

Medea Matiashvili*

Homicide of Wife-Husband in the Old Georgian Law

Present article refers to the issue of homicide of wife-husband in the old Georgian law. Objective of the article is to determine, how the homicide of wife/husband was regulated in the old Georgian law, to define the relevant norms prohibiting such a crime and distinguish the responsibilities of spouses. For the achievement of set objective, it is necessary to study direct (positive, ecclesiastic and customary law norms) and indirect (hagiographic and historical monuments) sources of the law. As a result, it is defined, that according to the old Georgian law, homicide of wife/husband is a crime. Georgian Positive law is familiar with the general composition of wife's murder as well as separates the issue of murder of adulterous wife (including catching on the offence and committing crime based on the latter motive). It is a crime to murder husband; this type of murder is considered under the law of Vakhtang VI and the Armenian law.

Key words: *homicide of husband, homicide of wife, homicide of spouse, homicide of adulterous wife, murder of innocent wife, husband's right over his wife, punishment of wife, moral crime, adultery, mounting on the donkey, pelting.*

1. Introduction

There are norms regulating relationships between wife and husband in abundance in the old Georgian law. Among them one can encounter the guarantees for the protection of right for life of wife/husband.

Old Georgian family was patriarchal. Wife was obeying the husband. This rule was effective for individual as well as larger families. But despite the above, the head of the family, the man did not have unlimited power over the wife, he could not kill her. However, Georgian law was making some exceptions and in some cases, decided on the right of husband over the wife's life based on her guiltiness.

Certainly, old Georgian law protected husband's right on life and punished severely the woman committing such crime. Moreover, unlike the murder of wife, Georgian law did not know any exceptions from the above rule and despite the guiltiness of the husband, the responsibility was imposed over the person committing such action.

Objective of present article is to determine, how the old Georgian law regulated murder of wife/husband, to define relevant norms prohibiting such crimes and identify the responsibility of spouses. For the achievement of the above objective, the norms of old Georgian law and indirect sources of law history – hagiographic and historical monuments – will be discussed.

Article discusses murder of wife and husband individually. Murder of wife is conditionally divided into the murder of innocent and adulterous wives. Murder of wife is evaluated separately

* Doctoral Student, TSU Faculty of Law.

based on the “Martyrdom of the Holy Queen Shushanik“. The second type of murder – murder of husband, is presented in the second part of the article. This section discusses norms regulating murder of husband and provides analysis of one real case of such crime.

2. Homicide of Wife

2.1. Homicide of Wife Based on “Martyrdom of the Holy Queen Shushanik“

It is unimaginable to review one of the forms of domestic violence, in particular, issue of physical violence, murder of wife in the old Georgian law without study and understanding the first written Georgian monument “Martyrdom of the Holy Queen Shushanik“. As rightly noted by *En. Giunashvili*: “None of the hagiographic monuments have been discussed in so many books and scientific articles, none of the hagiographic texts have been published so many times, none of Georgian hagiographic works caused such an excitement, as “Martyrdom of the Holy Queen Shushanik”.¹ Scientists interested in the history of law have not either left this work without attention. At the time, *Iv. Javakhishvili*,² *Iv. Surguladze*,³ *G. Nadareishvili*,⁴ *I. Putkaradze*⁵ and others expressed number of positions, worth noting, about this work. However, the question, whether the actions of Varsken were legitimate and accordingly, whether there was domestic violence in place, remains without answer. Although, above mentioned authors do not review the manuscript specifically in the light of domestic violence, however, each of them attempt to assess Varsken’s actions and to answer question – Whether the Bidaxae had right to torture and liquidate her? The task is complicated, first of all, by the fact that “**Martyrdom of the Holy Queen Shushanik**” is the first written monument survived. There are no legislative, or other types of documents, clarifying the legal condition of Georgia in V century available. Scientists attempt to search for such information based on the text itself and historical materials about the V century.

It must be taken into account, that “**Martyrdom of the Holy Queen Shushanik**” is hagiographic manuscript and it is only indirect source of history. However, the fact that author was contemporary to the main hero of the manuscript, equips the monument with a huge advantage. Accordingly, however overstated or in contrary, understated were the events by Jacob the Priest, the story is still distinguished with high credibility; therefore, answers to the questions raised above shall be found in the text itself.

“Martyrdom of the Holy Queen Shushanik” is classical hagiographic work, describing the self-sacrifice of main hero, Shushanik for the religion. There is a position in the scientific literature

¹ *Gabidzashvili En.*, Works, I, Monographic opuses, Tbilisi, 2010, 151 (in Georgian).

² *Javakhishvili Iv.*, Objective, Sources and Methods of History in the Past and at Present, I, Old Georgian Historical Literature (V-XVIII), Tbilisi, 1945, 45-54 (in Georgian).

³ *Surguladze Iv.*, Opuses from the History of Georgian Political Doctrines, Tbilisi, 2001, 8 (in Georgian).

⁴ See: *Nadareishvili G.*, Rules of Divorce in Feudal Georgia, Works of Stalin Tbilisi State University, 63, Tbilisi, 1956, 229-231. *Nadareishvili G.*, Woman’s Legal Conditions in Feudal Georgia, Journal, “Soviet law”, 3, (May-June), 1968, 56-57 (in Georgian).

⁵ *Putkaradze I.*, Work on Issues of the History of Georgian Family Law, Journal “Soviet Law”, 2, March-April, 1968, 88-91 (in Georgian).

that unlike other hagiographic works, “Martyrdom of the Holy Queen Shushanik“ is based on the uncommon form of martyrdom and the reason for the above position is that in this work Christian martyrdom victim does not oppose the official political-religious power.⁶ The author of this position is *En. Gabidzashvili*. The scientist considers the confrontation of Shushanik against the bidaxae of Kartli, first of all, as domestic, family conflict: “Although official power in the face of Varsken, Kartli bidaxae is confronting Shushanik, however, his actions against Shushanik are not based on either political or religious motives, but on the Shushanik’s decision, not to live in the family of spouse who adopted Mazdeism religion. The only goal of Varsken is to return Shushanik back home”.⁷ Moreover, scientist does not decline the social basis of the conflict: “Christian woman is convinced with all her being that living with the spouse who adopted Mazdeism religion is encroachment of the sacredness of Christian religion”.⁸ Position that conflict between Shushanik and Varsken is first of all family type confrontation is quite widely spread in the scientific literature. *Iv. Javakhishvili* is also supporter of the above position. According to his view, Varsken’s actions are conditioned by Shushanik leaving husband’s house and his ferocity is related to this fact.⁹ *N. Janashia* also fully shares this position.¹⁰ *V. Inauri* refers to the conflict “conditioned by the religious-political situation” and “family aspect”.¹¹ *R. Siradze* has different position; according to *R. Siradze*, fall of one person (in this case – Varsken) or tragedy of one family, is the common misfortune for the country, accompanying our lives. “Therefore, we cannot perceive “Martyrdom of the Holy Queen Shushanik“ as family drama”.¹²

“Martyrdom of the Holy Queen Shushanik“ is artistic image of martyrdom life and tragic decrease of its main hero, Shushanik. The key objective of the monument is to idealize the hero, self-sacrificed for the religion and to underline the importance of his/her self-sacrifice. However, one cannot decline that “Martyrdom of the Holy Queen Shushanik“ is dual family drama and it also reflects the personal conflict of persons acting, Shushanik and Varsken. The differences in viewpoints are conditioned by the real basis for the above conflict – religious/political dispute, or personal grievance or both together. It must be considered that manuscript is created based on religious motives; its main hero is person, occupying political position and he encounters confrontation in his own family, from his wife; therefore, conflict is based on personal grievance as well as religious confrontation. Moreover, reasons for confrontation for Shushanik and Varsken may differ. For Shushanik such reasons are first of all religious type (Jacob Tsurtaveli draws this very line in the process of describing martyrdom life of the hero), however the above does not exclude, moreover, determines the personal confrontation, with the husband. As rightly noted by *N. Janashia*, disagreement of Shushanik and Varsken, started before he left for Iran and moved to another level, after adoption of Mazdeism religion and apostasy of husband.¹³ As for Varsken, conflict with wife has

⁶ *Gabidzashvili En.*, Works, I, Monographic opuses, Tbilisi, 2010, 265 (in Georgian).

⁷ *Ibid*, 265.

⁸ *Ibid*, 265-266.

⁹ *Javakhishvili Iv.*, Objective, Sources and Methods of History in the Past and at Present, I, Old Georgian Historical Literature (V-XVIII), Tbilisi, 1945, 45 (in Georgian).

¹⁰ *Janashia N.*, Martyrdom of Shushanik, Historical-sourcelogical research, Tbilisi, 1983, 253 (in Georgian).

¹¹ *Inauri V.*, Tragedy of Varsken Bidaxae, Tbilisi, 2004, 3 (in Georgian).

¹² *Siradze R.*, Georgian Hagiography, Tbilisi, 1987, 39-40 (in Georgian).

¹³ *Janashia N.*, Martyrdom of Shushanik, Historical-sourcelogical Research, Tbilisi, 1983, 250-251 (in Georgian).

first of all personal nature, however, it is closely related to the political and religious factors. In any case, personal conflict between the spouses is in place and accordingly, “Martyrdom of the Holy Queen Shushanik“, can be considered as the first survived written work as well as work describing domestic violence, where husband is violently treating, torturing and in the end murdering his wife. In order to determine, whether husband had such right in V century, it is necessary to determine the rules effective in the Georgian families of that time. These issues are covered by *G. Nadareishvili*. According to his correct comment, one can draw from the text, that family consisted of husband, wife and children and some of the servants might have been members of the family too.¹⁴ It is clear, that family was patriarchal and its head, head of the family was bidaxae Varsken. Woman obeys man and is not equal to him. For 5th century this is natural condition of a woman, which is evident from the text. The above is confirmed by the resentment of Shushanik during the meal at the behavior of Jojik’s wife, when the latter sits at the table together with men and has a meal – “when was it ever, the men and women eating together?”¹⁵ However, later, Shushanik partially changes her mind and even expresses her dissatisfaction about the inequality of men and women in the mundane world and her desire for the heavenly world: “when the time comes, when I and Varsken will be presented in front of the Judge, God, where man and woman are not tried differently, where men and women are equal”.¹⁶ The scientists have not missed this fact. For example, *Iv. Javakhishvili*¹⁷ and *N. Janashia*¹⁸ mention the inconsistent nature of Shushanik’s position – at the beginning she is against the equality of men and women and later, she expresses her discontent due to such inequality. However, unlike other scientists, *N. Janashia* does not support the view that Shushanik is supporting the idea of equality of man and woman.¹⁹ Author perceives this statement as the way for revenge against Varsken: “She intends to continue fight against Varsken in the other world. Even before the death, when humans often forgive the enemies all their sins, Shushanik is not getting softer. She states with the threat, that will make a word in front of God, in order to duly punish Varsken”.²⁰ Author explains support demonstrated by the queen for the idea of equality by the double standards dominating in the Christian doctrine: “Christians although recognize equality for everyone, at the same time, do not consider it necessary to have everyone socially equal in this world”.²¹ *G. Nadareishvili* also touches the gender issue in “Martyrdom of the Holy Queen Shushanik“ and notes that according to the work, “woman carries the heavy burden of family power of the man”²² Scientist refers to this circumstances as characteristic to 5th century and as a confirmation, presents the note on the Will of Vakh-tang Gorgasali, confirmed by the Georgian historian, Juansher, according to which, the king decides on the marriage of his sister in the following way: “If not alive, marry my sister Khuarandze to

¹⁴ *Nadareishvili G.*, Opus on the History of Georgian Law, Tbilisi, 1971, 53 (in Georgian).

¹⁵ *Jacob the Priest*, Martyrdom of Shushanik, Georgian Literature, I, Tbilisi, 1987, 230 (in Georgian).

¹⁶ *Ibid*, 240-241.

¹⁷ *Javakhishvili Iv.*, Objective, Sources and Methods of History in the Past and at Present, I, Old Georgian Historical Literature (V-XVIII), Tbilisi, 1945, 45-46 (in Georgian).

¹⁸ *Janashia N.*, Martyrdom of Shushanik, Historical-Sourceological Research, Tbilisi, 1983, 277 (in Georgian).

¹⁹ *Ibid*, 278.

²⁰ *Ibid*, 275.

²¹ *Ibid*, 278.

²² *Nadareishvili G.*, Woman’s Legal Conditions in Feudal Georgia, Journal, “Soviet Law”, 3, (May-June), 1968, 56 (in Georgian).

Mirian”.²³ It is evident that in 5th century, woman is not a subject, it is an object, she obeys man, who is authorized to manage her fate via the Will. But only the fact that in the 5th century the woman talks about the equality of genders even for the heavenly life, is very important. Although, it is organic for Shushanik, to have women and men having meal separately, walking in the scarf and obedience to the husband based on the traditions of the time, however, she feels the unfairness of this rules. The following statement is the repercussion on such discontent: “Where there is no difference between the man and woman”. It is unimaginable for this period to talk about equal rights for women and men. It is a confirmed fact that woman obeys man, that she is in his possession. That is why Shushanik’s statement is revolutionary and accordingly, equal to the expression of idea of equality for that period.

Position that Varsken is unconditional head of the family and that all members of the family obey him is widely spread in the scientific literature and practically is not subject for argument. For example, *G. Jamburia* notes: “The power of Varsken over the members of his family – wife, brother and etc. – is huge. The greater is such right/power over his servants, who are very scared of Varsken beating them or even killing them”.²⁴ *Sh. Meskhia* draws our attention to the term “lord”, according to his right comment, Jacob refers to Varsken in the following way: “My lord, why do you act in this way and mention such evil?”²⁵ According to the author’s interpretation, “Lord was generally the epithet of God, however, the word was also used with the meaning of worldly gods – master, owner, possessor”.²⁶ *G. Nadareishvili* is even more categorical, according to him: “Husband is seen as unlimited lord of wife. Husband beats wife, imprisons her and etc. In other words, he has approximately such power over his wife, as lord for slave”.²⁷ In his other work, researcher provides comparison with III-IV century Persian large family; according to the author: “Head of the family – Dustak Sardari is unlimited in his rights over his wife. Anyway, as we can see it based on Matikin, head of the house has right to kill wife, sell her as a slave and etc”.²⁸ *I. Putkaradze* does not consider Varsken’s violence as legitimate and accordingly, declines the unlimited, despotic power of husband in the family for the period.²⁹ The researcher states that Varsken’s action is “violence conditioned by the potential and actual support from invaders and excludes “implementation of right” by him”.³⁰ Moreover, according to the author, in Georgia of the discussed period, husband must not have right to “fully unanimously and willfully decide on the critical issues of his spouse’s personal life, he had to seriously consider the position of wife”.³¹ It is difficult to say, what does “critical issues of personal life” imply, but in any case, whatever the implication of the daily problem, it is unimaginable,

²³ The Kartli Chronicles, Edited by *S. Kaukhchishvili*, I, Tbilisi, 1955, 151, see from the work: *Nadareishvili G.*, Woman’s Legal Conditions in Feudal Georgia, Journal, “Soviet Law”, 3, (May-June), 1968, 56 (in Georgian).

²⁴ *Jamburia G.*, Issues of Georgian Feudalism, Tbilisi, 2007, 19 (in Georgian).

²⁵ Opuses of Georgian history, II, Editor of the Volume *Sh. Meskhia*, Tbilisi, 1973, 141 (in Georgian).

²⁶ Ibid.

²⁷ *Nadareishvili G.*, Woman’s Legal Conditions in Feudal Georgia, Journal, “Soviet Law”, 3, (May-June), 1968, 56 (in Georgian).

²⁸ *Nadareishvili G.*, Opus on the History of Georgian Law, Tbilisi, 1971, 55 (in Georgian).

²⁹ *Putkaradze I.*, Work on Issues of the History of Georgian Family Law, Journal “Soviet Law”, 2, March-April, 1968, 90 (in Georgian).

³⁰ Ibid.

³¹ Ibid.

that in 5th century husband needed to consider wife's position and moreover, to have her consent for making decision. It is known, that until XX century, woman could not even make decision on her own marriage without her parents,³² she actually did not have right for inheritance³³ and fully depended on the will of men; therefore, it is impossible to consider that husband had to "seriously consider wife's view".

Based on the fact that "Martyrdom of the Holy Queen Shushanik" is family drama, it contains important information on the old Georgian family, including the relationship between the spouses. The first note on the punishment, considered for the moral crime, mounting on the donkey is also encountered in "Martyrdom of the Holy Queen Shushanik". This fact was underlined by *G. Nadareishvili*. According to the researcher's observation, the "Karad Karauliti" mentioned in the monument, refers to the tradition of mounting on donkey, which considered publicly mounting of guilty wife on the donkey by her husband.³⁴ According to the rightly comment made by the author, unfortunately the mentioned tradition was not characteristic only for the 5th century Georgia; according to Davit Batonishvili, despite the fact that the above tradition was prohibited by the law, in 1805 year, inhabitants of Bodbiskhevi mounted the woman Barbare, accused for leaving her husband and prostitution, on the donkey in Kiziki and walked her around the houses.³⁵ Moreover, notes on the application of above punishment, are also found in the materials of XIX -XX centuries.³⁶ It is known that old Georgian law in some cases was forgiving husband even murder of his wife, if he caught her in the process of adultery.³⁷ Therefore, ruling of husband over the wife was not surprising at all. But even in cases of punishment of wife by husband, this was reaction against the crime committed by wife, for example – adultery, insulting husband and etc. The question is – in case of Shushanik, whether there was other type of offence in place? i.e. what preceded the violence from Varsken?

In order to answer these questions, the text itself must be reviewed. After adoption of Mazdeism by Varsken, Shushanik leaves the palace without his consent and will, leaves the house. Varsken's reaction is as follows: "You have overturn my image, and insulted my bed, you left your place and left for

³² The article by *H. Abashidze* "Voice of Georgian Muslim woman" is devoted to the rightless status of woman at the beginning of XX century; in the article author describes parent's unlimited power in the decision on marriage of daughter: "Parents treat them as the goods for sale, love is forbidden for them; father chooses as the future son in law the man his daughter has not seen even once, and gives her away under his will and order." *Abashidze H.*, Voice of Georgian Muslim woman, newspaper "Batumi newspaper", 18, 1914, from the work: *Bekaia M.*, Old Georgian Marriage Traditions in Adjara, Batumi, 1974, 97 (in Georgian).

³³ Georgian women were requesting securing the right for the inheritance even at the beginning of XX century. In 1917 year first Georgian feminist newspaper "Voice of Georgian woman" was issued; in the first issue, in the rubrics "What are we requesting", it was stated: "To annul present inheritance privilege for man and each child, whether female or male, to get equal share of parents' property". What Are we Requesting – Daily Political and Literature Newspaper, "Voice of Georgian Woman", 1, 1917, 5 April, 1 (in Georgian).

³⁴ *Nadareishvili G.*, Divorce According to the Georgian Law, Leaving, Separation, and Divorce Itself, as the Stages of Divorce Rule Development, Issues of History of Georgian Law, I, Tbilisi, 1973, 314-315 (in Georgian).

³⁵ *Bagrationi D.*, Review of Georgian Law and Legislation, Edited by *Ap. Rogava*, Tbilisi, 1959, 983; from the work: *Nadareishvili G.*, Divorce According to the Georgian Law, Leaving, Separation, and Divorce Itself, as the Stages of Divorce Rule Development, Issues of History of Georgian Law, I, Tbilisi, 1973, 315-316 (in Georgian).

³⁶ *Davitashvili G.*, Crime and Punishment in Georgian Customary Law, Tbilisi, 2011, 459 (in Georgian).

³⁷ Vakhtang VI, Article 42, Section 9, Law Book; Law of Vakhtang the Sixth, text was defined and references attached by *Is. Dolidze*, 1981, 194 (in Georgian).

the other place”.³⁸ He feels himself insulted due to the Shushanik’s behavior. The response of Shushanik is following: “I have insulted you, in the same way as you have rejected your creator”.³⁹ It is remarkable, that Shushanik’s behavior is evaluated negatively not only by Varsken. Outsiders also criticize the queen for the above behavior. For example, Jojik condemns Shushanik’s demarche in the same categorical manner: “You are our sister, do not insult the house, place of queens”. Therefore, Shushanik’s action – leaving the palace, leaving husband, is a huge humiliation for Varsken and moreover, it is not only his subjective evaluation. In the 5th century such behavior of wife was “overturning of image” and “destroying” the house”. Simply, leaving the husband equals to insult, particularly so, if the husband is bidaxae. Shushanik does not decline the above, she also evaluates her behavior as insult of husband. Moreover, queen acts in this way intentionally, to punish the husband or/and for his betterment. It is known that leaving husband/wife was criminalized in old Georgian law. The object of crime was protection of family as an institution, as well as respect and dignity of spouse. Therefore, in the 5th century leaving of husband by wife must have been huge offence.

At a first glance, it seems that Shushanik herself acts violently, infringes husband’s respect and dignity. However, the issue is not as simple. Shushanik’s action is reaction on the immoral behavior of Varsken – he changes his religion, gives promise on marrying Shah’s daughter, betrays his homeland. According to *G. Nadareishvili*, based on law of Georgian Christian period, Shushanik would have right to divorce Varsken.⁴⁰ However, author questions the effectiveness of Georgian Christian law in the period of Varsken’s ruling.⁴¹ It must be considered, that Shushanik leaves house and husband, as well as declares disobedience. At the dinner arranged by Varsken, Varsken demonstrates first attempt for reconciliation; during the dinner, the queen expresses her protest on the behavior of Jojik’s wife, “inappropriate” for a woman and treats her rudely. At this moment, the physical confrontation between Varsken and Shushanik starts: “Then Varsken started inappropriate swearing and beating her with his feet. And he got hold of the scraper and hit her on the head, and hit her and injured one of her eyes”.⁴² Christianity itself considered the obedience to husband: “Wives shall obey their husbands, as their lord”, “as husband is head of his wife, as the Christ is the head of the church”, “and as the church obeys to the Christ, the same way – the wives shall obey their husbands” (Epistle to the Ephesians 5, 22-24). But was this condition effective in case of rejection of the Christianity by husband? It is not likely that wife retained the obligation to obey Mazdeist husband, the person who betrayed the god. However, this rule would be effective only under the condition of full reigning of Christianity and in the period of strong church power. It is known and one can understand from the text that in the 5th century the church lacked the actual power and was fully subordinated to the secular leader. The contemporary political situation must be also taken into account. According to Sh. Meskhia observations, “This unlimited power of Varsken and his full inaccessibi-

³⁸ Jacob the Priest, *Martyrdom of Shushanik*, Georgian Literature, I, Tbilisi, 1987, 228 (in Georgian).

³⁹ Ibid.

⁴⁰ *Nadareishvili G.*, Divorce According to the Georgian Law, Issues of the History of Georgia Law, I, Tbilisi, 1973, 314 (in Georgian).

⁴¹ Ibid.

⁴² Jacob the Priest, *Martyrdom of Shushanik*, Georgian Literature, I, Tbilisi, 1987, 230 (in Georgian).

lity was based on the power of Persians'.⁴³ It is a fact that, according to the monument, Shushanik's right to confront husband and not to obey him is not evident. On the contrary, "Martyrdom of the Holy Queen Shushanik" describes the violence of Varsken and underlines his power. Although, Jakob the Priest condemns bidaxae's behavior, however, the monument does not describe the resistance from the Church and effective reaction on Varsken's behavior.

It is interesting to look at the review of Shushanik's martyrdom in historical sources. Author of "Life of Vakhtang Gorgasali", Juansher describes the major family drama of 5th century in the following way: "When his wife, Shushanik heard about her husband abandoning Christianity, she did not stay as the wife. And she forgot her love to her husband and with whole heart started following the commandments of the Christ".⁴⁴ Juansher is not evaluating the episode and only describes Varsken's reaction: "Then Varsken put his efforts – first with coaxing and imploring and promises, then torturing, and I will not in long describe the torment Saint Shushanik has undergone and then her husband, Varsken principal has killed her".⁴⁵ Hence, according to the above note, Varsken first tortured and then killed his wife. It is important that Juansher describes torturing of wife by Varsken, as a result of which she died, as well as directly qualifies actions of bidaxae – "then her husband, Varsken principal has killed her".⁴⁶

Evidently, there are also Armenian sources on "Martyrdom of the Holy Queen Shushanik". Moreover, manuscript has not been translated in full into Armenian and represents the brief account of the original.⁴⁷ For example, one of such sources is Ukhtaneli's opus "History on separation of Georgians from Armenians"; 67th chapter refers to the Martyrdom of Shushanik.⁴⁸ Although the above monument differs with the original with few details,⁴⁹ however, unfortunately it does not provide additional information on martyrdom or generally, on the family life of 5th century. It seems that in the historical as well as literature monuments, preserved up to date, there are no direct assessments of the above family conflict, on the one hand, assessment of Shushanik's actions – her leaving the palace and disobedience of husband, or on the other hand – Varsken's responsibility or implementation of his right. However, there is one Georgian historical note about the death of Varsken, which confirms his execution due to the murder of Shushanik.⁵⁰ This note caused different views among the scientists and is not shared by the majority. However, it must be noted that there are no other sources about death of

⁴³ Opuses of History of Georgia, II, editor of the volume, *Sh. Meskhia*, Tbilisi, 1973, 93 (in Georgian).

⁴⁴ *Juansher*, Life of Vakhtang Gorgasali, Kartli Chronicles, I, Tbilisi, 2012, 182 (in Georgian).

⁴⁵ Jacob the Priest., Martyrdom of Shushanik, Georgian Literature, I, Tbilisi, 1987, 230 (in Georgian).

⁴⁶ *Juansher*, Life of Vakhtang Gorgasali, Kartli Chronicles, I, Tbilisi, 2012, 182 (in Georgian).

⁴⁷ *Abuladze II.*, Relationship of Georgian and Armenian Literature, During IX-X centuries, Research and Ttexts, Tbilisi, 1944, 0172 (in Georgian).

⁴⁸ *Ukhtanesi*, History of Separation of Georgians from Armenians, Armenian text with Georgian translation and research was published by Z. Aleksidze, Tbilisi, 1975, 386-393 (in Georgian).

⁴⁹ In the process of work discussion, Z. Aleksidze talks about one detail, by which the works of Armenian historians are distinguished from Georgian and Armenian versions of Martyrdom, which have survived until today. Namely, *Ukhtanesi* describes the fact of dragging Shushanik by Varsken from the church in the following way: First Varsken "dragged Shushanik in the streets and roads, beat her and broke her mouth and jaw..." neither Georgian nor Armenian versions of Martyrdom cover these details of the episode, preserved versions do not mention streets or roads. See: *Ukhtanesi*, History of Separation of Georgians from Armenians, Armenian text with Georgian translation and research was published by Z. Aleksidze, Tbilisi, 1975, 388 (in Georgian).

⁵⁰ *Juansher*, Life of Vakhtang Gorgasali, Kartli Chronicles, I, Tbilisi, 2012, 182 (in Georgian).

Varsken. It is known that Varsken's death is not mentioned in the Martyrdom of Shushanik"; there is widely spread view that one of the reasons for the above is the date of monument creation.⁵¹ And indeed, if Jacob the Priest knew about Varsken's death, he would surely mention the fact in his work, especially if such death was a result of punishment of Varsken due to the torture of the queen. Juansher describes Varsken's death as follows: "Then Bakur, the King of Georgians, appealed to all principals and secretly gathered the forces; Varsken went to the field, on the bank of the Mtkvari river, at the point where river Mtkvari joins river Anakerti; the forces attacked Varsken, cut him into pieces and hung on the tree. And Shushanik's corpse was taken with the great respect and buried in Tsurtavi".⁵² As mentioned, the above episode caused disputes in the scientific circles. It is noteworthy that, in general, reputation of Juansher's work is heterogenous. Part of scientists are of the view that there are many unrealistic stories presented in the work, it is even referred to as the half-work of art.⁵³ Accordingly, assessment of work in terms of motives for execution of Varsken is greatly questionable. For example, according to the comment of *Iv. Javakhishvili*, the position that Varsken was liquidated due to murdering his wife, "is the desire of later historian" and does not correspond to the reality.⁵⁴ According to *Iv. Javakhishvili*, the above is confirmed by the fact that Varsken was killed in 12 years after the death of Shushanik. Therefore, it is less likely that Vakhtang Gorgasali paid off Varsken only after 12 years' time.⁵⁵ Vakhtang Inauri considers political reasons for the death of bidaxae; in his view, Varsken was "doomed for political and not religious purposes".⁵⁶

Indeed, *Iv. Javakhishvili's* position, that at the time of Varsken's punishment, Vakhtang Gorgasali was not guided "by religious considerations", has to be taken into account.⁵⁷ It is difficult to imagine that it took Vakhtang Gorgasali 12 years to punish Varsken and this took place under the condition that bidaxae's actions were known for the contemporary society and deserved evident disapproval. This is confirmed by the last scene of "Martyrdom of Shushanik", when people express their respectful farewell to the queen. According to the right observation of *N. Janashia*, although bishop Samuel did not attend Shushanik's burial, he sent his assistant, Ioane to the ceremony.⁵⁸ According to the position of the scientist, the above fact is the evident confirmation of the fact that "Kartli church assigned huge importance to the Martyrdom of Shushanik, by which Varsken and his behavior was publicly disapproved one more time".⁵⁹ Position of author, Jacob the Priest is straightforward. And it is not surprising, with the consideration of literature genre and attitude of author towards the queen. Fact that Varsken's actions caused criticism in the 5th century is very important. However, proving that Varsken did not have right to punish Shushanik, and that the power of husband did not extend over her, is quite difficult. We can assume, that protest about Varsken's actions in the contemporary society and

⁵¹ See: *Tsurtaveli I.*, Martyrdom of Shushanik, *Merchule G.*, Life of Grigol Khandzteli, text was prepared for publishing, vocabularies and research attached by *Z. Sarjveladze, K. Danelia, E. Giunashvili*; Editor: *E. Gabidzashvili*, Tbilisi, 1986, 43; *Kekelidze K.*, History of old Georgian Literature, I, Tbilisi, 1951, 105-106 (in Georgian).

⁵² *Juansher*, Life of Vakhtang Gorgasali, Kartli Chronicles, I, Tbilisi, 2012, 182 (in Georgian).

⁵³ Opuses of History of Georgia, II, editor of the volume *Sh. Meskhia*, Tbilisi, 1973, 90 (in Georgian).

⁵⁴ *Javakhishvili Iv.*, Works in Twelve Volumes, I, Tbilisi, 1979, 326-327 (in Georgian).

⁵⁵ *Ibid*, 327.

⁵⁶ *Inauri V.*, Tragedy of Varsken Bidaxae, Tbilisi, 2004, 18 (in Georgian).

⁵⁷ *Javakhishvili Iv.*, Works in Twelve Volumes, I, Tbilisi, 1979, 327 (in Georgian).

⁵⁸ *Janashia N.*, Martyrdom of Shushanik, Historical-Sourcelogical Research, Tbilisi, 1983, 361 (In Georgian)

⁵⁹ *Ibid*, 262.

clerical circles, first of all, was conditioned by the fact, that queen was fighting for the religion and not the fact that husband tortured and murdered wife. Moreover, this indignation has not been expressed clearly and nobody could confront Varsken, due to his official position. Even clerical persons behaved with reverence before him and only limited themselves by comforting the queen. Of course, such situation is not surprising for 5th century. Therefore, Juansher's position on the motives for Varsken's punishment, could be assigned to author's desire. However, even unprecise interpretation, presented by the chronicler, provides us with large information. It seems that, according to the evaluation of historian, Varsken deserved punishment for murdering his wife, i.e. according to his view, bidaxae should not have legitimate right to torture and finally kill the queen. But even at this point, we should not create illusion, that by XI century murdering the wife is regulated in general and that form of domestic violence – murder of wife is prohibited, in any case. It is evident, that Juansher's position is also based on the martyr death of Shushanik and her sacrifice for the religion.

Hence, monument of 5th century – “Martyrdom of the Holy Queen Shushanik” – provides unique information about the contemporary family life. Although, Shushanik's motives are deeply religious, however, there is also family type conflict in place. Wife leaves husband, does not obey him and therefore gets the cruel punishment – beating, imprisonment, putting into irons, dragging with hair, and finally – death. Nobody assigns responsibility for the above over Varsken. He is master-owner of his wife. Although, Varsken's actions condition negative attitude of society, and certain disapproval, but due to his position, nobody manages to confront him. At the end Vakhtang Gorgasali executed Varsken, but the actual basis for such punishment was treason and not torture and murder of his wife. Therefore, based on the preserved written materials, we can conclude that there were no norms regulating domestic violence in Georgia in 5th century.

2.2. Homicide of Adulterous Wife

Georgian positive law was familiar with the norms prohibiting encroachment upon the life of wife and husband, excluding the absolute right of husband over his wife. However, it was also noted that in certain cases, Georgian justice considered exceptions and was assigning responsibility over the husband murdering wife with the consideration of guiltiness of the latter (wife). For the illustration of the above practice article 42 of Vakhtang VI's law book will be discussed. The article contains the list of circumstances excluding the responsibility: “Their blood is not requested and such responsibility is not generated”, among others, part 9 names murder of adulterous wife – “if the man catches wife on adultery and kills her, no blood feud from brother or relative is requested”.⁶⁰ Forgiving murder of adulterous wife did not mean the existence of unlimited power of husband over his wife. By this article legislator considered wife “caught for adultery”, i.e. catching woman on adultery, emotional condition of husband and therefore, was releasing husband from the responsibility. According to G. Nadareishvili's right comment, the fact that husband did not have unlimited power over his wife is confirmed by another responsibility releasing condition envisaged under the other paragraph of the same article; according to the mentioned article “Insulted husband was entitled to kill wife as well as wife's

⁶⁰ Law of Vakhtang the Sixth, text was defined and references attached by *Is. Dolidze*, 1981, 194 (in Georgian).

lover”⁶¹ Moreover, in case of adultery, legislation forgets social inequality and grants the serf with the right to kill even the master, if “he is caught lying with his wife”.⁶² Based on the above, legislator pays particular attention to the wife’s adultery as the motive for her murder, considers the damage incurred by husband and forgives him the commitment of offence for the above damage. Of course, according to the monument, only the man is released from the responsibility and does not consider such action committed by the woman, in other words murdering adulterous husband, as the condition for releasing woman from the responsibility or as the extenuating circumstances. The above is not surprising, as it is known that in ancient Georgia, adultery was considered as mainly offence committed by women, and accordingly, only women had to expect punishment for such offence. However, it is noteworthy, that murder of guilty wife is not considered as the circumstance releasing from responsibility by all Georgian law monuments. The Armenian law included in the law collection of Vakhtang the 6th, does not forgive such action to the committer and accordingly punishes the offender – “The man murdering his wife for adultery must be responsible by the law, as the law envisages divorce with a woman for adultery and not her murder”.⁶³ The same line is drawn by article 75 of Davit Batonishvili law; however unlike Armenian law, it punishes the person committing the crime, symbolically, by cutting his right hand. It is clear that Georgian law is inconsistent in relation to this issue. Although law of Vakhtang the 6th occupies higher level compared with the above-mentioned monument with its relevance and influence, and, moreover, the Armenian law is part of Vakhtang VI law and has only supplementary, additional function, but the above-discussed collision is still important. It indicates that homicide of wife by the husband even with such a “legitimate” basis, was questionable. Probably, for this very reason, legislator (Davit Batonishvili) deemed the provision of Vakhtang VI law book as unfair and attempted by his own legislative act to change the defined rules. He was punishing murderer husband despite the guiltiness of wife.

It is interesting to find out what was the attitude of Georgian Customary law towards the similar cases. According to the general rule, husband did not have right over the life of his wife, however, there is a valid question – could he murder adulterous wife? *D. Jalabadze* covers the above issue in the process of review of Pshavi customary law. Author presents two examples.⁶⁴ First example refers to the murder of fiancé. The bridegroom kills his fiancé, as the latter did not fulfil the promise and married other person.⁶⁵ And in other case, husband kills his wife, who did not wait for the spouse who went to the army and married the other person.⁶⁶ According to *D. Jalabadze*, as the teller of the above stories does not mention the punishment of persons, these circumstances “make the punishability of murder committed under the similar motive questionable and one should consider it as one of the forms of revenge admissible under the law”.⁶⁷

⁶¹ *Nadareishvili G.*, Old Georgian Family Law, Tbilisi, 1974, 49 (in Georgian).

⁶² *Ibid.*

⁶³ Georgian Law Monuments, I, Collection of Vakhtang VI’s laws, texts were published, studied and vocabulary attached by *Is. Dolidze*, 1963, 286 (in Georgian).

⁶⁴ *Jalabadze D.*, Crime and Punishment in Georgian Customary (Folk) Law, (based on Pshavi Customary Law), Tbilisi, 2003, 55 (in Georgian).

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

Punishment of adulterous wife was not unfamiliar for Georgian Customary law. Such punishments as pelting, mounting on donkey, cutting the nose and mutilating were imposed over the persons committing the above-mentioned crime. Moreover, the last two punishments were conducted at the initiative of husband and by husband. Despite the above, it is not likely that in Georgia, including Pshavi, husband had right to kill adulterous wife. More so, it is difficult to imagine that rejected bridegroom could kill his fiancé and not to get punishment. Note provided by *Vazha-Pshavela* on rejecting the bridegroom is confirmation of the above. According to the author, “IF woman manifestly rejected the husband and would add to this rejection the impudence, adultery, then husband would mutilate such wife, i.e. Pshavi resident would say “mutilate” – cut her nose or hand, would take away from woman the feature attracting the man’s heart and eye – her beauty”.⁶⁸ Accordingly, based on the above note, it becomes clear that betrothed had right to mutilate the woman rejecting him and not to kill her. The same rule was valid in Khevsureti. According to *S. Makalatia*’s notes, for rejecting husband, the woman was endangered to have nose and thumb cut, as “the ambitious Khevsurian man considered leaving of wife as a great insult, he would not accept the repudiation payment and would feud the family of woman”.⁶⁹ *M. Kovalevski* also talks about the same form of punishment of adulterous wife in Pshavi. According to the scientist, husband could mutilate adulterous wife, the offence would cause expelling of wife from house.⁷⁰ Again, in this case, author does not mention her killing. *M. Kovalevski* also excludes the right of husband to murder adulterous wife in Svaneti. According to author’s definition, husband did not have right to kill wife for any reason in Svaneti; even if wife was betraying him, husband would still be punished for such an action.⁷¹ *V. Itonashvili* discusses the issue of murder of betraying wife in central Caucasus. According to *V. Itonashvili*, although story tellers talked about husband’s right to murder adulterous wife, however, at the same time, they noted that for such an action husband could become object of revenge from the side of woman’s relatives.⁷² According to the scientist, based on the customary rules, execution of adulterous wife was acceptable in Chechnia-Ingushia.⁷³ According to the tradition, man could “kill man caught for adultery, and could cut wife’s nose and expel her”.⁷⁴ In case of Adigians “punishment for adulterous wife depended on the husband, who could kill her or mutilate her or disgrace her (by means of cutting ear or hair) and to return her in this condition to parents”.⁷⁵

We can conclude that, according to the Georgian Customary law, husband should not have right to murder adulterous wife. He could punish her: mutilate and even expel her, however, could not kill woman without punishment even for such an excusable reason.

Hence, old Georgian law separately draws attention to the issue of murder of adulterous wife. According to the law book of Vakhtang the 6th, catching “wife on adultery” is considered as the circu-

⁶⁸ *Vazha-Pshavela*, *Ethnographic Letters*, Tbilisi, 1937, 127 (in Georgian).

⁶⁹ *Makalatia S.*, *Khevsureti*, Tbilisi, 1935, 183 (in Georgian).

⁷⁰ *Kovalevski M.*, *Primitive Law, II, Family*, Moscow, 1886, 94 (in Russian).

⁷¹ *Ibid.*, 49.

⁷² *Itonishvili V.*, *Family Life of Mountainous Population of Central Caucasus, I, Family Life of Nakhebi and Ossetins*, Tbilisi, 1969, 84 (in Georgian).

⁷³ *Ibid.*

⁷⁴ *Ibid.*, 85.

⁷⁵ *Okujava K.*, *XIX Century Ethnographic Motes on Black Sea Cost Adigians*, Tbilisi, 2003, 31 (in Georgian).

mstance excluding the responsibility. It has to be considered, that law envisages committing of homicide at the moment of catching wife on the offence and not murdering adulterous wife in general. On the other hand, Armenian law and Davit Batonishvili's law set prohibition for husband to kill adulterous wife and impose responsibility for such action. As for the Customary law, similar to the norms of Positive law, homicide of adulterous wife is a crime. Husband can punish and expel wife, but cannot murder her.

2.3. Murder of Innocent Wife

According to the article 62, law book of Vakhtang VI, murder of innocent wife was punished strictly. Namely, husband had to pay in blood to the family of killed wife and to additionally get the following punishment: "The bishop is aware of the legal part of the punishment".⁷⁶ Moreover, in case of unclear situation, husband had to justify himself by means of "oath, boiled water or red-hot-iron". In addition to discussed crime, the above type of justification was considered only for revealing persons under the suspicion of killing the king or robbery of the church.⁷⁷ Moreover, it is known that provision "The bishop is aware of legal part of punishment" meant transfer of the case to the church court. Qualified compositions included in the law book of Vakhtang VI, including cases on the homicide of family members, were subject of review at the royal and bishop's courts and in certain cases, considered the highest punishment – execution.⁷⁸ *Al. Vacheishvili* expresses his position that clauses "You know" or "We know" on the one hand, transfer the case to other unordinary court and, moreover, are so undefined, that could mean nothing else than execution.⁷⁹ To state, for sure, that homicide of innocent wife conditioned execution is difficult, as composition of the article does not directly specify the punishment. Crime considers "blood" according to the line, however, as the cases were transferred to the church court it cannot be excluded, that similar to the homicide of husband or brother, to assume that legislator implied highest sentence, or at least admitted such possibility.

In the above chapter the norms from the customary law were discussed in relation to the homicide of adulterous wife and it was stated, that Georgian customary law did not grant such right to the husband. Accordingly, fortiori the admission of homicide of innocent wife by husband has to be ruled out.

The fact that under the customary law certain crimes directed against the life and health of close relatives are considered as private law violations, is not something new.⁸⁰ Accordingly, such crime represents circumstances excluding or extenuating the responsibility.⁸¹ According to the general rule, the blood was not taken within the persons with the same family name, and in case of homicide of family member, the responsibility was limited to only the moral reprehension.⁸² However,

⁷⁶ Vakhtang VI, Article 42, Section 9, Law Book; Law of Vakhtang the Sixth, text was defined and references attached by *Is. Dolidze*, 1981, 201 (in Georgian).

⁷⁷ *Nadareishvili G.*, Old Georgian Family Law, Tbilisi, 1974, 49 (in Georgian).

⁷⁸ *Vacheishvili Al.*, Opuses from the History of Georgian Law, I, Tbilisi, 1986, 105 (in Georgian).

⁷⁹ *Ibid.*

⁸⁰ *Davitashvili G.*, *Crime and Punishment in Georgian Customary Law*, Tbilisi, 2011, 212 (in Georgian).

⁸¹ *Ibid.*, 220.

⁸² Regarding this issue, see *Davitashvili G.*, *Crime and Punishment in Georgian Customary Law*, Tbilisi, 2011, 214; *Georgian Customary Law*, edited by *M. Kekelia*, III, Tbilisi, 1991, 75 (in Georgian).

evidently release from the Blood payment, does not mean acceptance, encouragement of such action or/and implementation of husband's right. The situation that in Georgia, in most cases the murderer of family member was not imposed the blood feud, was conditioned by the economic factors. Within the family taking the blood did not have any sense, as in such case, the family would incur the double damage. *M. Kovalevski* directed his attention to the above mentioned and explained the situation with the lack of public bases for the crime.⁸³ However, in some regions of Georgia homicide of wife, as well as murder of other member of the family, considered vendetta, but at the same time, there were regions, where such responsibility was not defined. For example, in Khevsureti, vendetta was not considered for the homicide of wife and small payment was envisaged: "If husband kills wife or father murders child, he must pay to the wife's relatives" five cows.⁸⁴ But for the murder of father or brother Khevsurian tradition considered payment with blood. For example, in the event of homicide of father, the other child could make the homicide brother to pay the "half-blood",⁸⁵ and in case of murder of brother – grandchild of murdered brother requested Blood and his request was satisfied.⁸⁶ Husband did not have right to murder wife in Svaneti too.⁸⁷ However, unlike Khevsureti, wife's murder "generally caused vendetta".⁸⁸ Based on the above, Georgian Customary law prohibited homicide of wife by the husband and the guilty person was punished accordingly.

Old Georgian law considered composition on the murder of wife and like the other members of the family, protected her life too. Law book of Vakhtang VI devotes separate article to the murder of wife and threatens husband with blood payment and legal responsibility. Georgian Customary law like the Positive law does not grant to husband the right to kill wife and considers such case as the crime.

3. Homicide of Husband

3.1 Norms of Old Georgian Law on Homicide of Husband

According to the law of Vakhtang VI, homicide of husband belonged to the category of heavy crimes and presumably, was punished via the execution. The article 65 of the above law contains the clause on homicide of husband, subject is wife, object – husband's life, mean for the crime could be murder of husband with medicine or other means. As for the responsibility, the legislator defines as follows: "If she commits something she can justify, You know. Simply murdered – again, You know. God forbid, if it happened in our times – then we know".⁸⁹ Accordingly, if crime was committed in "our times", i.e. during the reigning of legislator King, then case would be presumably reviewed by the royal court, if later – similar to the homicide of other members of the family, the case would become subject of review for the ecclesiastic court. Moreover, the latter had to clarify the

⁸³ *Kovalevski M.*, Primitive Law, II, Family, Moscow, 1886, 34 (in Russian).

⁸⁴ *Makalatia S.*, Khevsureti, Tbilisi, 1935, 88 (in Georgian).

⁸⁵ *Ochiauri Al.*, Personal Archive, Khevsurian Justice, Manuscript, Notebook 2, 13, 1945, see from the work: *Davitashvili G.*, Crime and Punishment in Georgian Customary Law, Tbilisi, 2011, 213 (in Georgian).

⁸⁶ *Baliauri N.*, *Stsorproba* (relationship between woman and man) in Khevsureti, Tbilisi, 1991, 80 (in Georgian).

⁸⁷ *Nizharadze B.*, Historical-ethnographic Letters, Tbilisi. 1962, 111 (in Georgian).

⁸⁸ *Davitashvili G.*, Crime and Punishment in Georgian Customary Law, Tbilisi, 2011, 216 (in Georgian).

⁸⁹ Law of Vakhtang the Sixth, text was defined and references attached by *Is. Dolidze*, 1981, 202 (in Georgian).

crime motives and determine the guiltiness – “If there are circumstances justifying such an action, You know”. It is difficult to say, what could be bases for forgiving her such an action or extenuating the responsibility. Possibly, we can only assume, that if wife killed husband for his guilty actions, court could consider such circumstances. Husband’s guilty actions could include torturing of wife by husband, bad treatment or humiliation. We are able to state the above based on the norm in the monument itself, which prohibits physical violence of husband against wife and by this way protects wife’s health, respect and dignity (article 64).

Husband’s right for life is also protected by section two, article 169 of the Armenian law, according to which: “If woman murders her husband by means of lethal poison or by other action, she will be responsible in this world and get responsibility in the heavenly world too”.⁹⁰ Similar to the law of Vakhtang Batonishvili, the Armenian law mentions killing husband by means of medicine or other mean for committing the crime. Moreover, unlike the homicide of wife (section one, article 169), legislator makes woman murdering her husband punishable even in the heavenly world.

Based on the above, Georgian positive law considers homicide of husband as crime and punishes the murderer woman. In particular, this type crime is covered in the law of Vakhtang Batonishvili as well as Armenian law. The latter makes woman murdering her husband punishable even in the heavenly world. According to the law of Vakhtang Batonishvili for such crime, similar to the composition on murdering other members of the family, type of punishment is not provided directly, however, it is assumed that for such crime execution could be envisaged.

3.2 About One Case on Homicide of Husband

There is one question to be answered – what was the court practice like for the homicide of spouse in old times? How often were the above-mentioned norms applied in real life? In this regard, there is one very interesting note in the scientific literature. Namely, *N. Khizanishvili (Urbneli)* describes widely discussed case, which had caused different views in the society and even deserved attention of the contemporary media (press).⁹¹ The case was related to the fact of murdering the husband, Datika Tugushi by Pupi Tugushi via the killer (ordered murder).⁹² Case circumstances were as follows: Pupi Tugushi, residing in Guria, made lover and ran away with him to Lechkhumi. Such behavior of woman became the subject of huge disapproval, however, Datika Tugushi’s bad fortune has not ended by the above. His mutilated corpse was found in the forest night before the Christmas. Finally, it was identified that his wife murdered husband by order – “It turned out that Pupi ordered somebody else to murder her husband” – mentions Khizanishvili.⁹³

Information about the case was published on 8 April, 1895 year in the newspaper “Iveria”. Author of the article criticizes the idea to request “military tribunal”, initiated by people and supported by investigator and mentions the murder as “ordinary homicide”, and evaluates the diligence

⁹⁰ Georgian Law Monuments, I, Collection of Vakhtang VI’s Laws, texts were published, studied and vocabulary attached by *Is. Dolidze*, 1963, 286 (in Georgian).

⁹¹ *Khizanishvili N.*, Selected Legal Works, Tbilisi, 1982, 527-533 (in Georgian).

⁹² *Ibid.*

⁹³ *Ibid.*, 527.

of investigator as irresponsibility: “If today people request military tribunal for the ordinary homicide and administration and court endorse such request, tomorrow, if people apply the Lynch laws – who shall be blamed for that”.⁹⁴ In the newspaper issue of 01 March of the following year correspondent again refers to the issue and provides the readers with the information on case outcome – Pupi and her accomplices were arrested, case was reviewed by the Kutaisi district court: “Court has found guilty for homicide As. Bolkvadze and Bes. Imnadze, as they have confessed into the committing the murder and released Jorbenadze. The criminals noted that the latter was not participating in the murder. Court, following the seizure of all rights, decided to send the accused persons to the works in mines – for 15 years in case of Pupi Tugushi, 20 years – Silovan Baramidze and 27 years – for Besarion Imnadze. On 27 February Tbilisi Court Chamber reviewed the case and approved the decision made by the Kutaisi district court”.⁹⁵

The discussed case, itself, is quite interesting, as provides information on the domestic violence, namely murdering of husband by wife, in XIX century; based on the information, one can conclude that according to the contemporary criminal law, for the ordered murder, court was imposing the sentence of work in the mines over the convicted person. In this period Code of Vakhtang VI is already annulled and legislation of Russian Empire is effective. Accordingly, in order to determine the approach of Georgian law to the wife/husband homicide, this note cannot be used. However, article of *N. Urbneli* devoted to this case is quite interesting; in the article author discusses the crime based on old law.⁹⁶ According to the author, it is only possible to understand the huge agitation generated in the society due to the crime, by understanding the old Georgian criminal law: “If Lanchkhuti society was requesting to execute murderers of Datika Tugushi via hanging, this is the influence of old law; possibly, people still have not forgotten that Pupi’s guilt was very complex and heavy”.⁹⁷ *N. Urbneli* argued that Pupi was responsible not only for the homicide of husband but also for the crime prohibited under the old Georgian law – adultery- “Pupi’s adultery is the composition of separate crime. Whether this woman left herself or Silovan Baramidze took her, in both cases, husband was insulted”.⁹⁸ Woman first left and insulted husband and then “ended her evil with murdering husband”.⁹⁹ According to the statement of *N. Urbneli*, it was unimaginable to commit homicide of husband in old Georgia – “Hardly said and heard”.¹⁰⁰ Therefore, law of Vakhtang VI considered such composition, but considering its heaviness, was not assigning punishment or the crime and was transferring the case for the review to the King and bishop.¹⁰¹ In case of Pupi, this crime, was aggravated by the motive; therefore, author understands the request of people to hang the

⁹⁴ *Lali*, Newspaper “Iveria”, 72, 1895, 8 April, Saturday, 1-2, <http://dspace.nplg.gov.ge/bitstream/1234/60833/1/Iveria_1895_N72.pdf> [28 May, 2015] (in Georgian).

⁹⁵ Newspaper “Iveria”, 48, 1896, 1 March, Friday, 2, <http://dspace.nplg.gov.ge/bitstream/1234/66569/1/Iveria_1896_N48.pdf> [28 May, 2015] (in Georgian).

⁹⁶ *Urbneli*, From the Chronicle of Criminal Law, Homicide of Husband, Newspaper “Iveria”, №50, 1896, 3 March, Sunday, 1-3, <http://dspace.nplg.gov.ge/bitstream/1234/66571/1/Iveria_1896_N50.pdf> [28 May, 2015]. Also, see: *Khizanishvili N.*, Selected Legal Works, Tbilisi, 1982, 527-533 (in Georgian).

⁹⁷ *Khizanishvili N.*, Selected Legal Works, Tbilisi, 1982, 528 (in Georgian).

⁹⁸ *Ibid*, 530.

⁹⁹ *Ibid*, 532.

¹⁰⁰ *Ibid*.

¹⁰¹ *Ibid*.

criminals. Although Georgian law, unlike Armenian law, was assigning to woman certain status, however, “Georgian woman was slave and servant of her husband and in old times, if such a creature murdered her husband, she would be burnt or pelted”.¹⁰² Therefore, according to *N. Urbneli’s note*, in the past wife for the murder of husband could be pelted or burnt in Georgia. Although old Georgian law monuments do not directly consider such punishment for the homicide, but as the punishment for murder of husband is undefined, and the crime – very heavy, it cannot be ruled out, that criminal could be executed, including, via pelting or burning. Evidently, the practice and traditions dominating in old Georgia must have been known to *N. Urbneli* and presumably, his above position was based exactly on such knowledge.

4. Conclusion

Old Georgian law is familiar with the norms prohibiting homicide of wife and husband. Georgian positive law separates the homicide of adulterous wife. Law book of Vakhtang VI considers “catching” wife on “adultery” as the circumstance excluding the responsibility. In addition, it must be taken into account, that law implies murdering of wife by husband at the moment of catching her in the process of offence and not homicide of adulterous wife in general. On the other hand, Armenian law and law of Davit Batonishvili forbid husband to murder adulterous wife and assign responsibility for such action. As for the customary law, similar to norms of Positive law, here the homicide of adulterous wife is a crime. Husband can punish woman, mutilate and expel her, but he cannot kill her.

Old Georgian law also considers general composition of wife homicide. Namely, Georgian law prohibits murder of innocent wife. Law book of Vakhtang VI devotes separate article to this type of murder and threatens husband with blood payment and legal punishment. Georgian customary law too, similar to the Positive law, does not provide husband with the right to kill wife and considers such action as crime.

In addition to direct source, we can get some information on homicide of wife from the first Georgian written monument “Martyrdom of the Holy Queen Shushanik”. The work provides us with the unique information about the family life of the time. Based on the analysis of the manuscript text and other historical documents it becomes clear that in this period there were no norms in Georgia regulating the domestic violence.

As for the homicide of husband, old Georgian law considers such murder as crime and strictly punishes woman murdering her husband. In particular, Law book of Vakhtang VI as well as Armenian law are familiar with this type of murder. The latter assigns punishment for wife even in heavenly world. According to the law of Vakhtang Batonishvili, for such crime, similar to the murder of other family members, the type of punishment is not provided directly; however, it is assumed, that for this type of crime execution was envisaged.

¹⁰² *Khizanishvili N.*, Selected Legal Works, Tbilisi, 1982, 528 (in Georgian).