



CHALLENGES FACING THE PROSECUTION SERVICE IN
CRIMINAL PROCEEDINGS OF CRIMES COMMITTED
WITH DISCRIMINATORY MOTIVE



The European Union
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Institute for Development
of Freedom of Information

POLICY PAPER

ON CHALLENGES FACING THE PROSECUTION SERVICE IN CRIMINAL PROCEEDINGS OF CRIMES COMMITTED WITH DISCRIMINATORY MOTIVE

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TABLE OF CONTENTS

	INTRODUCTION -----	06	
	METHODOLOGY -----	09	
	KEY FINDINGS -----	13	
	SHORT OVERVIEW OF THE LEGISLATION ---	17	
	CHALLENGES IDENTIFIED THROUGH MONITORING RESULTS -----	20	
	RECOMMENDATIONS -----	30	



INTRODUCTION



The Policy Paper was developed within the project “Promoting Prosecutorial Independence through Monitoring and Engagement” (PrIME) implemented by the “Institute for Development of Freedom of Information” (IDFI) funded by the European Union. The goal of the document is to identify the challenges faced by prosecutors in terms of prosecution of cases of hate crime, domestic offences, domestic violence and violence against women as well as elaboration of recommendations to overcome the abovementioned challenges.

Hate crime as well as domestic offence or domestic violence and violence against women is a universal reality for every society and is a complex problem widespread in the world with devastating results not only for victims but for the society as a whole due to its specific character and social threat. Approximately one third of the female population (35%) in the world has at least once been a victim of the violence.¹ The statistics are even more alarming considering the fact that this form of violence is characterized by secrecy and, in some cases, because of silence, stigma or other factors, is not revealed. Domestic violence was one of the most widespread crimes in Georgia in 2018-2019.² A significant segment of the victims (88%) were women.³ Although the indicator of launching prosecution on hate crimes has increased in 2018 compared to previous years, the indicator of prosecution launched on possible hate crime committed by law enforcement officers is still low. In addition, majority of the hate crime victims (sexual minorities) indicate to the facts of violence by the law enforcement officers, improper respond and homophobic attitudes.⁴

Based on the abovementioned, fighting the hate crime, domestic violence and violence against women is one of the priorities for both the Government⁵ and Prosecution Service of Georgia (PSG).⁶ Despite the number of activities carried out to prevent these crimes during the past years,⁷ the situation analysis and evaluation by the international⁸ and local organizations⁹ show that the Prosecution Service of Georgia is still facing the challenge of an efficient and comprehensive prosecution of the crimes of the category.

It is difficult for the prosecutors to identify the gender discrimination motive in case of crimes of violence against women and domestic violence. In majority of cases, they are not sufficiently informed on respond standards and special approaches to gender based crimes,¹⁰ which represents a gap in justice on one hand and is a barrier in protecting the rights of the victims of the crime of the type on the other.

¹ World Health Organization, [factsheet](#), violence against women, 29 November 2017.

² Ministry of Internal Affairs of Georgia, [statistics](#), of registered crime (data of 2019 is processed as of October).

³ State Audit Service, Effectiveness Audit [Report](#) – Protection and Prevention Mechanisms of Domestic Violence, February 8, 2019, p. 9.

⁴ Institute for Development of Freedom of Information, Interim Monitoring [Report](#) on Implementation of the Strategy and the Action Plan of the Prosecution Service of Georgia, 2017 – 2018, p. 59 – 60.

⁵ Official [webpage](#) of the Ministry of Internal Affairs.

⁶ Official [webpage](#) of the Prosecution Service of Georgia; In addition, the fight against hate crime and domestic offence is one of the priorities of the [Strategy](#) 2017-2021 of the Prosecution Service of Georgia.

⁷ Adoption of the Law “On Domestic Violence” (2006), criminalization of domestic violence (2012), strengthen response measures to the facts of violence (2014), establishment of the Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence (2017), legislative changes related to the restraining order (2018), introduction of the domestic violence risk assessment mechanism (2018), establishment of the special department withing the Ministry of Internal Affairs to monitor ongoing investigations into domestic crime (2018).

⁸ [Report](#) of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia, 9 June 2016, p. 17; Un women Georgia official [webpage](#), “Chief Prosecutor’s Office of Georgia presents analysis of cases of violence against women and girls”, 27 November 2018.

⁹ Institute for Development of Freedom of Information (IDFI), Overview of the Reforms in the Prosecution System of Georgia: Achievements and Existing Challenges, [Analyses](#), 2018, pp. 6 – 9; Georgian Young Lawyers’ Association (GYLA), Cases of Domestic Violence, Domestic Crime and Violence against Women, Monitoring [Report](#) #10, 2017; GYLA, Monitoring of Criminal Trials [Report](#) N13, 2019.

¹⁰ [Report](#) of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia, 9 June 2016, p. 17.

Based on the abovementioned, study and analysis of the prosecution and court response, as well as of the practice, is necessary for the respective agencies to be able to plan and implement the policy in this direction. Thus, the goal of the policy paper is to identify the challenges based on the outcomes of the court proceedings on the cases of hate crime, domestic offence, domestic violence and violence against women and to elaborate recommendations to eliminate gaps based on the analysis of the monitoring results.



METHODOLOGY



The Policy Paper is based on the results of the trial monitoring. Together with the "Institute for Development of Freedom of Information" the court monitoring was carried out by two regional nongovernmental organizations selected by the IDFI within the PrIME project – "Civil Society Institute" (CSI) in Adjara Autonomous Republic and Association "DEA" (DEA) in Samegrelo – Zemo Svaneti region.

Monitoring was carried out on cases, which included possible discriminatory signs, in particular on cases of hate crimes, domestic offences, violence against women and domestic violence at Tbilisi, Poti and Batumi city courts, district courts of Khelvachauri, Zugdidi and Senaki and Tbilisi Court of Appeals taking into consideration the specificity of the cases. During the monitoring, the observers used two questionnaires developed in advance. The first of them aiming at general assessment of cases included general questions regarding the process. The second questionnaire included detailed questions on hearing and short description of the hearing process. The questionnaires included both closed-ended questions the answer to which could be "Yes" or "No" and open-ended questions answering to which gave the observer possibility to extensively explain his/her observations.

The questionnaires made it possible to assess the prosecutors in terms of professional training and knowledge of circumstances regarding a specific case. Filed motions, arguments, and behaviors of the prosecutors during the hearing process – their attitudes to the judiciary, accused, victim, witness on the case etc., were also observed during the monitoring. Direct communication with the participants of proceedings was also the source of information.

The monitoring period was from July 2018 to October 2019. The number of the hearings monitored according to the courts and stages of the hearing are as follows:

№	COURT	INITIAL APPEARANCE	PRETRIAL	HEARING ON MERITS	TOTAL
1	Zugdidi District Court	-	13	7	20
2	Senaki District Court	-	1	2	3
3	Poti City Court	-	8	2	10
4	Batumi City Court	2	2	6	10
5	Khelvachauri District Court	3	1	1	5

6	Tbilisi City Court	-	-	44	44
TOTAL		5	25	62	92
7	Tbilisi Court of Appeals	-	-	3	3
TOTAL		5	25	65	95



TBILISI CITY COURT - 44 HEARINGS

(main hearing of the case)



TBILISI COURT OF APPEALS – THREE HEARINGS



ZUGDIDI DISTRICT COURT – 20 HEARINGS

(including pretrial hearings – 13, main hearing of the cases – seven)



SENAKI DISTRICT COURT – THREE HEARINGS

(including pretrial hearings – one, main hearing of the cases – two)



POTI CITY COURT - 10 HEARINGS

(including pretrial hearings – eight, main hearing of the cases – two)



BATUMI CITY COURT – 10 HEARINGS

(including initial appearance hearing – two; pretrial hearings – two, main hearing of the cases – six)



KHELVACHAURI DISTRICT COURT – FIVE HEARINGS

(including initial appearance hearing – three; pretrial hearings – one, main hearing of the cases – one)

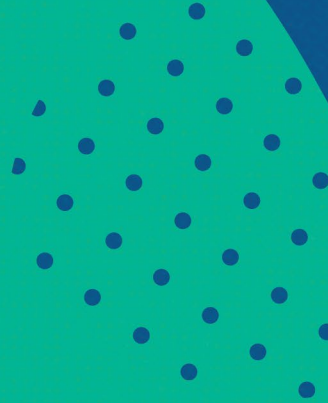
During the monitoring 95 court hearings on 84 cases of hate crime, domestic offence, domestic violence and violence against women were monitored (including first appearance hearing – five, pretrial hearings – 25, main hearing of the case – 62, appeal hearing- three).

Two focus groups were carried out with prosecutors for the purpose of the Policy Paper. The goal of the focus group was to discuss the legislation in force on domestic offence, domestic violence and violence against women as well as hate crime and to reveal challenges of criminal prosecution and court proceeding. The prosecutors were interviewed through a questionnaire with open-ended questions developed in advance for the meetings. The duration of each focus group was approximately one hour and each was attended on average by 15 prosecutors.

Since the PRIME project seeks to promote the independence of the Prosecution Service, the focus during the monitoring of the court trials was on the performance of prosecutors.



KEY FINDINGS



According to the monitoring, it is difficult for the Prosecution Service to prove the motive of gender discrimination in cases of domestic offence, violence against women and domestic violence and the implementation of gender-sensitive justice remains a significant challenge.

The monitoring of the court trials revealed that it is a challenge for prosecutors to identify intolerance by discrimination component in hate crimes. The abovementioned is caused by both lack of knowledge in the area and lack of sensitivity of prosecutors to the issue, which hinders making fair decisions on cases and sentencing an adequate punishment to the accused.

The monitoring revealed that Article 53¹ of the Criminal Code is not appropriately applied in cases of hate crimes, domestic offence, violence against women and domestic violence and the prosecution does not underline the discriminatory reason even when it is possible depending on the case circumstances.

The number of prosecutors specialized in the domestic offence, violence against women and domestic violence is not sufficient causing the specialized prosecutors to be overloaded. The abovementioned affects the quality of the prosecutors' preparation and delays the process, which as a result negatively affects both the implementation of the process and the quality of prosecution in general.

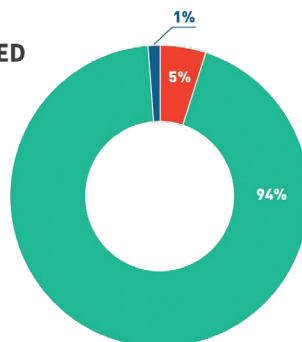
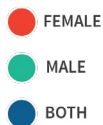
Considering the low number of the cases of hate crime, the number of specialized prosecutors can be considered as sufficient. Although considering the fact that the workload of the specialized prosecutors and investigators is not properly evaluated and special criteria and procedure are not developed, the workload of the prosecutors is impossible to be determined.

Comprehensive substantiation of the objective part of the composition of the act under charged article in the case of domestic offence and its substantiation with in-depth and evidence-based arguments still remain a challenge for the prosecution.

The problem of substantiation by the prosecution is revealed as a problem when requiring imprisonment/ leaving the remand detention in force as a measure of prevention. The motions filed to the court are based on template and unsubstantiated in majority of the cases studied within the monitoring.

The passive role of the prosecutors during the questioning of witnesses and weak communication with the victim, that was evident during the trials, is also a significant challenge.

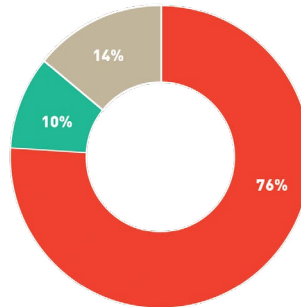
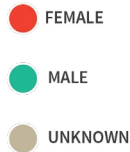
STATISTICS OF ACCUSED PERSONS BY SEX



Observation of the court trials revealed that out of 84 cases monitored, a woman was accused in five cases and a man was accused in 80 cases. In addition, in 17% of the cases, a juvenile was involved out of which in nine cases, the crime was committed in attendance of a minor, in five cases the crime was committed against a minor.

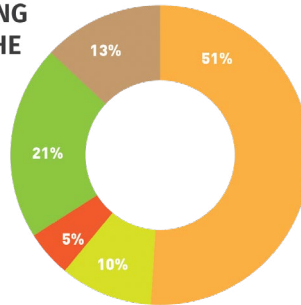
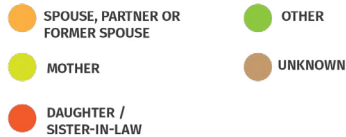
In 64 cases the victims were women, in eight cases – men, in 12 cases it was impossible to identify the sex of the victim during the observation of the trial.

STATISTICS OF VICTIMS BY SEX



In majority of the cases, the affected women were spouses, partners or former partners of the accused (51%), mothers of the accused (10%) or daughters/sisters-in-law (5%).¹¹

STATISTICS OF VICTIMS ACCORDING TO THEIR RELATIONSHIP WITH THE ACCUSED



¹¹ Out of 64 cases, in 32 cases the victim was a spouse, partner or the ex-spouse of the accused; mother of the accused – in six cases; daughter-in-law – in three cases; son/daughter – in two cases; grandmother – in one case; sister – in one case; spouse and daughter-in-law – in one case; spouse and son/daughter – in two cases; mother and father – in two cases; spouse and mother – in one case; spouse and grandfather – in one case; other – in four cases; in eight cases it was impossible to identify the relationship through observation on the process.



SHORT OVERVIEW OF THE LEGISLATION

Hate crime, domestic offence, domestic violence and violence against women are regulated by various laws: Law of Georgia on Violence against Women and/or Elimination of Domestic Violence, Protection and Support of Victims of Violence,¹² Law of Georgia on Gender Equality,¹³ Law of Georgia on the Elimination of all Forms of Discrimination¹⁴ etc. Of course, the Criminal Code of Georgia¹⁵ is of crucial importance in combating this category of crime, which, as a result of legislative amendment of June 12, 2012, laid down responsibility for domestic offence and domestic violence.

According to Article 126¹ of the Criminal Code of Georgia, domestic violence is “violence, regular insult, blackmail, humiliation by one family member against another family member, which has resulted in physical pain or anguish and which has not entailed the consequences provided for by Articles 117, 118 or 120 of this Code“. In case of crime committed under other articles by one member of the family against another member of the family, the composition of the domestic offence, as defined in Article 11¹ of the Criminal Code, is present.

Since Georgia ratified the Convention of the Council of Europe on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)¹⁶ in 2017, the State has made significant legislative amendments to harmonize the national legislation with the Istanbul Convention. As a result, article 151¹ was added to the Criminal Code regulating the crime of stalking. The Criminal Code defines stalking as an illegal monitoring, personally or through a third person, of a person, his/her family member or a close relative, or establishment of an undesirable communication by a telephone, an electronic or other means, or any other intentional action conducted regularly and causing mental torture to a person, and/or a reasonable fear of using coercion against a person and/or his/her family member or a close relative, and/or of destroying property, which makes the person substantially change his/her lifestyle, or creates a real need for changing it.

Article 53¹ was also added to the Criminal Code as a result of amendment in 2017, by which aggravating circumstances of punishment are regulated separately. The abovementioned article provides aggravation of the criminal liability in case of commission of crime on the basis of race, skin color, language, sex, sexual orientation, gender, gender identity, age, religion, political or other views, disability, citizenship, national, ethnic or social affiliation, origin, property or birth status, place of residence or other signs of discrimination with the reason of intolerance.

It should be noted that the abovementioned crimes are often committed against women, which is confirmed by the statistics discussed above.

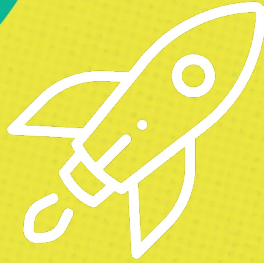
¹² [Law](#) of Georgia on Violence against Women and/or Elimination of Domestic Violence, Protection and Support of Victims of Violence, May 25, 2006.

¹³ [Law](#) of Georgia on Gender Equality, March 26, 2010.

¹⁴ [Law](#) of Georgia on the Elimination of All Forms of Discrimination, May 2, 2014.

¹⁵ Criminal [Code](#) of Georgia, July 22, 1999.

¹⁶ Council of Europe [Convention](#) on preventing and combating violence against women and domestic violence, April 12, 2011.



CHALLENGES IDENTIFIED THROUGH MONITORING RESULTS







Hearings on hate crime, domestic offence, domestic violence and violence against women are largely proceeded without significant procedural violations by prosecutors. The prosecution demonstrates knowledge of the legislation. In some cases, litigation is adequate and professional. In rare cases, the prosecution is comprehensively substantiating a crime's qualifications highlighting aggravating circumstances. On one of the cases on stalking during the monitoring period, a prosecutor was comprehensively substantiating existence of the composition of Article 151¹. The prosecution identified various factual circumstances that clearly indicated a change in the victim's lifestyle on the basis of fear.

EXAMPLE:

A person was accused of stalking ex-spouse. The accused was convicted of intentional murder of the relative of the ex-spouse. The day he was released from the prison, he went to the house of the victim, although he could not meet the ex-wife, when speaking with the family he stated that he would not leave her alone. Thereafter, the accused repeatedly visited the house of the victim.

The prosecutor comprehensively substantiated the charge and provided specific factual circumstances to strengthen the objective signs of the composition of the act. Since one of the parts of stalking is change of the lifestyle of the victim, the prosecutor indicated that the wedding of the victim with the new husband was postponed due to the systematic stalking by the ex-spouse. In addition, the victim refused to move in with the new spouse since more people lived in her family and she felt safer there. She also moved to work to another city to stay away from the accused.

Notwithstanding the positive trends stated above, there are shortcomings in the exercise of powers by prosecutors, which negatively affect the speedy and effective administration of justice. Given the sensitivity of the issue, a number of challenges the prosecution faces in the cases of hate crime, domestic offence, domestic violence and violence against women require special attention. These challenges are:

-  Proving the gender discrimination motive by prosecution in the cases of domestic offence, violence against women and domestic violence;
-  Identification of signs of discrimination with the reason of intolerance by prosecution in hate crimes;
-  Paying insufficient attention to the discrimination motives by the prosecution in the cases which might carry signs indicating to the circumstances of gender discrimination or other types of intolerance;
-  Workload of the prosecutors specialized in domestic offence, violence against women and domestic violence;
-  Insufficient substantiation by prosecution of the objective part of the composition of the act under charged article in case of domestic offences;
-  Insufficient substantiation by prosecution when filing motion on application imprisonment/ leaving the remand detention in force as a measure of prevention in cases of all three categories of crimes;



Passive role of the prosecution when questioning witness in cases of hate crime, domestic offence, domestic violence and violence against women;



Weak communication of prosecution with victim in cases of domestic offence, domestic violence and violence against women.

Despite the international recognition of violence against women as a form of discrimination of women,¹⁷ only in one case out of monitored cases, where the victim was a woman and a better substantiation of the subjective part of the composition of the act would make the discriminatory sign possible to be revealed, did the prosecutor underline the gender issue (3%) and discussed the gender discrimination motive. Analysis of other cases revealed that neither prosecution nor court had properly studied cases of the violence against women in order to identify possible gender discrimination. According to the Article 53¹ of the Criminal Code of Georgia, commission of a crime with a reason of gender is aggravating circumstance, although in practice it is hard for the investigative and prosecution agencies to identify these motives. Even in cases of clear signs of discrimination, prosecution does not pay sufficient attention whether the crime was motivated by the stereotypical attitudes to the gender role of women.

EXAMPLES:

In one of the cases, a person was accused of psychological and physical abuse of a minor the reason of which was dissatisfaction of the father by the household duties fulfilled by the girl. The prosecution did not indicate to the possible discrimination during the court trial and the person was charged by paragraph “a” of the part two of the article 126¹ of the Criminal Code.

In one case, a person was charged with physical and psychological abuse of a spouse. According to the prosecutor, in addition to the physical assault, the accused systematically repeated to the victim that she was fat, ugly, and cursed with reference to nationality. However, the prosecution did not indicate to either gender or other discrimination.

One of the cases involved physical abuse of a partner by an accused. In particular, the accused inflicted a minor bodily injury to the victim by hitting the belly by hand. The accused acknowledged the incident and indicated that the action was committed on the ground of jealousy. The prosecutor did not consider the motive of the accused in this case either and did not discuss the possibility of committing the crime on the basis of gender.

Thus, proving a gender-based motive for prosecution in domestic offence, cases of violence against women and domestic violence is a complex issue and remains a significant challenge for the administration of gender-sensitive justice.

The same is true with respect to hate crimes. In one case involving violence against a transgender woman, the prosecution not only did not explicitly cite intolerance, but also did not investigate the motive of the crime at all, especially as the victim belonged to a marginalized group. Finally, the accused was charged with a crime under Article 126 part 1.

¹⁷ Ibid. Article 3(a); OPUZ v. TURKEY, European Court of Human Right (EctHR), application no. 33401/02, 9 June 2009, paras. 185 – 191, 200; MUDRIC v. THE REPUBLIC OF MOLDOVA, EctHR, application no. 74839/10, 16 July 2013, para. 63.

EXAMPLE:

The person was charged with assaulting a transgender woman. The reason for the violence was the hatred of the sexual minorities and dressing of the victim untraditional for men. Although the investigation was immediately launched, the perpetrator was identified and the evidence collected, the case was delayed and only a few months later the person was charged. However, the accused was charged under Article 126 part one and the prosecution did not indicate the motive of hatred, which was a key element in the case.

Given the high public interest, it is necessary to highlight the case of the murder of human rights defender Vitaly Safarov on September 30, 2018. The investigation was launched under Article 108 of the Criminal Code, which was disputed from the outset for those who witnessed the crime. Following the spread of the video footage, the complicity of both accused persons in the crime became apparent. In addition, the witnesses pointed to the motive of hatred and noted that the dispute broke out on the ground of intolerance. It is important, that the accused were aware of Safarov's being Jewish which was expressed in their shouting when committing the crime. However, the prosecution initially did not appeal the hate motive, and the qualification of the crime was only changed in April 2019 under Article 109 part two (d) and (e) of the Criminal Code, which implies intentional murder under aggravating circumstances – by a group of persons due to racial, religious, national or ethnic intolerance. Tbilisi City Court ruled out intolerance motive for both accused and found them guilty of the intentional murder by a group of persons, which both sides appealed.

This confirms that identifying a component of signs of discrimination with the reason of intolerance in hate crimes is still a problem. Given that in case of circumstances indicating to intolerance the prosecution does not focus on a discriminatory motive, the prosecution does not refer to aggravating circumstances for allegation and therefore Article 53¹ is not used. Herewith, within the focus groups, prosecutors noted that article 53¹ is also not applied by the court on its own initiative. It is understood that often finding the motive for the correct qualification of a crime is an essential factor, and inadequate response to the crimes endangers public order.

One of the major challenges is the **insufficient number of specialized prosecutors** for domestic offences, violence against women and domestic violence, **which causes increase of workload of specialized prosecutors.** On the one hand, the definition of the Rule of Investigators and Prosecutors in the field of Domestic Violence and Domestic Offence¹⁸ in 2018 has, to a certain extent, helped to improve the quality of prosecutors' work. However, on the other hand, there is no comprehensive monitoring mechanism for prosecutors' workload, which negatively affects the effectiveness of prosecution. By 2019, 193 prosecutors have been trained in domestic violence and violence against women,¹⁹ but monitoring of court hearings in the regions revealed that, given the large number of cases, the number of specialized prosecutors is insufficient. In some cases, the prosecutor has to deal not only with different criminal cases at the same time, but to participate in trials scheduled one after another that result in one, two and more hours of delays of the hearings. This reflects on the quality of prosecutor's preparation and causes delay of the process. This, in the end, has a clear negative impact on both the process and the quality of criminal proceedings in general.

As for prosecutors specializing in hate crimes, no problem of their workload was identified during the moni-

¹⁸ [Official webpage](#) of the Prosecution Service of Georgia.

¹⁹ Information provided by the Prosecutor's Office of Georgia.

toring court hearings, but it should be noted that the number of such cases is low. By 2019, 71 prosecutors / investigators have been retrained,²⁰ which, given the number of cases of this category, may be considered sufficient. However, as already noted, there is no proper system in place at the PSG to fully monitor the workload of prosecutors, which makes it impossible to accurately determine the workload of specialized prosecutors for hate crimes.

For effective criminal prosecution it is important that specialized prosecutors only work on the categories of crime they are trained in which, according to the focus groups, remains a challenge.

Within the focus groups prosecutors also noted that the prosecution faces problems with judges who are not trained in hate crime, domestic offence, domestic violence and violence against women. According prosecutors, they are under the impression that the judges do not fully understand the issue. Accordingly, scale retraining of judges on hate crime, domestic offence, domestic violence and violence against women should be provided in order judges to gain comprehensive knowledge on gender equality and discrimination issues as well as to increase their sensitivity to these crimes. Herewith, the prosecutors note that irregular approach of the judges as well as their over reliance on direct evidences are challenges for the prosecution. The focus groups revealed that it is problematic to distinguish between multiple offences and the systematic character of the offence. For the prosecution it is often unclear in what cases do the judges see different episodes of crime that form multiple offences and in what cases they do see the systematic character of the crime.

Apart from the abovementioned, **the obvious challenge is to fully substantiate the objective part of the composition of the act under charged article** in case of a domestic offence and to substantiate it with in-depth and evidence-based arguments. Observations of the monitored cases revealed that prosecutors were superficial to this part.

EXAMPLES:

In one case, a person was charged with threatening to kill a family member and unlawful imprisonment. The accused had an argument with his father, threatened to kill him, then locked him in the toilet and slammed the door with construction materials. According to the prosecution, the victim's neighbors heard shouting and released him. The accused was charged under articles 143 (1) – 11¹ and 15¹ – 11¹ of the Criminal Code. With regard to threat, the prosecutor, without discussing or substantiating the objective part of the crime composition or the existence of a reasonable sensation of fear, merely stated that the accused had threatened to kill the victim. The prosecution did not support arguments with facts and just introduced the charged article to the court and the defense. It is noteworthy that because of the insufficiently substantiated allegations the court did not find the defendant guilty of this article and shared the charge only partially.

In one of the cases, a person was charged with systematic abuse of a spouse in the presence of a minor. In a recent incident, the accused threatened to kill his son and wife with melee weapon. The prosecutor had the possibility to discuss how real the fear of threat could be when the alleged offender did so using the melee weapon, although there was no discussion of this sign of the objective composition of the offence.

With regard to the crime regulated by Article 151 of the Criminal Code of Georgia, according to the provision of the article, the threat or a reasonable sensation of fear that the threat will be carried out need to be present.

²⁰ Response by the Prosecutor's Office to the Public Information Request - Letter No. 13/89744.

The latter is an important element of the crime, which must be substantiated by appropriate circumstances, genuine causal link and / or indicative behavior of the victim. However, as has been noted, the prosecution is quite often, without substantiation, limited to superficial indication of threat.

The problem of substantiation on the part of the PSG also emerges when requesting detention/leaving the remand detention in force as a preventive measure. The motions filed by prosecutors are based on template and unsubstantiated in majority of the cases. According to the Criminal Procedure Code of Georgia detention as a measure of restraint shall be imposed only in case when it is the only measure to avoid: a) abscond of the accused and obstruction of judgement; b) obstruction of the accused by obtaining evidence; c) committing new crimes. Prosecutors often demand the use of detention without any arguments and refer to grounds without factual evidence.

EXAMPLE:

The person was charged with violence against his ex-wife. At the main hearing, which also examined the issue of changing the preventive measure, the prosecution, named two circumstances for leaving the remand detention in force as a preventive measure - the risk of witnesses being influenced and repeating the crime. However, the prosecution did not present arguments relevant to the facts and was unable to substantiate any of the abovementioned circumstances.

It is noteworthy that in this case the lack of substantiation of the petition was not caused by the lack of grounds. During the trial, the accused manifested an aggressive attitude towards the victim but the prosecution did not pay attention. However, the court upheld the detention as a preventive measure, considering that there was a danger of repetition of the crime exactly because of the demonstrated aggression by the accused during the interrogation of the victim.

The monitored cases revealed that in some cases of domestic violence and domestic offence, prosecutor is limited to the testimony of the victim only and neighbors, who may have significant information on incidents of violence, are not questioned when their testimony may reveal the systematic nature of the violence. This is, of course, important for a reasonable substantiation of the motion for the application of a preventive measure with reference of threat of repeating the crime. The problem of substantiation when requesting detention/leaving the remand detention in force as a preventive measure is also confirmed by the fact that in one of the cases, in which the accused was a citizen of another country and due to his financial situation, he could cross the border, if desired, the prosecutor did not discuss the real danger of his abscond.

On the one hand, it is difficult for prosecutors to substantiate the motions to use detention as a measure of prevention. On the other hand, The fact, that often, the court only uses the most severe preventive measure without reasonable substantiation, may constitute an encouraging circumstance for prosecutors to request detention as a preventive measure without proper justification.

The monitoring revealed that the passive role of prosecutors during interrogation of witnesses is also an important challenge. In the monitored cases, prosecutors do not pay enough attention to the same question being repeatedly asked to the witness of the prosecution party in order to obtain the defense's favorable response. In addition, they often do not respond to abusive shouts by the defense and the defendant and, consequently, fail to adequately protect their witnesses from secondary victimization. Monitoring of court hearings revealed that in 33% of the cases heard in Tbilisi City and Court of Appeals, the prosecutor was passive during

questioning of witnesses. It is important that the prosecution in some cases does not object to the defense's questioning which not only refer to the witness's knowledge of the factual circumstances but also implies their subjective assessment of the fact. In one case, even the prosecutor himself/herself uttered the phrase to the accused: "I am the prosecutor and that's why you are sitting there". In one case, following the passivity of the prosecution, the judge himself/herself asked the prosecutor whether she/he wished to object the question to the witness from the defense party.

EXAMPLES:


▶ *A person was charged with systematic abuse of a former spouse, which according to the victim was caused by the second marriage. At the trial, the victim was intensively verbally abused by lawyers. In addition, the accused repeatedly emphasized loose sexual morals, repeating that the victim was a liar and a terrible mother. The lawyer also used the term "monster" to address the victim. In no case has the prosecutor objected.*

▶ *The person was charged with violence against a partner. Specifically, the accused saw a text message with sexual content on the victim's cellphone screen, which irritated him. After the victim's refusal to show the message, the accused swore at the victim, and after the victim verbally abused him, the accused spat on her and punched in the face.*


The accused did not have a lawyer and often violated procedural rules, used interrogations to express his position and make assessments. Due to the passivity of the prosecutor, the judge constantly had to interrupt him on his/her own initiative. The accused also had a mocking tone, repeatedly referring to the victim's lifestyle and repeating to her that she was an unwanted child for her father, to which the prosecutor did not pay attention.

Weak communication of the prosecution with victims in cases of domestic offence, violence against women and domestic violence should also be pointed out. The lack of comprehensive and effective communication of the prosecution may be one of the contributing factors for victims to change the testimony and refuse to testify on the stage of hearing on merits, as well as for the defense to submit written documents noting that the victim has no complaints against the accused, forgives the crime and in some cases, requests release of the accused. This problem is particularly evident in cases of domestic offences, which, because of the hidden nature of the crime, are mostly based on the testimony of the victim. Despite the fact that the action of the victim may be caused by pressure, the prosecution is still less responsive to it.

EXAMPLES:

 *The person was charged with breach of a restraining order for abuse of a mother and psychological violence on her. The accused arrived at the house the day after the order was issued, where he again had an argument with mother and the victim reported this to the police.*

It was apparent at the trial that the prosecutor had not consulted the victim as the prosecutor was not aware of the victim's position until the questioning, namely whether she intended to testify or about what she wanted to testify about. The mentioned was also confirmed by the confusion of the victim. The prosecutor did not have information that by that time the accused and the victim lived together.

 *The person was charged with verbal abuse and physical violence in the presence of a minor child of the victim. At the trial, the defense stated in its closing statement that the victim had appealed to the court and the Prosecution Service to terminate the case against the accused. The prosecutor was passive in this regard and did not discuss the possible reasons for changing victim's position. Finally, the court acquitted the accused and found him innocent.*



RECOMMENDATIONS

IN ORDER TO ADDRESS THE CHALLENGES IDENTIFIED IN THE POLICY PAPER:

- 1 The PSG should take into account the specific nature of the domestic offence, domestic violence and violence against women and consider the gender perspective in order to carry out gender-sensitive justice;
- 2 Article 53¹ should be given more use in practice and, in case of violence against women, hate crimes or where there are indications of gender-based discrimination or other forms of intolerance, the prosecution shall focus on discriminatory motive;
- 3 The PSG shall continually improve the qualification of prosecutors and continue to specialize prosecutors in the areas of hate crime, domestic offence, domestic violence and violence against women, with the aim of ensuring adequate number of prosecutors and, consequently, eliminating excess workload of specialized prosecutors;
- 4 The PSG shall ensure the establishment of a comprehensive monitoring system for the workload of specialized prosecutors for the purpose of implementation of effective criminal prosecution;
- 5 For the purpose of quick and efficient administration of justice, it is important that specialized prosecutors only work on the categories of crimes for which they are trained;
- 6 The prosecution shall provide a comprehensive substantiation of the motion for both the objective part of the composition of the act under charged article and the use of detention/leaving the remand detention in force as a preventive measure, not on the basis of the template grounds but on plausible factual circumstances;
- 7 Prosecutors should have more intense communication with victims;
- 8 Given the intensity of hate crime, domestic offence, domestic violence and violence against women and outlining combatting this category of crime as one of the priorities in the strategic document of the PSG,²¹ for establishing unified approach to fighting discriminatory crimes the Prosecution Service of Georgia should ensure that comprehensive guidelines are available and applied in practice.

²¹ 2017 - 2021 Strategy of the Prosecution Service of Georgia.

