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La CEDU su sistemico fallimento nella prevenzione della violenza di genere
(CEDU, sez. V, sent. 8 giugno 2021, ric. n. 33056/17)

La Corte Edu si è pronunciata sul caso di una donna, figlia del ricorrente, uccisa nel 2014 sul posto di lavoro dal suo ex compagno, suicidatosi subito dopo l'assassinio. Nei mesi precedenti la vittima aveva sporto denuncia ed informato a più riprese le forze dell'ordine delle minacce e delle vessazioni a cui era sottoposta, ma non era stata intrapresa alcuna azione a sua tutela. Nessuna indagine efficace era stata condotta nemmeno sulla sua morte.
La Corte ha esaminato le censure ai sensi dell'art. 2 in combinato disposto con l'art. 14 della Convenzione, ed ha ribadito che, ogni volta vi sia un sospetto di violenza domestica o comunque di violenza nei confronti delle donne, è richiesta una diligenza speciale alle autorità nel corso dei procedimenti interni. L'incapacità di uno Stato di proteggere le donne dalla violenza domestica viola il loro diritto alla pari tutela dinanzi alla legge. Inoltre, l'obbligo di proteggere la vita ai sensi dell'art. 2 della Convenzione impone una qualche forma di indagine ufficiale effettiva nei casi di omicidio.
I Giudici di Strasburgo hanno ritenuto che l'inerzia della polizia georgiana potesse essere considerata un fallimento sistemico, con urgente necessità di condurre un'indagine significativa sulla possibilità che alla base della mancata azione da parte della polizia vi fosse la discriminazione e il pregiudizio di genere.

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF XXXXX v. GEORGIA
(*Application no. 33056/17*)

JUDGMENT
STRASBOURG
8 July 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXXXX v. Georgia,
The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:
Síofra O'Leary, *President*
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia,
Ivana Jelić,
Arnfinn Bårdsen,
Mattias Guyomar, *judges*,
and Victor Soloveytchik, *Section Registrar*,
Having regard to:
the application (no. 33056/17) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian national, Ms Taliko XXXXX ("the applicant"), on 13 April 2017;
the decision to give notice of the application to the Georgian Government ("the Government");
the observations submitted by the respondent Government and the observations in reply submitted by the applicant;
the comments submitted by the Office of the Public Defender (Ombudsman) of Georgia, which was granted leave to intervene by the President of the Section;
Having deliberated in private on 8 and 16 June 2021,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case raises issues under Articles 2 and 14 of the Convention and concerns the respondent State's failure to protect the applicant's daughter from domestic violence and to conduct an effective investigation into the matter.

THE FACTS

2. The applicant was born in 1958 and lives in Tbilisi. She was represented by three Georgian lawyers – Ms M. Kurtanidze, Ms B. Pataraia and Ms S. Gogishvili – and two British lawyers – Mr Ph. Leach and Ms J. Gavron.
3. The Government were represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice.
4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. circumstances leading to the killing of the applicant's daughter

5. The applicant's daughter, M.T., was born on 14 February 1981. In August 2013 she and L.M., without having their marriage officially registered, moved into a flat together in Rustavi, sharing with L.M.'s parents. M.T.'s daughter from her previous marriage was six years old at the time.
6. The couple started having arguments shortly after moving in together, as it appeared that L.M. suffered from pathological jealousy.

7. On 29 April 2014 L.M.'s father called the police because his son was abusing M.T. The police went to the flat and drew up a report stating that L.M. was heavily intoxicated and had threatened to kill the applicant out of jealousy. L.M.'s parents told the police officers that their son suffered from pathological jealousy and was otherwise mentally unstable, becoming particularly aggressive while drunk. The father further stated that his son's violent behaviour and death threats against their daughter-in-law were frightening and difficult to cope with, and that he wanted the police to make L.M. leave the property. The report also stated that, M.T., fearing for her life, had also asked the police to take all the measures necessary to prevent her partner from behaving in a similar way again. A criminal investigation was never opened into the matter, and no restrictive measures were issued in respect of L.M.

8. On 22 September 2014 M.T. called the police to say that L.M. had verbally and physically abused her. A police officer arrived at the scene and drew up a report indicating that M.T. had been physically assaulted by her partner, in an act classified as criminal battery, as a result of which she had called an ambulance and received medical assistance. The report also noted that she had been subjected to systematic verbal abuse and threats. L.M.'s mother confirmed her son's abusive behaviour. The police officer then questioned L.M., who acknowledged that he was a jealous person and had indeed made death threats against M.T. multiple times. He assured the officer that he would never harm M.T. because he loved her and cared about their life as a couple. He promised that he would never assault his wife again. During the interview with the officer, L.M. also stated that he had previously been convicted of robbery and unlawful possession of drugs.

9. On the same date M.T. was interviewed by an investigator from the criminal police unit. After the interview, the investigator issued a report which reclassified L.M.'s beating of M.T. as a less serious "shove", adding that "M.T. state[d] that she [did] not need any kind of medical treatment". The police officer advised the applicant's daughter that it was not possible to arrest her partner or to request any other restrictive measure given the "minor" nature of the "family altercation". An investigation was never opened into the matter.

10. On 23 September 2014 M.T., traumatised by the previous day's incident, left L.M. and moved in with her mother in Tbilisi. Following her departure, L.M. started sending her telephone messages containing various threats, including the following: "I can easily make you disappear", "I'm going to commit suicide, I can't live without you" and "No one can stop me, I'm not afraid of the police". He also made death threats against M.T.'s young daughter.

11. On 26 September 2014 M.T. reported to the police that L.M. had been threatening to kill her. A police officer's report of that day states that M.T. submitted that she had been receiving insulting messages and threats from L.M. (including those described in the previous paragraph) and that she wanted the police to help her end the aggression once and for all. The police officer advised M.T. that no restrictive measures could be taken in respect of her partner because his violent conduct had not been witnessed by the police.

12. On 27 September 2014 M.T. filed a criminal complaint against L.M. for further threats against her and her daughter. In particular, she reported that the previous evening L.M. had tried to break into her and her mother's flat. As the women had managed to block the front door, he had tried to smash the door open, threatening to set fire to M.T.'s car and kill the applicant, her daughter and her granddaughter. As a result, L.M. was summoned and interviewed by the criminal police.

According to the interview record, L.M. stated that he simply wanted to get back together with M.T, whom he loved deeply. The investigator from the criminal police then reclassified the reported death threats as verbal abuse and pleas to return to life as a couple. A criminal investigation was never opened, but a formal warning was issued against L.M. not to engage in any kind of dispute with M.T. or risk facing the full force of the law.

13. On 28 September 2014, when M.T. was returning home, she was accosted by L.M. at the entrance to her block of flats. Having managed to escape and reach her flat safely, she immediately called the police. A report drawn up by a police officer that day stated that for the three previous days M.T. had been receiving text messages on her mobile telephone containing death threats from her partner, about which she had already lodged a complaint with the criminal police. The officer explained that the police could not arrest L.M. for just making threats, in the absence of a physical assault. According to the applicant's recollection of the incident, the officer suggested, as an alternative solution, that M.T. tell her brothers about the violence she had been subjected to so that they could take revenge on L.M. by "breaking his bones".

14. Between late September and mid-October 2014 the applicant went to the Didube-Chughureti district police station in Tbilisi three times to report that L.M. had been stalking and threatening her daughter every day, urging the police to protect the latter. She also reported how he had once gone to her daughter's workplace with a hand grenade and threatened to detonate it. The police did not take any action.

15. On 15 October 2014 M.T. called the police and stated that L.M. had been at her place of work – she was an English language professor at a university – looking for her. She stated that she was extremely scared of him. A police officer went to see her and took a statement. No further steps were taken by the police, with the police officer reiterating the explanation that an aggressor had to be caught "red-handed" before being arrested or any other restrictive measure could be applied. M.T. urged the security guards of the university to never let L.M. into the building again.

16. On 16 October 2014 M.T. called the police and told them that when she had been driving to her daughter's school, she had been followed by L.M., who had tried to stop her and had almost crashed into her car with his car. A report drawn up by the police officer at the scene stated that M.T. submitted that she had been disturbed by her ex-partner, who had shown up at her workplace, engineered encounters with her in the street and interfered with her freedom of movement. The report ended with an explanation addressed to M.T. "to call the police the very moment he approach[ed] and verbally insult[ed] her or if he [made] a threat." No further steps were taken by the police.

17. On the same day the applicant went to the police herself to report that her and her daughter's lives had become unbearable as L.M. had been terrorising them on a daily basis. The applicant indicated in her statements that she knew that her daughter, genuinely concerned for her life and safety, had been carrying defence pepper spray and a taser with her at all times. The applicant pleaded for State protection. Without resorting to a restraining order or any other restrictive measures against L.M., the police officers limited themselves to drawing up a new report, recording the applicant's statements.

18. According to the various records and reports drawn up by the police officers in relation to the incidents of domestic violence described above (see paragraphs 7-17 above), neither the applicant

nor her daughter were ever advised of their procedural rights or the legislative and administrative measures of protection available to them under the Criminal Code and the Domestic Violence Act (see paragraphs 29-34 below).

19. On 17 October 2014 L.M. went to M.T.'s workplace and asked her to come out of the classroom where she was holding a lesson for students so that he could talk to her. When she entered the corridor, he shot her dead with a gun. Immediately afterwards he turned the gun on himself and committed suicide.

II. legal steps taken by the applicant

20. On 17 October 2014 an investigation was opened into the double homicide and unlawful possession of a firearm by L.M. Domestic violence was added to the file as the motive a few days later. On 31 December 2014 the investigation was discontinued as the person liable for the crime was deceased.

21. On 8 April 2015 the applicant filed a criminal complaint with the district public prosecutor's office, requesting that an investigation be opened against the police officers dealing with her daughter's domestic violence allegations case for negligence. As no reply was received, she reiterated the same complaint, further specifying that the inactivity of the police officers in question could also be considered gender-based discrimination. She lodged her complaint on at least four occasions between 5 August and 22 December 2015 for the attention of either the Chief Public Prosecutor's Office, the authority competent to launch criminal inquiries against police officers, or the General Inspectorate of the Ministry of the Interior ("the MIA"), the unit in charge of disciplinary supervision of those working for the Ministry.

22. While the prosecution authority left all the applicant's complaints unanswered, the MIA replied to her on 18 January 2016, stating they had no general jurisdiction to open an investigation into a crime allegedly committed by its officials without the consent of the Chief Public Prosecutor of Georgia.

23. On 21 September 2016 the applicant's representative again contacted the Chief Public Prosecutor's Office with a request for a criminal investigation to be launched against the police officers. She submitted that notwithstanding the number of occasions on which the applicant's daughter had reported the physical violence and death threats against her to the police, they had failed to ascertain the high likelihood of danger and to open an investigation, inaction which had resulted in her murder. Furthermore, she emphasised that she considered the latter to be an indication of gender-based discrimination. No reply was received.

24. On 11 April 2017 the applicant enquired with the Chief Public Prosecutor's Office whether it had received her previous letters and complaints and as to the reasons for its lack of response. By a letter of 5 May 2017, it confirmed that it had duly received all her previous correspondence, but did not provide any responses to her earlier complaints.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. Domestic legal framework, as at the material time

A. Criminal Code of Georgia

25. At the material time, Article 111 of the Criminal Code provided that those who could be considered "family members" and could thus be held liable for domestic crimes included former spouses and unmarried partners, as well as legal guardians and custodians.
26. Under Article 53 § 31, discrimination on the grounds of, inter alia, gender identity was considered to be a bias motivation and an aggravating circumstance in the commission of a criminal offence, warranting the imposition of a more severe punishment than the commission of the same offence without such discriminatory overtones.
27. Articles 117, 118 and 120 proscribed the offences of intentional infliction of serious bodily injury (punishable by three to six years' imprisonment), less serious bodily injury (one to three years' imprisonment) and minor bodily injury (up to two years' imprisonment).
28. Article 1261 proscribed the offence of domestic violence, qualifying it as "abusive behaviour by a family member [as defined in Article 111 of the Code] consisting of either regular insults, blackmail or degrading treatment which has resulted in physical pain or mental suffering and which has not entailed the consequences provided for in Articles 117, 118 and 120 of the Code." The offence of domestic violence was punishable by up to one year's imprisonment.

B. Law of 25 May 2006 on Combating Domestic Violence ("the Domestic Violence Act") as in force at the relevant time

29. Under section 9 of the Domestic Violence Act, criminal, civil and administrative mechanisms were used for the prevention and combating of domestic violence. Criminal mechanisms were to be applied where the domestic violence in question amounted to a criminal offence.
30. Section 10 provided that either protective or restraining orders could be issued where there were allegations of domestic violence. Protective orders were issued by a court, which could indicate any type of operational measure aimed at protecting the purported victim. Restraining orders could be issued by a police officer at the scene of an incident of domestic violence, which could contain any type of measures aimed at containing the perpetrator. Restraining orders were enforceable immediately, but had to be submitted for judicial approval within twenty-four hours. Failure to comply with the measures indicated in protective and restraining orders could result in either criminal or administrative liability.
31. In accordance with sections 11 and 12, protective and restraining orders could be requested either by the victim or a family member. Protective orders were valid for six months, whilst restraining orders were valid for one month. Section 13 specified that reconciliation between the victim and perpetrator could not suspend the legal force of an order.
32. Under section 16, upon receiving reports of domestic violence, the police had to promptly respond by taking all the measures provided for by law. Those measures included, amongst other things, steps aimed at (i) ending the incident immediately; (ii) conducting separate interviews with the victim, perpetrator and all available witnesses; (iii) informing the victim of her rights; (iv) arranging, if necessary, for the victim to be transferred either to a medical centre or a shelter for victims of domestic violence, and (v) issuing a restraining order and taking all the other measures necessary for protecting the life and well-being of the victim. The police also had to draw up a comprehensive written report indicating all the details concerning the incident of domestic violence

and information about the operational measures taken in response. The report had to be presented to a public prosecutor. If appropriate, the police were also under an obligation to notify the public prosecutor of the abuser's failure to comply with a protective or restraining order, so that the question of whether to initiate criminal proceedings could be considered.

33. Sections 17 and 18 provided that the Ministry of Labour, Health and Social Affairs was responsible for providing special temporary shelters for victims of domestic violence, as mentioned in the preceding section. The shelters had to be properly equipped and fit to accommodate victims in comfortable living conditions. A victim could initially stay in the shelter for three months, to be extended with the approval of the administration of the shelter if required. Section 181 also provided that crisis centres would be put in place, administered by the above-mentioned Ministry, in order to provide victims of domestic violence with psychological and medical assistance and legal aid.

34. Section 20 provided for the possibility of isolating an alleged perpetrator of domestic violence from the victim by transferring him to a special rehabilitation centre under the responsibility of the Ministry of Labour, Health and Social Affairs. Such facilities had to be equipped with adequate living conditions and provide psychological and medical assistance.

II. International materials

A. Convention on Preventing and Combating Violence against Women and Domestic Violence ("the Istanbul Convention")

35. The Istanbul Convention, which applies to all forms of violence against women and provides a comprehensive framework to prevent, prosecute and eliminate such violence and to protect victims, was ratified by and entered into force with respect to Georgia on 19 May and 1 September 2017 respectively.

B. Committee of Ministers' Recommendation 2002(5) on the protection of women against violence

36. In its Recommendation (2002)5 of 30 April 2002 on the protection of women against violence, the Committee of Ministers of the Council of Europe recommended, amongst others, that member States should "have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims".

37. The Committee of Ministers recommended, in particular, that member States should penalise serious violence against women such as sexual violence and rape, abuse of the vulnerability of pregnant, defenceless, ill, disabled or dependent victims, as well as penalising abuse of position by the perpetrator. The Recommendation also stated that member States should ensure that all victims of violence are able to institute proceedings, make provisions to ensure that criminal proceedings can be initiated by the public prosecutor, encourage prosecutors to regard violence against women as an aggravating or decisive factor in deciding whether or not to prosecute in the public interest, ensure where necessary that measures are taken to protect victims effectively against threats and possible acts of revenge and take specific measures to ensure that children's rights are protected during proceedings.

C. United Nations Committee on the Elimination of Discrimination against Women (CEDAW)

38. On 24 July 2014 CEDAW issued concluding observations on a periodic report of Georgia. The relevant excerpts read as follows:

"Stereotypes and harmful practices
18. The Committee regrets that, notwithstanding the efforts by the State party to implement the recommendations contained in its previous concluding observations (CEDAW/C/GEO/CO/3, para. 18), patriarchal attitudes and stereotypes regarding the roles and responsibilities of women and men in the family and in society remain deeply rooted and are exacerbated by the increased sexualization of women in the media, which undermines the social status, participation in public life and professional careers of women. ...
Violence against women
20. The Committee notes the adoption of legislation on elimination of domestic violence, including protection of and assistance to victims, in 2006, the criminalization of domestic violence in 2012 and the adoption of an action plan to combat domestic violence and implement measures to protect victims, covering the period 2013-2015. The Committee also notes that the State party has signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and will ratify it in the third quarter of 2014. It is concerned, however, at the:
(a) Growing number of women who are murdered by their husbands or partners and of women who are victims of other forms of violence, including psychological, physical, economic and sexual violence;
(b) Low rate of reporting of cases of sexual and domestic violence against women owing to stigma and fear of the perpetrator, in addition to lack of trust in law enforcement agencies, which sometimes refuse to register complaints of domestic violence;
(c) Lack of State-funded crisis centres and shelters for women who are victims of domestic violence, especially in rural areas; ..."

D. United Nations Human Rights Committee

39. On 19 August 2014 the Human Rights Committee, a body established under the International Covenant on Civil and Political Rights, issued concluding observations on a periodic report of Georgia. The relevant excerpt reads as follows:

"While acknowledging the measures taken to combat domestic violence, including its criminalization in June 2012, the Committee is concerned that domestic violence remains underreported owing to gender stereotypes, lack of due diligence on the part of law enforcement officers in investigating such cases and insufficient protection measures for victims, including insufficient enforcement of restrictive and protective orders and a limited number of State-funded shelters and support services."

E. United Nations Special Rapporteur on Violence against Women

40. On 9 June 2016 a report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia was published. The relevant excerpts read as follows:

"Violence against women, including domestic violence
10. ... [D]omestic violence, including physical, sexual and psychological abuse, is still considered a private matter and not an issue of public concern in most parts of the country. The incidence of domestic violence is still underreported, partly owing to the lack of public awareness about this societal problem, fear of retaliation and stigmatization, a lack of trust in law enforcement agencies and the low quality of existing services and protection mechanisms for victims of violence.
11. A national study conducted in 2009 shows that 1 in 11 of the women interviewed had experienced physical or sexual abuse at the hands of her husband or intimate partner and 34.7 per cent of women had been injured as a result of physical or sexual violence. Perpetrators of violence against women also include former intimate partners and family members. The main patterns of violence are physical, sexual, psychological and economic abuse, as well as coercion.
12. During the first half of 2015, the Public Defender's Office registered 1,478 cases of domestic violence. In 93 per cent of the cases registered, the perpetrator was a man and in 87 per cent of cases the victims were women. The Special Rapporteur regrets that the estimates for cases of domestic violence are based on the number of restraining orders issued, leaving invisible an undefined number of cases and not reflecting the real amplitude of this scourge. She is concerned that some cases are registered by the police under the category of "family conflict", which may also render cases of domestic violence invisible. ...
14. The Special Rapporteur notes that the factors most likely to increase the risk of intimate-partner violence include discriminatory gender stereotypes and patriarchal attitudes, women's low awareness of their rights, the occurrence of child and forced marriages and a lack of economic independence. In addition, the consumption of alcohol, economic problems and unemployment also contribute to the occurrence of domestic violence. ...
Femicides or gender-related killings of women
19. In 2014, the Committee on the Elimination of Discrimination against Women expressed concern about the growing number of women killed by their intimate partners and recommended that measures should be taken to prevent such killings. In 2015, as part of the follow-up to the recommendations, the Public Defender's Office published a special report on violence against women and domestic violence in Georgia, in which it provided data on 34 women killed because of their gender in 2014. The Special Rapporteur was informed that in 2015 fewer femicides and gender-related killings had been registered.
20. The Special Rapporteur noted that in many cases of killings committed by former or current intimate partners, the victims had reported acts of violence to the police but had not been provided with adequate and effective protection ...
Protection
89. The mandate holder was informed that, in numerous cases, victims of domestic violence have to report cases of violence several times to the police before a restraining order is issued. For example, she was informed that in 2013, the police were called to more than 5,447 incidents of domestic "conflict", but that only 212 restraining orders were issued. It was also reported that victims are not

well informed by police officers, who sometimes do not explain that it is possible to request a restraining order. ...

92. Nevertheless, the mandate holder expresses serious concerns about the persistence of stereotypes among police officers and the fact that some police officers in rural areas still issue "warning letters", devoid of any legal value, through which perpetrators agree not to exercise violence against their partner. She stresses the fact that such letters do not provide protection for victims and do not permit a person to be held to account for acts of violence committed in the past.

93. The Special Rapporteur is also concerned that some cases of violence are still registered by the police as "family conflict" cases and no assessment is carried out to ascertain the danger to the life of the victim. She was informed that in numerous cases the police do not provide adequate assistance, or information on shelters or restraining orders, to victims of domestic violence and that in many cases, investigations are halted when a victim withdraws her statement. Reports suggest that the police do not adequately document cases involving domestic violence and point to weaknesses with regard to the collection of evidence and the drafting of police reports, which can hinder the prosecution of perpetrators of violence. The mandate holder was informed that despite the new obligation for the police to immediately notify the victim of domestic violence when the convicted perpetrator leaves prison, the implementation of this requirement has been poor. All these issues may expose the victim to more violent, or even fatal, attacks by the perpetrator.

Prosecution

94. The Special Rapporteur was informed about difficulties in initiating criminal proceedings without the victim's complaint, as there is no ex officio prosecution of perpetrators of domestic violence. Interlocutors also reported that prosecutors do not conduct timely and effective investigations into cases of domestic violence. The number of prosecutions is low, in comparison with the number of cases reported."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 2 and 14 OF THE CONVENTION

41. The applicant complained under Articles 2 and 14 of the Convention of the domestic authorities' failure to protect her daughter from domestic violence and to conduct an effective criminal investigation into the circumstances which had contributed to her death. The relevant parts of these provisions read as follows:

Article 2

"1. Everyone's right to life shall be protected by law ..."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex ..., or other status."

A. Admissibility

42. The Government did not submit any objection as to the admissibility of the complaints under Articles 2 and 14 of the Convention.
43. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

44. The applicant submitted that, despite being aware of the danger posed to her daughter's life by L.M.'s violent behaviour, the police had nevertheless failed to take the necessary preventive measures. She complained that they had inadequately and inaccurately gathered and recorded evidence when dealing with her daughter's allegations of domestic violence. The applicant submitted that the inappropriate and discriminatory responses of the police and the prosecution authority to the numerous complaints she and her daughter had made about L.M.'s abusive behaviour, coupled with the relevant authorities' failure to investigate the circumstances which had contributed to her daughter's death and to hold all those involved criminally responsible, were central to the breach by the respondent State of its positive obligations under Articles 2 and 14 of the Convention.
45. Without disputing the facts of the case as submitted by the applicant, and without contesting her legal arguments, the Government limited their comments to providing the Court with an overview of various legislative, budgetary and administrative measures taken by the respondent State in the field of combating domestic violence and, more generally, violence committed against women from 2014 onwards. In that respect, they submitted information about various training and awareness-raising courses provided, between 2015 and 2017, to the judicial, prosecutorial and law-enforcement authorities on the problem of violence against women.

2. The third party's submissions

46. The Office of the Public Defender (Ombudsman) of Georgia submitted information about the work that it had undertaken on the protection of women's rights in the country, with particular emphasis on the causes, extent and consequences of discrimination against women. The third party referred to the pattern of systemic violence committed against women as one such consequence. It submitted that violence against women in Georgia was widespread and occurred both in private and in public, in urban and rural areas. It was the persistence of entrenched patriarchal attitudes and gender stereotypes that made gender-based violence tolerated.

3. The Court's assessment

47. Having regard to the applicant's allegations that the domestic authorities' double failure – the lack of protection of her daughter's life and the absence of an effective investigation into the

circumstances that had contributed to her death – stemmed from their insufficient acknowledgment of the phenomenon of discrimination against women, the Court finds that the most appropriate way to proceed would be to subject the complaints to a simultaneous dual examination under Article 2 taken in conjunction with Article 14 of the Convention (for application of the same methodology in the context of Article 3 complaints, see Aghdgomelashvili and Japaridze v. Georgia, no. 7224/11, § 36, 8 October 2020, with further references; and, as regards Article 2 complaints, see, for instance, Lakatošová and Lakatoš v. Slovakia, no. 655/16, § 78, 11 December 2018, with further references).

(a) General principles

48. Article 2 of the Convention requires the State not only to refrain from the "intentional" taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see Calvelli and Ciglio v. Italy [GC], no. 32967/96, § 48, ECHR 2002-I). This substantive positive obligation involves, firstly, a primary duty on the State to secure the right to life by putting in place a legislative and administrative framework designed to provide effective deterrence against threats to the right of life (see Öneryıldız v. Turkey, [GC] no. 48939/99, § 89, ECHR 2004-XII). Secondly, in appropriate circumstances there is a duty on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see Kontrová v. Slovakia, no. 7510/04, § 49, 31 May 2007). Victims of domestic violence, who fall into the category of vulnerable individuals, are entitled to State protection, in particular (see Talpis v. Italy, no. 41237/14, § 99, 2 March 2017). Whenever there are any doubts about the occurrence of domestic violence or violence against women, an immediate response and further special diligence is required of the authorities to deal with the specific nature of the violence in the course of the domestic proceedings (see Kurt v. Austria [GC], no. 62903/15, § 165-66, 15 June 2021, and Volodina v. Russia, no. 41261/17, § 92, 9 July 2019).

49. Bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the obligation to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For such a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. This is a question which can only be answered in the light of all the circumstances of any particular case. The risk of a real and immediate threat must be assessed, taking due account of the particular context of domestic violence. In such a situation, it is not only a question of an obligation to afford general protection to society, but above all to take account of the recurrence of successive episodes of violence within a family (see Talpis, cited above, § 122). Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place

restraints on the scope of their action to investigate crime and bring offenders to justice (see Opuz v. Turkey, no. 33401/02, §§ 129-30, ECHR 2009). However, in domestic violence cases, perpetrators' rights cannot supersede victims' human rights to life and to physical and psychological integrity (see Talpis, cited above, § 123).

50. The Court reiterates that the obligation to protect life under Article 2 of the Convention requires that there be some form of effective official investigation when individuals have been killed either by State officials or private individuals (see Mazepa and Others v. Russia, no. 15086/07, § 69, 17 July 2018). In order to be "effective" in the context of Article 2 of the Convention, an investigation must firstly be adequate, that is to say it must be capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible, where those responsible are State agents, but also where they are private individuals (see Lakatošová and Lakatoš, cited above, § 73). The obligation to conduct an effective investigation is an obligation which concerns the means to be employed, and not the results to be achieved (see Mižigárová v. Slovakia, no. 74832/01, § 93, 14 December 2010), but the nature and degree of scrutiny satisfying the minimum threshold of effectiveness depends on the circumstances of the particular case, and it is not possible to reduce the variety of situations which might occur to a bare checklist of acts of investigation or other simplified criteria (see Velikova v. Bulgaria, no. 41488/98, § 80, ECHR 2000-VI). A requirement of promptness and reasonable expedition is implicit in the context of an effective investigation within the meaning of Article 2 of the Convention (see, amongst many others, Talpis, cited above, § 106).

51. The Court also reiterates that a State's failure to protect women against domestic violence breaches their right to equal protection before the law and that this failure does not need to be intentional. It has previously held that "the general and discriminatory judicial passivity [creating] a climate that was conducive to domestic violence" amounted to a violation of Article 14 of the Convention (see Opuz, cited above, §§ 191 et seq.). Such discriminatory treatment occurred where it could be established that the authorities' actions were not a simple failure or delay in dealing with the violence in question, but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the complainant as a woman (see Talpis, cited above, § 141). Where there is a suspicion that discriminatory attitudes induced a violent act, it is particularly important that the official investigation be pursued with vigour and impartiality, having regard to the need to continuously reassert society's condemnation of such acts and to maintain the confidence of minority groups in the ability of the authorities to protect them from discriminatory violence. Compliance with the State's positive obligations requires that the domestic legal system demonstrate its capacity to enforce criminal law against the perpetrators of such violent acts (see Sabalić v. Croatia, no. 50231/13, § 95, 14 January 2021). Without a strict approach from the law-enforcement authorities, prejudice-motivated crimes would unavoidably be treated on an equal footing with ordinary cases without such overtones, and the resultant indifference would be tantamount to official acquiescence to or even connivance with hate crimes (see Identoba and Others v. Georgia, no. 73235/12, § 77, 12 May 2015, with further references).

(b) Application of these principles to the circumstances of the case

(i) Substantive positive obligations

52. At the outset, having regard to the relevant criminal-law provisions, as well as the additional deterrence mechanism contained in the Domestic Violence Act (see paragraphs 25-34 above), the Court, in the absence of any arguments to the contrary by the applicant, is satisfied that there existed an adequate legislative and administrative framework designed to combat domestic violence against women in the country in general. It is rather the manner of implementation of this deterrent mechanism by the law-enforcement authorities, that is to say the issue of compliance with the duty to take preventive operational measures to protect the applicant's life, which raises serious concerns in the present case. In its assessment of the latter issue, the Court must answer the following three questions: whether a real and immediate danger emanating from an identifiable individual existed, whether the domestic authorities knew or ought to have known of the threat, and, should the above two questions be answered in the affirmative, whether the authorities displayed special diligence in their response to the threat (see, for instance, Opuz, cited above, §§ 130 and 137-49, and also compare Kurt, cited above, §§ 161-79).

53. The Court notes that, according to the material in the case file, within a very tight time frame of some six months, between 29 April and 16 October 2014, M.T. and the applicant requested help from the police on at least eleven occasions. In their statements, they always clearly conveyed, by describing all the relevant details, the level of violence in L.M.'s behaviour. The latter himself admitted on one occasion that he had been threatening to kill the applicant's daughter. L.M.'s parents also confirmed to the police the dangerousness of their son's conduct, especially when drunk. Moreover, the police knew that L.M. suffered from pathological jealousy and had other mental instabilities, had difficulties in managing his anger and furthermore had a criminal record and history of drug and alcohol abuse. The police were also aware that M.T. carried various defence weapons with her all the time and experienced extreme fear and anxiety at seeing her partner approaching either her flat or workplace (see paragraphs 7-18 above). All these considerations confirmed the reality of the danger caused by L.M. to M.T. Furthermore, when examining the history of their relationship, the Court notes that the violence to which the applicant's daughter was subjected cannot be seen as individual and separate episodes but must instead be considered a lasting situation. Where there is a lasting situation of domestic violence, there can hardly be any doubt about the immediacy of the danger posed to the victim (compare Opuz, cited above, §§ 134 and 135; Talpis, cited above, § 121; Branko Tomašić and Others v. Croatia, no. 46598/06, §§ 52 and 53, 15 January 2009; and contrast Tërshana v. Albania, no. 48756/14, § 151, 4 August 2020). The Court thus concludes that the police knew or certainly ought to have known of the real and immediate threat to the safety of the applicant's daughter.

54. As regards the requirement of special diligence, the Court discerns several major failings on the part of the law-enforcement authorities. Firstly, there are indications of inaccurate or incomplete evidence-gathering by the police officers. In this connection, the Court considers that shortcomings in the gathering of evidence in response to a reported incident of domestic violence can result in an underestimation of the level of violence actually committed, can have deleterious effects on the prospects of opening a criminal investigation and even discourage victims of domestic abuse, who are often already under pressure from society not to do so, from reporting an abusive family member to the authorities in the future. It is also significant in this connection that, when recording the incidents, the police officers do not appear to have conducted a "lethality risk assessment" in an

autonomous, proactive and comprehensive manner (compare Kurt, cited above, § 168). They did not attach sufficient importance to potential trigger factors for the violence – such as, for instance, L.M.'s alcohol dependency, his pathological jealousy further fuelled by the fact that he and M.T. had separated, and so on – and failed to take into account the victim's own perceptions of danger, that is, how extremely fearful the applicant's daughter actually was (see paragraphs 7, 10 and 14-16 above, compare Talpis, cited above, § 118). The police preferred to downgrade the classification of an incident to a "minor family altercation" (compare Kontrova, cited above, § 54). The Court further observes in this connection that, in her relevant report on Georgia, the UN Special Rapporteur on violence against women pointed to the very same shortcomings in the police's initial responses to domestic violence allegations, identifying those failings as systemic (see paragraph 40 above).

55. Furthermore, it is striking to note that, whilst the domestic legislative framework provided for temporary restrictive measures in respect of the abuser, such as protective and restraining orders, with the latter being able to be immediately issued by a police officer at the scene, the relevant domestic authorities did not resort to them at all (see paragraphs 30 and 31 above, and compare with Talpis, cited above, §§ 113 and 114). There even existed the possibility of isolating the abuser in a special rehabilitation centre (see paragraph 34 above), but the police did not consider that possibility either. What is more, it does not appear from the various reports and records drawn up by the police officers that either the applicant or her daughter were advised by the police of their procedural rights and of the various legislative and administrative measures of protection available to them. On the contrary, it appears that they were misled as the police referred to their inability to arrest the abuser or to apply any other restrictive measure (see paragraphs 9, 11, 13 and 15-16 above). Again, it does not escape the Court's attention that the reluctance of the police to resort to issuing restraining orders was another systemic problem identified by the UN Special Rapporteur on violence against women (see paragraph 40 above). Even though the police failed to use their best endeavours to appropriately report the various incidents of domestic abuse, the Court notes that, owing to the numerous criminal complaints repeatedly filed by M.T. and the applicant, which clearly and convincingly revealed the gravity of L.M.'s alleged conduct – infliction of physical injuries, incessant verbal death threats, intention to cause a traffic accident, a threat to blow up the victim with a hand grenade, and so on – there still existed plenty of evidence warranting the institution of criminal proceedings against L.M., which would have opened up the possibility of placing him in pre-trial detention. It is deplorable that the law-enforcement authorities did not do so.

56. The Court further observes that the inactivity of the domestic law-enforcement authorities, in particular the police, appears to be even more unforgivable when assessed against the fact that, in general, violence against women, including domestic violence, has been reported to be a major systemic problem affecting society in the country at the material time. According to the relevant statistical data, domestic violence mainly affected women, who accounted for roughly 87% of victims. Several authoritative international monitoring bodies, as well as the Office of the Public Defender of Georgia, attested to this blight on society, reporting that the causes of violence against women were linked to, inter alia, discriminatory gender stereotypes and patriarchal attitudes, coupled with a lack of special diligence on the part of the law-enforcement authorities (see paragraphs 38-40 and 46 above). The domestic authorities responsible thus knew or should have known of the gravity of the situation affecting many women in the country and should have thus

shown particular diligence and provided heightened State protection to vulnerable members of that group (compare Identoba and Others, cited above, § 72, and also Tërshana, cited above, § 157). In the light of the foregoing, the Court can only conclude that the general and discriminatory passivity of the law-enforcement authorities in the face of allegations of domestic violence, of which the present case is a perfect illustration, created a climate conducive to a further proliferation of violence committed against women. That being so, the respondent State's failure to take preventive operational measures aimed at protecting the applicant's daughter, irrespective of whether that failure was intentional or negligent, undermined the rights of the applicant and her daughter to equal protection before the law (compare Opuz, cited above, §§ 184-202, and Talpis, cited above, §§ 145 and 148).

57. All in all, the Court finds that the law-enforcement authorities demonstrated a persistent failure to take steps that could have had a real prospect of altering the tragic outcome or mitigating the harm. In flagrant disregard for the panoply of various protective measures that were directly available to them, the authorities failed to display special diligence to prevent gender-based violence against the applicant's daughter, which culminated in her death. When assessed against the similar findings of the international and national monitoring bodies, the Court finds that the police inaction in the present case could be considered a systemic failure. The respondent State has thus breached its substantive positive obligations under Article 2 of the Convention read in in conjunction with Article 14.

(ii) Procedural positive obligations

58. The Court observes that the perpetrator of the killing was a private individual, and that his responsibility in that regard was never called into question. L.M. immediately killed himself, and any further application of criminal-law mechanisms in respect of him thus became futile.

59. As regards the question of whether, in the particular circumstances of the present case, the State had a further positive obligation to investigate inaction of any of the law-enforcement officials involved and hold them responsible, the Court reiterates that, in cases concerning possible responsibility on the part of State officials for deaths occurring as a result of their alleged negligence, the obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case (see, among many other authorities, Kotilainen and Others v. Finland, no. 62439/12, § 91, 17 September 2020). However, there may be exceptional circumstances where only an effective criminal investigation would be capable of satisfying the procedural positive obligation imposed by Article 2. Such circumstances can be present, for example, where a life was lost or put at risk because of the conduct of a public authority that goes beyond an error of judgment or carelessness. Where it is established that the negligence attributable to State officials or bodies goes beyond an error of judgment or carelessness, in that the authorities in question – fully realising the likely consequences and disregarding the powers vested in them – failed to take measures that were necessary and sufficient to avert the risks, the fact that those responsible for endangering life have not been charged with a criminal offence or prosecuted may amount to a violation of Article 2, irrespective of any other types of remedy that individuals may exercise on their own initiative (see Zinatullin v. Russia, no. 10551/10, § 33, 28 January 2020).

60. The Court has already established above that the inactivity of the law-enforcement authorities was one of the causes of the descent of the domestic abuse into the killing of the victim. Given that the authorities knew or should have known of the high level of risk that would be faced by the victim if they failed to discharge their policing duties, the Court considers that their negligence went beyond a mere error of judgment or carelessness. However, the prosecution authority disregarded the applicant's numerous criminal complaints and made no attempt to establish the identity of the police officers, to interview them and to establish their responsibility in relation to their failure to respond properly to the multiple incidents of gender-based violence that preceded the killing of the victim. Furthermore, having lodged a criminal complaint seeking the necessary investigation into the actions of law enforcement in this case, the applicant repeatedly sought but failed to receive information from the Chief Public Prosecutor's Office. Indeed, it is noteworthy that it took the latter over two years to acknowledge receipt of her correspondence, no further information being provided even then (see paragraphs 21 and 24 above). Not even a disciplinary probe into the alleged police inaction was opened, despite the fact of the applicant's having complained to the body in charge of disciplinary supervision of police officers (see paragraph 21 above and contrast Bljakaj and Others v. Croatia, no. 74448/12, § 123, 18 September 2014), and no steps were taken to train the police officers on how to respond properly to allegations of domestic violence for the future (see, mutatis mutandis, Lovyginy v. Ukraine, no. 22323/08, § 99, 23 June 2016). However, in the light of the relevant circumstances of the case, namely the existence of discriminatory overtones associated with violence committed against women (see paragraph 56 above), the Court considers that there was a pressing need to conduct a meaningful inquiry into the possibility that gender-based discrimination and bias had also been a motivating factor behind the alleged police inaction (compare, mutatis mutandis, Aghdgomelashvili and Japaridze, cited above, § 40). These shortcomings amount to a breach by the respondent State of its procedural positive obligations under Article 2 read in conjunction with Article 14 of the Convention (compare, mutatis mutandis, Zinatullin, cited above, §§ 40, 41 and 47).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

62. The applicant claimed 18,240 Georgian laris (GEL – approximately 4,360 euros (EUR)) in respect of pecuniary damage explaining that, owing to M.T.'s death, her granddaughter had lost economic support from her mother. The applicant also claimed EUR 40,000 in respect of non-pecuniary damage on account of the stress and anguish she had experienced as result of the loss of her daughter.

63. The Government submitted that the amounts claimed were not justified in the circumstances of the case.
64. The Court reiterates that there must be a clear causal connection between the pecuniary damage claimed by the applicant and the violation of the Convention, and that this may, where appropriate, include compensation for loss of earnings (see, among other authorities, Imakayeva v. Russia, no. 7615/02, § 213, ECHR 2006-XIII (extracts)). However, M.T.'s daughter, who had been economically dependent on her mother, is not an applicant in the present case, and the applicant did not lodge her application on behalf of her granddaughter. Furthermore, the applicant did not claim that she had herself been financially dependent on her daughter before her death (compare, for instance, Kukhalashvili and Others v. Georgia, nos. 8938/07 and 41891/07, § 162, 2 April 2020, and Albekov and Others v. Russia, no. 68216/01, §§ 125-27, 9 October 2008). Thus, having regard to the fact that the applicant did not show that her own pecuniary interests had been affected by the death of her daughter, the Court does not find it appropriate in the circumstances of this case to make any award to the applicant in respect of pecuniary damage.
65. On the other hand, the Court accepts that the applicant must have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. It finds it appropriate to award the applicant EUR 35,000 under this head.

B. Costs and expenses

66. The applicant claimed 6,975 pounds sterling (GBP – approximately EUR 8,000) for the costs of her representation before the Court by one of her British lawyers. No claim was made with respect to the applicant's representation by the remaining four (three Georgian and one British) lawyers (see paragraph 2 above). The claimed amount was based on the number of hours which the British lawyer in question had spent on the case (forty-six hours and thirty minutes) and the lawyer's hourly rate (GBP 150). No copies of the relevant legal service contracts, invoices, vouchers or any other supporting financial documents were submitted. The applicant additionally claimed GBP 402 and 351 United States dollars (approximately EUR 289) for postal expenses, translation expenses and other types of administrative expenses incurred by the same British lawyer.
67. The Government submitted that the claims were unsubstantiated and excessive.
68. The Court notes that a representative's fees are actually incurred if the applicant has paid them or is liable to pay them (see Merabishvili v. Georgia [GC], no. 72508/13, § 371, 28 November 2017). In the present case, the applicant did not submit documents showing that she had paid or was under a legal obligation to pay the fees charged by her British representative or the expenses incurred by her. In the absence of such documents, the Court finds no basis on which to accept that the costs and expenses claimed by the applicant have actually been incurred (ibid., § 372; Aghdgomelashvili and Japaridze, cited above, § 61; and Vazagashvili and Shanava v. Georgia, no. 50375/07, §§ 105-08).
69. It follows that the claims must be rejected.

C. Default interest

70. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. Declares the application admissible;
2. Holds that there has been a violation of Article 2 under its substantive positive and procedural limbs taken in conjunction with Article 14 of the Convention;
3. Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement; and
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. Dismisses the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Victor Soloveytchik
Section Registrar

Síofra O'Leary
President