

**Badri Kotchlamazashvili**

**Doctor of Law  
Judge of the Criminal panel  
Of Tbilisi City Court**

**Report  
Peculiarities of dealing  
With domestic violence cases in court**

Each case has a certain peculiarity to the court. There are no exceptions in this regard to domestic violence cases, which, apart from their specificity, are characterized by some difficulty. Difficulty is related to the complication and the most important unit such as family, whose unity and solidarity is the responsibility of not only the state but each member of society, at the same time, however, it is also the duty of the state to protect the victim of violence, identify the offender and take effective measures against him.

In order to take effective measures against the offender, the offender must first be identified and to confirm that he/she has committed a violent crime, which is impossible without a court hearing. In the report will be discussed the difficulties encountered in the judicial review of domestic violence cases, which complicate the finding of a confirmed fact of violence and therefore the conviction of the offender. These difficulties are related to several circumstances, among which are the following:

1. Frequently the fact of the violence does not have a witness and the accusation is based solely on the testimony of the victim;
2. The victim is a family member of the offender and often enjoys the right not to testify against a close relative;
3. The facts of the violence have witnesses, but they, like the victim, are family members of the offender and enjoy the right not to testify against their close relative;
4. Violence is presented before the minors, though they are so young that it is impossible to question them;
5. The fact of injury to the victim is not confirmed by the medical examiner's report, though the victim claims that he/she was subjected to violence;
6. The fact of injury to the victim is confirmed by the medical examiner's report, but the victim states that the accused did not inflict the injury;
7. The victim confirms the fact of violence against him/her, but states that he/she did not encounter any physical pain;
8. Only the victim states about systematic violence.

In the report the issues were discussed exhaustively in the above paragraphs.

**Overview of Criminal Law Regulations for Combating Domestic Violence  
in Germany**

Ladies and Gentlemen,

I am very pleased to speak today at your conference on the criminal law perspective of domestic violence in Germany.

I will give you a rough overview of the criminal law regulations of the applicable law and in particular the punishability of the particular “aggressor”. Therefore, I will deal with the possibilities of criminal law to take action against the person who actively exercises violence in the domestic area. In Germany this is mostly – but not always – the husband.

However, I will not deal with the criminal assessment of the behaviour of the victim who resists domestic violence. My colleague *Edward Schramm* will do so in the following lecture.

Nor will I deal with the legal policy considerations that we are currently discussing in Germany. Ms *Müller* will do so in the following. So, after I have spent the next 20 minutes talking about how and why the legal situation in Germany is insufficient to combat domestic violence, Ms *Müller* will then tell you how it might be possible to do better.

First of all, I would like to make it clear, in a brief introduction, what I mean by domestic violence and, what is more, that we do not have any special offences for combating domestic violence in Germany.

Domestic violence is rather – and merely – covered by the general offences of German criminal law. This will be discussed later.

What do I mean by domestic violence?

**Domestic violence** is – quite abstractly – physical, sexual, psychological and economic violence between people living in the same household.

The generic term “domestic violence” therefore includes not only acts of violence in relationships between couples, but also acts of violence against children, violence by children against their parents, violence between siblings and violence against elderly people living in the household.

The focus is on the violence that takes place while the respective persons live together in one household. In an expanded definition of the term, however, violence by persons after or during the separation is also recorded, i.e. if a married couple still lives together in one household – but in separate rooms – during the separation, or if a spouse has already moved out of the common apartment, but always comes back again, possibly also because he or she still has a key to the apartment.

In practice, the most common cases are of the dominant husband systematically oppressing, beating and exploiting his wife over a longer period of time. In technical jargon we call this perpetrator a “household tyrant”.

No less significant, however, are the cases of systematic child abuse committed by parents. These occur both in the form of physical punishment and child neglect.

I have already indicated that in Germany we do not know of any special offences for the judgement of domestic violence. Thus, the general criminal offences of

German criminal law are applicable, which also apply in the relationship of persons who do not live together in the same household. As an example, I would like to mention only the offence of manslaughter.

If the husband kills his wife in the course of a dispute, he is punished for manslaughter in the same way as someone who kills a person in a dispute on the street. Whoever beats his wife commits bodily harm in the same way as if he beats an employee in the office or a pedestrian on the street.

Now one could well imagine that – especially in cases of bodily injury, an offence which contains several qualifications under German law – there is a special qualification or penalty sharpening if the bodily injury is committed within the framework of domestic cohabitation, i.e. if it is domestic violence.

But the German Criminal Code does not provide precisely for this. Only within the framework of the general reasoning for calculating sentences the fact that domestic violence is present can be taken into account in a punitive manner. This will be the case if the exercised violence is part of a systematic suppression of the domestic partner.

On the other hand, domestic violence can also be judged more mildly in the context of the sentencing if it is a matter of one-off misconduct in the immediate vicinity that has arisen out of a personal conflict situation.

Only in very few sub-areas we do have special criminal law provisions that affect domestic cohabitation – I will go into this later. As a basic principle, however, we remember that there are no special offences in German criminal law to combat domestic violence.

In the following, I will now give you an overview of the forms of domestic violence, the relevant offences and any special features.

As already mentioned, we can distinguish between physical violence, psychological violence, sexual violence and economic violence.

First, **physical violence**. Here, the offences of manslaughter and personal injury are particularly relevant. But I would also like to mention crimes of freedom, especially deprivation of liberty and coercion.

First of all, manslaughter offences. Here, German criminal law separates between the crimes of manslaughter and murder. Murder is characterized by the fact that a manslaughter is committed in a special manner (e.g. cruelly or by stealth) or by a special motive (e.g. greed or other base motives).

As I said, there is no difference here in German law whether manslaughter or murder is committed within the framework of domestic violence or between other persons who either do not know each other at all or only as a nodding acquaintance.

As far as statistics are concerned, there were a total of about 2,500 homicides in Germany in 2015, of which 781 were committed against women and 1676 against men.

Of the 2,500 homicides, 415 occurred within partnerships, i.e. about 17%. It is striking that of the 781 women killed, a total of 331 were killed in partnership, i.e. 42.4%. In contrast, only 84 killings of men took place in the partnership area. This means that killings of women take place to a large extent within the framework of

cooperative relationships, but killings of men tend to take place outside such context.

It is also striking that of the 415 killings in the partnership sector, 210 took place among spouses, 112 in non-marital partnerships and 93 in former partnerships. Especially the killings after the end of a relationship are a frequent phenomenon, whereby mainly women, in the year 2015 a total of 74 cases, but partly also men, 19 cases, are affected.

Especially in the case of killings after the end of a relationship, jealousy will often play an important role. If the jealousy is based on an increased possession-thinking and is not expression of a special despair, this represents also a base motivation, which qualifies manslaughter to murder.

But I would also like to mention that the killing of children can also be observed in the domestic field. Especially the killing of small children plays an important role in this respect. This can take place on the one hand by an improper treatment (such as the frequent “shaking” of small children) but also by killing by omission with extreme neglect – lack of nutrition or lack of hygiene.

The second thing I want to mention are offences occasioning bodily harm. Here we find in Germany the basic offence in Section 223 of the German Criminal Code. Beyond that, however, there are also many qualification offences, for example if the bodily injury takes place by means of a dangerous tool or through a life-threatening treatment. As already mentioned, there is no particular qualification for bodily injury within the framework of domestic violence.

I have already mentioned the so-called “house tyrant”, i.e. the husband who systematically abuses (mostly beats) his wife in a partnership. Even if this happens

over many years and the partnership becomes a torture for the wife, this can at most be aggravating for the punishment for bodily injury within the considerations concerning the sentencing.

With regards to children, it has now been clarified that the physical abuse of children is no longer a parental privilege but a criminal offence. The German Civil Code now expressly regulates the principle of “non-violent upbringing”.

This has consequences for criminal law to the extent that the previously partially recognized justification of corporal punishment by the parents is no longer accepted. Whoever beats his child makes himself punishable because of a bodily injury.

As far as children are concerned, however, a special offence actually exists in Germany, namely Section 225 of the Criminal Code, which bears the title “Abuse of position of trust”. According to this, those who torture or seriously abuse a person under the age of eighteen or a person who is defenseless due to frailty or illness, who is either under his care or custody or belongs to his household, or who damages such a person’s health by maliciously neglecting his duty to take care of him, are more severely punished.

Usually, these will be their own children – or at least their partner’s children – with whom the perpetrator lives in their own home. In addition, older persons and persons in need of care who live together with their children in their own house are also covered. If the children do not take care of the old people and do they suffer health damage as a result, the offence is also fulfilled.

However, this provision also covers persons who were surrendered to the offender by the person responsible for social welfare (e.g. teachers on a school excursion)

or persons who are subordinate to the offender within the framework of a service or employment relationship (e.g. the apprentice in a company). This already shows that this special provision is not limited to the domestic sphere, i.e. that it is only partially a real special provision.

In this context, I would like to draw your attention to another special provision of German criminal law: Especially for the protection of oppressed women, the legislator enacted a special law, namely the so-called “Gewaltschutzgesetz” (Protection Against Violence Act).

If someone is physically abused by another with intent, the victim can file an application with the court that the perpetrator, as far as this is necessary, be subject to certain conditions and restrictions for the future.

Examples are the restraint not to enter the home of the injured person, not to stay within a certain radius of the home of the injured person or not to visit certain other places where the injured person regularly stays.

This usually concerns persons who live apart after the end of the partnership but who continue to harass the other partner after the end of the relationship. If the person concerned violates such an obligation, e.g. if the man appears regularly at the woman’s place of work or waits in front of her house in contravention of a ban, this constitutes an offence of his own.

Also in this context I would like to address the relatively new offence of “stalking”, regulated in Section 238 of the Criminal Code. This is aimed at all persons, but in practice there are often cases in which a couple has separated and one part – usually the man – does not accept this.



Stalking is a punishable offence if the person is stalking another person in an unauthorized manner that is likely to seriously impair the person's way of life. This is the case, for example, when he persistently visits the physical proximity of the other person or calls him on the phone, sends WhatsApp messages or orders goods for the victim from mail-order companies.

However, as already mentioned, this does not apply to domestic violence in the narrower sense, but mostly to cases in which the partners have separated and also live apart.

Finally, as the third category alongside homicide and bodily injury offences, I would like to mention offences against the personal freedom of movement, in particular unlawful imprisonment. Quite frequently, one observes cases in which domestic violence shows itself precisely in the fact that one spouse – again usually the husband – locks up the other spouse at home in order to prevent him from leaving the house and seeking contact with other people.

Next, I would like to discuss the complex of **psychological violence**.

This includes all actions that are directed against the mental stability of another person – from covert passive forms to open active forms. Passive forms include, for example, permanent silence or the social isolation of a person within one's own family.

Active forms include, for example, devaluations, emotional manipulation and permanent intimidation – but also prohibitions as well as constant control and spying on social contacts.

However, German criminal law is now characterized by the fact that it does not – in any case not expressly – protect the psyche or the just mentioned patterns of behavior. There are no criminal offences which have an impairment of the human psyche as their object.

For example, purely psychological impairments are not regarded as body injuries. Only if the mental impairments condense into a recognized mental illness the application of the offence of bodily injury is discussed.

Solely the already mentioned criminal offence of abuse of position of trust, Section 225 of the Criminal Code, also covers psychological maltreatment, but applies, as already mentioned, only to persons who are placed under the care of another person, i.e. primarily minor children.

Psychological impairments can only be compensated by a few general offences: Anyone who threatens another person with committing a crime against him or a person close to him is liable to prosecution under Section 241 of the Criminal Code.

In addition, there are also cases of punishable coercion, Section 240 of the German Criminal Code, if I force my spouse – or my children – to do, suffer or omit an act under the impression of a threat of a serious evil. This is the case, for example, if I threaten my wife with beatings or blocking access to the bank account if she does not regularly clean up the apartment or does not prepare good food for me.

In this context I would also like to mention the offence of insult. A peculiarity of German law is that defamatory insults by another person can be punished as insult according to Section 185 of the Penal Code. In many countries only the untrue

and defamatory statement of facts to another person is punishable, but not the simple insult.

German law, on the other hand, can punish you for insulting someone else for example by saying the words “you stupid idiot” in a private conversation. Here, however, it is recognized that in the domestic sphere, where insults occur almost daily, a restriction is made. Not every defamatory statement should be considered an insult under criminal law. It is only relevant under criminal law if the defamation reaches a certain severity.

If one takes this serious, the domestic violence in the form of constant insults is rather privileged as it is punished milder or not at all.

The third form of domestic violence – which often occurs and will be addressed briefly – is **sexual violence**.

Sexual violence includes all actions that are directed against sexual self-determination, such as rape, sexual coercion, degradation to a sex object, but also the coercion to prostitution.

German criminal law knows a multitude of very detailed rules against sexual self-determination, where rape is at the center of attention.

It is striking that in German criminal law rape within marriage was – until a few years ago – explicitly excluded from criminal liability. In these cases, the perpetrator could only be punished for bodily injury. This is now different, the offence of rape now also applies to marriage and is one of the central regulations against domestic violence.

I do not want to go into further forms of sexual violence now. However, here too it is characteristic that German criminal law does not have any special offences – neither privileging nor aggravating – which regulate sexual violence particularly in the domestic sphere.

As a special form of violence at home, I would also like to mention a specific case, namely cases in which one spouse forces the other to engage in prostitution. If the husband creates a new source of income for himself by forcing his wife to sexually associate with other persons on his arrangement, this is usually forced prostitution, which has meanwhile become a punishable offence under German law. Usually the husband “collects” the money for the prostitution, which leads me to the next form:

As the fourth form of domestic violence, I would like to mention **economic violence**. Although this form is not at the center of the discussion about domestic violence, it can nevertheless take on forms that are aggravating for the person concerned – and in which we have gaps in punishability in German law.

Economic violence includes all actions against the economic or financial independence of another person.

This includes, for example, a total or partial prohibition on performing paid work or a prohibition on performing (or not performing) certain remunerated work for others.

In Germany, however, these cases – with the exception of the already mentioned forced prostitution – can at most be regarded as punishable coercion. Another special offence does not exist.

However, the spouse who is not granted access to the joint account or whose wage is withheld by the other spouse is also economically dependent.

The background and consequence of such an economic dependency is usually to force the other partner to manage the relationship in a certain way.

But economic dependence is also one of the biggest obstacles to leaving a violent relationship for the oppressed partner. Thus the oppressed spouse usually only remains in a relationship that is no longer acceptable to him or her because he or she has no financial means to live an independent life.

This concludes my brief general overview on various forms of domestic violence.

Let me get this straight: As I have pointed out to you, German criminal law does not have any special offences which are directed against domestic violence. The general offences can be applied, although here too it is noticeable that the commission of an offence within the framework of domestic violence does not constitute any special offence of its own.

Crimes within the framework of domestic violence can therefore only be taken into account in the sentencing of the offender. Whether this is good or bad, I leave to the subsequent discussion. Whether we will change this in Germany and want to find out you in the next but one lecture, in which Ms *Müller* deals with the legal-political discussion.

Thank you for your attention.

**Prof. Dr. Edward Schramm**

Chair of Criminal Law, Criminal Procedure, Business Criminal Law, European and International Criminal Law

Friedrich-Schiller-University Jena

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**The Killing of the Domestic Tyrant –  
Murder, Manslaughter and self-defense in cases of domestic violence**

Domestic violence is an acute and actual topic in Germany too and keeps occupying the jurisprudence and jurisprudence.

According to the latest police crime statistics, around 138,000 cases of domestic violence were reported in Germany in 2017. Of these, 455 were cases of murder and manslaughter, including attempts; In completed murder, there were 179 cases, with 32 (18%) male and 141 (78%) female victims.

I would like to address my presentation to a specific aspect of domestic violence, namely the so-called domestic tyranny.

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## I. Abstract/Summary

1. In German jurisprudence, "domestic tyrant cases" are those situations in which the husband insults, threatens and physically abuses his wife, children or other family members over a long period of time. Finally the situation escalates and a relative kills the tyrant, usually in his sleep.
2. The killing of a family tyrant while sleeping is a murder (§ 211 German Criminal Code [StGB]) in the form of treachery. The perpetrator will be sentenced to a whole life imprisonment. Reform efforts in the German Bundestag to regulate the house murder adequately and thereby to mitigate the emergency situation of the suffering wife and children have - due to a lack of political Consensus - failed in the 2015 legislative process.
3. A justification for self-defense (§ 32 StGB) is ruled out because of the lack of a current attack. A justification for a justifiable state of emergency (§ 34 StGB) is also out of the question, because in the balance of interests to be weighed, life represents a maximum value and outweighs the interests of the relatives.
4. The objective conditions of an existential, apologizing state of emergency (§ 35 StGB) are usually not available, because the danger emanating from the house tyrant is otherwise averted (separation, flight, stay in a women's shelter house). If the perpetrator erroneously assumes a situation of apologizing calamity, however, the penalty will be reduced pursuant to § 35 (2) sentence 2 StGB.

## II. Terminus "domestic tyrant cases"

The terminus refers to situations in which the husband insults, threatens and physically abuses his wife or children and other family members over a long period of time. Finally the situation escalates and the relatives kill the tyrant, usually while asleep.<sup>1</sup> In the past, these cases were also referred to in German literature as "patricide" (In latin language: parricidium). For it was obviously the wives rather than the sons who killed the house-tyrants, their fathers. One will certainly be able to assume that the sons have often done the act at the instigation or at least with the approval of their mothers. For the sons, unlike women, were most likely physically equal to their fathers and therefore able to do so. This phenomenon of patricide occurs in many cultures and is also very old.

In his lecture before, Mr Heinrich has reported that nearly 50% of killings in which women are murdered by men in Germany take place in a marriage, partnership or post-relationship relationship. There is no statistical material for killing the aggressive domestic tyrants. There are no studies on how often victims of domestic violence defend themselves against the violent perpetrators.

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<sup>1</sup> Schramm, Ehe und Familie im Strafrecht (family and marriage in substantial criminal law), 2012, S. 118.

However, the fact that German jurisdiction has to deal with such cases again and again, expresses the fact that such cases are rather rare but certainly occur. The last and simultaneously most spectacular case, which the jurisprudence has treated in the past years, was the assassination of a house tyrant by his wife in the Baden-Württemberg city called Hechingen in the year 2000. Therefore, this house tyrant case also become mentioned as the “Hechinger Haus-tyrannenfall”.<sup>2</sup> The husband was a rocker and president of various rocker groups. The Hechinger domestic tyrant has beating his wife for about 15 years, even when she was pregnant; he beat her with objects, threatened her massively and always insulted her severely, so that the woman attempted to commit suicide. He inflicted a kidney squeeze that required hospitalization. Another time, he hit her head so hard against a room wall that he himself thought he had killed her. Her attempt to break away from the man by staying in a women's shelter failed. She was in deep fear for her life and that of her two daughters. After a nocturnal altercation, she shot her husband while he slept with two bullets from a revolver.

The principles set out in this decision by the Federal Court of Justice for the treatment of such cases of domestic tyranny form the reference point for my remarks.

### III. The areas of legal conflicts

First of all I would like to define the three key legal areas that play a role in killing a domestic tyrant.

1. The killing of the house tyrant as a violation of the right to life committed by the partner / the child: which offenses are fulfilled?
2. What justification and excuse reasons are applicable to the killing of the house tyrant?
3. What role do state aid services play as an alternative to the killing of the house tyrant?

### IV. The problem of the offense of murder in Germany

The murder is punishable and sentenced in Germany without exception with a life-long imprisonment in accordance with 211 (1) StGB). It is possible (and mostly so) that after a long period of imprisonment, at least 15 years in prison, the execution of the sentence will be suspended in accordance with § 57a StGB, if not the particular gravity of the guilty convict's further enforcement. The law itself does not contain a minor case of murder.<sup>3</sup> For the killing of a pet tyrant this means: As soon as only one of the nine german murder characteristics is fulfilled, the judge must recognize a life imprisonment. When killing the house tyrant, this is the characteristic of the treachery, because the tyrant is usually killed in his sleep. It is, frankly

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<sup>2</sup> BGHSt (= Official collection of decisions of the Federal Court of Justice in Criminal Justice), Vol. 48, page 255 ff.

<sup>3</sup> *Kindhäuser/Schramm*, Strafrecht Besonderer Teil (Criminal Law Special Part), Vol. 1, 9. Ed. 2019, § 2 Rn. 2.



spoken, for the offender often the only chance to really kill the tyrant, because the sleeping tyrant can not resist the attack. Treachery means that the offender faces a victim who does not expect an attack on his life, and therefore can not protect himself against the attack. The perpetrator must also take advantage of this remedy to kill the victim.

Some cases from the case-law: So if the woman waits for her husband until he sleeps and then she shoots him with a pistol,<sup>4</sup> or stabs him with a knife or kills with a frying pan,<sup>5</sup> this is a treacherously committed murder. Likewise, it is a treacherous murder, when the woman poisoned her husband, for example, by secretly giving him a deadly poison in a meal or a drink. Likewise, it is treachery when she gives him an anesthetic and then stifles the anaesthetized man in his sleep by pressing a pillow in his face.<sup>6</sup>

Other forms of murder are usually not realized. The only conceivable murder trait would be the killing of a person from "very low motives". "Low" means a killing motive that is ethically totally unacceptable. These include motives such as excessive jealousy or the motive to kill the husband in order to pave the way for a new partner. But such motives are usually not available for the women who kill their husband or the sons who kill their father.

The case law of the Federal Republic of Germany has found a solution on the level of sentencing for extreme exceptional cases of treachery in order to circumvent the whole life imprisonment. It states that, especially and exceptionally in cases of great despair, the exception of imposing a lifelong imprisonment may exceptionally apply and, instead, it may intervene in a penalty mitigation which is not provided for by law. This means instead of life imprisonment now a minimum of 3 years imprisonment. The formal way is an analogy of § 49 (1) Nr. 1 StGB in bonam partem.<sup>7</sup> But as such an exceptional case the killing of the domestic tyrant is surprisingly not considered by the Bundesgerichtshof. Rather, the case law in the "Hechinger case" (later more to this case) emphasizes that this exception is secondary, d. H. subsidiary, and that exception can only be used if other mitigation grounds are not actual. So I have to explain to you in a moment which other mitigation grounds can be considered here.

Thus, in accordance with the law, the mechanism of life imprisonment is nearly *always* triggered in Germany. Incidentally, Germany has been discussing a reform of homicides for over 50 years in Germany. We still have a murder rule in Germany dating back to the Nazi era. There were recently efforts, largely initiated by the then Minister of Justice and today's Foreign Minister Heiko Maas (SPD) to reform the murder. In addition to the elimination of the linguistic remnants of National Socialist criminal doctrine in § 211 was above all the dissatisfaction over the rigid legal consequence "lifelong" in the domestic tyrant cases a very decisive motive for trying this reform.<sup>8</sup> For example, it is said in the expert report on the reform of the murder facts that the murder characteristic is inadequate, especially in the cases of domestic assassination, as these cases would have a close proximity to self-defense and emergency and therefore because of the much lower injustice classification as a murder is unfair. However, there were also voices in the legislative process according to which the murder of the house-

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<sup>4</sup> BGH NSTz (Neue Zeitschrift für Strafrecht) 1987, 322; BGHSt 48, 255.

<sup>5</sup> BGH NJW (Neue Juristische Wochenschrift) 1966, 1832.

<sup>6</sup> BGH NSTz 1984, 20.

<sup>7</sup> BGHSt 30, 105.

<sup>8</sup> Final Report of the Group of Experts on the Reform of Homicides, 2015.

martyrs was an act of self-justice of the woman, which should not be privileged.<sup>9</sup> But there was no consensus in the German parliament: The coalition partner of the SPD, the chancellor party CDU, saw no need for a change in the law. Thus the § 211 remained unchanged.

## V. Reasons of Justifications

Are there any justifications that legitimize the killing of a family tyrant? Of course, one may think first on the self-defense. But self-defense presupposes in German law say (§ 32 German Criminal Code) that there must be a *present* attack on a legally protected individual interest of the self-defense person. But when the tyrant sleeps, he does not make an attack. So it lacks the situation of self-defense.

Now, one may rightly ask: But if the woman, because of her physical inferiority, could not defend herself against the tyrant in the past - and if the woman can not continue to defend herself directly against the aggressive partner: Can she then not practise a kind of preventive self-defense, so exercise a preventive Notwehr, which gives her- before the next attack - the same rights of defense, as she would, if in the coming, real attack would take place by the man? That's how you can see that. And this is how it is, for example, in the jurisdiction in Canada or in the Law of the Australian state of Queensland.<sup>10</sup> But that's not the point of view of the Criminal law legislation and jurisdiction in Germany.

Although there are weak forms of preventive self-defense. However, these are only possible within the framework of the law on the prevention of criminal law, technical terminology: to justify a state of emergency (in German: "Rechtfertigender Notstand", § 34 StGB). However, this criminal security / justifying emergency does not permit 1. killings, because killings are in principle not justified, and 2. because the balancing of interests, moreover, does indeed allow certain protection mechanisms (such as the inclusion and violation of the potential attacker) but not killing.

It is noteworthy, incidentally, that the earlier jurisdiction of the Reichsgericht - the highest German criminal court from 1871 to 1945, situated in Leipzig - in a case of the father's murder affirmed the conditions of the state of emergency:<sup>11</sup> the father was a permanent danger that could not otherwise be averted as by the son has been. But the supreme court case law of the Federal Republic of Germany since 1945 subsequently rejected the application of a legalizing emergency. Thus, if the tyrant does not attack the wife acutely and there is no current attack, the husband's killing of the husband can not be justified by a ground of justification of German criminal law.

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<sup>9</sup> Final Report of the Group of Experts on the Reform of Homicides, 2015, p. 111, 126.

<sup>10</sup> *Schramm*, Ehe und Familie, S. 165.

<sup>11</sup> § 54 StGB, at that time still classified as an apology reason; vgl. *Schramm*, S. 123.

## VI. Excuse reasons

So there are only reasons that reduce the guilt of the perpetrator. Guilt means: The perpetrator is in an extraordinary, extreme mental-intellectual stress situation. In this exceptional situation, it is very difficult for them to comply with the standards, so to behave in accordance with the norm.

### 1. Reduced criminal liability (guilt)

Thus, in such cases, it is important to consider that, after often long years of suffering under the house tyranny, the psyche of the woman is strongly attacked. So one could assume that a thus influenced mental illness falls under the regulation of reduced guilt. This would lead to the consequence that a mitigation of punishment is applied here (§ 21 StGB). Although this mitigation is only formally optional under German law, it is generally accepted and practised nevertheless. In cases of house tyranny, however, the Federal Court of Justice has so far assumed no diminished debt capacity only on the basis of domestic tyranny. This is to regret because there would have been the chance for the inclusion of the theory of the Battered Women Syndrome which was developed in the USA. Similarly, in the international classifications of mental illnesses, the psychological impairment due to suffered violence in relationships is a mental stress situation called "battered spouse syndrome". Surprisingly, it was not used by German psychiatrists and psychologists in the criminal process, as well as German criminal judges have not considered so far that the idea that due to the domestic tyranny could have come to a limitation of the culpability.

### 2. Excusing emergency

This leads me to the decisive regulation that comes into play here in Germany, namely the regulation to ward off an existential danger situation. Although this action does not lead to the result that the danger-repelling behavior is allowed, but it does mean that the offender acts without guilt, that he can not be reproached. This so-called apologetic "excusing state of emergency" in § 35 StGB presupposes a present danger for one of these following individual rights goods: the life, the health or the freedom. For this purpose, a permanent danger is sufficient, d. H. the risk of being attacked, injured or possibly even killed by aggressive family tyrants. There is also a corresponding danger to a close person (eg the children). In that regard, the affirmation of danger is not the problem here.

The problem, however, is the other-versatility: The danger must only be averted through the act. There must therefore be no alternative to the offense committed by the woman. Now in the domestic tyrant cases this fact is very problematic, whether the danger can not be eliminated otherwise. At least theoretically there exist welfare state alternatives to the killing of the man. Just think about the possibility of separation, getting out of the shared apartment or the common house, the divorce or escape to a special facility for vulnerable women, so-called

sheltering “women houses”. According to a study by the Federal Government, there are 353 women's shelters and about 40 shelter flats in Germany with a total of more than 6000 places. Together, they provide protection and counseling for some 15,000 to 17,000 women and their children (about 30,000 to 34,000 people). In that regard, it must always be examined on a concrete case-by-case basis whether, instead of killing the domestic tyrant, separation, divorce or moving to a women's shelter would not have been an effective alternative and so the better solution. This may look like this at first glance, but it does not have to be when the house tyrant makes it clear that he will always find the woman in case she moves out, and a breakup is pointless. Thus, the Hechinger house tyrant has repeatedly threatened his wife again and again, he would find out in any case, where she would then live, and escape therefore would be senseless.

Thus, if there are objectively alternative solutions, the objective prerequisites of the apologetic state of emergency are lacking. However, it is conceivable that the woman is wrong and considers her behaviour as an alternative. She sees in her desperation no other solution than the killing of the man, although her objectively still other options would have been available. Such an error about the actual requirements of this ground of excuse leads, if the error is avoidable, by law then to a compelling mitigation of penalties (§ 35 Abs. 2 StGB), since the woman was subjectively in a serious conscience. If the error is unavoidable, the mistaking person cannot be punished at all (§ 35 Abs. 2 S. 1 StGB). In the Hechinger house tyrant case, this led to the result that the woman came into the benefit of mitigating the penalty. So, she was ultimately, after a revision before the BGH and two trials before the district court, sentenced to a prison sentence of four years and not life-long prison.

## VII. Final

I come now to the end of my remarks. You see: The killing of the domestic animal is a murder in Germany; however, the penalty may be significantly reduced because of a guilt-reducing error - the existence of an erroneously assumed existential danger. I am looking forward to the discussion. In particular, I am very curious to know whether there have been such cases in Georgia of the killing of the aggressive husband or father by the wife or a son (ie the patricide). If so, I would like to know how Georgian criminal law regulates such cases, whether a justification or apology of the wife or son is also discussed, and how the Georgian criminal justice system concretely assesses such cases.

Thank you very much for your attention.

**Elene Gogvadze**

**Judge of Tbilisi City Court**

**Characteristics of granting preventive measures on  
the criminal case of domestic violence**

Domestic violence represents one of the most common and specific forms of crime. Such type of crime is observed in many countries around the world and includes all class of the society. To improve the system against domestic crime, it is necessary to consider the domestic violence as one of the difficult and dangerous events, because such type of crime violates human dignity, health and maybe even life itself.

Negative environment existing in the family may affect the society and future generations. A child, growing up in the atmosphere of strained family relationships differs sharply from those of children who grow up in a quiet family environment. Disagreements existing in the family have a negative impact on adolescent's mental development. Such psychological feelings may even make the child an abuser in the future. According to the several studies, maybe the abuser himself was a victim in the age of infancy or vale of years. The main factor that domestic violence is the major cause of socially dangerous consequences should be considered as the actual problem of such criminal activity; changing moral climate in the family affects especially young children and adolescents. It causes irreparable damage to all of them, adults may have come to the brink of alcoholism and drug addiction. Domestic violence may also cause them to commit suicide.

Among the other fundamental rights, protection of human rights and freedom is considered as one of the main goals of The Constitution of Georgia. Domestic violence may be considered as a violation of the human rights protected by the Constitution of Georgia. „All human beings are born free and equal before the law regardless of their skin, color, sex, religion, political and other views, national, ethnic and social affiliation, origin, property or titular status, place of residence“. Consequently, domestic violence

should be treated as a violation of constitutional rights by one family member against another.

“A free person and his dignity represent the value and the most important principle of supremacy of Constitution of Georgia. According to the constitution, a person is regarded as an individual, who has the possibility and ability to form his own life independently and with his own responsibility”.<sup>1</sup> Also, according to the first paragraph, Article 17 of the Constitution of Georgia: “Human honor and dignity are indisputable”.

What can cause the violation of one family member’s rights by another one? Why one member of the family may be an abuser and the other a victim?

The basic creator of the abuser is an environment or being in a violent environment since childhood. As the cause of the family conflict we should also mention – unstable social environment in the family, distrust between the family members, loss of mutual respect, etc.

Nowadays, numerous different nonhomogeneous circumstances may be named as the cause of domestic violence. Social-economic problems may be named as the main reason of domestic violence. But, only “unemployment and socio-economic problem existing in the country cannot be considered as a cause of violence, because domestic violence equally exists in less developed countries as well as in economically strong and developed countries”. Many abusers explain their actions by taking alcohol or using drugs, which is wrong. No one commits violence just because he is under the influence of alcohol or drugs. In such a case, the feeling of personal freedom and domination over others intensifying in the abuser, which already affects the degree of violence.”<sup>2</sup>

Recently, unfavorable financial situation and poverty in the family may be named as the cause of domestic violence, which causes psychological stress in a person and this increases the disagreement between the family members on a daily basis. Also, being in such an environment makes one family member dependent on the other, which is considered so-called “money earner” in the family and unemployment and economic dependence force the victim to put up with the violence, because the only financial

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<sup>1</sup> Kublashvili K. “The Human main rights”, Tbilisi 2010, pg.86

<sup>2</sup> Bochorishvili K. Loria A. “Practical manual on domestic violence issues”, Tbilisi 2009, pg. 9

support for her is the abuser. There are also cases of domestic violence, when woman's economic activity and independence are perceived as a threat by man. Especially, when the man is unemployed, because he is in fear of losing his power in the family and this subsequently results in violence against woman.

“The violence had different effects on human destiny. Conflict and social hardship have contributed to an increase in violence. General processes have emerged in terms of moral and common values in a society. For example: forced marriage, pregnancy in heavy conditions, marriage with a person, who was herself a victim of violence and more importantly, the children affected on the basis of family conflict was no longer a rare event. This is how the hate crime was created before us, which took the name of domestic violence. Still, why the domestic crime? Because the family is an important institution, where one should feel the most secure.”<sup>3</sup>

Conflicts existing in the family often turns into violence and this can lead to even more severe lethal consequences. However, we cannot be too strict to all such actions and apply radical measures in the first case, because the crime was committed in the family, the victim and the abuser are the members of the one family and in the future, such drastic measures may make more irritated the opposing sides and the other members of the family, therefore, such actions require more careful approaches, an in-depth study of the factual circumstances and finding causes of conflict by the state.

It should be noted a victim of domestic violence - the victim, who may suffer both physical and psychological violence, coercion, sexual and even economic violence. This is the victim, who is different from other victims, particularly those affected by theft, robbery, fraud and other criminal acts, because they are supported by their families, relatives, friends and a victim of domestic violence remains alone with the abuser. She lives with the abuser and is in constant stress and there is a greater risk of committing more serious crimes.

In Georgia, working on the issues related to domestic violence has started in the late 1990s. In 2006, was adopted a law “about prevention of domestic violence, protection

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<sup>3</sup> Guram Nachkebia – 75 Anniversary collection, Tbilisi Ivane Javakhishvili State University, faculty of law. Publishing house “Meridiani”, 2016 year. Ivanidze M. „Crimes committed in the family“, pg. 52-53

and assistance to victims of domestic violence”, where the notion of domestic violence and state defense mechanisms were defined, which are performed against the abuser, in particular, a restraining and protective order has been introduced, which enables the police and the court to have a rapid response to domestic violence, ensure the protection of the victim and restrict the abuser’s certain actions.

What does domestic violence mean – violation of the constitutional rights and freedom of one family member by another by physical, psychological, economic, sexual violence or coercion.

Who is considered as a member of the family – the family members are: mother, father, grandmother, grandfather, wife/husband, child (step-child), adopted child, foster family (foster-mother, foster-father), grandchild, sister, brother, wife’s/husband’s parents, son-in-law, daughter-in-law, also former wife/husband, persons in unregistered marriage, trustee;

What kind of violence may occur in the family – physical violence - beating, torture, health damage, unlawful deprivation of liberty or any other action that causes physical pain or suffering; failure to comply with health-related requirements, which leads to a family member's death or injury.

Psychical violence – insult, blackmail, humiliation, threats and any other action, which results in humiliating of human honor and dignity.

Coercion - physical or psychological coercion of person to perform or not to perform the act, the exercise or the restraint of which is his right; or to experience himself the impact against his will.

Sexual violence – sexual intercourse through violence, by threatening of violence or using the victim’s weakness; sexual intercourse or any other act of a sexual nature or depraved action towards minor.

Economic violence – action, which leads to restriction of food, housing and other conditions of normal development, exercise of property and labor rights, as well as use of co-owned property and the right to dispose of owned share.



It seems that violence for such crimes is not just physical violence. This offense also includes insult of a person, coercion, sexual violence, as well as psychological and economic violence against the victim. Therefore, it is necessary to focus on each form of violence.

In 2012, the Article 126<sup>1</sup> was added to the Criminal Code of Georgia, which implies “Violence, regular insult, blackmail, humiliation by one family member of another family member, which has resulted in physical pain or anguish. The offense shall be punished by community service from 80 to 150 hours or imprisonment for up to a year. If the same act committed knowingly against a pregnant woman, minor or a helpless person; against a minor's family member in the presence of the minor; against two or more persons; by a group of persons; repeatedly, - shall be punished by community service from 200 to 400 hours or with imprisonment for a term of one to three years.”

Criminal regulation of domestic violence systematized the domestic violence in one article.

“Criminal regulation of domestic violence has its positive and negative aspects. Consider each of them.

Positive aspects are: 1. Incorporation and systematization of domestic violence in one article; 2. The abuser in the family acknowledge that he is an abuser; 3. Giving an adequate name to the action; 4. Crime prevention will be implemented; 5. It will be frightening for those who are potential abusers.

Negative aspect: Prevents family maintenance. Criminal regulation of domestic violence deprives the abuser of the opportunity to return to the family relationship, because it is impossible for him to live in the future with the person informing the police on him”.<sup>4 4</sup>

As already mentioned, domestic violence cannot be treated homogeneously. Each of such criminal case requires a great attention in terms of its individualization. Factual circumstances must be thoroughly assessed, it must be examined abuser and the victim's personal data, attention should be paid to what edge of the conflict the couple is on, under what circumstances do they make the presence of the minor children, what other

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<sup>4</sup> Shalikhvili M. “Criminology of violence”. Tbilisi 2012, publishing house “Meridiani”, pg. 86-87

members of their family are experiencing, is it possible to continue violence against both the victim and other family members in the future. It is also worth noting that you might meet such factual circumstances, where we might be dealing with mixed blame. The wife may be considered as a psychological abuser and the husband – as a physical abuser. In such a case, both of them will be prosecuted.

In many cases, after beginning of the prosecution, arresting of the defendant and charging him, the state prosecutor files a petition with the state against the alleged abuser, requesting imprisonment, in the form of preventive measure. The prosecution substantiates the motion based mainly on the continuation of the crime by the abuser and the dangers of destroying evidence.

According to court statistics, if we look at the 2016 data “Total of 191 prosecution motions on the domestic violence cases were filed at the Tbilisi City Court (by the article 126<sup>1</sup> of Criminal Code of Georgia) in the Tbilisi City Court Criminal Cases Investigation, Pre-trial and substantial review panel. In 155 cases, there was a petition for detention, but the court made a decision on imprisonment of an abuser only in 80 cases, in other cases, the abuser was sentenced to non-custodial preventive measure. In particular: bail has been used in 22 cases, bail with jail security in 41 cases, the defendant was left without a preventive measure in one case, the defendant was given a personal surety in 3 cases, the defendant was sentenced to the agreement on not to leave the country and proper behavior in 6 cases, the plea bargain concluded between the parties was approved in one criminal case, but in one other case the intercessor withdrew the motion and the case was no longer discussed. Also, in addition to imprisonment, as a preventive measure, the court has received request for bail, as non-custodial measure of 34 criminal cases, from the prosecutor on the cases of domestic violence. The motion was partially satisfied (reducing the amount of bail) in 24 criminal cases, the defendant was left without a preventive measure in 7 cases and the plea bargain concluded between the parties was approved in 3 criminal cases. Also, the prosecution filed a motion for one criminal case towards the defendants, on not to leave the country without writing acknowledgement and proper behavior as a preventive measure, that was satisfied and

he demanded personal surety for other case but it was not satisfied and the defendant was not sentenced to a preventive measure”.<sup>5</sup>

According to the statistics of last year, in the cases of domestic violence the dominant is preventive measure – imprisonment, it is then followed by bail and other less restrictive measures, or also the person was not sentenced to a preventive measure.

The question may be asked, what is the reason of making a decision on imposing non-custodial measure against the alleged abuser, while such crimes are often characterized by the factors such as continuation of the crime and impact on witnesses. Also, the risks of turning into a more serious and especially grave crime of such crime acts are extremely high.

As mentioned above, upon consideration petition by court, first of all there are to be by all means taken into account factual circumstances of case and jointly, decision is to be made, based on both factual and formal circumstances. There are some circumstances of case obviously indicating that there are high risks of crime continuation by culprit and also hindering investigation. For example, one of the case’s factual circumstances are as follows: violator commits violence against his wife, expressed by slapping in the face several times, also menaces her that he will by all means kill her and in order to actually have perceived menace, or fulfill promise to his victim, the violator takes an axe, forcing her to go to the yard and says that he will behead her. The eyewitness is their underage 16 years old daughter, who goes to help her mother. The father commits violence against her. We can not confirm, whether the violator would fulfill menace or not. Though, to my minds, when having such factual circumstances on mentioned criminal case and also under those formal bases such as commitment of aforesaid crime for more than one time. It will be enough to have imposed imprisonment to violator as the strictest form of restriction of rights and freedom.

Subsequently, factual circumstances of violence committed in the family on criminal case are as follows: - father committed violence against her underage 8 years old daughter, he used to beat child by punching in the face, also he was beating her

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<sup>5</sup> Office of generalization and statistics of international and judicial practice. Tbilisi City Court

backbone, the child even was not able to escape as the crime took place in the elevator, in a closed space, where the mother could not help her daughter. We will not review the cause of such action, but it will be interesting for the reader stating that father beat her 8 years old daughter because, she fell down with the products bought in the market and cigarette intended for the violator was damaged.

Upon assessment of these two examples by considering both factual and formal circumstances of case the court has a legal ground to apply the strictest form of restriction of rights – imprisonment in order to have avoided the risk of future crime and also force against eyewitnesses. So, upon facing such circumstances, taking non-custodial measures will not be gained objectives on imprisonment to violators. The court also should by all means take into account personal features of violator, also specificity of action he is accused of and the way of action, such crimes always are found with the repetition of action as the factor of aforesaid statement is the fact of living violator together with the victim, when the person (violator) can not control his anger against his family members and also in front of children and even against them. Such factual and formal grounds completely meet the standard on imprisonment of person. Herein is to be mentioned that “family violence mostly is related to couples and children. It differs from other kind of violence with its closed space and repetition. Family violence goes beyond the family and will appear to be dangerous social problem, as the model established in the family comprises not only from conflict-habituated couple, but entire family members”, family violence mostly impacts kids’ state of mind.

Out of above mentioned cases, judgement of conviction was passed on one of the case and imprisonment was imposed to violator, but then criminal case is on the stage of substantive hearing.

Also none of the complaints were sent to European Court of Human Rights with regard to the facts of family violence from various countries. In one of its judgements related to family violence, the case “Eremia and other v. the Republic of Moldova #3564/1 as of 28.05.2013 the European Court of Human Rights established that in the case is violated:

Article 3 of convention (prohibition of inhuman and degrading treatment) related to Mrs. Lilia Eremia;

Article 8 of convention (right to respect for private and family life) related to her two daughters;

Article 14 of convention (prohibition of discrimination) together with the Article 3, related to Mrs. Lilia Eremia;

This case was related to the complaint of applicants stating that the Government of Moldova could not protect them against forced and abusive actions of policeman husband and father.

European Court of Human Rights established that despite of having information about violence the authority could not take any effective measures, in order to detain plaintiff's husband and protect applicant from family violence. The court also considered that effective measures were not taken to stop continuation of violence despite of the fact that the violence to mother had negative impact on daughter's state of mind. Finally, the court decided the reaction of authority meant pardon of violence; this behavior had discriminating nature for Mrs. Eremia, as a woman.

Many standards included in the convention are generally formulated, it would be hard to exactly interpret and apply regulations of convention without analyzing case law of European court. Text of convention is explained based on the decisions and judgements of European Court of Human Rights, exactly European decisions are to be considered as the source of law, because they are precedents. List of rights guaranteed under European convention, on the whole coincide with the catalogue of rights and freedoms determined under the second chapter of the constitution of Georgia. So, Georgian courts mostly apply decisions made by European court by corresponding to factual circumstances, as precedents. At the same time the state is obliged to activate all of its domestic mechanisms and resources, in order to have maximally protected the victim in the event of facing violence and to have taken all lawful measures against the violator, to make the violator to be fully aware about criminal nature of his action and in future to have excluded repetition of violence from the part of violator.

There are also such cases, when violator in family violence greatly regrets about the crime committed by him/her, caused by his/her emotions and lack of restraint. He is

ashamed and begs pardon to his/her family. In old did not take place such an action. The person is not convicted and even punished by administrative law, neighbors and colleagues positively characterize him/her, is employed, provides financial assistance to family and the most importantly the victim wants to forgive her husband and let them continue marital relations. Despite of such formal grounds, even in such cases the court has to by all means emphasize the risks of future crime. The court has to analyze as to how sincere is the violator, if the violator or their family members forced the victim to act so.

Though it is interesting, what makes the victim to be again willing to have back the violator? The reasons of it may be economical or/and emotional factors. The court should not be misled by exactly such circumstances, because such crime itself is known with its specificity, even as if seeming that the family members desire to reconcile and external factors hamper them, though it is even possible to have avoided such risks, if suspended sentence is applied to possible violator and establish certain restrictions for him.

First of all, if the victim is forced by somebody or tries to save violator due to economic or emotional factors, exactly such circumstance may be considered as the high risk bearing circumstance to that may be followed future crime and in such cases the results may be graver than only violence. But if the victim sincerely desires not to have victim imprisoned and himself possible violator also perceives the results of his committed crime and feels sorry for it, why should not be given him a chance to be free. The violator may for a certain period of time be ordered to appear at police authority as the form of prevention, or even to be ordered not to come close to the victim that is possible to be done in accordance with the Article 199 of Criminal Procedural Code of Georgia. In this event there are to be considered personal characters of violator, stating that he in old the violator was not convicted that this is the first case and the violence did not happen systematically. Before happening facts against her there was not issued restraining order before the fact taken place against her, is not punished by administrative law, is employed and people positively characterize him. Even in such

cases there are high risks, though nobody can in advance consider the action of each violators, as to how will he act in future.

Herein I would like to draw reader's attention about such factual circumstances that was found by me in one of the criminal cases during writing this article: victim of family violence is 17 years old girl and the violator is her father. The violence had taken place at the time of insulting, when the father threw lighter to her daughter that caused hemorrhage on the girl's face. Disagreement between father and daughter was caused due to girl's undesirable academic achievement at school and with teachers. Unsatisfied father asked his daughter to answer, as to why was not going to school and to teachers, as she was school leaver and was more responsible for her study, also father faced some financial obligations for the study of her daughter. When father asked her a question the girl inadequately answered him by laughing and required from her father to let her act alone. Exactly after such a dialogue had arisen disagreement between father and the girl, after that father left house and spent night in the car. At the same day was launched criminal prosecution on the fact of family violence from the part of father. Upon the first introduction of violator at the court session the victim sincerely regretted that fact and despite of bad economic condition in the family, was ready to have imposed bail as a preventive measure to that prosecution also expressed petition at the court session.

As mentioned above, nowadays prosecution mostly expresses petition to court to such crime with regard to imprisonment of violator as a compulsory measure. Though, in this case prosecution was asking to have imposed bail as non-custodial measure. Approaches on family crime both of prosecution and justice are to be individual, above mentioned crime requires to have more reviewed factual circumstances at the first introduction session of accused person and make decision on the formal grounds.

In order to have established as to how the changes made to the legislation of Georgia prevented family violence, to this effect it is essential to have carried out study throughout Georgia, to state as to how many cases faced verdict of guilty, what kind of punishment was imposed to violators, how many of them reserialized and how many of them were judged by court with regard to repetition of violence. Such study will enable

us to judge, whether we have a result due to the changes made to the legislation, or the crime of family violence still requires finding flaws and their appropriate analyzing.

Herein I would like to emphasize for the reader about the nuance for the last time revealed at the courts with regard to such action – mostly at the time of factual review of the case on family violence. When the proofs are being studied and when the victim or witness are to be interrogated, the witnesses subject to the interrogation exercise their right and refuse to give testimony at the court against the violator. They do not provide accusatory testimony towards their family member, in such case we have non-guilty judgement to violator. In order to have avoided non-guilty judgement by violators due to only such circumstances, aforesaid issue requires provision of more information and study. There are to be found such lawful standards under that the victim will be maximally protected from violator.

Here is posed a question, how should we avoid such crimes and how disable him/her to be developed. This issue is globally and scientifically explained. There are various reasons within the global standpoint. Part of society is not able to protect personal rights. Frequently it happens because, people are not well aware about the law. One of the issues is referral, as to how often do persons refer to respective body (police) and finally, relation of each member of society with regard to crime. That part of society may protect its right, besides lawful education is related to many factors. To this effect generally is arisen educational problem that to our minds is to be provided by taking various measures. Mainly it is to be begun from school, namely are to be proposed intensified programs on family institute, major values, human rights and the programs on protection of freedom. All of the aforesaid are the bases for the establishment of strong civil society. (Trainings). What about referral, here the victim should be sure that she/he will be protected from law enforcement bodies and at the same time will have support from each member of society.

“In accordance with the second part, Article 36 of Constitution of Georgia the family relations are protected, meaning that the state should facilitate for the wellbeing of family. Under this right the family is protected, by maintaining the union of education



and life and the family peace. Accordingly, it would be better to have fenced the mediation of family violence that would facilitate maintenance of family.”

That is why it is essential to have raised public awareness. Schools, higher educational establishments, media, press and psychologists should be involved in the struggle against family violence as this is not only one specific family’s problem, but it is the problem of entire society and state, as the family is the basis of state that to certain extent forms the state – in the state, there is relation between them and this relation is the wellbeing, as the wellbeing of state determines condition of family and wellbeing and vice versa.

Considering the fact that family violence includes conflicted couple that mostly the victims are women, exactly due to this reality made international world society to have established convention "about prevention and suppression of violence against women and family violence” in Istanbul. Cornerstone of convention covers such issues such as prevention of violence, protection of victims and imposition of criminal responsibility to violators. Convention suggests to all members of society, especially men and boys to change their attitude to violence. Substantially, this is a new proclamation towards more equality between women and men. According to the convention the violence to women is acknowledged as a violation of human rights and the form of discrimination. It means that responsibility will be imposed to states if they do not adequately react on such violence. Herein is to be also noted that according to the convention the criminal responsibility will be imposed for such many crimes as tearing female external genital organs, forced marriage, persecution (molestation/obsessional persecution), forced abortion and forced sterilization. Pursuant to the convention the states should have involved respective state bodies and services in the struggle against women’s violence and family violence in order to have solved this problem under the coordinated effort. All of the member states of European Council have signed European Convention on Human Rights – agreement aiming respect of human rights, democracy and the rule of law.

Geronti Kakhelidze

## **The practical aspects of domestic violence seen through the eyes of a judge**

**(Short Annotation)**

What are the aspects of violence against women, aspects; motive, purpose and essence of violence against women and domestic violence.

Definition of violence in general.

Definition of violence against women.

Definition of domestic violence.

Purposes and goals of domestic violence.

- Victim
- Abuser
- Action (Violence)

Types of domestic violence.

- Physical violence
- Psychological / Emotional violence
- Economic violence
- Sexual abuse

Overview of Georgian legislation.

(Constitution of Georgia, Criminal Code - Legislative Problems).

Definition of “systematicity”.

Appreciation of pain / suffering.

Practical Aspects for imposing penalties in Domestic Violence Cases.

- General principles for imposing penalties.
- Aggravating circumstances of the penalty.

Review of specific cases (in short, considering the time allotted).

## **Theories about Causes and Real Causes of Domestic Violence**

### **Definition of Domestic Violence**

**Domestic violence** (also named **domestic abuse** or **family violence**) is **violence** or other **abuse** of constitutional rights and liberties, committed by one person against another physically, psychologically, economically and sexually.

It is important to distinguish that violence has different manifestations. There are several types of domestic violence: physical, sexual, psychological and economic.<sup>1, 2</sup>

- Physical violence - direct or indirect impact on the victim with the aim of causing physical harm, such as injuring, grievous bodily harm, beating, kicking, slapping, pushing, slapping, throwing objects, etc. Corporal punishment in the family is one of forms of domestic violence. Physical violence includes evasion of first aid, involvement in the use of alcohol and drugs against the desire of the victim. Physical harm to other family members and animals for the purpose of psychological impact on the victim is defined as an indirect form of physical violence.
- Sexual abuse, including abuse of children.
- Emotional (psychological) violence - humiliation, insult, behavior control, isolation, restricting the victim's social circle, brainwashing, interrogation, blackmail, threats of violence.
- Economic violence - control over the financial and other resources of the family, allocation of money to the victim for "maintenance", extortion, coercion to extortion. This also includes a ban on education and / or employment, and the deliberate embezzlement of family financial resources in order to create a tense atmosphere.

### **Theories of Domestic Violence**

In order for domestic violence prevention strategies to be most effective, they must be based on a clearly articulated theory of the causes of domestic violence.

It is useful to know information about the evolution of theories of violence in the United States of America (USA), which are used in other countries. Some theories explain the mechanism of domestic

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<sup>1</sup> McQuigg, Ronagh J.A. (2011), "Potential problems for the effectiveness of international human rights law as regards domestic violence", in McQuigg, Ronagh J.A., *International human rights law and domestic violence: the effectiveness of international human rights law*, Oxford New York: Taylor & Francis, . 13, ISBN 9781136742088

<sup>2</sup> García-Moreno, Claudia & Stöckl, Heidi (2013), "Protection of sexual and reproductive health rights: addressing violence against women", *Health and human rights in a changing world*, Routledge, . 780–781,

violence; other theories have proved ineffective and unsafe for victims.

Understanding the essence and shortcomings of these theories will help to ensure the correct response to cases of violence and will improve the system of victim protection and punishment of the offender. Consider some theories about the causes of domestic violence.

1. The theory of "mental pathology" in domestic criminals, which claims that family rapists are insane. Studies have shown that this theory is usually not supported by practice. A psychiatric examination generally does not show that mental illness is at the core of domestic violence. The behavior of people who commit domestic violence is different from the behavior of people with mental illness. They usually act selectively and, unlike the mentally ill, attack only intimate partners.<sup>3</sup>
2. Theory of "loss of control" as a result of alcohol or drug intoxication This theory describes violence as a result of a criminal losing control of himself while intoxicated by alcohol or drugs. This theory of "loss of control" contradicts their behavior. Their cruelty is aimed at certain people in certain places and at certain times. Most often, ill-treatment is used by this group of criminals only when they are alone with their partners, i.e. without witnesses.
3. The theory of "learned helplessness" or a battered woman's syndrome, based on the conclusion that women suffering from constant beatings psychologically break down, cannot resist violence and do not dare to break off relations with a family tyrant. This theory has a certain meaning, but ignores the fact that there are many other economic, social and cultural reasons why women do not break off relations in which they are subjected to domestic violence. For example, women are afraid of revenge directed at them or their children, or they may not have sufficient financial resources to support children. In addition, if they leave, they risk being criticized in the social environment.<sup>4</sup>
4. Theory-model of conflict in the family. According to this model, both partners contribute to the emergence of violence in their relationship. The model of family conflict implies that the victim provokes violence by his behavior, and that the actions of the partner in relation to her are justified. However, it should be noted that, unlike men, women resort to the use of force, usually for self-defense.
5. The theory of "cycle of abuse", which is similar to the model of family conflict. This theory was developed in the 70s of the 20th century by the American researcher Lenore Walker<sup>5</sup>. According to her concept, domestic violence is a cycle of actions that repeats with increasing frequency, which includes 4 stages:

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<sup>3</sup> Some Thoughts on Philosophy, in Coordinating Community Responses to Domestic Violence: Lessons from the Duluth Model, Ellen L. Pence, 1999.

Theory-Driven Explanations of Male Violence Against

<sup>4</sup> <https://schoolworkhelper.net/battered-womens-syndrome-origins-theory-post-traumatic-stress-disorder/>

<sup>5</sup> Lenore E. Walker. The battered woman :. — N. Y. : Harper & Row, 1979. — 270 ;

- Tension building - The increase in tension in the family. Dissatisfaction in relations is growing and communication between family members is disrupted. At this stage, the victim tries to calm the aggressor.
  - Acute violence - A violent incident. There is an outbreak of brutality of a verbal, emotional or physical nature.
  - Reconciliation. The offender apologizes, explains the cause of the cruelty, blames the victim, sometimes denies the incident or convinces the victim that the consequences of the conflict should not be exaggerated.
  - Honeymoon.- A calm period in a relationship (“honeymoon”). The violent incident is forgotten, the offender is forgiven. The phase is called “honeymoon” because the quality of the relationship between partners at this stage is positive.
  - After the “honeymoon”, the relationship returns to the first stage, and the cycle repeats.
6. The Theory of Differential Association, authors American sociologists Edwin Sutherland and Donald Cressey). According to this theory, the concept of violence, including domestic violence, is based on the fact that the offender learns about cruel behavior, using it to establish and maintain control over another person. Typically, criminals learn cruelty by copying other people's behavior. For example, the tendency to beat their wives in the future is seven times higher among boys who in childhood witnessed or were victims of domestic violence.<sup>6,7</sup>

Cruel behavior can be the result of exposure to the social environment where gender discrimination persists. Violence exists and spreads in an environment where authorities or society are unable to protect victims of domestic violence. This theory is aimed at explaining individual systemic criminal behavior. The more a person interacts with the criminal environment, the higher the likelihood of his antisocial prevalence.

### **Statistical records of domestic violence**

Statistical records of domestic violence in Georgia are conducted according to administrative and criminal indicators (crimes under article 126.1 of the Criminal Code of Georgia). According to administrative indicators, the number of offenses from 2015-2018 increased from 2556 to 4176, and for criminal offenses under Article 126.1 of the Criminal Code of Georgia increased from 1356 to 4671.

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<sup>6</sup> Conwell, Chic (1937). Sutherland, Edwin H. (ed.). *The Professional Thief: by a Professional Thief*. Annotated and Interpreted by Edwin H. Sutherland. Chicago: University of Chicago Press. LCCN 37036112.

<sup>7</sup> Sutherland, Edwin H. and Cressey, Donald. *Principles of Criminology*. 11th ed. Lanham, Md.: AltaMira Press, 1992. ISBN 0-930390-69-5

**Assistant Professor of TSU Law Faculty,**

**Doctor of Law**

**Irine Kherkheulidze**

## **Covert connections and correlations between domestic violence and crime of trafficking**

The article describes domestic violence as a phenomenon possibly intertwined with women trafficking. Correspondingly, it introduces the issue of the connection between domestic violence and women sex- trafficking, as well as contemplates an idea on the nexus between women sex trafficking and prostitution. It also makes an overview of relevant gender-sensitive legislation, including Georgian laws on “Violence against women and/or elimination of domestic violence, protection and support of victims of violence” and “law on combating human trafficking” and evaluates their compliance with the regional and international legal instrument such as “The Council of Europe Convention on Prevention and Combating Violence against Women and Domestic violence”, (the Istanbul Convention) and “Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children”, supplementing the “United Nations Convention against Transnational Organized Crime”, eventually making conclusion on the conformity between national and international acts.

The paper explains that while human trafficking is considered to be an organized crime violating the principle of humans’ equality and dignity, domestic violence based on gender, must be addressed as a human rights issue in compliance with the interpretation of the Istanbul Convention. The prevalence of the both crimes, such as human trafficking and domestic violence is explicitly perceivable from the perspectives of human rights and criminal law. However, in difference with the crime of human trafficking there are fewer law professionals, who consider the crime of domestic violence to be the issue of the same seriousness as trafficking. Moreover, there could be even fewer who are able to detect a covert connection and correlations between the crimes of domestic violence and human trafficking. However, a sharp observation of the issue and in depth analysis of the court practice, made through the article leads the reader to the logically and evidentially proved linkages between those two types of crime.

The main idea of the article is to raise an issue on the nexus between domestic violence and women sex- trafficking, as well as to outline the similarities between those two. It stresses on gendered nature of those infringements, places them in gender-specific dimension and asserts that it is the feminine gender that stipulates the identical abusive treatment to the victim women of the both crimes.

The paper argues that the power and control is a common characteristic for the crime of women sex trafficking and domestic violence. Correspondingly, exercise of the power and control over affected women is the common element for both crimes. As it is widely acknowledged, the power and control are the core conceptions and driving force for the perpetrator of domestic violence and could be addressed to the physical as well as to sexual violence of the victim. The similarities in terms of committing of these two crimes are such an apparent that the anti-trafficking experts have taken the power and control wheel, a tool developed by domestic violence victims advocates, and adapted it to reflect the specific forms of abuse used by traffickers against their victims.

The article has also been tasked to show the problem and to illuminate the close bonding between these two crimes through explaining so called to “pull and push forces”. Human trafficking experts often refer to “pull and push forces” while addressing this crime mentioning conditions that prompt vulnerable people into a situation of prostitution or forced labor. Domestic violence also often serves as such a force. There are a lot of cases in which the crime of domestic violence operates as an entry into or exit from trafficking.

The paper asserts that Sex trafficking is often an extreme form of intimate - partner violence in which traffickers are pimps and batterers rolled into one. The cases of *Kika and Chantal*, which were discussed at lecture, as an example of dovetailing and overlapping of trafficking with the cases of domestic violence could be considered as prototypes of this kind of trafficking. The cases of other women victims were also discussed in order to document and conclude that “domestic violence acts as entry into or exit from trafficking” and that domestic violence victim have been inducted into trafficking through all of the routes. It could be through love affairs, fraudulently, coercively or other.

In a conclusion the consequences of domestic violence and human trafficking, as well as effects of prostitution, are portrayed as problem of huge significance, which requires for urgent reaction because of trauma and harm they cause. Their consideration is also important to draw the best strategies for the remedy and recovery.

## Comparative-Legal Aspects of Domestic Violence

Family is not a law-free space!

Legal regulation of domestic violence in German-speaking countries:

- (1) Psychological support
- (2) Police-legal emergency assistance by Police
  - Shunning the violator from the home by Police, making the abuser to leave the flat;
  - Arresting the violator;
  - Prohibition of relationship to violator with victim (Police Law) – violation of contact prohibition does not result in prosecution.
- (3) To prohibit violator entering a flat or home for a half year in accordance with the Law §2 “On Civil Protection from Violence and Keeping Track” by the court’s civilian legal assistance. If any, this ban can be extended for more another half year. Failure to comply with this obligation by the violator results in criminal liability. The sanction includes imprisonment for up to one year or a fine.
- (4) Criminal reaction



## **Non-judicial Regulation of Conflicts in Domestic Violence Cases – Mediation and Community Accountability**

### USA New Tendency Community Accountability

State Approach – punishment of violators is important in terms of both general prevention and private prevention. Otherwise, the violator will be strengthened in the belief that he/she must continue his/her usual activities. Legal, especially criminal approach – polarization of society – women – potential victims and men as potential violators.

Alternative Model of Intervention – taking responsibility by society – Community Accountability – a method developed by US activists, as an alternative to prosecution. Useful effect of legal approach – avoiding dangerous acts, assuming a liability for damage and reparations. The victim is not obliged to contact the police and to seek the legal remedies.

The problem of coming out from the spiral of the violence is the problem of women less involved in public life – they do not receive classical legal protection. Consequently, there exists the necessity of strengthening the role of community and society and developing the alternative methods. A strong society and community, which protects the victim and the violator, imposes a moral liability of stopping the violence immediately.

The individual must realize the problematic behavior and break the spiral of violence, as well as the attack on the victim, which means also a threat for whole society and public safety. Problems with women of color in couple relationships may be more settled in the community, than through the state coercive mechanism.

According to his method, the image of the human is positive – the violator is not born as violator. It must be considered as individual and in the connection with his/her surrounding social dynamics. And the state's reaction is to stigmatize them as criminals and cut them off from society.

By this method, violence between the couples is not perceived as violence between individuals. But all members of society are part of this violence. The whole community is responsible for whether its members feel secure or not.

If we defend the dignity of the violator, he/she will not stubbornly deny the violence fact and will be able to assimilate his/her own actions – he/she must not be interpreted as an animal or a stranger.

Society should not be silent on violence. It must realize the causes of violence and break through the isolation between the violence loaded couple and society, protecting both the safety of the victim and the rights of all participants. The society must stand the explicit demands towards the aggressor – to stop the aggression. It also must show the confidence to the violator and support him/her in recognition of the current dynamics of responsibilities and violence.

### **Therapy for violator in Switzerland**

Anti-aggression therapy, which allows the violator to recognize and break through the violence spiral.

In Switzerland, special attention is intended for supporting the violator men. Since 1999, in the Zurich Canton is operating a training program “A Partnership without Violence” for men, who violated on their partners and the mentioned program is owned by the Enforcement and Probation Service. In this program are involved both the person, who firstly showed up the violation, as well as those, who have repeatedly committed such an

act. A person must be a resident of Switzerland, who must know the country's national language on the sufficient level (the offer is not made to foreigners not familiar with the national language), also he/she must partially plead the guilty and it should exist the possibility of conditional sentence. The person will be sent by the prosecutors to the probation office, where he/she will be interviewed.

The talk is about delinquency, social integration, personal resources, deficits and motivation for participation. In case of Probation Bureau makes a positive conclusion, the Probation Service shall send a recommendation and a detailed report to the relevant Prosecutor's Office on the basis of which it makes a decision. The number of participants compared to the proceedings is small.

The part of Swiss experts request the improvement of work with violators and imposing the liability on them not only by criminal methods, but also by pressure on them in order to make them work on their own and to organize the programs, which can motivate the violators.

In addition, early detection and early intervention of the violence before the spiral of violence is has also a great importance in Switzerland. The fight against violence continued until the violence itself arises. It is important that a person should seek advice before forcing someone else first. "I am afraid of I will hit!" However, the format of the anti-aggression training proposal should be known. It is also important to be recognized the problem of the future violence by a doctor. It is known that about 1/3 of violators visit the doctor in Switzerland before the severe violence. The violator is under a great psychological pressure, so if the doctor identifies a problem and redirects the person to the appropriate place, a big part of the violent acts is not carried out.

In many Cantons, there exist family consultation and supporting recommendation centers. They are also directly or indirectly linked to the problem of violence between couples, and

when sufficiently reasoned, they can notice the problem before exacerbation and eliminate it as far as possible.

### **Restorative justice and violence between couples**

It is questionable whether mediation in couple violence is possible until the violence spiral has stabilized or the psychological violence has turned into physical form.

This topic got the subject of a special study of scientists and a three-year project was funded by the European Commission Directorate-General for Justice. At the end of the project, under the auspices of this agency and the Federal Ministry of Education and Women's Affairs of Germany (Bundesministerium für Bildung und Frauen), special guidelines on restorative justice and violence between partners were published, which were developed by the researchers of this project, Brigitte Haller and Veronika Hofinger. These are guidelines for all specialists interested in restorative justice regarding couple relationships, both for restorative justice practitioners, as well as for women's and victim protection agencies, the prosecution and the court. The purpose of the guidelines is to standardize the minimal rules for restorative justice to be applied in couple relationships and to raise themes relevant to the intrastate context.

### **Framework conditions and definitions**

According to the current EU victim protection directives, restorative justice and/or compensation is defined as a process whereby victims and violators are given the opportunity to independently resolve/settle the consequences of crime in an open dialogue format through the objective third party assistance.

The restorative justice process established in Austria is called conflict resolution (tatausgleich) and the matter is referred to the prosecutor's office, rarely also to the court, and it is implemented by the association New Start. One-fifth of the conflicts in the association are the cases of violence between the couples.

According to the EU victim protection directives, a "victim" is a natural person, who suffers bodily, psychological and/or spiritual harm (geistige oder seelische) as a direct result of a crime.

The directives enacts that the victim of violence occurred in a personal relationship with a partner or a former partner, regardless of whether the victim was in a family cohabitation or not, may need special protection measures, because the violence in a close relationship is a serious and often hidden social problem that can cause systematic mental and physical trauma with serious consequences, "because the violator is a person, who must be trustable for the victim".

### **Pro and Contra Arguments of Restorative Justice in Couples Relationships**

Restorative justice has already been established in most EU countries, but its use in couples' relations is still controversial. In such discussion, it is often overlooked that we should differ from each other "situational violence between couples" and "intimate terrorism". The criteria for difference are not only the frequency and duration of the violence, but primarily the control implemented by the partner/former partner.

The restorative justice movement has emerged as an alternative to the justice apparatus: for achieving the justice restoration "wiedergutmachende Gerechtigkeit" for victims instead of punishing violator. Restorative justice enables individuals to actively participate in problem solving processes. In 1997, one author has been indicating that the state should "return" to

individuals their conflicts, because only they can find a meaningful and comprehensive solution of the conflict. This is why the feminist movement has criticized the “privatization” of the domestic violence. The most important attainment of the women’s movement is the public prosecution of violence in intimate relationships and the victims’ protection by the state and its authorities. That is why also the use of the restorative justice has got the subject of strong criticism.

The criticism expressed towards the use of restorative justice against the violence between the couples’ relationship is also reflected in international documents, such as the United Nations Guide on Violence Legislation (2009), which requires a ban on the use of restorative justice in violence against women. The Istanbul Convention (Article 48) runs against a rule to make a woman responsible for participating in the restorative justice process as there does not exist possibility of elimination of the power inequality between the victim and the violator and the state should prevent the re-privatization of domestic violence.

However, the use of restorative justice in relationships between the couples has got an international trend in recent years. It is noteworthy that the needs of the victim in the criminal processes are mostly focused, but while criticizing the restorative justice, the importance of litigation is overestimated and the fact, that the restorative justice can also be a tool for violence dissemination and domestic violence disapproval, is forgotten.

The following points reflect the benefit of the use of restorative justice in couples’ relationships:

- As a rule, during mediation, more attention is paid for the victims’ interests, because at that time, their interests are standing at the center of attention and the mediation is aimed at restoring the justice for the victim and compensation, as well as making effective decisions in the future. The court perceives the victim as “evidence”;
- The victim’s position is strengthened after such restorative justice is completed;

- The use of violence is clearly denied and important aspect for mediation is to make the violator assume the obligation;
- The rate of relapse after the conflict resolution in couple's relationship through the mediation is very low (only 9%).

**The research project “Restorative Justice and Domestic Violence”** is addressed to both the criticism of restorative justice and the positive sides of its frequent use and is aimed at establishing minimum requirements for mediation in domestic violence. The following empirical bases are used in the guidelines;

- 1) Law-comparison of legal framework conditions and the practice of restorative justice in domestic violence in research countries: Denmark, Finland, Greece, the Netherlands, Austria, United Kingdom of Great Britain and Northern Ireland.
- 2) Interview with victims and abusers, who have participated in the restorative justice process based on their expectations, requirements and experiences.
- 3) Verifying the results by using the focus group methods with intrastate experts and personnel of Prosecutor's Office, Court, Victim Protection and Association New Start.
- 4) The participation of many experts and practitioners on two intrastate conferences regarding intrastate outcomes and expectations.
- 5) Implementation of guideline indications in practice.

While international law-comparison has found that there are different experiences of using mediation in violence between couples. Herein, the Austrian model, which has been the subject of the scholars' studies and has been implementing for several years, is also considered as “good practice” due to the professionalism of the staff of association New Start and consideration of public and legal policy.

According to the EU Victim Protection Guidelines, all institutions, which offer restorative justice service, should always focus on the victim's interests, needs and security. Its purpose is to restore justice and avoid secondary victimization. The European Union Member States should provide the following preconditions (Täter-Opfer-Ausgleich) for balancing the violator-victim relations:

- 1) Confidentiality;
- 2) Complete and objective information;
- 3) Voluntary and informed consent;
- 4) The violator mainly acknowledged the circumstances of the case;
- 5) Effective specialist;
- 6) For the victim's interests.

These preconditions must be specific and specialized.

## **Conclusion**

- Despite the fact that the international conventions exclude the mediation against the violence between the couples, according to a new trend in different countries around the world, this method of conflict resolutions is still used successfully to restore the justice.
- The essence of Community Accountability and the possibilities of its use in Georgia should be studied.
- Greater importance should also be addressed to improvement of working with violators and binding them, as well as its implemented in practice of overseas countries.



- In the reporter's special report on violence against women, the reasons and consequences of violence, there was indicated towards the Georgia that Georgia should make changes to its mediation-related provision to avoid mediation in cases of violence against women. Article 187/3 of the current Civil Law Procedure Code of Georgia excludes mediation in domestic violence cases. Law in action evade this requirement and in cases where the victim refuses to testify against the violator, appears the traces of mediation. Mediation is not only an institutionalized and alternative way attached to the court, but also a traditional format of mediation involving loved ones. The exclusion of state-mandated mediation in cases of violence between couples opens the way for mediation implementation by private individuals, which can be resulted in both positive and severe consequences for the victim.

**Lela Janashvili**

**Associate Professor of TSU Law Faculty,**

**Doctor of Law**

**School, Society and Law**

*Ubi ius, ibi societas;*

### **Abstract**

Education is an important means of ensuring human rights. The purpose of education is to respect human rights and to develop a culture that develops from childhood to school age.

Law and legal education are a cultural phenomenon. Human rights and Law evolve with culture.

Dissemination of practical knowledge of the human rights and freedoms needed to protect. This is one of the most important tasks of states, educational institutions, NGOs and intergovernmental organizations today. State and society cannot exist without universally recognized moral principles.

The purpose of this project was to raise awareness among the masses on issues such as domestic violence and to seek effective ways to prevent it.

The moral perceptions of the public on the issue of violence are important. Education, cultural traditions, economic relations, and more play a major role in forming moral beliefs.

ლელა ჯანაშვილი

თსუ იურიდიული ფაკულტეტის ასოცირებული პროფესორი,

სამართლის დოქტორი

## სკოლა, საზოგადოება და სამართალი

*Ubi ius, ibi societas;*

*სადაც არის სამართალი, არის საზოგადოება*

სამართალი ადამიანების მიერ დადგენილი სოციალური წესრიგის ერთ-ერთი ფორმაა და ამდენად, სამართლის რეგულირების სფეროს ძალზედ ფართოა. იგი დამოკიდებულია საზოგადოებრივი ურთიერთობების უკვე არსებულ სტრუქტურაზე, რაც გარკვეულ სოციალურ კანონზომიერებებს ექვემდებარება.

საქართველოს კონსტიტუციის 27-ე მუხლის თანახმად, განათლების კონსტიტუციური უფლება თითოეულს აძლევს განვითარების თანაბარ შანსს. განათლების უფლება ადამიანის უფლებათა თანამედროვე სამართლის მნიშვნელოვან ნაწილს წარმოადგენს. განათლებაში თანასწორობის პრინციპი მრავალ ასპექტს მოიცავს (დაწყებული ერთიანი საგანმანათლებლო სტანდარტით, მატერიალურ-ტექნიკური ბაზისა და ინფრასტრუქტურის ჩათვლით) და იგი სხვა ძირითადი უფლებების განხორციელების წინაპირობაა.

სამართლის პერსონალური ფუნქცია მოიცავს მართლწესრიგით დადგენილ პიროვნების სტატუსს. სამართალი უზრუნველყოფს ინდივიდის თავისუფალ თვითგანმორკვევას, იცავს მის პირად ავტონომიასა და ცხოვრების ინტიმურ

სფეროებს, როგორც სხვა პირების, ა სევე სახელმწიფო მხრიდან უკანონო ჩრევებისაგან. სამართლის პერსონალური ფუნქცია განსაკუთრებულ მნიშვნელობას იძებს თანამედროვე ტექნიკური პროგრესის პირობებში, როდესაც შედარებით ნაკლები ყურადღება ექცევა ადამიანის სულიერებას.

მაგრამ არის საკითხი, რომლებიც შეიძლება სცდებოდეს სამართლებრივი რეგულირების სფეროს, ურთიერთობები, რომლებიც სამართლის მიღმა რჩება და რომელიც სამართლით ვერ მოწესრიგდება.

მიუხედავად იმისა, რომ კონკრეტული ისტორიული, პოლიტიკური, კულტურული, რელიგიური თუ ეროვნული კონტექსტიდან გამომდინარე განათლების მიზნები და ამოცანები შესაძლოა ერთმანეთისაგან განსხვავდებოდეს (ისე როგორც განსხვავებულია სამართლის როლი სხვადასხვა კულტურებში და ცალკეული ერების ღირებულებით სისტემაში სამართლი, ტრადიციულად მნიშვნელოვან როლს ასრულებს), ადამიანის ძირითადი უფლებებისა და თავისუფლებების აღიარება და დაცვა თანამედროვე საზოგადოების ძირითადი მახასიათებელი და მიზანი უნდა იყოს.

განათლება ადამიანის უფლებათა უზრუნველყოფის მნიშვნელოვანი საშუალებაა. განათლების მიზანს სწორედ ადამიანის უფლებათა პატივისცემა და შესაბამისი კულტურის ჩამოყალიბება წარმოადგენს, რომელიც ინდივიდს პატარაობიდან - სკოლის პერიოდიდან უვითარდება. სამართლი და სამართლებრივი განათლება არის კულტურის ფენომენი, რომელიც ყალიბდება და ვითარდება კულტურასთან ერთად.

სახელმწიფოს, საზოგადოების თუ სხვა ადამიანთა მხრიდან პირის უფლებათა და თავისუფლებათა გაუმართლებელი ხელყოფისგან დაცვისათვის საჭირო პრაქტიკული ცოდნის გავრცელება - რომელიც მიზნად ისახავს ადამიანის უფლებათა თეორიასა და პრაქტიკას შორის არსებული დიდი დაშორების გადალახვას. სწორედ აღნიშნული წარმოადგენს დღეს სახელმწიფოთა,

საგანმანათლებლო დაწესებულებათა, არასამთავრობო ორგანიზაციათა და სამთავრობოთაშორისი ორგანიზაციების ერთერთ მნიშვნელოვან ამოცანას.

აღნიშნული პროექტის მიზანიც სწორედ ეს გახლდათ, რომ ფართო მასებისათვის ცნობადობის ამაღლება ისეთ საკითხზე, როგორც არის ოჯახში ძალადობა და მისი პრევენციის ეფექტური გზების ძიება

ძალადობა ნეგატიურ გავლენას ახდენს ინდივიდის, საზოგადოებისა და სახელმწიფოს განვითარებაზე. ადამიანის პოტენციალის სრულფასოვანი რეალიზაცია შესაძლებელია მხოლოდ ძალადობისგან თავისუფალ, უსაფრთხო გარემოში. შესაბამისად, ძალადობა მნიშვნელოვნად აფერხებს პიროვნების უნარს, ხელი შეუწყოს საკუთარი ოჯახისა და საზოგადოების ეკონომიკურ, პოლიტიკურ თუ კულტურულ წინსვლას. ძალადობა თანამედროვე საზოგადოების გამოწვევად იქცა. სტატისტიკური მონაცემების ნაკლებობა, რომელიც გამოვლინდა მსოფლიოს არაერთ ქვეყანაში ხელს უშლის გენდერული ძალადობის პრობლემის უკეთ გაგებას. მიუხედავად იმისა, რომ კვლევათ სიხშირე მაღალია.

მნიშვნელოვანია საზოგადოების მორალური წარმოდგენები ძალადობის თემასთან დაკავშირებით. მორალური შეხედულებების ჩამოყალიბებაში დიდ როლს ასრულებს აღზრდა, კულტურული ტრადიციები, ეკონომიკური ურთიერთობები და სხვა. როგორც სახელმწიფო, ისე საზოგადოება ვერ იარსებებს საყოველთაოდ აღიარებული მორალური პრინციპების გარეშე

ძალადობის შესახებ არაერთი კვლევა ჩატარებულია სამათავრობო, არასამთავრობო ორგანიზაციებისა თუ საერთაშორისო ორგანიზაციების მიერ და შესაბამისად არაერთი წინადადება იქნა შეთავაზებული სახელმწიფოს ვალდებულებების შესახებ.

მიუხედავად იმისა, რომ ქალთა მიმართ ძალადობა გავრცელებული და კომპლექსური პრობლემაა, შესაძლებელია მისი თავიდან აცილება, შემცირება და მასზე ადეკვატური რეაგირება. ამასთან, არსებობს ძალადობასთან ბრძოლის

სხვადასხვა გზა. ძალადობრივი ქმედებები არსებითად წარმოადგენს სამართლებრივი და მორალური ვალდებულებების დარღვევას. მაგრამ პრობლემურია საკითხი სახელმწიფოს მხრიდან კი ძალადობაზე ძალადობრივი რეაგირება შესახებ. ზოგიერთ შემთხვევაში აღნიშნული არ ნერგავს საზოგადოებაში ნდობას და მშვიდობიანი თანაცხოვრების განცდას არ იწვევს. აღნიშნული ვერ იძლევა გრძელვადიან შედეგს და გათვლილია პრობლემის მყისიერ, მოგვარებაზე. გარდა ამისა, სახელმწიფომ უნდა გააცნობიეროს, რომ საკუთარ მოქალაქეებს დასჯაზე მეტად ხშირად დახმარება სჭირდებათ და საზოგადოებრივი მორალის მოტხოვნებს სახელწმიფო ანგარიში უნდა გაუწიოს.

ძალადობის გამომწვევი მიზეზები ურთიერთგადაჯაჭვულია. სოციალური და კულტურული ფაქტორები, უთანასწორო გენდერული როლები, უმუშევრობა,– ძალადობის გამომწვევ ფაქტორებს წარმოადგენს. ძალადობის რისკებს ზრდის, ასევე, ცივი იარაღი, ალკოჰოლი და ნარკოტიკული ნივთიერებები.

რთულ სოციალურ გარემოში პრობლემის მოგვარების ერთ-ერთი უმნიშვნელოვანესი გზაა - პრევენცია, რომელიც სკოლიდან იწყება. ოჯახში ძალადობის პრევენციისათვის მნიშვნელოვანია საზოგადოების ინფორმირებულობა ძალადობის სხვადასხვა ფორმების შესახებ.

ამ მხრივ განათლება მნიშვნელოვან როლს თამაშობს. რაც უფრო მაღალია პიროვნების განათლების დონე, მით უფრო ნაკლებადაა მოსალოდნელი, რომ მან ძალადობა დასაშვებად მიიჩნიოს. შეიძლება გადაისინჯოს სკოლის სასწავლო გეგმები, რომ ახალგაზრდებმა კარგად გააცნობიერონ ძალადობის არსი და შედეგები.

ამასთან, პრევენციისათვის ერთ-ერთი ყველაზე მნიშვნელოვანი და აუცილებელი ზომაა ძალადობის წინააღმდეგ მასშტაბური კამპანიებისა და განხილვების ორგანიზება.

პრევენციის ერთ-ერთ მნიშვნელოვან სახედ შეიძლება განვიცხილოთ: საგანმანათლებლო-საკონსულტაციო პრევენცია

პრევენციის მიზანია დამოკიდებულების პრობლემიდან მომდინარე საფრთხეების შესახებ საზოგადოების ფართო ფენების ინფორმირება. საკონსულტაციო-საგანმანათლებლო ღონისძიებებმა უნდა უზრუნველყოს, რომ მოქალაქის შეგნების შესაბამისი ჩამოყალიბების გზით ოპტიმალურად შემცირდეს დამოკიდებულების პრობლემის გაჩენის რისკები. აღნიშნულიდან გამომდინარე, საგანმანათლებლო პრევენციის აუცილებელ კომპონენტს წარმოადგენს საგანმანათლებლო მუშაობის წარმართვა ბავშვებთან და მოზრდილებთან. მნიშვნელოვანია სამოქალაქო განათლების წარმართვა, როგორც აქტიური მოქალაქის იდეის სწავლების, ისე დამოკიდებულების პრობლემის მძიმე შედეგებზე ინფორმირების კუთხით.

სამოქალაქო განათლების ფარგლებში დემოკრატიის, ადამიანის უფლებების, კონფლიქტების თავიდან აცილების გზების სწავლებამ უნდა უზრუნველყოს მომავალ მოქალაქეებში მშვიდობიანი თანაცხოვრების წინაპირობების ჩამოყალიბება. ეს უკანასკნელი ოპტიმალურად შეამცირებს დამოკიდებულების განვითარების რისკს.

სამოქალაქო განათლებაში დემოკრატიისა და ადამიანის უფლებების სწავლებასთან ერთად, ცალკე თემატიკა უნდა დაეთმოს მომავალ მოქალაქეში სწორი მომხმარებლური და ეკოლოგიური შეგნების ფორმირებას. სამართლის ეკოლოგიური ფუნქცია სწორედ ადამიანის ანთროპოლოგიურ-პერსონალური ფუნქციის ერთ-ერთ სახეს წარმოადგენს

პრევენციის საგანმანათლებლო პროგრამა არ უნდა კონცენტრირდეს მხოლოდ საზოგადოების ახალგაზრდა სეგმენტზე. უნდა წარმოჩინდეს საზოგადოებრივ ორგანიზაციებში არსებული დიდი პოტენციალი ინდივიდის ფსიქო-სოციალური რეაბილიტაციისთვის და მოხდეს მათი ჩართვა პრევენციის მიზნების

შესასრულებლად. განსაკუთრებით მაშინ, როდესაც ზიანი მიაღწა პირის ჯანმრთელობას. ამასთან, აუცილებელია სამედიცინო-სარეაბილიტაციო პროგრამების შესახებ საზოგადოების ინფორმირება.

მნიშვნელოვანია პასუხისმგებელი უწყებების მიერ სხვადასხვა პროგრამების/სერვისების შემუშავება და ოპტიმალური შეთავაზება სამედიცინო და სოციალური რეაბილიტაციის უზრუნველსაყოფად.

ძალადობის დასრულების საუკეთესო გზად მაინც რჩება ეფექტური პრევენცია საზოგადოების მხრიდან. გლობალიზაციის ეპოქამ გამოიწვია ცვლილებები საზოგადოებრივ ურთიერთობაში, შეიცვალა წარმოდგენები ინდივიდის სოციალური როლის შესახებ, შეიცვალა სტერეოტიპები და ა.შ. საზოგადოების კონსოლიდაციას, თაობათა განათლებაა, სამართლებრივი კულტურის ამაღლება - ეს არის საუკეთესო გამოსავალი არსებული პრობლემის წინააღმდეგ.



Professor of the TSU Faculty of Law

Doctor of Law, Maia Ivanidze

### **History of domestic violence and the role of the society in its prevention**

Domestic violence has its history in Georgia.

In my paper, I would like to emphasize the historical aspects of domestic crime, and the approaches towards the family institution in different eras. I would like to address the issues of prevention of domestic violence and the role of each member of the society in combating domestic violence.

Many interesting issues arise in the process of discussion of that topic. It is important to acknowledge the problem itself, as the mechanisms for its legal regulation are essential. In this regard, the legal experience of foreign countries is interesting. Certain psychological aspects are identified in the relations with a victim of domestic violence, also there is a problem in terms of addressing the law enforcement bodies during family conflicts, attention is paid to the traditions. Most notable are the cases where a victim is a teenager.

The purpose of this research is to unite the society in relation to the issue of domestic violence, to strengthen the family institution and to raise civil self-awareness, which should start from the school period. For that purpose, school pupils and undergraduate students were selected for the participation in the project.

When I start thinking about family crime, I recall the motivation of a well-known Georgian lawyer Nugzar Gabrichidze, who started a theoretical research on this topic. While working as an investigator, he was investigating the case of a doctor who killed the spouse on the grounds of family conflict.

This fact rose such an interest of a practicing lawyer that later on he became the author of a textbook on violence committed as a result of family conflicts.

This fact aroused the interest of a practicing lawyer, who subsequently became the author of a textbook on violent crime committed by family conflict.<sup>1</sup>

In that work, based on the old monuments of Georgian law, Nugzar Gabrichidze emphasised the fact that in old days the murderer of a father, wife, brother and other family members was punished more severely than the persons committing murder under other circumstances.

It is interesting that the author named his work 'Methodology of investigation of murders committed as a result of family conflicts', as he believed that the main cause of various crimes committed among the family members was a conflict situation, thus in his monography N. Gabrichidze boldly outlined the essence and danger of a crime committed on the grounds of family conflict. It is known that the problem of conflictology, whether mental or social, is studied by psychology.<sup>2</sup>

According to R. Jorbenadze, "the causes of conflict are related to a specific situation. The tension is increased by the mutual perception between the parties, i.e. a mirror perception, where 'the other' is negatively perceived unlike 'us'.<sup>3</sup>

According to an American scientist Boulding, the conflict situations should be classified in terms of how many and which parties are involved in it.<sup>4</sup>

Certainly, if we look at the issue from the viewpoint of traditions of our country, in different times there were different attitudes of the society towards the treatment of family members, especially women. In that case we all remember Queen Shushanik, who was one of the first victims of domestic violence on the grounds of religion. In the XII century, respect towards women has reached the remarkable heights. After some time, society started to intervene in family affairs more evidently. In 1883, the author of the Droeba correspondence wrote: "When a man or a woman was caught in adultery, the

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<sup>1</sup>N. Gabrichidze, Methodology of investigation of murders committed as a result of family conflicts, Tbilisi, 2005.

<sup>2</sup>Шнайдер Г Криминология М издПресса с 290

<sup>3</sup>R. Jorbenadze, Management of Political Conflicts, Metsniereba, Tbilisi, 2001, p.

<sup>4</sup>Boulding K., The role of conflict in the dynamics of society II Current research on peace and violence. IX., 3, 1986m pp. 98-102.

village would gather. Then he/she was forced to sit backwards on a donkey and ride around the village.” That was a moral punishment by the society, which would affect the conscience of an accused person.<sup>5</sup>

In later years, there were soviet attitudes towards a family institution. Then comes the famous 1990s. We were angry about the violence in various forms, but no longer surprised; we were no longer terrified with it.

Violence has in many ways affected the fate of people. Conflicts and social hardship have contributed to the increase of violence. General processes have emerged in the society in moral terms. For example, forced marriage, pregnancy in difficult conditions, marrying a person who was once a victim of violence himself/herself and, most importantly, children affected by domestic conflict were no longer an unfamiliar issue. When discussing the issue of juvenile crime, often I remember the 1990s and the generation left face-to-face the violence, for whose families the rows to buy a bread and days without electricity were not unfamiliar. “In such a way childhood ended for my generation, we became adults under those circumstances, where the main moral imperative was no longer effective” – says one of the representatives of that generation.<sup>6</sup> The author of those words actually describes the situation, which became fatal for several of his/her fellows.

This is how the hate crime emerged, which acquired a name ‘domestic violence’. And yet, why a domestic crime? Because family is an important institution, in which a person must feel himself/herself most protected.

Let's look through the legislative framework that regulates the issue of domestic violence. The Convention on Human Rights adequately protects personal and family life. The International Covenant on Economic, Social and Cultural Rights (ICESCR) provides for special measures for the protection and assistance of families. The Convention on the Elimination of All Forms of Discrimination against Women emphasises the civil rights and legal status of women.

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<sup>5</sup> G. Davitashvili – “Crime and punishment in Georgian common law”, publishing house Mediriani, Tbilisi, 2011, p. 220.

<sup>6</sup><https://www.radiotavisupleba.ge/a/blog-salome-asatiani-90s/26565032.html>

According to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence “Domestic Violence” means “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”.

As for the national legislation, according to the Administrative Procedure Code of Georgia provides for the procedures for issuance and appeal of protecting and restraining orders for ensuring the protection of a victim and the limitation of certain acts of a perpetrator on the facts of domestic violence.

In 2006, the Parliament of Georgia adopted the Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence. At that time, part of the society was skeptical about the psychological, sexual, physical violence envisaged by that Law.

Time clearly demonstrated to the society the importance and need of that Law.

In relation to the norms added to the Criminal Code of Georgia in 2012, they often said: why do we need a separate Article 126<sup>1</sup> - Domestic Violence, when there are a number of separate articles in the Criminal Code of Georgia which envisage the liability for a crime committed with violence?

When discussing this issue, we would like to emphasize the circumstance that a conflict between family members is the situation, which quite often precedes crimes such as a murder, damage to health and other crimes of violence. We believe that if a person is appropriately punished under the article on domestic violence, a more serious crime will be avoided. In his work ‘Criminology of Violence’, M. Shalikashvili points to the advantages and disadvantages of the article (this amendment) added to the Criminal Code of Georgia. He believes that advantages are that domestic violence has been combined in one article and systematized, that the actions are given adequate names and the prevention of crime.

According to the author, a negative factor is its hindering circumstance to maintaining a family.<sup>7</sup>

Article 11<sup>1</sup> of the Criminal Code of Georgia has a specific form of prevention, which provides for liability for a domestic crime. It also determines family members and defines that a family crime means the commission of a crime, provided for in Articles 108, 109, 115, 117 and so on, by one family member against another family member. There were certain opinions often expressed in relation to the existence of that article in the Criminal Code of Georgia. Namely, why do we need Article 11<sup>1</sup>, when we have Article 126<sup>1</sup>?

The readiness of the state to eliminate the problem of domestic violence is also expressed in the fact that the Inter-agency Commission on Gender Equality, Violence against Women and Domestic Violence was created in 2017. The Commission has prepared a unified national communication strategy and action plan on violence against women and domestic violence.

In order to harmonize the national legislation with the Istanbul Convention, the Parliament of Georgia approved the package of amendments prepared by the Ministry of Justice of Georgia, which envisages amendments to 25 legislative acts. Amendments were made to the above-mentioned law, which was expanded and currently it also covers the violence against women outside the family.

According to Article 3 of the Law of Georgia on Elimination of Violence against Women and/or Domestic Violence, Protection and Support of Victims of Domestic Violence of 2017, domestic violence means “the violation of constitutional rights and freedoms of one family member by another family member through neglect and/or physical, psychological, economic, sexual violence or coercion. Article 4 of the same Law provides for the negligence of the interests of minors, which means “failure by a parent, another legal representative and/or another responsible person to satisfy physical and psychological needs of a minor, protect him/her from danger, restrict his/her right to basic education, or failure to perform actions necessary to register birth, and to use medical and

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<sup>7</sup> M. Shalikashvili, *Criminology of Violence*, publishing house Meridiani, 2012, p. 86.

other services if the parent (parents), another legal representative and/or another responsible person has (have) appropriate information, possibility and access to the appropriate services”.

On 11 January 2018, the Human Rights Protection Department was created, which monitors domestic violence, violence against women and crimes committed by minors.

The main objective of the project ‘Criminal and Criminological Aspects of Domestic Violence’ is to raise public awareness of this problem and to ensure the engagement of public.

The key message of my paper is the role of the society in the prevention of domestic violence.

At first, I will discuss the causes and factors behind the crime of domestic violence. The role of the society in overcoming them is very important. The scheme of family crisis will be as follows:

- **General social processes**
- The social status of a person involved in the conflict
- Personality

General social processes and the social status of a person involved in the conflict may be united in one group and the ground for their combination is economic hardship. There are many reasons and conditions for the above, among which unemployment is often emphasised, although there is a solution for every situation. If we try and go deeper, each member of the society will find the cause in his/her own capabilities and in the correct realization of those capabilities.

The disruption of the economic functions of a family has had proportional effect on its biosocial functions. Gender inequality, alcohol, drug addiction, less involvement of a person in social life became the factors that contribute to violence. All of the above worsened spiritual function in certain families. The relationship between family members has changed. The amount of time that family members spend together has dramatically

decreased. Aggression and cruelty at home and outside have become the norm of self-affirmation. Due to those circumstances, family conflicts emerged. The only solution for a woman oppressed by a family member was a divorce. This is the solution, after which the social status of a woman is hard. For certain reasons the society is not tolerant to a divorced woman, who finds herself subject to the rigorous evaluation of the norms of the society. It is often said that the woman herself is guilty. Our stories on the tragedy of certain women are skeptically responded: a woman may be a perpetrator herself.

When two persons connect their lives to each other, it takes a great deal of effort and time to form a unified entity. The reason for conflict between them may be:

1. the breach of ethics between spouses;
2. biological incompatibility;
3. disagreement with other family members and relatives;
4. incompatibility of interests and needs;
5. different viewpoints on raising a child;
6. personal shortcoming or negative character.

Such questions have one answer: a family conflict is always unacceptable and in the case of such conflict, minor and adolescent family members are harmed. I remember a victim 10-year-old boy, who was so beaten by his father that the boy was hospitalized and required an urgent appendectomy. Another factor is also worth mentioning: the existence of different generations in a family, a so-called traditional family, in which persons of three different generations live in one family. **At present, the condition of the elderly** is significantly worsened, often they live alone and, thus, the connection between generations is broken.

As for the personal characters of a person involved in the conflict, in this case we mean a perpetrator, in the discussion of this topic I will use five major personality traits known in psychology:

- **how well does a person know the social situation** (communication skills, etc.)
- neuroticism;
- agreeableness;

- organization and self-organization;
- openness.

Among those five traits, attention should be paid to the first one, how a person knows the social situation and, based on that, we should look for the causes and conditions for commission of domestic violence as a crime. Thus, the psyche of a person and his/her attitude towards criminal behavior is one of the important reasons. It is examined by means of biological and social determinants. Some scientists denied social factors and recognised only biological factors in shaping a person into a criminal. In the XVIII century, a French philosopher and physician JulienOffray de La Mettrie claimed that a human “is a complex organ and depends on how he/she is governed by his/her natural characteristics.”

When discussing the biological factors of a personality, some criminologists referred to a person’s age, gender, individual physical and psychological peculiarities. Indeed, in some cases, certain biological aspects are predominant in each person, such as: aggression, greed, indifference, cruelty. Not only criminologists and forensic scientists but also genealogists and psychologists had their own position on that issue. The opinion of the genealogist Charlotte Auerbach is noteworthy. In one of her works she states: “every child has a set of inherited data and eventually these data form a specific male, female, who will grow from that child”.

Depending on whether a social or biological determinant is predominant in a particular person, the image of a perpetrator is gradually formed.

As stated above, public engagement is important for the prevention of violence. A certain part of the society is skeptical about this issue, some of them are indifferent, while some of them are the victims of violence themselves.

We assume that indifference to these causes is a special reason. Often we hear about a fact of domestic violence, we may even know the perpetrator closely, in which cases we often hear the familiar phrases: we do not know what is happening, he is an accepted person to the society, he cannot be a perpetrator. I recall an example of a **Polish** criminologist, where a well-known person was a perpetrator in his family. His oppressed



wife called the police several times, but nobody could imagine that such a well-known person could be a perpetrator. Nobody believed the woman. According to the police officer, it was necessary to catch a perpetrator on fact in order to initiate the case and the proceedings. The woman's call to the police was her final call. Police found the woman dead, severely beaten by her husband. This fact may have one explanation, namely that a perpetrator is often cruel and ruthless towards the victim, while for the rest of the society he may be acceptable.

The grounds for such circumstance may be found in different theories of violence. "According to the theory of socialization, a violent action is mainly performed by the men, who have less socialization." Most of the male perpetrators were not taught in their childhood to control their feelings and to resolve the conflict situations peacefully".<sup>8</sup>

The question is how should we act in such cases? This issue has its global and scientific explanation. From a global perspective, the causes are versatile.

- Part of the society cannot protect their rights, often because they do not know the law.
- One of the issues is the referral, i.e. the extent to which a person applies to the appropriate authority (police).
- And lastly, the attitude of each member of the society towards a crime.

The ability of a part of the society to defend their rights, apart from legal education, depends on many factors. In this respect, there is the problem of general education, which in our opinion should be implemented through various measures, but mainly it should be started at school. In particular, the enhanced programs on the family institution, main values, human rights and freedoms should be offered. All of those are the basis for creating a strong civil society. (Trainings)

As for the **referral**, a victim must be sure that he/she will be protected by the law enforcement bodies and also will have support from each member of the society. This issue is also related to the attitude of the society towards a crime. That is, how each

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<sup>8</sup> M. Shalikhvili, Criminology of Violence, publishing house Meridiani, 2012, p. 63.

member of the society perceives a committed crime, especially a crime related to a family conflict. Undoubtedly, the latest statistics of 2014, regarding the number of women who died on family grounds, astounded the society. We expressed our attitude in the conference 'No to violence', held at IvaneJavakhishvili Tbilisi State University. People of different professions (sociologists, psychologists, lawyers) took part in it. Back then, I really thought that this type of crime would gradually decrease, but current reality shows that this is not the case. Recent facts really deserve the evaluation of the society as – no to violence.

I will talk about the notion of social danger. I will try to scientifically explain this issue. Namely, the problem of interrelation between the social danger and unlawfulness. In the introductory part of Ms. Tina Tsereteli's well-known work 'Social Danger and Unlawfulness in Criminal Law', the editor of the work Professor OtarGamkrelidzeemphasised the circumstance that in the applicable Criminal Code, unlike the Criminal Code of 1960, the notion of social danger is no longer used, but it does not mean that this notion is unfamiliar to the applicable Georgian criminal law. Yes, social danger, as a separate element of crime, is no longer considered but it does not mean that each of those actions lost their socially dangerous nature.

The perception of a crime, especially a crime committed on the grounds of domestic violence, must always be severe in the society. I remember the crime committed in Kakabeti long ago. A child was kidnapped from the family. The kidnapers demanded a ransom for the child. With the help of the law enforcement bodies, the child was safely returned.

The criminals were from the village Kakabeti and the residents of the village condemned their behavior with extreme severity. This reaction of the society was named 'the Kakabeti bells ring'. Such crime has not been committed for years.

In order to talk about the role and importance of the society in combating domestic crime, we should look at the modern society, which is often called vulgarized (due to the existing conflicts and established aggression).

The question is: what caused the above?

- a) Focus on the nonexistent – as psychologists say: avoiding the issue.
- b) The problem of alienation, when a person loses his/her own importance. It causes aggression.
- c) The assumption on easier perception by broader masses of the society - as sociologist JeanBaudrillard states: “we live in the society created by the media – the language of television”.

Where and how do we see the solution? Raising the legal awareness of the society; at the same time, implementation of school and higher education programmes;

What is the progress of the society if not that the personality of a human, human conscience, human life are not breached by anybody without any justification or grounds; that it is not besmirched, reviled or oppressed by anybody – these are the words by a famous Georgian writer and public figure Ilia Chavchavadze, and according to him, the society who lives consciously is every time and everywhere a solace and hope for the nation. With these words I would like to conclude my paper and put forward the following issues for discussion:

- Domestic violence in terms of criminal justice policy.
- Types of punishment for this type of crime and sharing German experience.
- Public engagement and the influence of the society on the prevention of this type of crime.
- Issues of treatment of domestic violence victims.
- Public awareness and bold steps.

## **Marina Meskhi**

### **Crimes committed in the name of so-called “honour”**

Georgia has ratified the Council of Europe Convention (Istanbul Convention) on Preventing and Combating Violence against Women and Domestic Violence, which entered into force for Georgia on 1 September 2017. Under the obligation of this convention, different changes had been prepared and have to prepare.

From the legislative changes, amendments made in Criminal Code on:

- criminalization of forced marriage,
- female genital mutilation,
- stalking and
- forced sterilization shall be marked.

According to article 42 of Istanbul Convention

“Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called “honour” shall not be regarded as justification for such acts.

This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behavior.

Parties shall take the necessary legislative or other measures to ensure that incitement by any person of a child to commit any of the acts referred to in paragraph 1 shall not diminish the criminal liability of that person for the acts committed”.

The meaning of honor crimes is defined as following: this crime involves:

- violence, including murder, committed by people who want to defend the reputation of their family or community.
- **Honour killing** is the murder of a person accused of bringing shame upon his or her family.

Motives for honor killing have included:

- suspicion of adultery,
- premarital sex or some other relationship between a woman and a man;
- being a victim of rape or sexual assault;
- refusing to enter an arranged marriage;
- seeking divorce or trying to escape marital violence;
- and falling in love with someone who is unacceptable to the victim's family.

This crime is problematic for Georgia as well. According to abovementioned article, several measures have to be taken by the Georgian government to combat this problem.

Nana Chachua

## Psychological Aspects of Domestic Violence

Obviously, the beginning of domestic violence is aggression. Theories of aggression that focus on its origins are very important in preventing domestic violence. Hostile as well as instrumental aggression is psychologically harmful to both the aggressor and the object of aggression. At the same time, it can even be a motivator for constructivism if we know how to manage it. Moreover, people can change aggressive tendencies in a variety of ways. Experimental studies have shown that aggression cannot be defused by aggressive behavior. On the contrary, responding to aggression with aggression further strengthens it. If this type of aggression occurs in the family environment, then we should expect longer-term difficulties even across generations. The management style distinguishes between an authoritative, authoritarian, liberal and neutral family. If the warmth is more pronounced, but control is still in place, we are dealing with a case of authoritative management. The authoritarian management style is characterized only by control, liberal by warmth, and neutral by none of them. The authoritarian style of management pushes for victim-abuser formation. It violates the natural tendency of human development to be constructive. Most importantly, it threatens to suppress vital impulses in all directions, both personally and socially. Where there is a lack of emotional intelligence, that is, the process of perceiving, understanding, expressing, managing and regulating emotions is limited, people cannot manage relationships in a constructive way. The overwhelming majority of parents with emotional intelligence become subject to authoritarian management. They find it difficult to have an objective perception of reality. They have their own style of events: negative explanations, negative memories, emotional lockdown, power-orientation. No matter what style of governance the family may be in, environmental factors: political, economic, social and cultural, affect the family's internal situations, processes within the family. In this respect, the style and content of the transmission of information about the processes taking place in the country and around the world is of special importance. Prevention of domestic violence is about understanding both the violence and its consequences. However, the main still of the public life and its “ani” and “Hai”.

**Professor at Tbilisi State University,**

**Doctor of Law,**

**Nona Todua**

### **The issues of legal regulation of femicide in Georgian legislation**

Recently, a new term denoting gender-based murderer has emerged in the literature.

When man kills woman for the reason that she is a woman, it is considered to be femicide.

There is a tendency to adopt this term when qualifying the murder of women, especially in the case of domestic violence (when woman is murdered).

It is interesting to what extent is it possible to substantiate this term in the legal field and, moreover, to introduce it into legislation?

- I. To clarify this issue, it is necessary to understand the meaning of the term - femicide.

it is interesting, what position does the Council of Europe (the so-called Istanbul Convention) on the Prevention and Prevention of Violence against Women and Domestic Violence develop?

There is no mention of the term "femicide" in the Istanbul Convention, though there are other concepts/terms close to it.

Consequently, it is interesting to what extent these concepts /terms are consistent with the term of the femicide?

In particular, the Convention states:

1. The concept of violence against women as a form of discrimination against women, which includes all acts of gender-based violence, regardless of where it occurs;
2. The Convention also explains the essence of gender itself. In particular, gender is the role society assumes for men and women, as well as behaviours, activities, and traits that are considered appropriate and correct for women and men;
3. The Convention also explains the essence of gender-based violence against women.

One wonders to what extent this type of violence comes along with the term of the femicide? If they coincide, then it turns out that the Istanbul Convention does in fact recognize femicide as a legal event. This will be proof that it requires the signatory countries to establish an appropriate legislative framework.

According to the Convention, gender-based violence against women is:

- A) is directed against a woman solely because she is a woman (such as forced abortion, female genital mutilation);
- B) or violence that women experience more frequently than men (such as sexual assault, rape, persecution, sexual harassment, domestic violence, forced marriage, and forced sterilization).

As we can see, gender-based violence under the Convention is of two types, and only in the first case there is a violence against women simply because she is a woman.

So, this time, exactly this first case is interesting for us to discuss. The point is that the Convention specifically lists these types of violence (forced abortion and female genital mutilation) and does not mention murder.

This means that the Istanbul Convention, that was specifically devoted to the prevention of violence against women, does not address to the issue of femicide.

So, as well as in an international convention recognized standards, also in national legislation and doctrine standards so-called "CID" group crimes include illegal acts aimed at (or intended to be) persons belonging to a particular group, or completely destroying the part of the outwards (e.g. part of the ecosystem).

For example, according to the Rome Statute of the International Criminal Court (the so-called Rome Statute), "genocide" means any act listed in the relevant article for the purpose of the total or partial destruction of a national, ethnic, racial or religious group.

In the list of actions that could lead to genocide, according to the Rome Statute, the killing of members of such a group is recognized as the primary means of genocide.

Thus, the crime of genocide belongs to a purpose-based, that is, deliberate delinquency, in which the perpetrator aims at the least partial destruction of persons belonging to a particular group. This issue is resolved in exact the same way in Georgian Criminal code.

Therefore, it is not disputed that when it comes to the killing of person belonging to a certain group, not for the purpose mentioned, but for another purpose, the act cannot be qualified as genocide.

For example, the killing of representatives of any nation for the purpose of retaliation, on the grounds that their motive for revenge for their previously committed violent crime (e.g., their violent sex crime), cannot be qualified as genocide.

The same should be said about Ecocides. According to Article 409 of the Criminal Code of Georgia, Ecocides are considered to be poisoning of the atmosphere, land, water resources, mass destruction of animals or plants, or any other action that could cause an environmental disaster.

As we can see, its perpetrator is driven to entirely destroy the ecosystem in a whole country, or the destruction of an ecosystem on its part – to provoke an eco-catastrophe. That is why one poisons the ground, or the water, and that is way one destroys the wildlife or nature.

Let's say, according to the order of initiator of aggressive war, the destruction of forests on the territory of the country by fire takes place.

Therefore, even an action which, though not only created a danger of an environmental catastrophe but also caused an environmental catastrophe, could not be considered as an Ecocide, if the purpose of the person was not to produce such an effect, but had a different purpose.

For example, the deliberate action of government officials (e.g., the deployment of companies working on malware sites in an inappropriate location) has led to the complete destruction of the ecosystem surrounding this site.

Since, in this case, the officials' action was not intended to achieve such an outcome, it is not possible to qualify it as an Ecocide.

The act committed may be qualified as another crime. For example, as a sabotage (Article 318, Criminal code of Georgia), if their aim was to weaken the country by spending a large sum on setting



up a non-profit enterprise; Or qualify as Neglect of official duty (Article 342, criminal code of Georgia) if such a result results from negligent dependence on the official's obligation to him or her or any other clause, or can be qualified with other articles.

It is possible, however, that the conduct of an official may not be subject to criminal appraisal at all and will only be regarded as showing an unprofessionalism that will result in disciplinary liability.

In the case of a different interpretation of the crimes belonging to the CID group, we would have to evaluate all actions (e.g. the introduction/implanting of high-risk techniques worldwide) as a consequence of global warming resulting in a catastrophic impact on the ecosystem.

II. Let's go back to the issue of femicide. Several questions should be answered in this regard:

- A) When is the action generally possible to be evaluated as the femicide?
- B) Is it possible to evaluate the murder of a woman by man on the ground of domestic violence as femicide?

Let's start by discussing the first issue.

Generally, an action may be qualified as a Femicide if the killings are carried out with the aim of liquidation (eliminating) women in whole or in some part of the country.

**Here are some hypothetical examples:**

1. During the armed conflict, the aggressor aimed at the destruction of persons of national origin in the given country. Consequently, in order to prevent the multiplication of this nation, they began mass killing of women. In other words, the method of mass killing of women was chosen for the purpose of genocide;

2. In any country, the killing of girls (children) has occurred because of their sexual orientation.

It should also be noted that the relevant examples of this second case do not occur not only in Georgia, but even in countries with a very patriarchal tradition where women are not even allowed to show their face in public.

But what if the aforementioned cases really happened and there were mass killings of women to this reason, for this aim? Is there a need for legislation to introduce Femicide as an independent crime (*delictum sui generis*)?

The answer on this question should be following: The killing of women in this situation for the purpose of their total or partial destruction (for the purpose of so-called "selection") is fully covered by Article 407 of the Criminal Code of Georgia - the Genocide, which refers to the purpose of total or partial destruction of a "group united by any other signs."

The point is that in a group united by any other sign, we can freely consider/ think of a united gender group (including women).

However, it is possible, but on the contrary, it is more likely that one of the strategies of aggressive warfare would be the total or partial destruction of men, not women. Such a fact would also qualify as genocide without the need for any new clause or new aggravating circumstance where the qualification would be to commit murder on the grounds that the victim's gender is male (masculine genocide).

As for abortion because a baby is a girl, in Georgia it is impossible to evaluate this act as a femicide.

There are several reasons for this, some of which are essential while others are non-essential. Namely:

1. The point is that under Georgian law the criminal protection of a person's life starts from the moment of his birth (i.e. the beginning of childbirth). Accordingly, embryo is not the primary object of legal protection, it is merely an additional object. Therefore, illegal abortion in Georgian criminal code is placed not in the chapter on crimes against human life, but in the chapter on crimes threatening human life and health, where the main object of criminal protection is not the embryos' life and health, but health and the life of the woman (mother);
2. In practice, abortion due to unwanted sex occurs even when the parent does not want the boy and the abortion is done on this basis (another issue is that such cases are less frequent);
3. Abortion, to get rid of a baby girl, is often initiated by the mother, not by her father's wishes. Thus, if we consider abortion of a baby girl as a "sex selection" for the purpose of Femicide, it would appear that the very act itself is directed by a woman, who hates her own sex and does not want to reproduce it;
4. Sexual abortion can be done in full compliance with the law when the action cannot be qualified as illegal abortion. Thus, such an act cannot be regarded as a crime (including a femicide) at all;
5. Even if the abortion is performed on the basis of sex, not on the basis of the mother's wish, but on the initiative of the father, we cannot still regard the action as femicide, since at this time the persons' purpose is not the so-called sex selection but the reason of an abortion is that the person does not want to adopt another girl.
6. That is why the abortion cannot be considered as femicide even in countries where the primary object of criminal protection against illegal abortion is the life of the embryo itself, which is considered as the life of an unborn child. These are countries where the embryo is recognized as a child, which not born yet, (For example: Germany).

There are two forms of femicide in the literature: Direct and indirect femicide. One of the forms of direct femicide is the killing of women as a result of domestic violence.

- II. **So, we have to answer the second question:** Is the murder of women perpetrated on the grounds of domestic violence a femicide? To answer this question, we need to discuss specific types of killing of women as a result of domestic violence.

One of the most common forms of killing a woman as a result of domestic violence in Georgia is, when a woman leaves the abusive man and refuses to reconcile, and for this reason the ex-husband kills her.

Is it possible to evaluate such a case as a Femicide, or even as a crime committed on the basis of gender? In other words, if we can agree with the widespread assumption, that this woman was killed, because she was a woman.

Sharing such opinion would not be justified because:

A) The motive for the murder of a former spouse is not hatred of the woman at this time. In other words, the subject of the crime has not made the decision to murder, because the victim is a woman. On the contrary, he is eager to continue his family relationship with this woman. It is another matter that the offender, due to his personal, mental, psychical or other problems, is unable

to respect his family members, including his spouse, to behave in a dignified manner in the family, which is itself the basis of family conflict and separation of spouses, breaking up;

B) What is the motive for the crime? The motive for the crime is not gender-based, but revenge that his wife broke up with him and is refusing to reconcile. Thus, the person cannot stand the divorce.

Consequently, such murder should not qualify as a Femicide, also not gender-based murder committed in an aggravating circumstance (Criminal Codes of Georgia, Article 109. Paragraph 2). This aggravating circumstance has just been added to Article 109 of the Criminal Code of Georgia (November 30, 2018).

The opponent might ask: If the motive for this murder is revenge and not the victim's gender, then in opposite case (i.e. when the husband leaves his wife and refuses to reconcile), why do women also do not commit the murder? Don't they also have a motive for revenge on their ex-husband (or partner)?

We should mention here the main reason, why during the conflict between spouses, mostly women become the victims of domestic violence.

The point is that the motive for revenge can be born in both persons minds - male or female; As well as a man abused by a traitorous wife and wife by a traitorous husband, but unlike men, women usually do not use force to satisfy this motive. Especially with its extreme revealing like committing a murder.

The nature of a woman in this respect, which is clearly different from that of a man, is not difficult to prove:

- Men also often address to violent crime, including murder, in cases of conflict with one another. They often do not even forgive one another for the so-called "reversed" word, and on this ground, they do often commit a particularly brutal murder;
- The aggression of women towards one another is addressed in much lighter forms - verbally abusing or pulling one another's hair;
- The authors of the overwhelming majority of violent crime in the world are men;
- The authors of the wars in world history are men;
- The authors of World Terrorism are men too;
- The authors of trafficking, drug business, pornography, illegal trade of weapons are men;
- The actors of so-called "serial killers" are men;
- The actors of hired professional killers ("killers") are men;
- Men are the actors of the danger that brings walking at night on the city's unprotected streets;
- The actors of the "family tyranny" are men, etc.

This list can be continued indefinitely.

Consequently, we must look at the problem of domestic violence not in a gender-based motive, but in something else. In particular, we should search for the reasons why men behave aggressively generally, especially in the family? Why is that we consider only Men as so called the "family tyrant" and not women, for the reason why other family members refuse to live with them.

If a victim (wife) provokes such aggression by inappropriate behaviour, which often leads her husband to lose temper on himself, then why is that her husband is so unwilling to divorce with her? Moreover, he is even willing to commit murder if he is convinced that his wife is about to leave him or refuse to council?

The point is that violence against wife is not the reason of wife's inappropriate behaviour, and it is well known by abusive husbands. The problem of violence perpetrated by them lies within them. That is the reason why they do not want to divorce.

Indeed, what will her abusive husband get/receive after divorce despite splitting up with his family members (wife, probably kids if they have one)? He is well aware with the fact, that marrying another woman will not solve his domestic violence problems, as he will continue to do the same violent actions with his new wife.

If there were a gender-based motive for violence against women in the family, then men would express such aggression not only against their wives but also their mothers or daughters - as they also are women? However, the fact is that tyrannical men in the family express such aggression not only against their wives but also their children, regardless of their gender. There are times when they address to violent acts against their old fathers.

Although there are far more cases of violence against wives, this is due to the fact that a person's private life (which is an important part of life) is more closely related to the marriage than to the relationship between parents and children or siblings.

Finally, it must be said that the dominant motive for killing women in domestic violence by men is not women's gender. Gender belonging can often be one of the contributors in the formation of a motive for murder (for example, a motive for revenge). That can play some role in the formation of motivation process.

The point is that the family is a place where all the nuances of human nature are more clearly seen. In other relationships, people are more likely to hide their own vicious sides. They have even more of a motive - if you do not act in the community or at work in a correct way, you will create problems for yourself - you will not get the prevailing position, but you will be dismissed from this community. Moreover, you are likely to lose your job.

And in a family where family members live in a same house, there is more opportunity for a person to satisfy his own personal and even unhealthy ambition, as well as to unleash aggression - to "release the steam." And if another family member tries to live separately from him, he won't let them – because in his mind, he's the head of the family.

There is a second problem here - unfortunately, because of the wrong upbringing, men often think that if they are head of a family, this means that they have right to use violence against family members. They do not understand that leadership is conceived of as a greater responsibility in caring for the family and not a right to violence.

In particular, it is primarily the duty of men to provide the family with both - financially and provide safety. It is the function of the head of the family and not the violence.

Thus, theories about the cause of domestic violence (material poverty of the family, the material subordination of a woman to her husband, etc.) do not say anything about the main cause of domestic violence - the aggression that lives inside the men.

That is exactly the subject that needs to be studied:

What is the reason? Is it related to the biological or mental characteristics of men, to the wrong upbringing of men, to their mentality, often to their inferiority complex, or cumulatively to all of them taken together?

The religious aspect of the issue also needs to be studied (the deficit of religious upbringing and the "Eve Complex").

Consequently, the issue should be investigated in a complex manner and should involve representatives of all the above-mentioned sphere.

I do not want it to look like, as if I want to divide society into two parts: On one side aggressor men and women-victims of their aggression, on the other side. However, unless the above-mentioned problem is not researched and appropriate actions taken, the problem of domestic violence will remain unchanged.

No matter how much we try to hide this side of the problem, it cannot be hidden.

Therefore, I find it unjustified to attempt to introduce a new form of murder in the Criminal Code - femicide. It cannot answer the essence of the murder committed with gender-based murder against women.

The reason for men's domestic violence against women should be sought, not in their desire for female hatred and willing of reduction in female sex, but in their inclination towards violence in general.

This is a very complex subject that needs to be studied.

## **Head of Human Rights Division of the General**

### **Prosecutor's Office of Georgia**

**Salome Shengelia**

#### **Practical Aspects of Domestic Violence**

The report will focus on measures undertaken by the Prosecutor's Office of Georgia on domestic violence, criminal justice policies on domestic violence cases, legislative gaps and challenges in practice.

Domestic violence and violence against women have been a priority for the Prosecutor's Office of Georgia since 2014.

In order to improve the quality of prosecution activities and to protect the interests of victims, prosecutors and investigators were specialized in criminal cases of domestic violence and domestic crime.

According to the order of the Prosecutor General of Georgia, since May 1, 2018, specialized investigators and prosecutors have been conducting investigations, procedural guidance and support of state prosecution at Courts of the aforementioned category cases.

For the preparation of prosecutors and Prosecutor's office investigators, in 2018, three specialization courses on combating violence against women and domestic violence were conducted, in which 83 officials were retrained. The training was supported by UN Women Organization. There are currently 155 specialized prosecutors and Prosecutor's Office investigators.

The Prosecutor's Office conducts an analysis of criminal cases on crimes committed on the grounds of domestic violence and gender discrimination annually. Case studies are conducted in two main areas:

The forensic part, that helps to find/investigate the crime scene, the circumstances, the relationship between the victim and the accused, as well as the personal characteristics of the victims and the accused;

The effectiveness of the investigation to determine how timely the response is to the facts, how effective the investigative actions are, the position of the injured party, and whether a summary judgment on the case is effective.

The Prosecutor's Office implements a strict criminal policy against those charged with domestic crimes. As a result of improved prosecutorial oversight, the number of victims of domestic violence addressing the relevant bodies has increased significantly and, consequently, the incidence of prosecution has increased. In 2014, prosecutions for domestic offenses were initiated against 550 persons, 1066 in 2015, 1356 in 2016, 1986 - in 1986, and in 2018 against 3955 people.

As for the plea agreement on domestic crimes cases, plea bargaining is rarely done with the accused, which requires a great deal of resources from the Prosecutor's Office of Georgia as well as from the general courts. As a rule, diversions are not used by prosecutors in criminal prosecution of family members, and generally not used by husbands in cases of violence against their wives.

It was particularly important in the 2018 Criminal Cases against Women and Domestic Violence, the identification of prosecutors' motives for gender discrimination, and the reference to the indictment on charges of gender-based intolerance. In 2016, criminal proceedings were initiated against 3 persons for gender discrimination, against 25 persons in 2017 and 111 persons in 2018. Compared to previous years, in 2018, prosecutors managed to discovering mentioned motive has increased four times.

It is noteworthy that in 2018, for the first time in the criminal case of attempted murder of a woman, the motive of gender discrimination was revealed, In particular, criminal prosecution of attempted murder of a spouse who was unregistered marriage was initiated on the grounds of gender discrimination against a person, in accordance with Article 11'19.109, 1 (b) and 3 (a) and (b) of the Criminal Code of Georgia.

As for the evidence on domestic violence cases when there is physical suffering and the psychological expertise of a person when the expertise does not establish psychological suffering, the court cannot rely solely on the subjective side - the testimony given by the victim. It should be noted that the examination is carried out the old methodology, the experts are often not fully explore the victim's psychology, is not created good conditions for the victim and, therefore, court cannot rely solely on expertise and decision-making process, it is necessary to use / rely on witnesses, including the victim, testimony.

Accordingly, a forensic report is not necessary, but its conduct is an additional lever for the prosecution if the victim does not testify on the merits of the criminal case. If there is no forensic evidence in the case, the victim must give a thorough, descriptive testimony that expresses psychological suffering and it would also be helpful to corroborate his version with the testimony of other witnesses.

What happens when a partner uses violence on partner? The Istanbul Convention considers a partner to be a family member, there is less need to introduce the concept of partner, as the current situation in Georgia makes it difficult to explain/interpret this term.

In criminal cases involving same-sex couples, cohabitation falls within the notion of a single family and therefore there is no legislative gap in this regard.

How should it be interpreted and what timeframe should be set for recognizing individuals as members of the same family, who are no longer engaged in same family activities? For example, in cases where individuals have not been single family members for the last 5 years, should they be considered as family members; However, for what period of time should individuals be engaged in the same family activities to be considered as a family member? More specifically, the notion of "engaged in same family activities" should be interpreted and criteria set out, as well as defining what permanence means. Date restrictions on family relationships will not be justified and this kind of cases should be regulated by practices. Accordingly, in specific cases it is necessary to determine the period of cohabitation, if it is coexistence / existence, the intensity, the content of the relationship and other characteristics, and thereafter determine the existence / absence of the family. For example, in the case of one-day old unregistered marriages, the court does not consider them to be family members.

The challenge is the relatively high rate of acquittals (as of 2018, acquittals were up to 8% of court cases, and partially acquitted - 3%); The main reason for this is the refusal or changing the testimony by the victim.

**Challenges:**

- Victims' refusal to testify in court on the merits of discussing the case in court.
- Standard of proof; Very high demand for detention;
- A very high degree of substantive deliberation, which causes an unreasonably high load of specialized prosecutors and creates a permanent need to increase the number of specialized prosecutors;
- Creating a system tailored to the needs of the victims;
- Acute shortage of rehabilitation programs for abusers;
- Need for multi-system research: Establishing a standard of inquiry and evidence, as well as finding effective ways to obtain evidence for serving of justice.



**Tamar makharoblidze**

**Forms of violence direct minors and legal mechanisms for their protection**

**Abstract**

Violence is one of the most painful and widespread problem in today's world. Violence direct minors is one of the most serious form of human rights abuses. The sensitivity of this issue is that the victim of violence is often a juvenile who is vulnerable to adulthood, and the trace of violence is most severe on his or her future. There have been some reforms in Georgia about violence, but the legislature has not paid enough attention to juvenile violence as one of the issues. The child has the right to be protected from all forms of abuse – physical, psychological, sexual, etc. Child abuse is often latent. The hidden nature of this action may be reason to the fact that violence in adult's life today is more focused than violence direct juveniles.

The issue of mistreatment of children has been a cause of concern for hundreds of years, but has not received much attention. An important positive breakthrough in changing public attitudes towards violence direct children was made by pediatrician Henry Kempe. At the 1961 Annual Meeting of the American Academy of Pediatrics he presented the results of a fundamental study that first referred to the term "The Battered-Child Syndrome". By this term, Kempe described so-called the nature of unexplained injuries. By this time, in most countries around the world, child's scientists and practitioners have recognized the phenomenon of child abuse (Child Abuse and Neglect) as a special problem that requires the efforts of professionals, parents and the community. However, it is no secret that in many countries there is not yet a fully-fledged legal framework enabling effective protection of children against all forms of violence. Unfortunately, Georgia is among those countries.

The studies have shown that violence direct minors occurs in all countries of the world, in all cultures and ethnic groups, regardless of their education or material background. Studies have also shown that violence direct children occurs mainly at home, school or other educational institutions, such as prisons and other detention centers, in the workplace and community. Fighting violence direct children is a serious challenge for the whole world, including Georgia. In 2016, up to a billion children suffered physical, sexual and psychological abuse. As of 2006, 120 million girls and 73 million boys are victims of sexual abuse. Studies conducted in Georgia in 2013-2017 also confirm that the situation is alarming. About 45% of the population considers violence direct children is permissible, with 60% of the population believing that more stringent methods of parenting are more effective. Educational institutions are often subject to psychological and physical abuse by

both students and adults. The report is focused on violence direct minors, its forms, legislative problems and reccomendations.

## Femicide as a Murder of Women on the Ground of Their Gender

Femicide is an universal problem which is common in every society. Such kind of violence is an absolute violation of Fundamental Human Rights and Freedoms. One of the main issues of the indicated theme, is an inadequacy of penalties.

It is important to underline that one of the positive steps taken by our State is the ratification of Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). According to the indicated Convention every kind of violence against women is strictly prohibited. Nowadays the process of harmonization of Istanbul Convention into Georgian legislation proceeds. The Government of Georgia made several major changes to strengthen the guaranties of Fundamental Human Rights and Freedoms. On the other hand, it is vital to mention that the ratification of the Convention obliges the State to take steps in order to make it enforceable which includes imposition of penalty according to the degree of crime, personality of a defendant and other important circumstances.

During the Research will be highlighted the issue of domestic violence against women, the cause of this problem and its types. There will also be emphasized the dominancy of a man and a subordinated role of a woman, which might become the provocative factor of the violence. The statistics will clear up the types of violence held against women.

The report is focused on alarming statistics of violence against women (including murder) in recent years. Its publicity raised the issue of developing an effective action strategy to combat violence against women across the country.

The report also provided a definition of the term femicide. In the article, I discussed the direct and indirect form of a femicide. The focus is on the most common form of femicide. The report shows that this type of crime is committed by an intimate partner. Honorable killings are also common.

Important part of the report is devoted to the motives and causes of femicide. We conclude, therefore, that the killing of a woman occurs as a result of the woman's subordinate role in society and the socio-cultural norms that acknowledge the superiority of the man, while the woman's life deserves less respect.

The cultural elements lead the offender to believe that he has the right to make decisions about the woman's behavior and life. Femicide maintains and reinforces social and cultural norms of subordination and oppression, which often allow the offender to regard murder as a matter of "masculine dignity."

The Georgian legislation does not recognize femicide as a separate crime. Accordingly, all cases of the death of women are investigated and punished in the general context of crimes against humanity.

Another important issue is identifying the motive for killing women.

Determining the motive of the murder is very important. According to psychological science motive is the result of motivation. Motive is the ultimate summary psychological act of motivation that results in action. The purpose of the behavior is to meet certain requirements. The subject has different circumstances for making the decision, but at least one motive lies in the decision, because the behavior psychologically has only one mental aspect. Accordingly, motive is one of the necessary conditions for the assessment of criminal activity. Determining the motive is of great importance for the planning and justification of crime avoidance measures. Generally speaking, motives have four functions: to distinguish offenses; Creating qualified staff for crime; Aggravated punishment; To alleviate.

Effective investigations of femicide, gender equality and justice are important for achieving gender equality, recognition, restoration of justice, prevention of recidivism, and transformational equality for women.

The research identified a number of important issues that require attention. Official statistics undoubtedly reflect the challenges facing the country in addressing various forms of violence against women. Although the prohibition of discrimination is so called. It belongs to the category of absolute rights, and its violation is particularly intolerable in any democratic society.

In conclusion, we can say that femicide is the most dangerous crime against women that is discriminatory. It is widespread throughout the world. Achieving gender equality is one of the major challenges in modern society.

Within the scope of the research, several important issues have been identified that warrant attention. Official statistics undoubtedly reflect the challenges facing the country in addressing various forms of violence against women. Although the prohibition of discrimination is so called. It belongs to the category of absolute rights and its violation is particularly intolerable in any democratic society, unfortunately, even in countries with well-developed democracies and large traditions of democracy, there are still cases of discrimination against certain vulnerable groups.

In 2014, there was a record number of murders of women. It is important to point out the wrong attitude that was revealed both at the investigation stage and at the court. The most important of these is to establish a motive that is reinforced by the truth of the case. Consequently, the sentence was also misunderstood, as sex discrimination in itself implies tougher sentences.

It is clear that the extreme form of violence against women - femicide, requires a high degree of state intervention. Indeed, the European Court of Human Rights has found that member states have a positive commitment to the issue of violence against women, which must be met with due diligence.

In this essay I have discussed the most dangerous form of violence against women - murder on the basis of gender. Research has shown that there is no single specific reason for killing women on a gender basis. However, patriarchal beliefs are one of the more advanced reasons to consider.

Given all of the above, we can express a positive view that the state is trying to improve legislation, a number of changes that have been made recently. At the same time, we must identify all the problems that still exist. I would like to hope that any norms that are so important in combating violence against women will have real, proper enforcement.

Tamar Zarandia, Associate Professor

## Special legal relations In juvenile

The report outlined the following main theses:

### . The parent as the legal representative of the minor

Parents are legal representatives of juvenile children and come out without special credentials to protect their rights and interests in dealing with third parties, including in court.

### . Methods of child rearing

The child must be protected from all forms of violence, regardless of how adult violence is justified (UN Convention on the Rights of the Child).

### . Premature marriage and related problems

Statistically, Georgia ranks second in Eastern Europe with premature marriages of girls. It is followed by Turkey and Tajikistan;

### . Transaction capacity of underage

If a juvenile enters into a bilateral transaction (contract) without the necessary consent of the legal representative, then the validity of the contract depends on its subsequent representation.

The purpose of the legislator is to protect the juvenile from the expected adverse effects that may result from the contract. In this respect, the article reinforces the principle that a underage who enters into a contract for which he is not legally entitled requires the consent of the legal representative.

### .Minor -juvenile

Minors - up to 7 years; Juvenile - 7 to 18 years old;

The juvenile will have the right to participate in the civil service, but his or her participation will be limited to the benefit of profitable or neutral arrangements;

In all other cases, the consent of legal representatives is required.

### . Benefit Transactions

A transaction shall be deemed to be legally unprofitable for a juvenile if there is any obligation on the juvenile. For example, bilateral purchase agreements.

Legal benefits include transactions that only improve the legal status of the juvenile, such as the acquisition of rights, the acquisition of property, gifting, and etc.

### . Property inherited by a juvenile

. “pocket money”

. Judicial practice on the protection of the best interests of a juvenile child

. Juvenile and labor relations

Labor Relations An employment contract with a juvenile under 14 years of age may only be concluded in sports, arts and culture, as well as in advertising. The working time of a juvenile aged 14 to 16 years will not exceed 24 hours per week. The working time of a juvenile from 16 to 18 years of age will not exceed 36 hours per week.

Termination of employment contract.

PhD in TSU Law Faculty

Zurab Karchava

## Introduction

Stalking is one of the forms of violence that is considered a crime under the Georgian Criminal Code only by the law of May 4, 2017. Until now, Georgian legislation was not perceived as a criminal offense and is an important novelty in the Georgian Criminal Code.

There is not one specific definition of stalking that a legislator can guide. It originated from the English-speaking word and it is a continental-European creation.<sup>1</sup> In a direct meaning It was used in hunter-gathering areas where its meaning was used as an ambush.<sup>2</sup> Nearly after the systematic surveillance of celebrities, the sense of stalking became less and less legal.

The most appropriate and topical explanation of stalking is: repeated harassment and harassment that endanger a particular person.<sup>3</sup> From here on out stalking does not have a specific definition, it should be considered as one of the serious social problems that cannot be tackled without criminal liability.

As I have already noted, with the change of time, danger has increased, and consequently the role of its threat has become alarming in many countries. Researching show that the predominant crime victim is a woman, with 30% -50% of women murdered in the United States killed by a former or acting partner. The statistics also show that up to 75% of abusers were mostly stalking. Consequently, it should not be viewed as a mere act of threat, it may be a prerequisite for murder. Stalking, as well as other forms of harassment, as I have noted, is mainly experienced by women, driven by cultural, religious, economic and political factors.<sup>4</sup> Unfortunately, society still believes that men are dominant and women have to obey him, men have the right to control a woman's life and this is a common occurrence. Accordingly, such attitudes impede the proper perception of violence against women in general.

Many states have supported criminalization of stalking, including Georgia in 2017, but it should also be noted that many countries still do not recognize stalking as criminal responsibility.

## Short historical excursion

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<sup>1</sup> 1 გერმანულ-ქართული სისხლის სამართლის ჟურნალი. ადევნება, როგორც სისხლისსამართლებრივი შემადგენლობა. ბაჩანა ჯიშკარიანი LL.M. (მიუნხენი) გვ.45

<sup>2</sup> Spohn, Viola, Zehn Jahre Anti-Stalking-Gesetz, 2017, 24.

<sup>3</sup> 3 Meloy J.R., Stalking An old behavior, a new crime, Forensic Psychiatry, volume 22, number 1 1999, 85

<sup>4</sup> 4 სისხლის სამართლის აქტუალური საკითხები, ადევნების დასჯადობის ლეგიტიმაცია, ნათია მერებაშვილი, გვ.66 თბილისი 2017



The term itself stems from the English word "Stalk", which literally means "to steal." As I have mentioned above, the term "stalking" itself has been followed by certain individuals since the 1980s, and only then has it been perceived as one form of violence.<sup>5</sup>

The basis for the criminal staling was the murder of a woman in the United States in the 1990s in a five-week banquet that killed her spouse. It also prompted the killing of prominent American actress Rebecca Schaefer, one of her fans, followed by a subsequent assassination. Following this action has already been seen in the United States as a serious call and has become a social problem. The media and the public have already begun to argue for laws that would prevent such crimes.<sup>6</sup> The first law passed on stalking is January 1, 1991, in the State of California.<sup>7</sup>

Already enacted by the first law and practices from the other countries, California has followed suit, and nearly three years later, virtually all states have adopted anti-trust laws. About 10 years later, Australia and Canada have also adopted specific regulations on stalking.<sup>8</sup>

The notion of this crime has grown from time to time and is becoming more and more global, but in many European countries this crime has not been regulated for a long time. National legislation faced a lot of opposition. Many countries did not consider the problem of stalking because they did not perceive this crime as a social problem. Until 2007, only eight Member States had adopted domestic regulatory rules about stalking.

In the last 10 years, many EU countries have signed the Convention on the Prevention and Suppression of Violence against Women and Domestic Violence. Georgia joined the Convention in 2017, but long before the Convention was recognized, there had long been negative attitudes and differences of opinion.

### Stalking in international conventions

The Council of Europe Convention covers various forms of gender-based violence, defined as "violence against women. The Istanbul Convention recognizes and proposes for the first time a series of measures to support victims of harassment. The entry into force of the Convention and its implementation at national level will bring a great deal of relief to the victims.

The Convention makes it clear that stalking is a form of violence against women. Although the Council of Europe's data on this issue is different, in the end, the victims of abduction are mostly women, and the perpetrators are men. Women are often watched after they have sex with a man. This

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<sup>5</sup> Issa, Ammer, Der Straftaftbestand der Nachstellung (§238 StGB) und die Strafbarkeit von Stalking nach US-amerikanischem Recht am Beispiel Kaliforniens, 2015, 121.

<sup>6</sup> სსსსლის სამართლის აქტუალური საკითხები, ადევნების დასჯადობის ლეგიტიმაცია, ნათია მერეზაშვილი, გვ.67 თბილისი 2017

<sup>7</sup> Mullen, P.E. Pathe M., Stalking, Crime and Justice, Vol. 29 (2002) 273,274

<sup>8</sup> 8 Aa. S. van der. New Trends in the Criminalization of Stalking in the EU Member States, Our j Crim Policy Res DOI 10. 1007/s10610-017-9359-9, 2017, 1,2

type of violence is uniquely gender-based, as it relates to a desire for dominance and control. It is not uncommon for women to be approached by men whom they have never had contact with but in general women are victims by a man whom they know him from somewhere.<sup>9</sup>

National legislation should provide for mechanisms to cope with stalking. The Convention requires States to establish criminal liability for stalking, which indicates that if a State ratifies the Convention it is obliged to criminalize the stalking. The fear of danger in Assi.<sup>10</sup> While negotiating, some member states have reserved the right to impose non-judicial sanctions for stalking instead of criminal prosecution, though they may be found guilty. That is why it is possible to make a reservation to this provision (Article 78 3 3). The authors of the Convention considered it important to formulate all gender-neutral provisions, and the definition of adherence included pronouns with both sexes. This means that all the provisions of the Convention apply in substance to women and men, which is consistent with the criminal law of most member states.

Criminal offenses are usually gender-neutral in nature and affect both men and women. The criminal liability of stalking allows the courts to examine this issue. Forms such as inviting someone to go out or texting or going to work may not be the basis for a face-to-face meeting. An important factor to consider is fear, that is, the victim must feel the fear coming from a particular person, where the intent of the offender is an important element of a criminal offense. Recognized criminal offenses, such as coercion or interference with private life or property, do not fully cover the elements of a criminal offense. To bridge this gap, criminalization of prosecution is vital.

Determination of a new crime and successful stalking of it depends largely on enforcement mechanisms. The Convention therefore contains provisions that facilitate investigations and proceedings. The aim is to ensure that victims' rights are respected at all stages of the criminal prosecution, in order to ensure its security, more effective investigation and prosecution.

### Stalking in Georgian criminal law

Stalking in Georgian criminal law came about through the influence of the Istanbul Convention. Violence against women is an unequal manifestation of power between men and women. From the Convention, we can clearly see that the focus is mainly on women, and according to Georgian legislation no such separation has occurred and this offense applies to both women and men.

An article about stalking has been added to the Criminal Code in 2017. These include: the unlawful surveillance of a person or a third party in person, his or her family or close relative, or unwanted communication by telephone, electronic or other means, or any other systematic conduct that is systematically causing mental distress and / or Violence against a family member or close relative c

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<sup>9</sup> Boon J., Sheriden, L., Stalking and Psychosexual Obsession, 2002.8

<sup>10</sup> Krupna, Karsten, in Dölling, Dieter/Duttge, Gunnar/König, Stefan/Rössner, Dieter, *Gesamtes Strafrecht*, 4. Aufl., 2017, §238, Rn. 1

pressure, and / or destruction of property reasonable fear that a person living in a force or a significant change in real danger.

According to this crime, we do not have any specific legal goodness, although we can say that the norm protects a specific individual sphere of humanity. Its freedom and freedom of decision making Opportunity.<sup>11</sup> We must also add the right to his inner peace, since we know that in the course of the stalking of human beings, first of all, psychological trauma.<sup>12</sup>

The perpetrator of this crime is a convicted person who has reached the age of any criminal responsibility. This offense also has the aggravating circumstance of an act of official conduct using. In such a case, the offense shall be qualified under paragraph 2 of this Article and shall not require additional qualification.

Objective Expression in Action. There are several alternative actions that need to be taken systematically. How many times undesirable communication with the victim should be made, this is not recorded anywhere, and depending on the intensity of the interference, the court itself has to evaluate each case. Consequently, we have a common crime with different actions.

we have several alternative actions to consider, we can discuss each of them:

Illegal surveillance of the victim or his or her family member or close relative of the victim. In this case, the person is systematically tracking the potential victim to make him / her aware of the victim's location and daily actions. It does not matter what means it will be by foot or by car. It also does not matter where illegal surveillance is carried out. According to studies, constant tracking and tracking is the most common type of stalking.

However, the development of electronic equipment has recently become more widespread and radically changed the method of tracking.<sup>13</sup> The second alternative is to establish unwanted communication by telephone, electronic or other means. Unwanted communication should mean a case of systematically abusing the victim by telephone or the internet, thereby causing fear or distress.<sup>14</sup>And also can spreading the private information by a social media information. It doesn't matter whether the culprit intended to execute her husband. Communication is considered to be undesirable if the victim does not wish to establish contact with the offender or has a negative attitude to speak with the offender and has a fearful attitude from the beginning.

Also another alternative action is any other intentional act. By introducing this action, the legislator allowed the court to insure essence.<sup>15</sup> In this action, we should assume that the person who is in

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<sup>11</sup> 1 Fischer, Thomas, Strafgesetzbuch mit Nebengesetzen, 64. Aufl., 2017, §238 Rn. 2.

<sup>12</sup> Mitsch, Wolfgang, Neue Juristische Wochenschrift (NJW) 2007, 1227, 1238.

<sup>13</sup> სისხლის სამართლის აქტუალური საკითხები, ადევნების დასჯადობის ლეგიტიმაცია, ნათია მერებაშვილი, გვ.72 თბილისი 2017.

<sup>14</sup> Tribal Legal Code Resource:Sexual Assault and Stalking laws. Guide for drafting or revising Victim-Centered Tribal Laws against sexual assault and stalking 2012. 91

<sup>15</sup> სისხლის სამართლის კერძო ნაწილი ( მე-2 წიგნი) ავტორთა კოლექტივი

frequent contact with the victim or his / her child and with these contacts find out with whom the victim, his or her whereabouts are related, and etc.

There are several types of results on the face:

1. Mental suffering of a person. Person has mental suffering or not is up to the expert to decide.
2. Reasonable fear of violence or destruction of a person or his / her family member or close relative. Fear of using violence includes any fear of being physically abused, sexually assaulted or murdered.
3. A person is forced to change dramatically. This case should be understood in such a way that the person does not allow the victim to live normally. The victim has the fear of leaving, or having to change the phone number to change jobs.<sup>16</sup>
4. or imposes its real need to significantly change it. He is so often and systematically oppressed that he thinks the victim needs to change his life significantly.

This crime must be separated from coercion and intimidation. Let's first separate it from coercion:

1. In the case of coercion, a person shall resort to physical or mental pressure to compel the victim to commit an act or to refrain from doing something. when we are talking about stalking, it is not necessary for the person to have the intention.
2. stalking is a systematic, as mentioned above, coercion can be reusable
3. It is not necessary to bring about a legal consequence in coercion

We will separate from intimidation:

1. It is mainly related to the mental impact of a person, which is an expression of damage to health, destruction of property, loss of life.
2. Stalking is systemic action in nature and intimidation be one-time
3. Intimidation always produce one outcome, and prosecution may result in one of several.

Another important issue to note is the separation from forced marriage:

1. In the case of stalking, the signs of the objective aspect of the crime are specified and the objective of the coercion of marriage is expressed by a person who is not identified in the form of coercion.<sup>17</sup>
2. When we are talking about stalking, the objective side implies systematic implementation of alternative actions, and the objective side of coercion does not necessarily mean systematic implementation.<sup>18</sup>

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<sup>16</sup> Meloy J.R., Stalking An old behavior, a new crime, Forensic Psychiatry, volume 22, number 1 1999, 90

<sup>17</sup> სისხლის სამართლის კერძო ნაწილი ( მე-2 წიგნი) ავტორთა კოლექტივი გვ.367

<sup>18</sup> იქვე 368

3. Forced marriage ends at the moment of its implementation, and it does not matter whether any unlawful action is followed, and in the course of the prosecution it is necessary to bring about any consequences from alternative actions.<sup>19</sup>

4. When we are talking about marriage coercion purpose is marriage, in stalking there is no this purpose.

From the subjective point of view, the motive and purpose of the crime are not essential.

According to the form of accusation, there is an intentional crime (direct and indirect).

As to the aggravating circumstance of this article, these are:

1. To the offender with prior knowledge of a minor, a helpless person, a person with a disability or a pregnant woman.

2. In group

3. Many times

4. Using the service

#### Court practice

Following the criminalization of this crime, judicial practice has been put into effect. About 35 criminal investigations have been launched. We have both an exculpatory and an incriminatory. Let me introduce you on case from court practice.

The verdict was delivered by the Tbilisi City Court on September 24, 2018. The court found that Z. had committed prosecution. That is, the establishment of undesirable communication and systematic deliberate action that led to a well-founded fear of violence, suffering, and a real need to change one's lifestyle in real life.

Since February 11, 2018, Z has systematically established unwanted communication with MR. Almost every day he would read at work and come home, asking for a loving relationship, if not more. He was threatening to kill her. In order not to meet Mr Z, he had to leave his job and ask his relative to leave the house. On February 17, 2018 at approximately 7:00 pm in Tbilisi, Mr NK met and threatened to kill her. The latter has had this fact and has a well-founded fear of being threatened.

The court has thoroughly examined the evidence in the case, assessed each of them, as well as whether defendant Z was sufficient to plead guilty, with the assistance of the aggrieved party of the

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<sup>19</sup> Lackner, Karl /Kühl, Kristian, StGB Kommentar, 29. Aufl., 2018, §238 Rn. 12

witnesses and the witnesses, and found the evidence beyond a reasonable doubt<sup>1</sup> to 1. Article 1 (1) the offense<sup>20</sup>

## Conclusion

Keeping track of is one of the most important and threatening actions that will definitely require the attention of criminal law. If we rely on research and results, there should be no doubt about the introduction of this crime. There may be different types of attitudes, but they have one thing in common. We have accepted the Council of Europe Convention and like all other ratified states, we need to take all necessary measures to eliminate this crime.

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<sup>20</sup> N1-0174/8302