imposed a conditional sentence on the defendant (imprisonment for a term of 1 year, which was conditional, and a probation period of 2 years).²⁰

²⁰ The person committed a crime provided for by Article 140 of the Criminal Code of Georgia in 2011, which constitutes a less grave crime and is punishable by imprisonment for a term from 1 to 3 years.

II. CLASSIFICATION OF CRIMES AND A DISCRIMINATION MOTIVE IN CASES OF DOMESTIC VIOLENCE, DOMESTIC CRIMES AND VIOLENCE AGAINST WOMEN

1. Classification of crimes

In the cases of violence against women, it is important that the classification of a crime actually corresponds to the gravity of a committed action. In conditions of incorrect classification of a crime, it is impossible to have a gender-sensitive criminal justice system, in which crimes committed against women are appropriately recognised, classified and punished by the prosecution and the judicial authorities.²¹

According to the legislation, the courts are not allowed to change the classification of a crime to a more serious one (the judge is allowed to change the classification of a crime only to a similar or lighter classification).²² This imposes even a greater responsibility on the investigative and the prosecution authorities.

Monitoring results with regard to the classification of crimes

In none of the cases related to violence against women identified as a result of the monitoring were crimes classified as crimes committed on discrimination grounds (no reference was made to Article 53(3¹) of the Criminal Code of Georgia). Accordingly, the prosecution and the judicial authorities do not recognise that violent crimes committed against women are the consequence of gender discrimination. In one case the judge pointed out the incorrect classification of the crime (the judge explained that the classification of the crime did not correspond to the gravity of the crime) and reprimanded the prosecution for having assessed the violent crime against a woman with lenience.

²¹ Dekanosidze T., Judgements of 2014 Femicide Cases, GYLA's research, Tbilisi, 2016, 35-36.

²² Criminal Procedure Code of Georgia, Article 273.

The example below illustrates the above mentioned:

Example №9

The prosecution stated that the defendant and the victim were divorced but the defendant maintained communication with his former wife. The defendant made an appointment with the victim, during which they had a quarrel and the defendant hit his former wife several times due to jealousy. The conflict continued the next day as well. The defendant took away her mobile phone, threw out her shoes and locked the door. A neighbour called the police. After arriving at the scene, the law enforcement officers found that the woman was beaten. Intentional light bodily injuries were established. It was also established that the perpetrator kept the victim in a locked room for several minutes, due to which the victim was deprived of the possibility to move freely. This incident was classified as domestic violence (Article 126¹(1) of the Criminal Code of Georgia).

The judge challenged the correctness of classification and noted that this crime should have been classified as illegal deprivation of liberty or at least coercion, apart from domestic violence. As stated by judge, the perpetrator kept the victim in the house using coercion and the prosecution should have assessed all these more strictly. Judge: *“I will point out in the judgement that the crime was not correctly classified. Let us consider that you are lucky [addressed to the defendant], because the factual circumstances of the case allowed to make a stricter classification.”*

The prosecution disagreed with such assessment of the judge and stated that: *“At that time the prosecution considered such classification appropriate.”*

In addition, one case was identified where the classification of the crime is questioned. Finally, there were reasonable doubts in 2 cases as to the accuracy of classification.

Example №10

In the case of domestic violence, at the hearing of the case on merits the prosecution talked about the factual circumstances of the case and noted that the defendant hit the child once, and the spouse and the mother several times in their face, causing them physical pain. However, the person's act was classified as domestic violence against two or more persons and in the presence of the minor. Such classification did not include the act perpetrated against the minor.

The judge became interested as to the number of victims in the case. The prosecution responded that there were two victims, while the minor child was mentioned in the context of charges since, according to the prosecution, it could not be established if the minor suffered physical pain.

2. Examination of discrimination motives

If violence against women is perpetrated, the investigation must start with the examination of whether an act of violence was perpetrated with a gender discrimination motive or not.²³ During the investigation, in the case of existence of a possible discrimination motive, the employees of the Ministry of Internal Affairs of Georgia are obliged to refer to Article 53(3¹) of the Criminal Code of Georgia, i.e. the commission of a crime on discrimination grounds.²⁴

In addition, the examination of the motive of commission of a crime has a preventive function. The establishment of the motive of commission of a crime is often a necessary precondition for the correct classi-

²³ Report of the Special Rapporteur UN Doc. A/HRC/23/49 (14 May 2013), §73; also, IACtHR, Case of Gonzalez et al. ("Cotton Field") v. Mexico, Judgement of 16 November 2009, §455; see: Dekanosidze T., Judgements of 2014 Femicide Cases, GYLA's research, Tbilisi, 2016, 18-19. See also: Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), 11.05.2011, Istanbul, Article 3(a); see: Dekanosidze T., Judgements of 2014 Femicide Cases, GYLA's research, Tbilisi, 2016, 35.

²⁴ Instruction No 47 of the Minister of Internal Affairs of Georgia on prevention of discrimination and implementation of effective response measures by the units of the Ministry of Internal Affairs of Georgia against offences committed on discrimination grounds.

fication of a crime. The motive and the purpose make it possible to determine the mental status of a perpetrator at the moment of committing a crime, as well as to identify the reasons of commission of a crime and to determine the extent of public danger.²⁵ Article 53(3¹) of the Criminal Code of Georgia obligates courts to consider the motive and the purpose of commission of a crime when imposing sentences. Such a requirement is logical, as correct classification and achievement of the purpose of a sentence without establishing the reasons of commission of a crime or the mental status of the perpetrator is impossible.²⁶

At the same time, the existence of the main motive in the case, even if it is associated with the personal conflict of different content, is not sufficient to invalidate the doubt as to the existence of another motive. Proper attention should be paid to the examination of a mixed motive not to exclude the examination a possible discrimination motive in the case.

Monitoring results with regard to the identification of a discrimination motive

The investigation and identification of a gender-related motive of crimes is a significant challenge for the prosecution and the judicial authorities. The monitoring revealed in a number of cases evidence—which should have been the basis for investigating whether the crime was committed with the motive of gender inequality, views about the gender role of women or gender stereotypes. However, the prosecution and the courts did not address such facts.

The above mentioned evidence includes, for example, the defendant's statement that the victim [former wife] should not have performed an act that is inappropriate to a wife. In another case, the defendant was jealous of his spouse and, supposedly, that was the reason why he physically and psychologically abused her (he beat his spouse, stabbed her eye with a finger and when she fell down he threatened to murder her). The fact that the perpetrator got irritated and perpetrated violence after having seen the photographs in his former wife's profile on the social network, also indicates the possible signs of a discrimination

²⁵ Dvalidze I., *Motive and Purpose in Georgian Criminal Justice Doctrine*, Magazine Overview of Georgian Law, 10/2007-2-3, Tb., 270.

²⁶ Dvalidze I., *Motive and Purpose in Georgian Criminal Justice Doctrine*, Magazine Overview of Georgian Law, 10/2007-2-3, Tb., 270.

motive. Also, the possessive attitude of the man towards his partner and the desire to control her behaviour was revealed (*“later you will find yourself in a worse situation if you don’t behave properly”*).

However, despite the circumstances indicating a discrimination motive, the prosecution and the judicial authorities do not address such motives in their statements.

Case of a transgender woman ZiziShekiladze

Although the hearing of this case on merits was held and the decision on the case was delivered on 3 February 2017, which does not fall within this reporting period, this case deserves proper assessment due to the great public interest and the specific character of the incident occurred. This case is also interesting because the possible motive of the case was not discussed at the hearing and the prosecution did not appropriately address this issue. In this case, there is a high probability that the crime was committed with a motive of hatred since the victim belonged to a marginalised and vulnerable group. In such case, the prosecution has more responsibility to direct the proceedings within the specific context. However, despite this fact, as indicated below the motive of transphobic hatred as an aggravating circumstance was not appropriately examined at the hearing.

Example №11

On 3 February 2017, a hearing on merits on the case of intentional murder of ZiziShekiladze, a transgender woman, was held.

The prosecution noted in their opening statement that on 14 October 2016 the defendant visited ZiziShekiladze, whom he had known since 2011. During the meeting, ZiziShekiladze was under the influence of alcohol. The defendant and the victim continued drinking together. Afterwards, a quarrel broke out between them, during which the defendant thrust a concrete brick towards ZiziShekiladze, stabbed her neck with a knife several times, and escaped from the scene. ZiziShekiladze died a few days later due to the injuries inflicted.

In the defence’s closing argument the lawyer noted that the defendant was a labourer. The lawyer further noted that the defendant decided to visit ZiziShekiladze to have a chat with her. During the

meeting, the deceased talked harshly about the defendant's intimate partner and demonstrated her genitals to the defendant. According to the lawyer, this irritated him. The defence stated that they disagreed with the intentional murder classification since the defendant did not have a motive to murder and committed the crime due to assault by the victim. In light of this, the defence requested the judge to change the classification by referring to Article 111 of the Criminal Code of Georgia.²⁷

In this regard the prosecution noted that many people were interrogated to identify the motive of the crime but the prosecution did not further mention the motive identified.

Finally, the defendant stated that he did not intend to murder Shekiladze and if not for her humiliating behaviour he would not have killed her.

The judge found the defendant guilty in committing intentional murder and imposed imprisonment for a term of 10 years.

²⁷ Intentional murder in a state of sudden, strong emotional excitement. Is punished by restriction of liberty for up to three years or by imprisonment for a term of one to three years.

III. STATEMENTS OF THE VICTIMS OF VIOLENCE AND OTHER PARTIES TO PROCEEDINGS WITH RESPECT TO DOMESTIC CRIMES

Sometimes it is possible to identify the attitude of victims or others parties to proceedings (judges, prosecutors, lawyers, etc.) to cases of domestic violence based on what takes place at the court trials. Based on the statements, especially those made by parties to proceedings, a tolerant attitude to domestic crimes is felt. In addition, the statements indicate that domestic violence is still perceived as private business of a victim and a perpetrator of violence, which deserves more lenience than other crimes of the same gravity. Such approaches may encourage the perpetration of domestic violence and prevent women, other than victims, from accessing justice, as well as they carry a perpetrator-supporting effect.

Example №12

In one of the cases of domestic violence, the lawyer noted in his/her opening statement that a person should not be held liable in the cases of domestic violence: *“Family is such a thing that whatever conflict occurs there, it should not go beyond the family. Such a strict approach of the prosecution to these crimes is unnecessary.”*

Example №13

Another case of violence revealed that the defendant beat his spouse with legs, hit her with a belt and struck the lid of a frying pan over her head. He also pushed her against the wall and tried to suffocate her. This fact was witnessed by their child who came to help the mother. In addition, the defendant told the victim in the presence of the patrol officer that he would kill her after being released from prison.

Nevertheless, the lawyer argued that a husband might hit his wife, but these facts are not usually talked about in public. On the contrary, we should contribute to father’s return home to his children. The lawyer further stated that this crime was not a grave one. The lawyer also emphasised that the defendant and the victim loved each other and nobody could prevent them from being together. The lawyer also noted: *“Relations between a husband and a wife are their private affair”.*

Example №14

A person was accused of perpetrating violence against his child. However, the perpetrator did not perceive the act as a crime. *"It's nobody's business whether I hit my child or not. I can do whatever I want."*

In addition, the defendant was aggressive towards the victim, rebuking the victim that the investigation was launched because of the latter.

In another case, a person was accused of perpetrating violence against his minor children. The defendant noted at the court hearing that he, as a father, has the right to hit his children for upbringing purposes and that he did not know this act was punishable by law.

In addition, the courts monitoring revealed that in individual cases the victims have lenient attitudes about violence perpetrated against them. They are forced to tolerate violence to avoid disapproval from the society, due to being economically dependent on the perpetrator, due to fear of revenge by the perpetrator or other factors. For this reason, violence victims change their positions or refuse to give testimony and have no claims against the perpetrators. All this creates obstacles for the prosecution and the courts; however, this does not presuppose that more lenient and beneficial conditions should be applied to perpetrators. The criterion of reconciliation with a victim cannot be used in the cases of domestic crimes.²⁸

The example below illustrates the above mentioned:

Example №15

A person was accused of perpetrating violence against his spouse in the presence of a minor child. The judge requested the victim to state her position. The victim stated that she was economically dependent on the perpetrator and did not want to punish him.

"He does whatever he can through hard work to support us. He is our breadwinner, my children and I are dependent on him, I don't believe we can continue existing without him, he feeds us. I don't want to destroy my family and have never thought of it. Please pardon him and use a lenient measure."

²⁸ Dekanosidze T., Judgements of 2014 Femicide Cases, GYLA's research, Tbilisi, 2016, 49.

Example №16

In another case, which related to violence perpetrated against a wife, the defence made an application that the victim did not have any claim against the perpetrator and intended to reconcile with him. Based on this statement, the lawyer requested not to impose any preventive measure on the defendant. The prosecution noted that the abovementioned application was filed due to the fact that the victim was afraid of the perpetrator.

These suspicions of the prosecution were supported by the fact that the victim, who was present in the courtroom, mentioned in her conversation with one of the attendees that the application was written by her under pressure and that she did not want her husband to return home but she could not express her position due to certain reasons.

RECOMMENDATIONS:

Based on the findings of the latest and all previous monitoring reports, GYLA recommends:

1. For common courts

- Justice should be administered in cases of domestic violence, domestic crimes and violence against women based on gender views: courts should take into consideration the specific character of such crimes and adequately assess the threats coming from defendants, and should apply preventive measures of relevant severity;
- If first appearance sessions show the signs of crimes allegedly committed on a discrimination ground, the judges should take this circumstance into consideration in imposing preventive measures;
- Courts should, in all possible cases, impose sentences of relevant severity on defendants to effectively prevent repeated acts of violence and ensure the safety of victims;
- Judges should assess evidence presented by the prosecution to identify discrimination grounds and should, in all possible cases, consider a discrimination motive to be an aggravating circumstance.

2. For the Prosecutor's Office

- The Prosecutor's Office should properly assess the circumstances in connection with cases of domestic violence, domestic crime and violence against women, and should request the application of a preventive measure corresponding to the gravity of the crime, which will be a guarantee of the safety of victims and will protect them from re-victimisation;
- The Prosecutor's Office should classify crimes in cases of domestic violence, domestic crimes and violence against women according to their gravity and based on gender views in order to ensure imposing on perpetrators sentences corresponding to the gravity of acts perpetrated if the charges are confirmed;
- The Prosecutor's Office should use every effort to investigate if the crime was committed with a gender-related or other intolerance motive, and where discrimination is identified, apply Article 53(3¹) in addition to other relevant articles of the Criminal Code of Georgia.

3. For the Ministry of Internal Affairs of Georgia

- A system for the assessment of violence risks should be introduced, that will ensure the timely foresight of threats and the possibility to effectively plan appropriate measures. This may be an obligation of the Ministry of Internal Affairs of Georgia, as it is in Spain, Czech Republic and other EU countries.