

TRIAL MONITORING OF THE CASES ON THE CONVICTED DEFENDANT AND VICTIM WOMEN

2018

● Trial monitoring of the cases against the defendant women and convicted in drug-related crimes and analysis of judgments

● Trial monitoring of the cases on the violence against women and domestic violence and analysis of judgments



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- ✓ Trial monitoring of the cases on the violence against women and domestic violence, analysis of judgments
- ✓ Trial monitoring of the cases against the defendant women and convicted in drug-related crimes, analysis of judgments



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Non-governmental organization the Human Rights Center, formerly Human Rights Information and Documentation Center (HRIDC) was founded on December 10, 1996 in Tbilisi, Georgia. The HRIDC aims to increase respect for human rights, fundamental freedoms and facilitate peacebuilding process in Georgia. To achieve this goal it is essential to ensure that authorities respect the rule of law and principles of transparency and separation of powers, to eliminate discrimination at all levels, increase awareness and respect for human rights among the people in Georgia.

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ABOUT THE PROJECT

From December 15, 2017 to June 15, 2018, Human Rights Center (HRC) with financial assistance of the Bulgarian Development Aid through the Embassy of the Republic of Bulgaria implemented the project “*Trial Monitoring for Women,*” which aimed to support transparency of trials and raise accountability of the judiciary or prosecution regarding the cases where women are victims of violence as well as cases where women are defendants and convicts in drug-related crimes.

The project aimed to carry out the following objectives: to reveal whether the principles of fair trial are ensured at the proceedings, towards the victim women, and women who are defendants and convicts, such as principle of adversarial proceeding and equality of arms, right to reasoned decision, right to defense and independence and impartiality of judiciary; also to raise awareness and reveal specific shortcomings which constitute obstacles for ensuring a fair trial in cases where women are victims.

In the line to the project goals, the research team decided to work with two target groups:

- **Monitoring of the court hearings in the criminal cases panel of the Tbilisi City Court and analysis of the enforced judgments, where women are victims of violent crimes;**
- **Monitoring of the court hearings against the women defendants in drug-related crimes and analysis of the enforced judgments against the women convicted for the same category of crimes in the view of types and measures of the imposed punishments.**

The following crimes against women punishable under the Criminal Code of Georgia (CCG) fell under the monitoring focus within the realm of first target groups:

- **Crimes against human life and health;**
- **Crimes which create threat to human life and health;**
- **Crimes against sexual freedom and sexual inviolability;**
- **Crime against human rights and freedoms**
- **Hate crimes.**

As for the second target group, the monitoring covered:

- **Court hearings into the crimes punishable under the XXXIII Chapter of the Criminal Code of Georgia, where women are defendants or/and convicted; judgments of conviction which have entered into force.**

During the trial monitoring in the period from January 10 to May 10, 2018, the cases heard by the criminal cases panel of the Tbilisi City Court mostly referred to the crimes committed against human health, namely cases about domestic violence. In individual

cases, there were examples of violence against women, drug-related crimes, and cases qualified as trafficking and rape. It was impossible to attend and monitor the trials into the cases on trafficking and rape as court proceedings in similar cases are closed.

In line with the project goals, in the frame of the trial monitoring, the HRC lawyer/monitors monitored court hearings of 88 criminal cases and studied 150 judgments of conviction which have entered into force.

The findings and analyzed information as a result of the trial monitoring and analysis of the judgments are presented in the respective chapters of the report below.

RESEARCH METHODOLOGY AND PROCESS OF DATA COLLECTION

The monitoring report aims to reveal whether the principles of fair trial are ensured in relation to victim women, defendant and convicted women at the proceedings of criminal law and identify specific or systemic shortcomings which constitute obstacles for ensuring fair trial in cases where women are defendants and convicts in drug-related crimes.

The following methodology instruments were used when working on the below-presented monitoring report:

- Attending/monitoring the hearings into criminal cases in the Tbilisi City Court;
- Assessment of the court proceedings based on the special forms elaborated for the trial monitoring;
- Request of the judgments of conviction which have entered into force and their analysis;
- Cooperation with partner Civil Society Organizations (CSOs) and exchange of information about the ongoing criminal cases on domestic violence and violence against women processed by the partner CSOs;
- Request of statistical information and their analysis for the goals of the research;
- Request of public information from different state institutions and their analysis.

Attending/monitoring the hearings of the criminal cases in the Tbilisi City Court:

HRC monitors, in accordance to individual schedule elaborated specifically for them, attended the court proceedings into criminal cases relevant to the project goals at the Tbilisi City Court every day. The monitors received information about the qualification of the charge and the defendant and victims in these cases from the information scoreboard in the Tbilisi City Court and from the official website of the Court. After attending and observing the trials, the monitors filled out special report forms about each hearing.

Assessment of the court proceedings in accordance to the special forms elaborated for the trial monitoring:

2 special evaluation/monitoring forms were elaborated for the monitors: evaluation form **for the pre-trial hearing** and evaluation form for the **trial on merits**. The forms were elaborated specifically for the goals of this monitoring and contained both “closed” and “open” questions. The court proceedings’ evaluation forms, in accordance to the stage of proceeding, contained questions about the duties and responsibilities of the court, prosecution, victim, defendant and defense in accordance to the Criminal Procedure Code of Georgia (CPCG). Consequently, the trial monitoring component of the report fully depends on the reports from court hearings. In this way, the team collected impartial, measurable information that made identification of significant aspects possible.

Request of the judgment of conviction which have entered into force and their analysis:

For the purpose of the monitoring, based on the statistical data received from the Tbilisi City Court and district courts, the copies of the judgment of conviction which have entered into force were requested. The judgments were analyzed in the view of different legal and factual circumstances and also with regard to violent crimes, the reasonability of judgments was analyzed; in case of drug-related crimes, both reasonability and types and measures of imposed punishments were analyzed.

Cooperation with partner CSOs and exchange of information about the ongoing criminal cases on domestic violence and violence against women processed by the partner CSOs:

In the course of the project, HRC monitors met the lawyers of Human Rights Center and partner CSOs – Sapari, Partnership for Human Rights (PHR) and Anti-Violence National Network of Georgia. The practicing lawyers shared the information about single or systemic shortcomings in the investigation stage, which they observed with regard to the criminal cases they work on.

Request of public information and their analysis:

One of the key instruments of the monitoring was to request public information from relevant institutions. HRC requested public information from the Ministry of Internal Affairs (MIA), Ministry of Corrections, Chief Prosecutor’s Office of Georgia, State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking, Special and Emergency Situations Management Center “112”, Supreme Court of Georgia and the system of common courts.

STATISTICAL ANALYSIS

Although there are legislative mechanisms regulating violence against women and domestic violence, victims’ supporting services are enhanced and much effort is taken to raise public awareness, the number of cases of domestic violence and violence against women is still alarming. The approach of the society towards these facts is also problematic, when violent behaviors of the harasser are often justified. In accordance to

the results of the National Study on Violence against Women¹, which was published on March 6, 2018, ***“women and men show a high degree of tolerance and acceptance towards the use of physical violence against women in relationships, and they also share inequitable views on sex and sexual violence. Of those surveyed, almost one quarter of women (22 per cent) and one third of men (31 per cent) believe that wife-beating is justified under certain circumstances. Moreover, almost one quarter of all women (23 per cent) and nearly half of all men (42 per cent) believe that a wife should obey her husband even if she disagrees.”***²

The statistical data on violence against women and domestic violence is alarming.

In order to analyze the statistical data, the HRC addressed the MIA and the Chief Prosecutor’s Office of Georgia.

HRC requested information about registered and solved violent crimes in the period from January 1, 2017 to February 1, 2018, where victims were women. In accordance to the provided information, the MIA does not conduct gender-based statistical analysis of the processed cases, which could enable us to estimate how many victims were women in the registered and solved crimes. According to the information provided by the MIA, in 2017, 2143 facts of crime were registered according to Article 126¹ of CCG³ and 1554 cases were opened. According to this information, the number of victims of this crime and their gender identity is vague. The same can be said about 2330 cases opened out of 2636 facts of drug related crimes where it is not possible to identify gender identity of perpetrators.

HRC requested the information from the same period of time with regard to the criminal cases related to violence, over which they had carried out prosecutorial oversight and state prosecution in the courts, and where victims were women. In accordance to the information provided by the prosecutor’s office, from January 1, 2017 to January 31, 2018, **2 438 women** were victims of violent crimes. Among them:

<i>Crimes against human life:</i>	
Article 108 of the CCG	5 victim women;
Article 109 of the CCG	8 victim women;
Article 115 of the CCG	3 victim women;
Article 116 of the CCG	1 victim woman;
<i>Crimes against human health:</i>	
Article 117 of the CCG	4 victim women;

¹ See information about the GeoStat’s report at:

<http://www.geostat.ge/index.php?action=news&npid=1264&lang=eng>

² <http://georgia.unwomen.org/en/news/stories/2018/03/one-in-seven-women-in-georgia-experiences-domestic-violence-new-national-study-finds>

³ Article 126¹ “About Domestic Violence”, Criminal Code of Georgia.

Article 118 of the CCG	17 victim women;
Articles 120 to 126 of the CCG together	494 victim women;
Article 126 ¹ of the CCG	1514 victim women;
Crimes against Sexual Freedom and Sexual Inviolability:	
Article 137 of the CCG	14 victim women;
Articles 138 to 141 of the CCG together	6 victim women;
Crimes against human rights and freedoms:	
Article 143 of the CCG	33 victim women;
Articles 143 ¹ⁿ to 143 ³ of the CCG together	8 victim women;
Articles 144-144 ² of the CCG	2 victim women;
Article 150 of the CCG	9 victim women;
Article 151 ¹ of the CCG	8 victim women;
Articles 156 to 159 of the CCG together	17 victim women.
Information about the victim women in the domestic violence cases was requested from the Chief Prosecutor's Office of Georgia:	
Article 11 ¹ -108 of the CCG	9 victim women;
Article 11 ¹ -109 of the CCG	3 victim women;
Article 11 ¹ -115 of the CCG	4 victim women;
Article 11 ¹ - 117 of the CCG	6 victim women;
Article 11 ¹ -118 of the CCG	12 victim women;
Article 11 ¹ -120 of the CCG	39 victim women;
Article 11 ¹ -126 of the CCG	31 victim women;
Article 11 ¹ -150 of the CCG	10 victim women;
Article 11 ¹ -151 of the CCG	171 victim women;
Article 11 ¹ -151 ¹ of the CCG	4 victim women.

The statistical data provided by the Chief Prosecutor's Office of Georgia does not show the data about the Article 19 of the CCG, which refers to attempted crime.

Information provided by the Legal Entity of Public Law (LEPL) "112" if the MIA:

HRC addressed the LEPL "112" of the Ministry of Internal Affairs and requested information about phone calls the "112" had received with regard to the cases of domestic violence and violence against women from January 1, 2017 to February 1, 2018. HRC also requested information about the persons who had called the "112" (whether it was the victim or other person). In response to the requested information, LEPL "112" answered that ***"Information about domestic violence/family conflicts, which "112" receives for further reaction cannot be equated with real facts of domestic violence as "112" is the primary source for processing the information. Categorizing of the incidents does not aim to determine contextual similarity of the notification with legislative disposition but accurate identification of the priorities and types of the emergency brigade, which shall be sent to the site of the incident for response."*** The letter from the

“112” also read that “correct qualification of the incident is done by authorized units of the MIA, which arrive on the site of incident.”

With regard to the clarifications provided by the “112”, the Public Defender of Georgia made an interesting evaluation in the monitoring report “2016-2017 Action Plan to Combat Violence against Women and Domestic Violence and to Protect Victims”, which states that **“LEPL “112” records the notifications they receive about domestic violence/family conflicts but does not analyze them in details”⁴.**

As for processing and analysis of the notifications received in the “112” of the MIA for further response, at the beginning of 2018, the Public Defender of Georgia recommended and called on the MIA **“to conduct analysis of the notifications the LEPL “112” receives with regard to alleged domestic violence and family conflict facts”⁵.**

According to the HRC assessment, the Public Defender had well-reasoned recommendation and its fulfillment does not require the MIA to take particular efforts as the unit which receives information about violence fact (“112”), as well as the unit which records and responds to them (patrol or criminal polices) are parts of the MIA and consequently it should not be difficult for the Ministry to obtain, double-check and process the information.

Statistical information provided by the Supreme Court of Georgia, City and District Courts:

In 2018, HRC addressed the Supreme Court of Georgia and requested statistical data about the judgments on violent crimes committed against women and about the judgments which have entered into force against the women, who were convicted for drug-related crimes. The letter requesting the public information underlined that number of verdicts against violent crimes on the one hand, where women were victims and on the other hand, the judgments against the women convicted for drug-related crimes represented relevant information for the research. The response letter from the Supreme Court reads: **“The statistical data on victim women has been recorded since January 2018 using statistical reporting forms. In 2017, the female victims were recorded only in connection to the crimes which are punishable under specific articles of the CCG. Consequently, we are sending you the information about the number of female victims and convicts in the criminal cases which were processed by the district and city courts of Georgia in accordance to the crime categories you requested.”** The letter was

⁴ <http://www.ombudsman.ge/uploads/other/5/5042.pdf>

⁵ <http://www.ombudsman.ge/ge/recommendations-Proposal/rekomendaciebi/saxalxo-dsaxalxo-damcvelma-ojaxsi-zaladobis-saqmeebze-araefeqturi-reagirebis-gamo-rekomendacii-mimarta-sinagan-saqmeta-saministrosamcvelma-odjaxshi-dzaladobis-saqmeebze-araefeqturi-reagirebis-gamo-rekomendacii-mimarta-shinagan-saqmeta-saministros.page>

enclosed with the clarification “data about the number of female victims and defendants in accordance to the cases processed by the city/district courts of Georgia in 2017 and in January 2018,” and the statistical information included **279 judgments**.

Considering the abovementioned information, HRC, based on the information provided from the Supreme Court, addressed **26 district and city courts** of common courts and requested⁶: 1. Copies of redacted judgements on violent crimes which have entered into force together with relevant quantitative indicators where victims were women; 2. Redacted copies of the guilty verdicts on the drug-related crimes with relevant quantitative indicators where defendants were women.

As a result of the requested public information, it was estimated that information requested from **26** district/city courts contained **up to 700 judgments** instead of **279 judgments** as it was reported by the Supreme Court. For example: according to the 2018 data of the Supreme Court, 111 judgments were passed with regard to the Article 126¹ of the CCG, while the total number of judgments passed with regard to the same article in the same period of time provided by the district/city courts was more than 300.

Methodology of statistical data processing of judgments of conviction requested from the first instance of the court may be doubtful as higher instances of court may have passed judgment of acquittal over the same cases, which already annuls the information provided by the first instance court about “guilty verdicts”.

In order to check this issue and get accurate information, HRC addressed the Tbilisi and Kutaisi Appellate Courts and requested information on how many judgments of conviction on violent crimes and drug-related crimes were appealed at their courts from January 1, 2017 to February 1, 2018. The information provided by the Kutaisi Appellate Court reads that “**Until January 1, 2018 the Kutaisi Appellate Court did not conduct gender-based statistical analysis of cases.**” It means that nowadays it is impossible to make the statistical information provided to the HRC about the status of judgments of conviction passed by the district/city courts in 2017 more accurate due to the probability that they were appealed at the cassation/appellate courts.

Considering the abovementioned, if the statistical or other information provided by the first instance court is not compared with the information processed by the appellate/cassation courts, it is impossible to get true, trustworthy and relevant information.

It should be noted that collection of statistical data about violence against women and domestic violence and their analysis is the obligation of the State under different international agreements it has signed.⁷

⁶ <http://hcoj.gov.ge/ge/common-courts/organization-charter/raionuli-saqalago-sasamartlo>

⁷ “The member states shall ensure contextual analysis of causes and results of violence facts, shall collect statistic data and evaluate taken measures for the prevention and eradication of violence,” UN

CHAPTER I: MONITORING OF THE TRIALS IN THE CRIMINAL LAW PANEL OF THE TBILISI CITY COURT AND ANALYSIS OF THE JUDGMENTS WHICH HAVE ENTERED INTO FORCE, WHERE WOMEN WERE VICTIMS OF VIOLENCE

In the line to the project goals, trial monitoring was one of the key components of the study, which aimed to observe how the principles of fair trial were ensured with regard to the victim women in the course of criminal law proceedings. The principles of fair trial include: adversarial proceeding and equality of arms, right to reasoned decision, right to defense and independence and impartiality of judiciary.

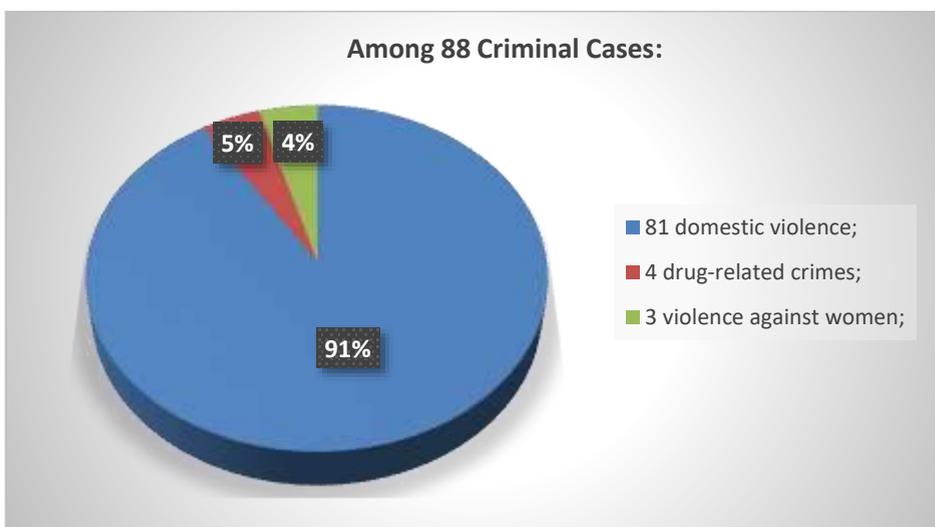
The principles of fair trial are ensured and guaranteed under the Constitution of Georgia, Criminal Procedural Code and European Convention on Human Rights. It creates grounds to conduct litigation process in accordance to the equality of arms and adversariality which includes granting equal opportunities to the parties.

In accordance to the acting Criminal Procedural Code of Georgia, prosecution defends the interests of the state in the process of criminal prosecution, while the defendant and his/her advocate defend interests of the defense side. Therefore, the victim is deprived of the possibility to participate in the court proceedings as a party. The prosecution defends the interests of the victim and it is his/her full responsibility to adequately defend the victim's interests. Meanwhile, among the duties of the prosecution it is important: to timely react to the cases of violence against women and domestic violence; to conduct effective investigation; to make correct qualification of the fact and verify it with relevant evidence; it is important to obtain trust of the victim in this process. Although the investigation is one of the important and key phases in the criminal proceeding, the stage of court hearings into the criminal case is also important with its relevant results.

From January 10, 2018 to May 10, 2018, HRC monitored ongoing trials into criminal cases on violence against women, domestic violence and drug-related crimes in the criminal cases panel of the Tbilisi City Court. In line with the research goals, the monitors selected the cases according to concrete criteria - women were victims and defendants.

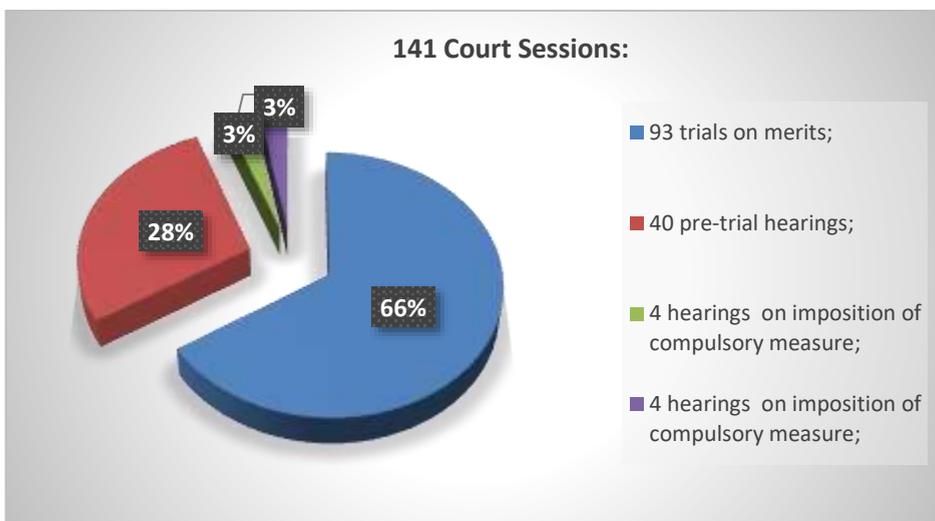
In accordance with the criteria to monitor the abovementioned court hearings, the HRC monitors **monitored 88 criminal cases**, which were qualified as follows:

*Convention on the Elimination of All Forms of Discrimination against Women, Facultative Protocol and general recommendations, general recommendation N 19 (Violence against Women), p.20
"Parties shall support research in the field of all forms of violence covered by the scope of this Convention in order to study its root causes and effects, incidences and conviction rates, as well as the efficacy of measures taken to implement this Convention," Council of Europe Convention on preventing and combating violence against women and domestic violence.*



Considering the ongoing hearings into 88 criminal cases, the monitors attended 141 trials.

The monitors attended the following stages of the criminal law proceedings:



Based on the reports of the HRC monitors about the observed 141 court hearings, in accordance with the information provided by the parties of the court hearing: judge, prosecution, defendant/defense side:

- Mainly 22 judges out of 40 judges, who are engaged in the investigation phase, pre-trial hearing and trial on merits in the Tbilisi City Court, discussed the cases about violence against women and domestic violence. 13 out of 22 judges were women and 9 men;

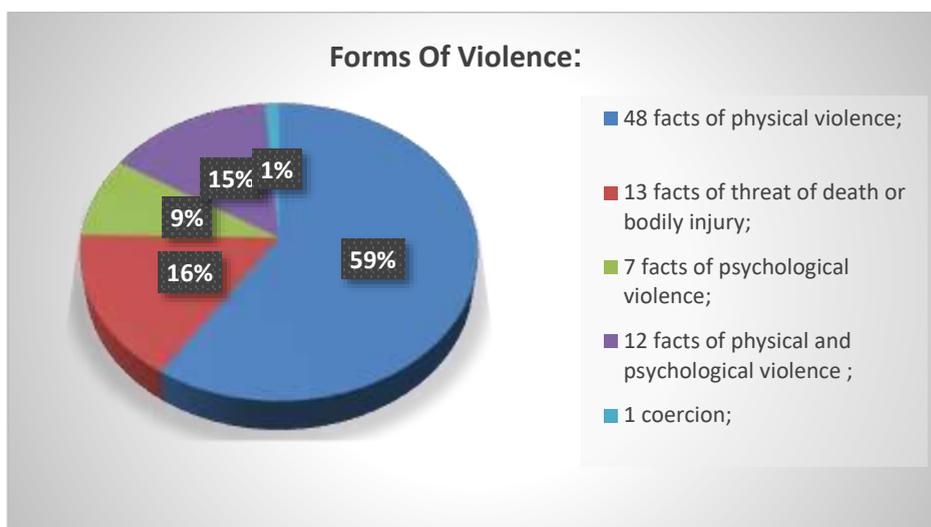
- During the observed court hearings, 47 prosecutors from the chief prosecutor’s office, Tbilisi and Tbilisi district prosecutor’s office represented the prosecution in the court. 22 women and 25 men were among the 47 prosecutors.
- In 70 out of 88 processed cases the defendants had private lawyers; in 7 cases, the lawyer from the State Legal Aid Service represented the defendant; 11 defendants did not have a lawyer and defended her/his interests him/herself;

It must be noted that no motion was made for recusal or self-recusal in none of the observed 88 cases.

With regard to plea bargaining, the monitoring results showed that plea agreements were signed only in 5 out of 88 cases; in 4 of them, the defendant was charged for a drug-related crime and in 1 case the defendant was accused of domestic violence.

Monitoring results from the court hearings into domestic violence cases

As a result of monitoring of court hearings, HRC monitors observed 81 cases qualified as domestic violence cases. According to the information collected from their reports, the following forms of violence were observed during the court hearings of domestic violence cases.

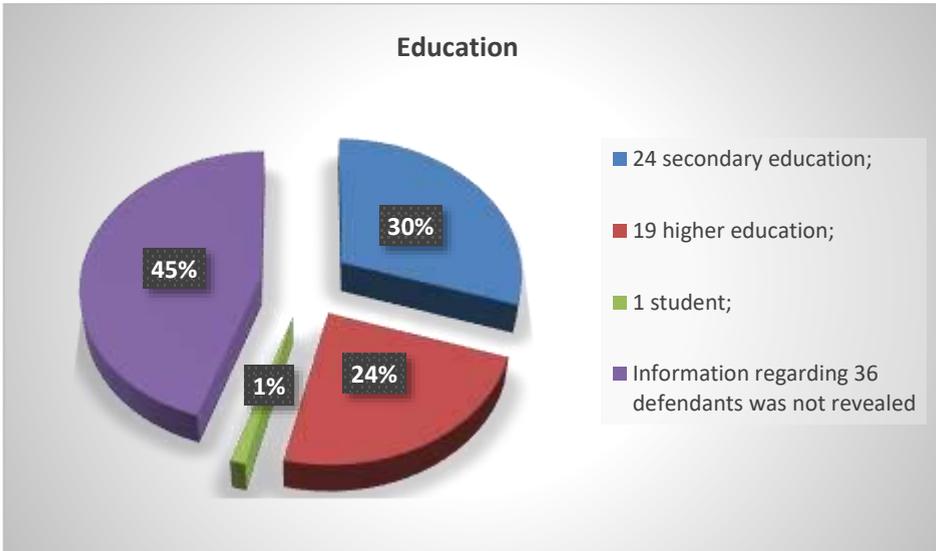


In 81 cases of domestic violence, the victims of violence were:

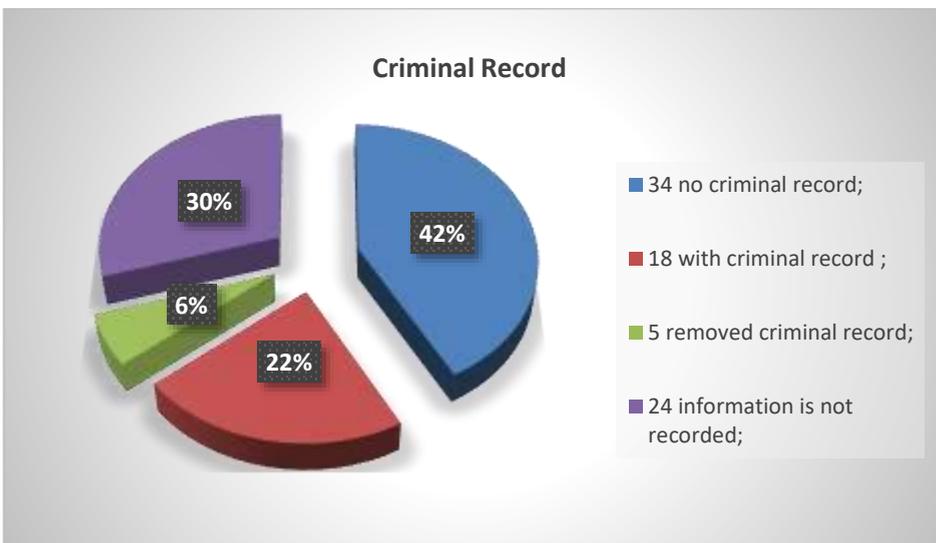
38 cases:	wife
17 cases:	former wife
2 cases:	pregnant wife
7 cases:	wife and child/children
11 cases:	child

5 cases:	former wife and children
2 cases:	former wife and her husband
1 case:	wife and daughter-in-law
6 cases:	parents
3 cases:	grandmother
4 cases:	sister

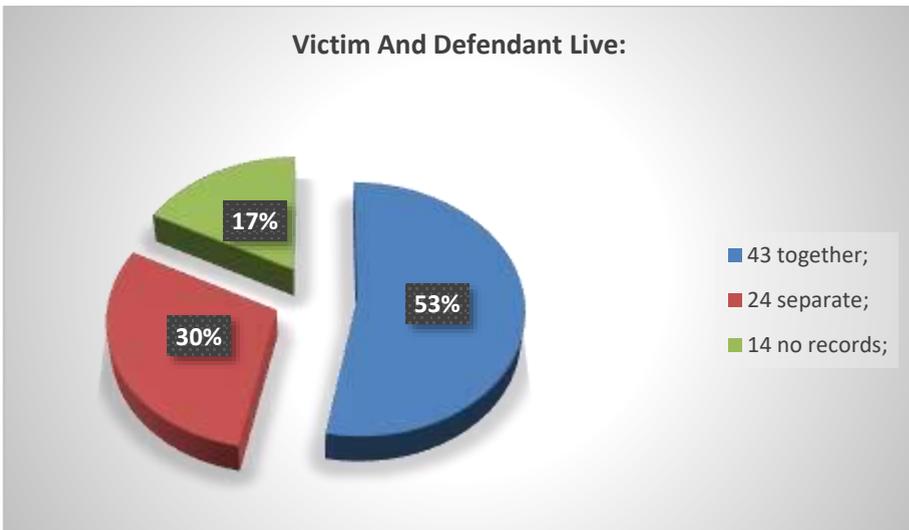
According to monitoring results, in 81 cases the information about the education background of the defendant is as follows:



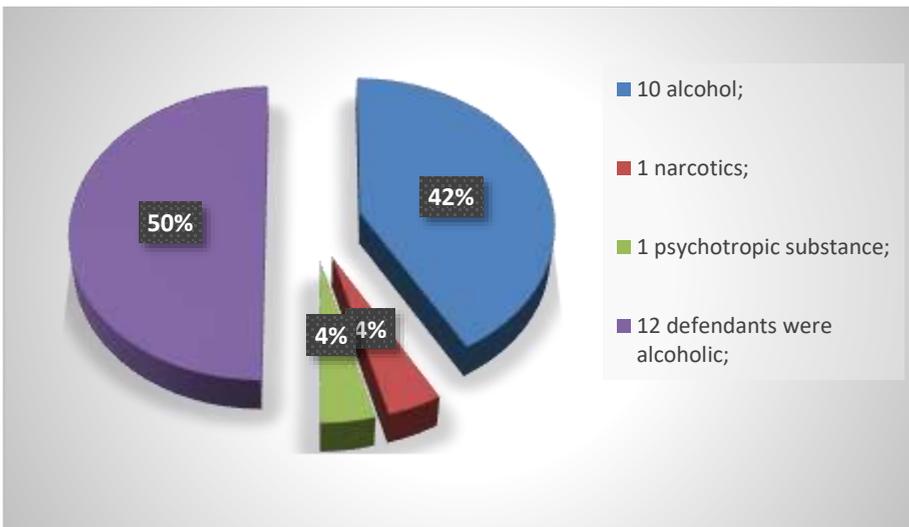
Information about criminal record of the 81 defendants



Information about relationship between the victim and the defendant



In accordance with the information received from the trial monitoring, in the moment of domestic violence and violence against women, the defendants were under the influence of different substances:



During the trial monitoring, besides the characteristic features of the victims and defendants, the monitors identified the number of children who live in the environment of violence. In the monitored **81** cases of violence, **101** children and more lived in the families and witnessed facts of violence.

As for other significant information collected during the trial monitoring, the HRC monitors' reports show that the victims mostly do not attend the court hearings. According to the monitors' reports, the victims attended only 14 out of 135 court hearings; the victim did not attend 35 court hearings because she was to be interrogated; the victim did not attend 54 court hearings; it was impossible to identify personalities of the victim in 32 hearings. It shall be noted that victims refrain from attending the court hearings not to complicate relationships with the defendants.

Different practice was observed with regard to defendants – they attended almost all court hearings. During the court hearings, the judges fully explain their duties and responsibilities to the defendants in accordance to the criminal procedure code. In some cases, judges provided detailed clarifications and asked the defendants whether everything was clear for them. A similar approach was used when the defendant did not have a lawyer and tried to defend his rights personally.

One of the key issues is how clear the content of the imposed charge is for the defendants. In accordance with the monitors' reports, 69 out of 81 defendants claimed in front of the judge that the content of the imposed charge was clear for them; 7 defendants said the content of the charge was not clear for them; the positions of the rest 5 defendants were not clear.

After clear understanding of the imposed charge significant follow up is whether he/she feels himself/herself guilty of the imposed charge. According to the monitoring reports, in 47 cases the defendant admitted the crime; in 19 cases the defendants did not admit the crime; in 8 cases they partly admitted the crime; in 1 case the defendant enjoyed his right to silence and in 6 cases the position of the defendant was not clear.

In the research part of the trial monitoring the issue of compulsory measures used against the defendants was analyzed. It showed that in 66 out of 81 criminal cases the court used imprisonment as compulsory measure; in 15 cases the court used non-imprisonment measure – bail.

In **37 cases** out of 81 cases the defense side made a motion to change the compulsory measure. In **3 cases** the defendants made a motion to change the compulsory measure – imprisonment and in **5 cases** the judge determined presence/absence of the issues related with the changed compulsory measures.

In 40 cases out of 81 cases, the motions to change the preventive measures into non-custodial sentences were raised. Only 2 of them were satisfied. In one case the imprisonment was changed into non-custodial compulsory measure – **bail** and in the second case the judge did not use any form of compulsory measure.

It should be noted that among the monitored cases, the defense side did not motion in regards with the changing of compulsory measure in **36 cases/defendants**.

The motions regarding changing of compulsory measures were well-argued and verified by the following circumstances:

- The evidence in the case was already collected and it was impossible to destroy them. Also, the witnesses were questioned in the court and the defendant could not influence their statements;
- As the defendant and the victim reconciled there was no threat of repeated fact of violence;
- Notarized notification of the victim – to change the imprisonment into less strict compulsory measure, to discharge the defendant from criminal liability and no complaints against the defendant;
- The initial threats, which became ground to impose imprisonment on the defendant, no longer existed. The defendant admitted the committed crime and regretted it;
- The amounts of the proposed bails in exchange of imprisonment term: 1000, 1500, 2000, 3000 and in one case 10 000 GEL.

The prosecution did not agree with any of the motions put forward by the defense or the defendant regarding the changing of the compulsory measure from the imprisonment term to the non-custodial measures and clarified that:

- There were threats of repeated crimes as the defendant systematically harassed the family members and was once already convicted for the domestic violence;
- Domestic violence has a peculiarity and as they are family members, there is threat of influencing the witnesses and committing new crime;
- There are increasing threats of influencing the witnesses as well as threat of repeated crimes. According to the clarifications of the victims, the defendant systematically harassed them;
- The defense side did not present new substantial circumstance which could become ground to change the imprisonment term and the initial threats are still present;
- The restraining order issued to the defendant failed to prevent new acts of violence that proves that he has not changed his attitude towards the domestic violence;
- The defendant systematically harassed the family members, and particularly aggravating is that it was done in the presence of minor child;
- Formal circumstances of the crime are still present; no new circumstances were identified that could influence the decision of the judge to change the compulsory measure;
- The compulsory measure shall not be changed against the defendant as the conflict was not resolved and restraining order did not ensure stopping of acts of violence;
- The prosecutor requested the court not to change the imprisonment as the bail would not ensure stopping of future acts of violence from the side of the defendant.

Judges verify their refusals to change the imprisonment term into non-custodial compulsory measure with the following arguments:

- There is possibility of repeated crime and hiding from justice;
- Restraining and protective orders issued to the defendant could not prevent his violent behavior;
- There is a threat that the defendant will refrain from attending the court hearings;
- There is no guarantee that the defendant will not influence the victim;
- Systematic facts of violence were observed; the defendant is alcoholic and cannot control his behavior. The facts of violence happen in the presence of minor children;
- There is a threat that evidence will be destroyed, victims and witnesses will be influenced;
- The witnesses in the case are family members of the defendant and before being questioned in the court they might be influenced;
- Due to specific characteristics of the crime, there is a threat of continued violence and high risk that the evidence will be destroyed;
- The prevention of violence is a priority; considering the threat of repeated violence and character of the offence, the threats are still present considering the criminal record of the defendant;
- Less strict compulsory measure cannot ensure goals of justice;
- There are no new circumstances which can influence the court to change the imprisonment into a less strict compulsory measure;
- There is an increased threat that the defendant will repeat the violent crime;
- The threats are the same as they were when the court used imprisonment term against the defendant;
- There is a threat of the repeated crime; violence has systemic character;
- There are several restraining orders in the case files as well as information about the breached restraining orders.

As for the two motions satisfied by the judges, their verifications and conditions were as follows:

Motion # 1

The judge took into consideration the factual circumstances of the case, which indicated that the defendant grabbed his wife by the throat as a result of verbal conflict, which caused her pain. Also, the judge took into account the confession and sincere regret of the defendant. The judge took into account that it was a single fact of violence, no restraining and protective orders were issued to the defendant before and the family members mostly positively evaluated them. The defendant was characterized positively. Consequently, the judge satisfied the motion of the defense side to change imprisonment into bail. The defense side motioned for 2 000 GEL but

the judge cited the conditions for the bail as follows: payment of 3 000 GEL or to mortgage an immovable property with the value of 3 000 GEL. Also the harasser was banned to have any communication with the victim wife.

Motion # 2

The judge took factual circumstances in the case files into account as well as the testimony of the victim, who stated that she was taking some psychotropic substances and as a result could not control her emotions. She stated that she provoked her husband/defendant but the act of violence did not happen. She admitted that she had a nervous breakdown and tried to convince the law enforcement officers that the husband had harassed her.

The judge decided to revoke imprisonment and free the defendant from the courtroom. The judge did not use any compulsory measure against the defendant. The judge noted that the victim's testimony was the new substantive circumstance which was evaluated in the case based on other evidence and became basis to change the compulsory measure. There was no real threat of repeated crime and called on the prosecutor and the investigator to substantially study this case. At the same time, the court did not satisfy the motion of the defense side to drop the criminal case against the defendant.

The reports, filled out during the trial monitoring, showed that in the majority of observed trials, the defendant admits the charges, does not dispute the provided evidence and refuses to continue trial on merits on his case. Similar behavior of the defendant more often results from the lawyer's recommendation to influence the attitude of the judge when the latter is making a decision about preventive measure and final punishment.

The monitoring reports also revealed that the court and the parties rarely use the case law of the European Court of Human Rights or international documents on women's rights.

During the trial monitoring, in majority of observed cases, the victims presented the notarized statements at the trial, the contents of which differed in different cases and with different defendants. Generally, in their statements the victims stated that "she did not have complaints against the defendant" and urged the court, considering their positions, to use non-custodial compulsory measure in one case and to change the imprisonment term into non-custodial term in another case; in the third option, the victim requested to drop criminal liability against the defendant or impose light punishment.

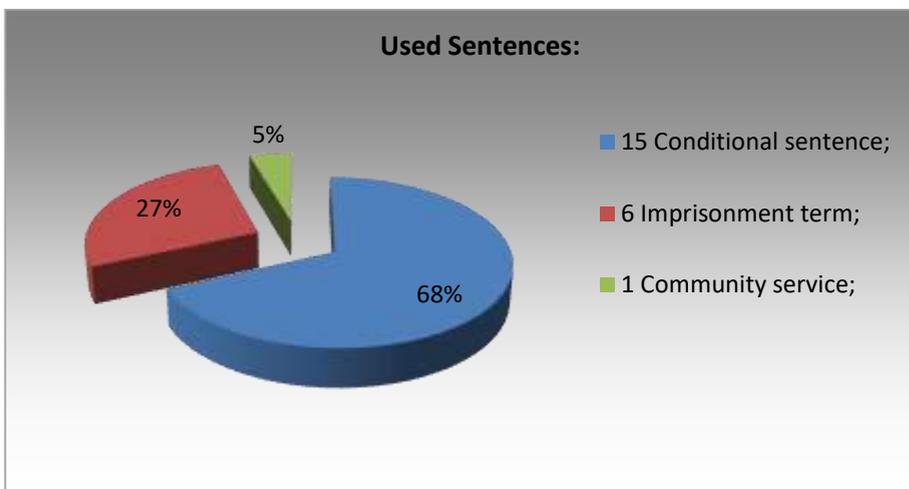
Refusal of the victim to make testimony against the defendant during the investigation or court proceedings demonstrated the same tendency. In most cases, during the

investigation stage the victims cooperated with the investigation and gave testimonies but after a while they changed the position as well as the initial testimony made to the investigation or/and completely refused to make testimony against the defendant in front of the court⁸.

Criminal cases finalized during the trial monitoring period

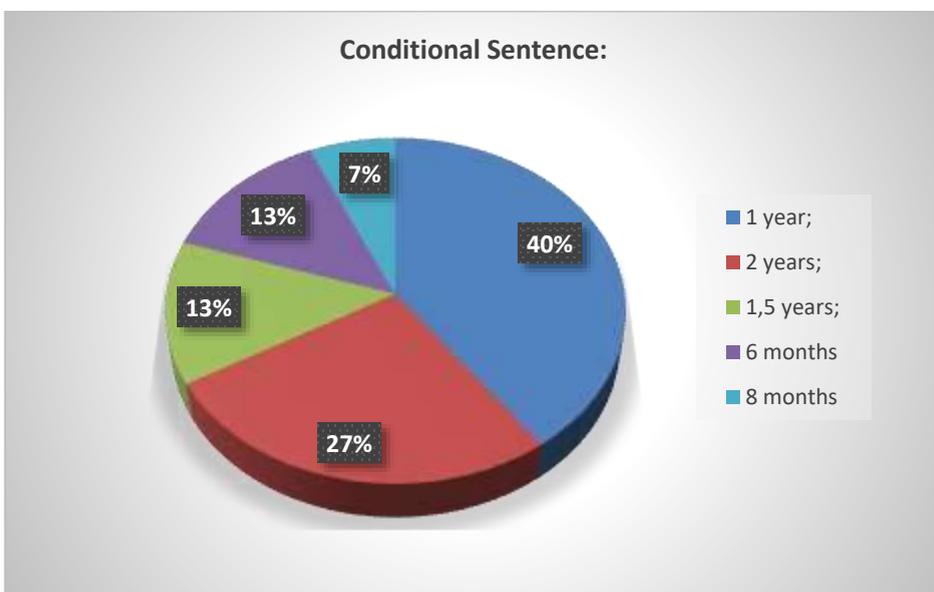
During the trial monitoring, court hearings in **23 criminal cases ended in the criminal cases panel of the Tbilisi City Court** among which: **21 cases referred to domestic violence** and **2 – to the violence against women**. In the finalized cases the court ruled: Out of 23 cases the judgment of conviction was passed in regards with 20 cases which included 1 plea agreement; judgment of acquittal was passed in 1 case and in 2 cases the defendant was partlyacquitted.

With the analysis of the judgements of conviction into the cases on domestic violence and violence against women, the following forms of punishments were used against the defendants:



If we review the number of judgments of conviction, the Court mainly confirms that facts of domestic violence and violence against women happened. At the same time, the used forms and measures of the sentences show that judges mostly use conditional sentences against the offenders. As for the term of conditional sentence, it is as follows:

⁸ <http://www.humanrights.ge/index.php?a=main&pid=19534&lang=geo>



Analysis of the cases in which the proceedings finished during the HRC trial monitoring, revealed that in the cases where the judge used conditional sentences, the circumstances are as follows:

1. Defendant admits and regrets the committed crime;
2. Restraining and protective orders were not issued against the defendant;
3. The defendant has never been judged;
4. The act of violence did not have permanent character and it did not cause intentional grave, less grave and minor injury of the body;
5. The defendant does not argue about the evidence provided by the prosecution;
6. The victim reconciled with the defendant, she does not have any complaints against him and urges the court to share her position;
7. Hard social/economic conditions of the family.

The Court considered the Case N: 1 based on the abovementioned circumstances, of which qualifications, case details and form and measure of imposed punishment are as follows:

Case N: 1

Defendant was charged under Article 126¹ Part 1 of the CCG (**violence by one family member against another family member**) namely physical violence against the wife (grabbed her by the throat as a result of verbal conflict) which did not cause intentional grave, less grave and minor injuries to her health.

The defendant admitted his offence and sincerely regretted what happened; there were no records about restraining and protective orders issued against him. The defendant did not argue against the evidence provided by the prosecution.

There was a statement of the victim “requesting the reconciliation with the defendant and stating that she did not have complaints against him.” Also, the defense side and the victim submitted the documents proving monetary responsibilities of the defendant (mortgage agreement), and the victim said that an imprisonment term of the defendant would place the family – her and their three children - in poor financial conditions.

The prosecution requested to use strict a sentence against the defendant. During the introductory and final statements, the defendant urged the Court to use conditional sentence against him.

The Court found the defendant guilty and sentenced him: to 6-month conditional sentence.

The crime, for what the defendant was charged, is punishable by community service from 80 to 150 hours or with imprisonment for up to one year under Article 126¹ Part I of the CCG.

Regardless of the abovementioned criteria, which are basic grounds to use conditional sentence against the defendant, we observed substantially different circumstance in the

Case N: 2

Defendant was charged under Article 126¹ Part 1 of the CCG (**violence by one family member against another family member**) namely physical violence against the former wife (slapped the victim several times in the face as a result of verbal conflict) which did not cause intentional grave, less grave and minor injuries to her health.

During the case hearings, according to the court reports, the defense lawyer stated that his client had pleaded guilty and sincerely regretted the committed offence. He did not dispute the provided evidence. There were no criminal records and restraining/protective orders issued against him. The defendant was not inclined to commit acts of violence and was characterized positively. The act of violence against the wife was a single incident. There was a statement of the wife in the case files, which stated that she had no complaints against the defendant.

The defendant had divorced the victim and in order to avoid all hopes of reconciliation he avoided all contacts with the former wife.

The judge passed judgement of conviction against the defendant and imposed a 6-month imprisonment on him. When announcing the judgment, the Judge clarified: "Although the defendant pleaded guilty, he never mentioned his position with regard to the imposed charge, which raised doubts about his sincere regret about the committed offence."

The crime, for what the defendant was convicted by the court, is punished by community service from 80 to 150 hours or imprisonment for up to a year under Article 126¹ Part I of CCG.

By comparing the essence of the abovementioned two cases, offences committed by the defendants and their characteristics, it is revealed that both cases are almost identical, but in **Case N:2**, the form and measure of the sentence used against the defendant is stricter because the defendant did not admit the crime and did not sincerely regret the fact of violence.

Unlike the previous 2 cases, in the below-presented **Case N:3**, regardless of the protective order issued against the defendant, the Court sentenced the defendant to the community labor and did not consider the character of the person – the factors of the protective order and the act of violence committed under the influence of alcohol. Apart from that, the Judge used minimal measure of sentence against the defendant.

Case N: 3

The defendant was charged for the crime punishable under Article 126¹ Part 1 of the CCG (violence by one family member against another family member) namely physical and verbal violence against his former wife while under the influence of alcohol. During the case discussion, it was revealed that a protective order was issued against the defendant in the past.

The defendant pleaded guilty and sincerely regretted the act of violence and did not argue against the evidence provided in the case. There was a statement of the victim, which positively characterized the defendant and confirmed that she wanted to reconcile with him and forgive the incident.

The judge passed judgement of conviction against the defendant and sentenced him to community service for 80 hours.

The crime, for what the defendant was convicted by the court, is punished by community service from 80 to 150 hours or imprisonment for up to a year under Article 126¹ Part I of CCG.

Considering all the above mentioned, it is clear that the Court's approach to the harasser/defendant, particularly in terms of forms and measures of the used sentences, is different and in some cases unequal.

According to the HRC monitors, a one-year conditional sentence was used in the criminal cases against those defendants, where facts of violence were observed: "in the presence of minor;" "in two cases of violence," "violence against two or more persons" and "violence against the minor." With regard to the mentioned offences, the court indicated at the circumstance and character of the defendants described in the case files, which are listed above in 7 points, namely: admitting and regretting the committed offence, single fact of violence, no argues against the evidence, no criminal record on the defendant and other above mentioned circumstances.

In accordance to the HRC monitors' reports, in the cases where the defendants had criminal record or restraining/protective orders were issued against them and violence against the victim had systematic character, the final judgments of the judges amounted to 12 to 18 months conditional sentences. It shows that the Court refrains from imposing real sentencing measures over the harassers, even in similar cases.

However, it should be mentioned that in the majority of observed cases, the imprisonment was used as a preventive measure which allows us to assume that the Court, when using the imprisonment term, considers, it is enough to separate the defendant from the victim to neutralize the conflict and to ensure the safety of the victim in future and to prevent the defendant to commit the repeated crime that is not sufficient measure to protect the victim from repeated victimization and to guarantee her safety.

As for the practice to use real imprisonment term in the case of domestic violence and violence against women, the monitors found that the Court used real imprisonment term only against 3 defendants; namely:

Case N: 4

The defendant was charged for the crime punishable under Article 126 Part 1 of the CCG (**physical violence committed against women**) namely physical and verbal violence against a transgender woman.

There was a notarized statement of the victim, where she confirmed that the conflict between the defendant and the victim was solved and she no longer had complaints against the defendant.

With regard to this case, the Judge addressed the defendant several times and asked: "have you harassed her because of her gender identity or not." The defendant denied the act of violence during several hearings and finally admitted the crime at the last hearing.

After passing the judgment, the Judge announced the resolution part of the judgment and found the defendant guilty in the violation of the Article 126 Part 1 of the CCG and sentenced him to 6-months imprisonment.

The crime, for what the defendant was convicted by the court, is punished by community service from 120 to 180 hours or house arrest from six months up to a year under Article 126 Part I of CCG.

Case N5: The defendant was accused of intentional grave injury to the health of his sister that caused deprivation of her life. The Court found him guilty and sentenced him to 8-year-imprisonment.

Case N6: Recidivism of crime was committed by the defendant and three episodes of facts of violence were recorded. The Court found him guilty and sentenced the defendant to 18-month imprisonment.

Case N7: The defendant was accused of systematic violence against two persons; he had been convicted for two different intentional crimes before. The victims requested criminal liability for the defendant. The latter partly admitted the crime. Considering the above mentioned circumstances, the Court found him guilty and sentenced him to one-year imprisonment.

Judgements of Acquittal and plea-agreements

Case N8: With regard to non-guilty verdicts, it should be noted that the defendant was accused of the physical harassment of the child. He did not plead guilty. In accordance to the evidence in the case files, the testimony of the victim and the conclusion of expertise contradicted each other. At the same time, the victim refused to testify against the defendant at the trial. Having announced the resolution part of the verdict, the Judge clarified that the fact of violence against the victim was not confirmed – the victim herself did not give the testimony to the court and statement of confession of the defendant could not become the basis of the guilty verdict. The conclusion of expertise in the case files contradicted the testimony of the defendant. All above mentioned circumstances became grounds for the Judge to pass a verdict of acquittal.

Case N9: The court approved the plea-agreement, according to which the defendant was accused of the physical harassment of his pregnant wife. The defendant pleaded guilty and regretted the committed offence. He did not argue against the evidence in the case files. Although the victim attended the court hearings, her position was unknown with regard to plea-agreement with the defendant. Regardless of the fact of violence, the prosecution clarified that the defendant admitted the crime, cooperated with the investigation and the agreement was reached: the defendant was sentenced to a 6 months imprisonment term and 2 years conditional sentence.

General Analysis of the Enforced Judgments on the Cases of Domestic Violence and Violence against Women; Analysis of Relevance of Forms and Measures of the Sentences Used in the Judgments

Human Rights Center requested the redacted copies of judgments of conviction from 26 district/city courts passed on the cases of domestic violence and violence against women.

22 out of 26 district/city courts sent the requested information to the Center. As for the rest of the 4 courts:

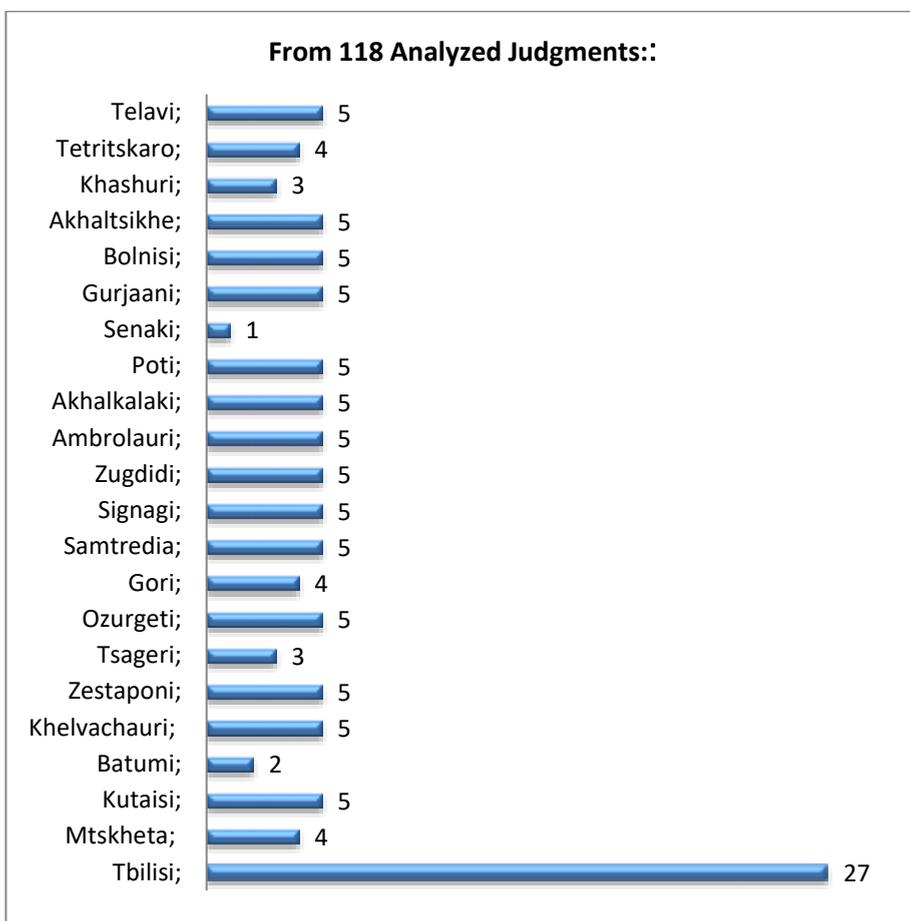
1. Sokhumi and Gagra-Gudauta district court did not process the cases relevant to the research in the requested period of time;
2. Gali-Gulrifshi and Ochamchire-Tkvarcheli district court no longer hears criminal cases in accordance to the amendments to the Criminal Procedure Code of Georgia;
3. Rustavi district court sent one part of the requested information to HRC and refused to send the second part because of high number of judgments and lack of the personnel who could process/redact the judgments;
4. HRC received inaccurate information from the Gori district court in terms of content and quantity.

Initially, Ozurgeti, Gori and Bolnisi courts refused the Center to send the requested public information. After appealing the refusal, HRC received the requested information.

As it is clarified in the chapter “Statistical Analysis” of the survey, in the first stage of the survey, the statistical information received from the Supreme Court about the number of survey materials/judgments was significantly different from the statistical information provided by the district/city courts. Inaccuracy of the statistical data created problems in the survey methodology and it was corrected. As a result of the corrected methodology, the judgments of acquittal identical to the qualifications of the cases, which were observed during the trial monitoring, were requested and analyzed.

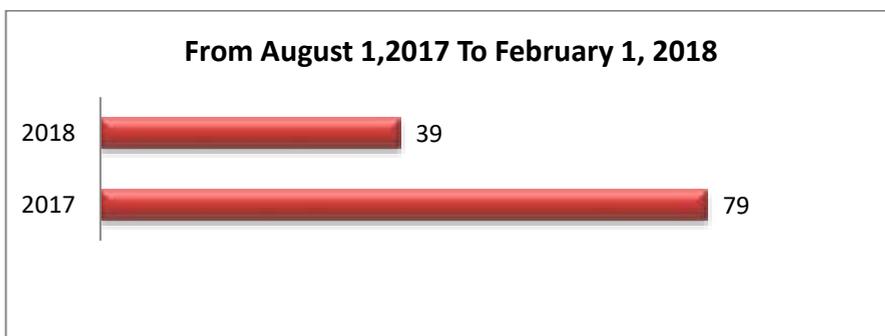
HRC conducted general analysis of the judgments received from 23 district/city courts as well as relevance of the forms and measures of sentences used in the judgments. All in all, 118 judgments were analyzed in the frame of the survey.

Analyzed judgments and their number in accordance to district/city courts were as follows:

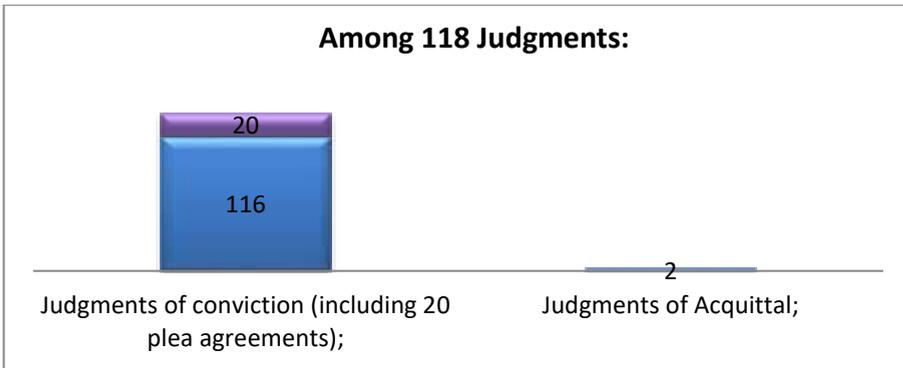


The analyzed judgments were categorized:

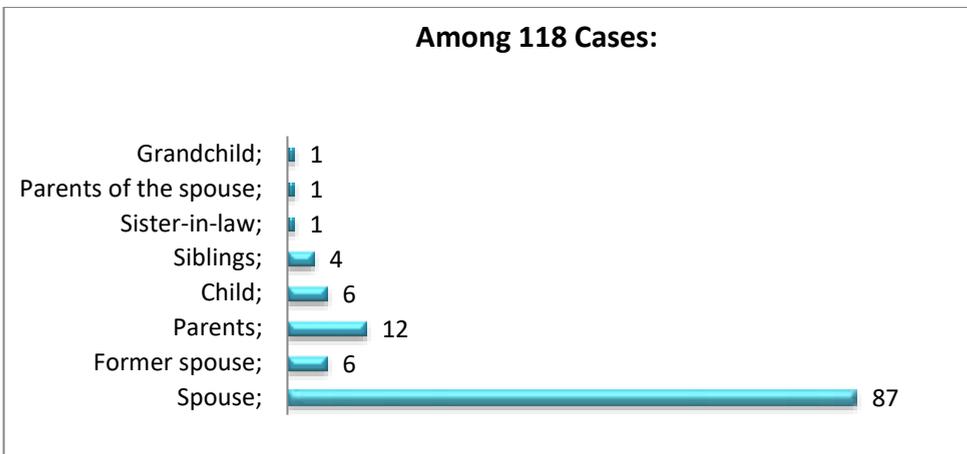
- 1) according to the date the judgments entered into force:



2) according to the court judgments:



3) according to the information about the relationship between the harasser/convicted and the victim and respective numbers:



4) according to the criminal records of the convicted persons:



Information about the education of the convicts revealed from the analysis of 118 judgments is as follows: 36 – secondary education; 8 – higher education; 6 – technical education; there was no information about the education with regard to 68 convicts.

Among 118 convicts: restraining orders were issued on 20 convicts and protective order on 2 convicts.

32 defendants had committed act of violence under the influence of alcohol.

Analysis of 118 cases of violence revealed that 28 defendants had 1 child and 26 – two and more children.

As a result of the analysis, the judgments passed on the cases of domestic violence and violence against women:

- **In 57 cases, the convicted was accused of:** violence committed by one family member against another family member, systematic verbal assault, blackmailing and humiliation, which caused physical pain or anguish;
- **In 35 cases, the convicted was accused of:** violence against his family member in the presence of a minor;
- **In 7 cases, the convicted was accused of:** violence against two or more persons;
- **In 5 cases, the convicted was accused of:** several facts of violence;
- **In 2 cases, the convicted was accused of:** violence against a minor, violence in the presence of a minor and violence against two and more persons;
- **In 5 cases, the convicted was accused of:** violence against a minor and violence in the presence of a minor;
- **In 3 cases, the convicted was accused of:** intentional violence against a minor;
- **In 2 cases, the convicted was accused of:** systematic beating and other forms of violence against the person, which resulted into physical pain or anguish of the victim;
- **In one case, the convicted was accused of:** violence against a minor; violence against a minor and multiple violence acts;
- **In one case, the convicted was accused of:** violence against a minor and multiple violence acts.

It should be noted that according to the studied judgments, in most of the cases of domestic violence and violence against women, the court passed judgment of conviction. But the judges did not use the sentences with relevant severity in all possible cases that would have had effective impact on the prevention of repeated violence and ensure the security of victims. In 98% of the studied 118 judgments, the court passed judgment of conviction against the defendant. In 17% of the cases plea-agreement was made with the perpetrator/defendants. Although in majority of cases the judgment of conviction has been passed, in range of cases the adequacy and effectiveness of the used sentence is questionable.

In studied 118 cases, following types and terms of sentences were used:

Conditional sentence with different terms of sentence	48
Actual restriction of freedom with different terms of sentences	26
Partly actual sentence and party conditional sentence	6
Conditional sentence and community work	8
Community work	16
Actual restriction of freedom with different terms of sentences and fine of different amounts	2
Community work and fine;	1
Community work and including perpetrator in rehabilitation programs;	2
Fine and community work	9

As the chart shows, mainly, conditional sentence and community work was used against the defendants. When studying the cases where the type and term of this sentence was used, it was revealed that the fact of violence was not systematic; the defendant acknowledged and confessed the committed crime; did not dispute the evidence presented by the prosecution; in range of cases the severe socio-economic problems of the family were observed. The victim did not have a pretension against the defendant and confirmed the fact of reconciliation with him/her.

Unlike abovementioned circumstances, the conditional sentence and community work were used as a type of sentence in those cases where: restraining order was used, facts of physical violence were committed against a juvenile, violence against a family member in a presence of a juvenile and facts of systematic violence were committed. However, this did not affect the type and the term of the sentence. In range of cases, the defendants were imposed with conditional sentence and in range of cases the community work was used as a type of sentence.

As for the issue of the use of actual sentences, as the analysis of judgments reveal, mainly the actual sentences are used when the defendant is charged with different episodes of violence, violence has been committed more than once, towards two or more people, when violence has been committed against a family member in the presence of the juvenile more than once and in case of the aggregate of crimes envisaged by the part II of Article 126¹ of CCG.

Analysis of the judgments revealed that in one part of majority of the criminal cases on domestic violence and violence against women, the evidence provided by the prosecution was not argued, while in the second part of the judgments, incomplete evidence was provided. Due to these two circumstances it was not possible to properly analyze the content and relevance of the evidence with the case files.

The analysis also revealed that the prosecution included information about criminal record and/or number of restraining/protective orders issued against the defendant in the list of presented evidence. However, later on, the prosecutor did not clarify whether the information proved that the defendant had a criminal record and whether restraining/protective orders were really issued against him or not; or it was only notification about the requested information. Obscurity of this information created problems in the evaluation of the forms and terms of the sentences used in the judgments studied within this research.

The analysis of the judgments on domestic violence and violence against women reveals that Article 53¹ of CCG has been used in only 2 cases from the studied judgments, as the crime committed against the woman under discriminative as well as aggravating circumstances.

GENERAL ANALYSIS OF THE MONITORING RESULTS

Although the State of Georgia took significant steps to improve the legislation as well as to better protect and defend the victims in the recent years, the crimes related to domestic violence and violence against women are still a significant challenge in the country.

Statistical analysis in the monitoring report revealed that there is no common, systemized and categorized statistical database about the crimes related to domestic violence and violence against women in the country.

Collection of the statistical data and analysis will assist all actors working on the prevention of violence to plan correct and results oriented activities. At the same time, in order to correctly plan and implement the activities aiming at the elimination and prevention of the crime, it is important to know the number of violent crimes committed in the country.

The issue of awareness-raising of the population is also a challenge. The recent studies have shown that the society still has a high acceptance of violence against women.

Law enforcement bodies shall adequately react to the facts in order to reduce acts of violence against the women; they shall conduct qualified proceedings with a sensitive approach to the issue which will be oriented to gain the trust of the victim. Prosecution and judiciary bodies shall be oriented towards combating the repeated victimization and make decisions which will guarantee the safety of the victims.

In the view of the above mentioned principles, according to the tendency observed during the trial monitoring, when imposing the preventive measures, in most cases, the prosecution requests the strictest form and measure of punishment – imprisonment - to neutralize the conflicts, to guarantee safety of the victims and to prevent repeated victimization of the victim. According to the statistics presented in the chapter Trial

Monitoring, imprisonment was used as a preventive measure against 69 out of 88 defendants.

During the trial monitoring, no cases of wrong qualification of the crimes were observed with regard to the cases of domestic violence and violence against women. There were other single cases, when during the court hearings the prosecution could not present evidence proving the guilt into one out of two separate crime episodes imposed against the defendant and the defendant was partly acquitted.

In some cases, prosecutors prolonged court proceedings, which caused discontent of the judges and defendants. It had different reasons. For example, prosecutor tried to drag-out the court hearings in cases where the victim refused to cooperate with the investigation; also in cases where the victim did not give testimony that was basis to drop the criminal prosecution against the defendant.

It is noteworthy that during trial monitoring, in one of the observed cases, the prosecution tried to force the victim to give testimony against the defendant (husband), intimidated her and tried to influence her will; in accordance to the Criminal Procedural Code of Georgia (CPCG) victim may refuse to give testimony against a family member.

When processing the cases of domestic violence and violence against women, the majority of judges had an individual approach and practice. In most cases, the judges determined the motive and purpose of the violent action of the harasser/defendant, as well as form and type of harassment, hear the position of the defendant about the committed violent act and only after that concluded whether the defendant pleaded guilty and sincerely regretted the committed crime or not.

As it is stated in the chapter on Trial Monitoring, the judges substantially and clearly explained the rights and responsibilities to the defendants and prosecutors had possibility to implement their duties and responsibilities in accordance to the Criminal Procedural Code. Although in accordance with the acting CPCG, the victim is not a party of the court hearing, besides questioning them during trials the judges made efforts so that victims would express their positions about the defendants and characterize them. It happened particularly when there was a notarized statement of the victim in the case files about the reconciliation with the defendant. Having found similar document in the case files, judges tried to find out whether the victim had made the decision independently or was under the influence of family members.

In the observed court hearings, the principles of fair trial were not breached in relation with the victim women of domestic violence or no obstacles were created that could deprive the victim to enjoy her rights to fair trial.

During the trial monitoring, judges never demonstrated stereotypical approach towards the victims of domestic violence and violence against women.

It is necessary to evaluate the technical side of the work of the courts. Overload of the pending cases in the Tbilisi City Court often hinders timely hearings into the cases. The overload of the work reveals the problem of insufficient number of courtrooms, for what hearings are often postponed. Technical shortcomings were observed in the work of information boards/monitors and the official website of the Tbilisi City Court, which are primary sources for the interested parties to receive information about the scheduled hearings.

As for the analysis of the studied judgments, the number of the judgments of conviction and the type and term of the used sentence, in certain cases, it is not proportionate to the issues of security of victim as the conditional sentence is used as the ultimate type and term of the sentence. The problem of proportionality and security of the victims also becomes an issue when approving plea agreement with the defendants in cases of domestic violence, violence against women and domestic crime.

RECOMMENDATIONS:

Ways and recommendations to solve the problems identified in the frame of the trial monitoring:

- For the effective and timely response to the facts of domestic violence and violence against women, the **Ministry of Internal Affairs** shall:
 - Improve mechanisms in order to reveal facts of violence against women, domestic violence and domestic crimes;
 - Raise public awareness about the preventive mechanisms and importance of cooperation with the law enforcement bodies;
 - Conduct effective investigation into violent crimes;
 - Establish the practice for the identification, evaluation and analysis of gender-motivated crimes;
 - Provide victim women with full information about the defense and support mechanisms, including the essence and consequences of the restraining and protective orders;
 - Monitor elimination of facts of violence under the acting restraining and protective orders;
 - Process gender-based statistical data about the registered and resolved crimes throughout the year;
 - Record and analyze the results regarding the response to the facts of domestic violence, domestic crimes and violence against women which were reported to the LEPL “112” Special and Emergency Situations Management Center.
- **Chief Prosecutor’s Office of Georgia shall**
 - Take the following steps in order to increase the trust of victims towards the law enforcement officers and effectively fight against crime;

- Enhance professional capacity of the prosecutors and prosecutor's office personnel; to train and specialize prosecutors about the cases of domestic violence and violence against women;
- Give accurate and proper qualification to the cases of domestic violence, violence against women and domestic crimes;
- Implement preventive activities and raise public awareness about the legal aspects of domestic violence, domestic crimes and violence against women that will encourage victims to apply to the law enforcement bodies and timely response to the facts of violence;
- Process analysis of criminal cases on domestic violence, domestic crimes and violence against women which will promote effective planning of future steps to prevent crimes;
- Establish the practice of identification, evaluation and analysis of gender-motivated crimes.

➤ For timely, excellent and prompt improvement of justice, the **High Council of Justice** shall:

Train acting and future judges in Tbilisi and regions regarding on issues of violence against women, domestic violence and domestic crime so that the phenomenon of domestic violence and violence against women and its psychological aspects are more clear; Train judges regarding aspects of gender motivated crime and its identification.

- To ensure effectiveness of justice and to avoid recidivism of crimes the **High School of Justice** shall:

- Train the acting and future judges in Tbilisi and regions in the issues related with violence against women, domestic violence and domestic crimes, so that the judges would be more aware of the phenomenon and psychological aspects of the violence against women and domestic violence;
- Train judges in the aspects of gender-motivated crimes and methods to identify them.

➤ For the real prevention of crimes related with domestic violence and violence against women, the **National Probation Agency of Georgia** shall actively work on the creation of rehabilitation courses and on the correction of violent behavior of the defendants/convicts.

CHAPTER II: TRIAL MONITORING OF THE CASES OF DEFENDANT WOMEN IN DRUG-RELATED CRIMES AND ANALYSIS OF THE JUDGMENTS WHICH HAVE ENTERED INTO FORCE AGAINST THE WOMEN CONVICTED FOR THE SAME CATEGORY OF CRIMES IN THE VIEW OF FORMS AND TERMS OF THE IMPOSED/USED SENTENCES

The research aims to identify the tendency and legislative miscarriages as a result of analysis of court judgments into drug-related criminal cases, where convicts are women, in order to reveal pros and cons of the judiciary system. In order to improve human rights legislation and practice, it is important to establish the standards and mechanisms, which will ensure full respect of human rights in the country.

The rights and interests of the parties in criminal law proceedings shall be protected. However, in some cases, the standards are not followed, which is caused by legislative and practical miscarriages. Human Rights Center studied the miscarriages and positive tendencies in the judiciary process. The analysis of the above mentioned crimes was made possible after the study of the judgments of common courts of Georgia. The study relies on the analysis of the best practices of the national legislation and courts, as well as international approaches and recommendations. The study presents the tendencies in the use of preventive measures, practice of imposing the punishment and related shortcomings. The survey pays attention to the practice of the search and withdrawal of evidence; it evaluates effectiveness of the judiciary control in relation to its legality as well as the miscarriages and tendencies in plea-agreements and pre-trial hearings. The study reviews the tendencies revealed during the trial on merits and results of the trial monitoring.

The study is accompanied by the respective recommendations to resolve the problems revealed during the monitoring process. The main purpose of the recommendations is to improve the criminal law system.

This part of the study predicated on the analysis of the judicial practice, namely the judgments over drug-related crimes punishable under the Chapter 33 of the Criminal Code of Georgia. HRC studied and analyzed judgments of the common courts of Georgia in 32 criminal cases against women passed from August 1, 2017 to February, 2018. The below presented findings and conclusions, mostly, predicate on these *observations*. The information obtained from the analysis of judgments underline practical or legislative miscarriages in separate instances. Respective recommendations were elaborated in accordance to the miscarriages revealed in the process.

Analysis of the judicial practice

Analysis of the judgments passed by the common courts of Georgia against defendant women from August 1, 2017 to February 2018 (including) reveal that the aggregate of

evidence, which on its side is basis for judgment of conviction, predicates on the following evidence:

- Statement of confession of the defendant;
- Protocols on the arrest and personal search;
- Protocols on witness testimonies/interrogation (the police officers participating in the search);
- Conclusion of the chemical expertise/drug-test;
- Narcotic substance withdrawal as a material evidence;
- In some instances the report of the police about receiving operative information.

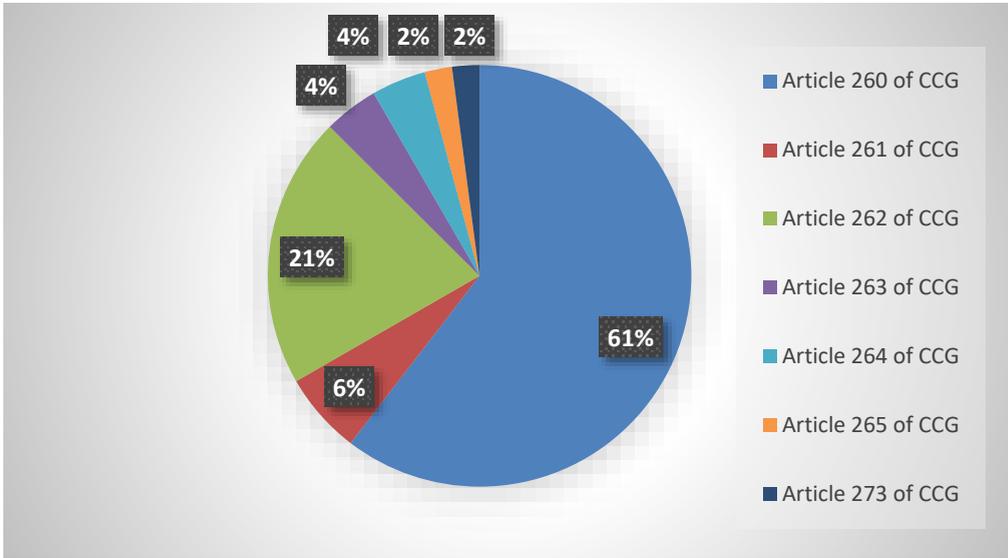
“Standard of proof beyond reasonable doubt plays a significant role in the criminal law process. It ensures the upholding of the principle of presumption of innocence significantly reduces the threat of passing unfair and ungrounded judgment of conviction and fosters prevention of danger of mistake in the judiciary process.”⁹ Criminal Procedural Law also indicates that judgment of conviction shall predicate on the aggregate of consonant, clear and convincing evidence, which beyond the reasonable doubt proves the culpability of the person. Consequently, lowering this standard by the court and finding abovementioned aggregate of evidence sufficient creates advantageous conditions for the prosecution to prove the imposed charge easily. It is demonstrated in the judgments studied in the frame of this survey, in which 100% are judgments of conviction. At the same time, in 87, 5 % of cases plea-agreements are signed, which is another instrument for the prosecution to avoid trial on merits in exchange of admitting the imposed charge through preliminary bargaining. As a rule, this circumstance does not free the judge from the responsibility to become convinced in the culpability of the person in accordance with the standard of proof beyond reasonable doubt based on the aggregate of evidence. Nevertheless, in absolute majority of the surveyed judgments, judges (in the basic parts of cases, because of statements of confession of the defendants) very superficially consider the aggregate of evidence when passing the judgments. It significantly increases the risks of arbitrariness and abuse of power by the law enforcement bodies. In this respect, one of the surveyed cases is of particular importance, where the defendant claims the illegality of his search and the intimidation from the law enforcement officers.

Statistical analysis

General statistics of the studied judgments in the frame of the survey show that criminal law proceedings against the defendant women (60, 4%), who were judged in the research period, were related with the Article 260 of the CCG. General statistics with regard to the CCG articles applied in these cases are as follows:¹⁰

⁹ Professor Dr. Hans Joerg Albrecht, opinion about the January 22, 2015 N 1/1/548 ruling of the Constitutional Court of Georgia

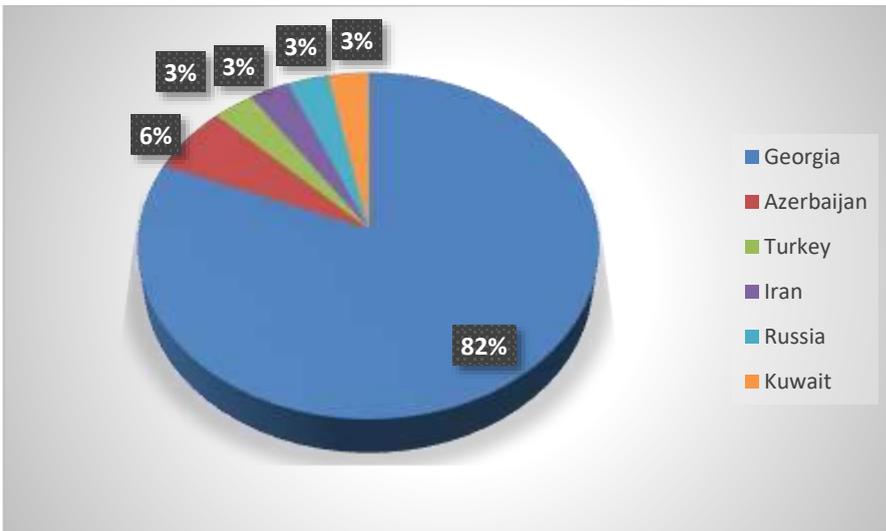
¹⁰ The data predicates on the judgments received from the common courts of Georgia



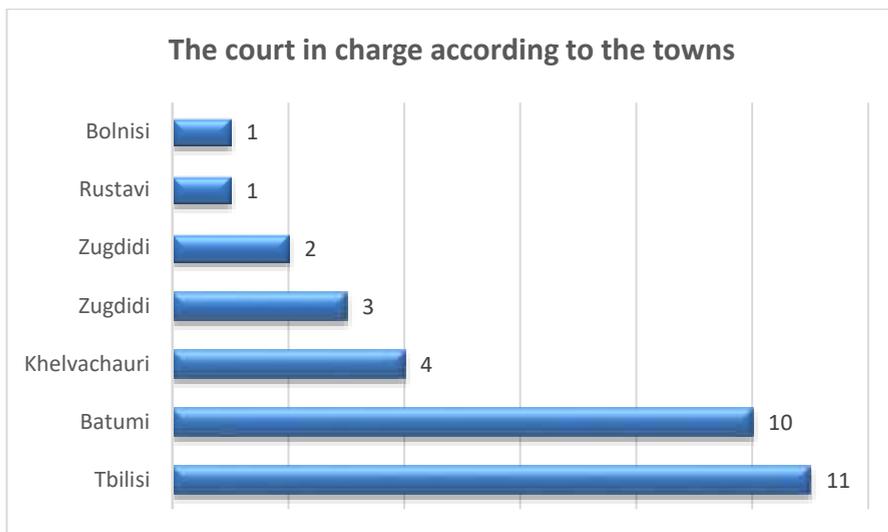
The court has passed judgments of conviction in 100% of the studied cases. The study of the judgments showed that in 96,9% of the cases the defendant admitted the crime, that was considered as mitigating circumstance by the court.

87,5% of the judgments passed in the first instance predicated on the plea-agreement between the defendant and the prosecutor, and in 100% of those cases the defendant admits the crime completely.

In accordance to the studied judgments, in the period of the survey, majority of the defendant women, namely 81% of them were citizens of Georgia. More precisely, see the chart about the citizenship of the convicted women.



In accordance to the information requested by Human Rights Center, from August 1, 2017 to February 1, 2018, the regional statistics of the drug-related crimes with women defendants are as follows:



Standard of evidence

In the majority of the cases studied in the frame of this survey, namely in 87,5% of them, the court approved the plea-agreements between the prosecutor and defendant upon the consent of the senior prosecutor. The defendant did not claim, in any of the mentioned cases, that she was innocent and not disputing the imposed charges in accordance to the so called *nolo contendere* principle was not the only basis of plea-agreement; in all cases the defendant admitted the committed crime and found herself guilty. Consequently, in all these cases the court passed judgment without trials on merits.

In accordance to the Article 13 Part 2 of the Criminal Procedure Code of Georgia, ***“the confession of the accused, unless corroborated by any other evidence that proves the person's guilt, shall not be sufficient to pass a judgment of conviction against the accused. A judgment of conviction shall be based only on a body of consistent, clear and convincing evidence that, beyond reasonable doubt, proves the culpability of a person.”***

In the majority of the cases studied in the frame of the survey, as it was already noted, the court judgments were passed without trials on merits that in the view of analysis of body of evidence, does not create special possibilities. Nevertheless, in the majority of judgments, the evidence in the case files is indicated in various forms that became sufficient grounds for the judges to satisfy the standard beyond reasonable doubt.

Search standard

The analysis of the studied judgments revealed that the search process is another significant problem in connection with drug-related crimes. As it was identified, in most

cases, only police officers participate in the process of search. The search as the most actual and painful investigative procedure needs particular accuracy and accurate implementation of regulations. In this regard, it is important to mention the miscarriages in the acting criminal procedural code and the practice. As the analysis of the practice showed, only police report, written notification of the police officer about operative information, is enough to verify the legality of the search, which on its own cannot satisfy the standard of “well-grounded assumption”. Besides, acting legislation considers the presence of the police officer who implements the investigative activity, sufficient, that makes it practically impossible for the defense side to prove the violation. This circumstance increases the risk of arbitrariness and unlawful activities of the police officers. Based on the survey files, in one of the cases, a convicted woman reported the intimidation from the side of police officers. The evidence provided by the prosecutor to the court cannot invalidate the suspicion about the occurrence of these facts as investigative activities were carried out by those police officers, who were accused of the intimidation.

In this regard, it is important to review the case law of the European Court of Human Rights, which permanently pays attention whether the search was used as the ultimate, proportionate and well-grounded measure when considering the cases related with the respect to privacy. In the case *Keegan v United Kingdom*¹¹, the ECtHR considered the issue of the search which was allowed by the national court. Namely, it reviewed whether the search was conducted based on the “true belief” in the necessity of the search. Regardless number of information and facts possessed by the police, the ECtHR clarified: “The fact that the police did not act maliciously is not decisive under the Convention, which aims to protect against abuse of power, however motivated or caused. The Court cannot agree that limiting actions for damages to cases of malice is necessary to protect the police in their vital function of investigating crime.”¹²

This narrative shows the high standard established by the European Convention of Human Rights in terms of legality for intervention in the area protected by the Article 8 of the European Convention on Human Rights.

Judiciary control in the process of plea-agreement approval

As it was already noted, in 87,5% out of studied 32 cases, that makes 28 cases, the court proceedings finished with a plea-agreements between the prosecutor and the defendant. The 2013 amendments in the Criminal Procedure Code aimed to eliminate “the problems revealed in the practice of plea-bargain, which is related with the wide discretion of the prosecutor in the process of plea-bargaining over the charge and the sentence of the defendant, in the process of implementation of the judiciary control over voluntariness of the defendant’s consent and transparency of the process, the standard of necessary testimonial for achieving the plea-bargain, participation of the victim in the process and

¹¹ See the ruling of the ECtHR on the case: **Keegan v United Kingdom №28867/03, July 18, 2006**

¹² See *Keegan v United Kingdom* &34

taking his/her interests into account.”¹³ Consequently, the law-maker aims to defend the rights of the defendant and imposes responsibility for the legality of plea-bargain over the court.

The studied judgments revealed that in all decisions, where plea-agreement was achieved, the judge followed formal legality and the judgments note that essence and legal outcomes of the plea-agreements were clarified to the defendants. Also, the judge indicates that he/she got convinced in the voluntariness of the agreement. The information requested from the appellate courts of Georgia proves the same, which state that none of the judgments were appealed, where plea-agreements were achieved. At the same time, the judge satisfied the claim on plea-bargain in all the above mentioned cases and did not identify any obstacles for the bargain. Nevertheless, the quality of the aggregate of evidence in those judgments, as it was already noted, was very weak. In some cases, the judge only indicated at the statement of confession in the case file. As for the aggregate of evidence which shall satisfy the standard of proof beyond reasonable doubt, the judge reviews it superficially.

The judgments in the part of imposing sentences are distinctive. In one of the cases, the judge imposed a more severe sentence over the person accused for the selling of a smaller amount of narcotics than another person accused of selling of a larger amount of narcotics, considering the plea agreement. This problem shall be explained mostly with inconsistency of prosecutors, as the severe sentences shall not be the aim of the prosecutor and neither plea-agreement shall be subject of bargain. Just the opposite, it should be delivered in accordance to the aims of the sentence, established by the law. Consequently, it would be logical if the state had an equal approach in the same crime for nearly similar amount of narcotics. Such requirement derives from the principle of equality before the law. The problem is further complicated by the fact that the legislation does not define minimum amount of narcotic substances in regards with the range of narcotic substances that significantly widens discretion of the judge when delivering the judgment. It directly impacts the imposed judgments, which are often inadequate and inhuman.

Although a statement of confession is not a necessary pre-condition for the plea bargain, in 100% of the studied cases with plea-agreements, the defendants admitted the imposed charges that were considered as mitigating circumstance by the judge. This circumstance shall be evaluated as implementation of the law requirements. However, at the same time, considering the number of plea-bargains, in the majority of the studied cases, the decision was made without trial on merits that hinders comprehensive examination of the court judgments. The high number of plea-bargains with defendants may be linked to the low standard of proof which is applied by the court in practice. Factual circumstances also substantiate this allegation, considering that none of the studied cases finished with judgment of acquittal.

¹³ See the clarification note about the amendments into the Law of Georgia about the Criminal Procedure Code of Georgia – plea bargain – 19/11/2013

Judicial control over the source of operative information

The studied cases show that investigation into drug-related crimes commences based on two main motives: based on passport control at the border and operative information.

In the case of operative-investigation information, mostly, the court reviews the interrogation protocol or testimony of police officer(s) as one of the evidences. The cases, where judgments are passed without trial on merits, we find the indication only on that evidence which the judge relied on when passing the judgment and the defense side did not argue about them. The only case, where the defendant did not admit the crime, and where the trial on merits is held, the witness police officer clarified that he had received operative information, which he had reported to senior officers, and then arrested the defendant. The analysis of the case shows that the defendant was arrested in the moment when he received the narcotic substance, which means the police officer had received the operative information before the offence was committed. In the same case, the defense side claimed that the defendant did not know what was in the parcel but the officer claimed that the narcotic substance was withdrawn from the defendant's bag. To prove this allegation, the court relied on the interrogation protocol of the police officers, who searched the defendant. The court did not check the validity or/and trustworthiness of the source of operative information. In one of the cases¹⁴, the defendant spoke about the oppression by police officers and their interest that implies illegitimate interest which is derived both from individuals as well as the system. As the legislation does not recognize judicial or prosecutorial supervision over the sources of operative information, the judge does not pay attention to similar issue. The pictures are basically equal in all other cases, where the presented evidence includes the police officers' report about the operative information.

Miscarriages in the processing of judicial statistics

Excellent and trustworthy system of criminal statistics is an important instrument to evaluate the situation in the judiciary system, for the identification of current tendencies or reasonability of passed verdicts that is part of the just state. Society has right to have true statistics of the crime, including the statistics from police, prosecutor's office, prisons, judiciary and probation. Also, it is necessary to survey latent crimes to have a broader picture which is particularly important in relation to drug-related crimes.

In the process of the survey we encountered problems in the statistical analysis of the court judgments. General statistical data received from the Supreme Court about the judgments passed against a defendant women did not coincide with the statistics received from the city and district courts. Besides inaccuracy of the data, in certain cases, the judgments from different city courts were absolutely irrelevant to the information we requested. Although the requested information was linked to the women accused of drug-related crimes in the particular period of time, we received several judgments were defendants were men.

¹⁴ November 21, 2017, judgment of the Tbilisi City Court, case #1/3193-17

Processing of the criminal law statistics in Georgia is still a challenge; statistical data processed by different institutions are often not compatible and also they fail to record the data considering significant indicator like gender.

Although in the EU there are no commonly established standards of processing the criminal law statistics, the main features, according to which the judicial statistics operate in EU member states, is a significant guarantee to implement effective justice. Thus, it is important to improve the judicial statistical data processing and to include information like: age, gender and regional differentiation of court judgments in accordance to the crimes; statistics related with plea-bargains and further arguments; statistics on imposed punishments in the view of gender, age and citizenship aspects in relation with different crimes.

It is also important that judicial system had a holistic approach to redacting the personal data. The judgments studied in the frame of the survey, which were requested from the courts across the country, showed that the courts have different practice. In some cases the information is hidden so that it is impossible to get non-personal information either.

Imposing punishments, types and rehabilitation problem

In the EU member states, treatment-rehabilitation is actively used against the people accused of the use, purchase-possession and selling of narcotic substances instead punishment measures. Similar approach may really impact the statistics of drug-related crimes as punishment is not pre-condition for recovery; the number of drug-users is not reduced among former prisoners and the goals of the punishments are not achieved. UN also supports the approach of the EU member states, whose 1988 Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the 1998 UN Declaration on the Guiding Principles of Drug Demand Reduction adopted at the special session of the UN General Assembly supports the use of such measures against offenders like treatment, informing, educational activities, rehabilitation and re-integration into society.¹⁵

The drug-policy in Georgia is unfairly strict and inhuman, alongside the absence of a minimum amount of narcotic substances regulated on the legislative level. The Georgian judicial practice echoes this policy, which is characterized by strict punishments considering the criminal policy against the drug-related crimes.

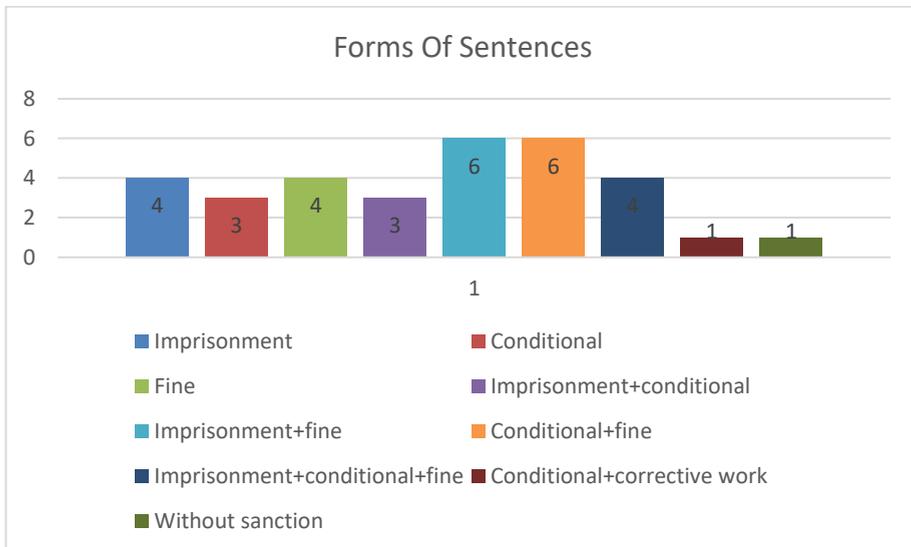
Among studied judgments, the same judge passed substantially different judgments on two separate cases. Both of them referred to identical narcotic substances. The defendant, who was arrested for the purchase-possession of a small amount of narcotics, was convicted for larger imprisonment term, while the second defendant, who was accused of the purchase-possession of larger amount of the same narcotic substance, was sentenced to shorter imprisonment term.

The situation is further complicated in relation with the judgments passed by different judges. Lack of common practice makes the inhuman punishments even more unfair. It

¹⁵ UN Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, Article 3.4

should be noted that the studied judgments, mostly rely upon plea-bargains and consequently bargain over the punishment measure is part of the agreement between the prosecutor and the defendant but regardless of that, the legislation obliges the judge to check reasonability of the prosecution and legality of the requested punishment. The judge has right to offer the parties to change the conditions of the plea-agreement. Although 87, 5% of the studied judgments ended with plea-agreements, the judge never realized his/her right granted by the legislation.

As for the forms of the imposed sentences, the studied judgments reveal that alternative punishment measures are actively used with regard to female defendants, which shall be positively evaluated. Imprisonment was used only in 12.5 % of the studied judgments but imprisonment and parallel alternative sentences together were applied in 55% of judgments. Corrective work, together with conditional early release from prison, was used only in one judgment. Mainly, imprisonment, conditional sentences and bails are used as compulsory measures in connection with the accused women.



It is important to mention one judgment, where the defendant admitted the imposed charge and the court passed judgment of conviction without imposing the sentence.¹⁶ The case referred to the action punishable under the Article 265 Part 2 – “a” of the CCG that is illegal sowing, growing or cultivation of plants containing narcotics in large quantities. The Judge, when presenting reasoning of the punishment, endorses the ruling of the Constitutional Court of Georgia,¹⁷ based on which the Parts 2 and 3 of the Article 265 of the CCG were declared unconstitutional in the view of the Article 17 Part 2 of the Constitution of Georgia.

¹⁶ Criminal case N090210915003

¹⁷ Ruling N1/9/701,722,725 of the Constitutional Court of Georgia, July 14, 2017

Results of the trial monitoring

In the frame of the project, the trial monitoring implemented by the HRC monitors covered three trials on merits and one pre-trial hearing. The monitoring proved that court proceedings are identical to the information reflected in the judgments and consequently all miscarriages, which were identified in the survey of the court judgments, were observed during the court proceedings too. Besides that, the monitoring revealed that the standard of reasoning used by the judges during the discussion over the compulsory measure at the pre-trial hearing is not satisfactory and the judge only relies on his/her assumption that is supported only by the character of the crime and the criminal record of the defendant.

At the same time, in the part of the aggregate of evidence, although the defense side argues about the evidence and defendants claim the intimidation from the police officers, judge excludes the interests of police officers in any stage of proceeding and possibility of any illegal action from the side of police officers. Moreover, the policemen had obtained the initial statement of confession from the defendant without the presence of the third person that makes the dispute over it perspectiveless.

According to the observation of the HRC monitors, the parties of the court hearings never discriminated the defendant women or demonstrated any stereotypical approach towards them that shall be evaluated positively. At the same time, there was no single case when the court substantiated its decisions with the case law of the European Court of Human Rights or international documents on women's rights.

GENERAL ANALYSIS OF THE MONITORING RESULTS

The analysis of the judgments passed against the women accused of drug-related crimes in the period from August 1, 2017 to February 1, 2018, showed that in relation with women, plea-agreements are most frequently used where the court has the nominal role. Judges do not study the conditions of the plea-agreements substantially and there is no common practice for passing the judgments and imposing sentences for drug-related crimes.

Aggregate of evidence in the judgments passed over drug-related crimes, which act as grounds for the court decision, cannot be considered sufficient to satisfy the standard of proof beyond reasonable doubt. The court shall evaluate the validity of the aggregate of evidence in the concrete criminal proceeding independently from plea-agreement.

The judicial control over the search and evidence withdrawal procedures conducted by the law enforcement bodies is also problematic. The judgments do not reveal and do not discuss how lawfully the above mentioned investigative actions were carried out. In accordance to the Criminal Procedural Code of Georgia, law enforcement bodies shall conduct the mentioned activities only in exceptional cases without preliminary

permission of the court. The judge shall legalize already conducted search and withdrawal operations only after substantial examination. In some cases, aggregate of evidence contains the ruling related with the legality of the search but there is no substantiation in any of them and mostly operative-investigation information provided to the police officers is used as a ground of the search. It, of course, cannot exclude arbitrariness of the police officers. Examination of the validity of the source of operative information by the court is also a significant problem, which in some cases makes the lawfulness of the police officers' activities vague.

The majority of the studied judgments clearly indicate at the inhumanity and unfairness of the drug-policy in the country. Rehabilitation of the convicted people and methods to fight against drug-related crimes are still key challenges in the country.

RECOMMENDATIONS

In order to eradicate the miscarriages in the legislation and tackle the problems in the judicial practice, it is necessary to work in the following directions:

- Investigation action by the law enforcement bodies – search, shall be carried out in accordance to the standards set by the European Convention on Human Rights and its guiding principles;
- The search shall be conducted based on trustworthy grounds and the police shall minimize risks of committing any possible mistakes;
- The search shall be used as an inevitable and ultimate action, based on respective legal grounds in due respect of the law;
- In the view of the right to fair trial, in order to defend rights of defendants and to ensure transparency of law enforcement bodies, it is recommended to establish prosecutorial or judicial supervision mechanism to check the validity of the sources of operative information and the accuracy of the fact itself;
- In order to realize the principle of just state, it is necessary to improve the judicial statistical data processing and it shall include information like: age, gender and regional differentiation of defendants/convicts.
- General liberalization of the drug-policy is necessary which shall be reflected in the proportionality and fairness of the forms and measures of punishment imposed by the court.
- In due respect to the equality principle it is necessary that the court established common practice in relation with similar drug-related crimes.
- It is necessary to strengthen judicial control over the plea-bargaining, not only with regard to formal-legal but contextual aspects of the agreements in order to avoid possible violation of the defendant's rights.

ANNEX

Articles prepared by Human Rights Center about the problems identified during the trial monitoring:

1. Victims of domestic violence do not trust police
<http://www.humanrights.ge/index.php?a=main&pid=19534&lang=eng>
2. Why victim women of violence refuse to give testimonies to prosecutor's office
<http://www.humanrights.ge/index.php?a=main&pid=19547&lang=eng>
3. Director of the new department in the MIA suggests the society to break silence
<http://www.humanrights.ge/index.php?a=main&pid=19564&lang=eng>
4. Drug Policy in Georgia is unfairly strict and inhuman
<http://www.humanrights.ge/index.php?a=main&pid=19580&lang=eng>
5. Consultations are going on to improve pardon mechanism
<http://humanrights.ge/index.php?a=main&pid=19577&lang=eng>