

Hidden Cruelty – Criminal Law Trends in Domestic Violence

Hidden domestic violence and cruelty is one of the most serious problems in the modern world, which is deeply rooted in society and carries the stereotypical attitude of reprimand from others and / or an irresistible fear of the abuser towards the victim. Hidden cruelty in the family belongs to the circle of issues that mostly oppress the society and an appropriate research level of which and relevant measures' implementation should be considered in urgent matters.

The relevance of the issue is also conditioned by the fact that according to the research of the Georgian case law, in almost every third-fourth court cases of domestic violence, which is of a hidden nature, a verdict of acquittal is rendered not on the grounds that the accused is not guilty, but on the grounds that the victim, who once dared and reported to law enforcement because of an extremely intolerable situation, no longer (or could no longer!) testified against the abuser at court because of established stereotypical beliefs and public influence, and again became the object of his oppression due to the continuing nature of the violence.

The goal of the presented research is to study the modern criminal law aspects of domestic violence and hidden cruelty in above mentioned regard. This paper will review the history of this issue, types of violence, theories of hidden cruelty, and a generalization of case law on hidden domestic violence. The paper aims to answer what the legislation should be like, not only materially, but also procedurally, so that the hidden or subsequently concealed cruelty committed by any abuser in the family will not go unanswered.

Keywords: *Domestic violence, hidden cruelty, respect, dignity, abuser, victim, gender equality, demonstration of force, cycle of violence, escalation of tension.*

1. Introduction

The human will, his inviolability and dignity are inalienable human rights. They represent an important criminal law institution, within of which the realization of such a right has become an integral element of daily life.¹ The world of the 21st century claiming to be at the highest stage of social development, the question is relevant: are the human will, his inviolability and dignity protected in the family, which are the highest value of a civilized society? Hidden violence is one of the most painful and relevant issues in the modern world. The modern trends of hidden domestic violence, current legislation, challenges related to domestic violence, and the catastrophic rise of court statistics clearly reveal the problematic nature of the issue, which requires an appropriate scientific analysis.

The family is an important institution where the one should feel himself most protected². The hidden domestic violence is a global phenomenon, which is characteristic for people of

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¹ *Ivanidze M.*, Family Crime, Iv. Javakhishvili Tbilisi State University, "Guram Nachkebia-75", 2016, 53.

² *Sharapov R.D.*, Physical Violence in Criminal Law, St. Petersburg, 2001, 24 (in Russian).

different races, ethnicities, social, cultural, economic, political or religious backgrounds. It has no cultural, social, economic, religious or territorial boundaries. The relevance of the problem is also due to the fact that violence takes place in the family, between family members, and in most cases, it is hidden from the general public. The cruelty and violence shown by one member of the family to another are reflected on the fate of people in different ways³.

The objective of the article is to critically review the problems existing today towards the issues' resolution in terms of hidden domestic cruelty. The goal of the research is to identify the practices that have been established in terms of covering up domestic violence. The relevance of the topic is heightened by the alarming statistics of hidden cruelty. The article will discuss the reality and assessment of Georgian court practice, and will implement the searching activities for legal ways to overcome the hidden cruelty.

2. History of the Domestic Violence Issue

Determining the issue where and when the history of domestic violence has began is difficult, because this phenomenon is common to all generations and nations, and in some countries male violence against family members was even allowed by law (in Asian and African countries). Until 1895 in America, a woman was not even allowed to divorce her husband on the grounds of violence.⁴ The history of Georgian law is interesting in this regard.

Important sources of traditional custom that have existed in Georgia for centuries are the foreign or Georgian written monuments and the works of art of Georgian writers that have reached to us.

According to Georgian law (as well as literary) monuments, deviations from the customs established by one family member towards another were manifested in different ways in different eras. "The Passion of Saint Shushanik" by Iakob Tsurtaveli (Elder – "Khutsesi" in Georgian) stands out in this respect, which reflects the attitude of the abusive husband, Varsken Pityakhshi, towards the queen-wife, Shushanik, on whom he tried to execute his will violently (physically and psychologically). It is also interesting to justify the violence in this regard: "Mothers' nature is narrow".⁵

The law of Beka and Aghbugha - "The book of law on men's sin" as an embryo of Georgian law refers to the sharp attitude towards the hidden cruelty in the family, where the word "domestic violence" appears, which is a law prohibited by law ("When the husband violates on his wife and helpless child ...").⁶

³ Report of the Prosecutor General of Georgia, Tbilisi, 2020, (in Georgian), <<https://bit.ly/2Mf4hln>> [29.01.2021].

⁴ *Goodman L., Leidholdt D.*, Lawyer's Manual on Domestic Violence Representing the Victim, 5th ed., Supreme Court of the State of New York, appellate Division, First Department, Hon. John T Buckley, Presiding Justice, 2006, 45-47.

⁵ *Tsurtaveli I.*, Torture of Shushanik, Georgian Prose , „Merani" Publishing House, 1987, 27 (in Georgian).

⁶ Beka and Aghbugha Law, a monument of old Georgian legislation. Compiled in XIII-XIV centuries. Included in the Collection of Law Books of Vakhtang VI as Part 6 (in Georgian). See also, *Dolidze I.*, Ordinary Law of Georgia, Publishing House of the Academy of Sciences of the Georgian SSR, Tbilisi, 1960 (in Georgian); *Surguladze Iv.*, For the History of the State and Law of Georgia, Tbilisi State University Publishing House, Tbilisi, 1952 (in Georgian); *Davitashvili G.*, Basic Aspects of

According to the book of Laws of Vakhtang VI “Kodiko”, a court of “men of the law” fined a husband to pay a solid fine of “Dram” to his wife for violence against her. The attitude of the law towards the hidden cruelty in the family is also interesting: if the wife concealed the violence (threats, beatings, intimidation, etc.) expressed by the husband, the wife's relatives were instructed by the “men of the law” to pay a “Dram” (a certain fee) to the husband's relatives.⁷ It should be noted that despite such a legacy of the old Georgian law, there was no separate legal norm in the criminal law of the Soviet era regarding the hidden domestic cruelty and violence; Actually, there was a problem, but due to Soviet ideology, this topic was taboo.

Silence over hidden violence against women has been broken since the 1970s, after the second wave of the feminist movement intensified in the West. From this period, the legislation was appeared prepared at the international or national level, and also a state policy for protecting women from violence. At the same time, the European Court of Human Rights has declared on family life, according to which marriage is not limited to a formal relationship: today, family life is not a relationship based only on marriage, but also a factual (without registration of marriage) relationship is considered such as.⁸

At the threshold of the 21st century, a wave of protests against domestic violence as a hidden crime has intensified around the world. Working on domestic violence in Georgia was started by women's NGOs in the late 1990s with the support of various donor organizations. A draft law **on the protection of domestic violence, protection and assistance for victims of domestic violence** has been prepared, which was adopted by the Parliament of Georgia on **May 25, 2006** with the assistance of the Gender Equality Council under the Chairman of the Parliament of Georgia.⁹ The law defined the concept of domestic violence and state protection mechanisms against the abuser, in particular a restraining and protection order was introduced, which allows the police and the court to respond quickly to domestic violence, provide protection for the victim and restrict certain actions of the abuser. The Law of Georgia on the **„Protection of Domestic Violence, Protection and Assistance for Victims of Domestic Violence”** states that a “restraining order is an act issued by an authorized police officer that defines temporary measures to protect a victim of domestic violence. It will be submitted to the court for approval within 24 hours after its issuance”. The fight against domestic violence has been a priority for Georgia for the last decade. In terms of legislation, **in May 2012, an amendment was made to the Criminal Code of Georgia**, according to which domestic violence was criminalized. By 11th ¹ Article of the Criminal Code of Georgia was defined the circle of family members, the list of crimes provided by the Code was indicated, in case of which the relevant reference to the mentioned article should be made. Under the same amendment, Article 126th ¹ was added to the private part of the Criminal Code, which clarified the criminal nature of domestic violence and the responsibility for the act committed.

Judicial Organization and the Process in Georgian Customary Law, cited in History of Georgian Law, compiled by *Kantaria B.*, World of Lawyers, 2014 (in Georgian).

⁷ Beka and Agbugha Law, a Monument of Old Georgian Legislation. Compiled in XIII-XIV Centuries. Included in the Collection of Law Books of Vakhtang VI as Part 6 (in Georgian).

⁸ Judgment of the European Court of Human Rights, Johnston and Others v. Ireland, 18 December, 2016 (in Georgian).

⁹ The Law of Georgia on the Protection of Domestic Violence, Protection and Assistance for Victims of Domestic Violence”, 25/05/2006, # N3143-Il (in Georgian).

Also, according to the amendment made to the Criminal Code in this regard (Law of June 22, 2016 №5452 - website, 12.07.2016) when recording a fact of violence, the police officer was given the authority to issue a restraining order, in case of violation of the conditions defined of which, the liability defined by Article 175^{th 1} of the Code of Administrative Offenses and Article 381^{th 1} of the Criminal Code was envisaged.

It should be noted that the Parliament of Georgia signed the Istanbul Convention on Domestic Violence in 2014, which is the first mandatory document that emphasizes violence against women as a form of discrimination against women and human rights. The document was adopted on May 7, 2011 in Istanbul. The Convention includes norms that is related to the achievement of real results and reflect all forms of violence, including psychological, social and physical violence that is motivated by sexual orientation.

When categorizing a crime from a legal point of view, domestic violence (126^{th 1} Article of the Criminal Code) is a nonfatal crime. It should be noted that the category of crime includes not only the logical form of theoretical thought, but also public practice. The crime categorization essentially depends on which object of criminal protection the legislator prioritizes.¹⁰ I consider that if the legislator has given priority to domestic violence, it has been separated from violence separately under 126^{th 1} Article of the Criminal Code. In case of revealed heightened domestic violence, is it time to shift the punishment to a more serious category and help to prevent the crime in this regard? I think the issue requires immediate consideration at the legislative level.

3. Modern Trends of Domestic Violence Regulation

A fundamental requirement of the Istanbul Convention (the **Council of Europe Convention on preventing and combating violence against women and domestic violence**) is to protect one family member from violence against another and to establish a gender policy in the family. According to Article 3, paragraph "b" of the Convention, "domestic violence" means all types of physical, sexual, psychological and economic violence that occurs in the family, or in the family circle, between former or current spouses and partners. The following sub-chapters will be devoted to the analysis and problematization of the types of violence, trends of hidden cruelty in the family, theories and the contemporary reality of domestic violence from a legal point of view.

3.1. Types of Violence

Violence is a demonstration of force, expressed in overt or covert form, against a person or persons to achieve something to which they willingly disagree. Synonyms of violence are: aggression, cruel treatment, abuse, coercion, encroachment, torture, threats. Violence is any action or word that can offend, harm or violate the rights of a person. Violence suppresses the human will, violates his inviolability, dignity, and freedom. All these are inseparable human rights, a manifestation of power. There exist direct and indirect (i.e. structural) violence.¹¹

¹⁰ *Lekveishvili M.*, Categories of Crime, Criminal Law (Manual), 4th ed., General Part, Tbilisi, 2019, 127-128 (in Georgia).

¹¹ *Sharapov R.D.*, Physical Violence in Criminal Law, St. Petersburg, 2001, 40-41 (in Russian).

Direct violence means physical violence, the premeditated use of physical force or power against oneself, another person or society that results in (or is likely to result in) death, bodily injury, psychological trauma, abnormal development or various types of injury.¹²

Indirect violence means poverty, exploitation, social injustice, lack of democracy, etc.

Physical violence - beating, torture, damage to health, unlawful deprivation of liberty or any other act that causes physical pain or suffering; Failure to meet the health requirements, resulting in damage or death to a family member;

Psychological violence - abuse, blackmail, humiliation, threats or other acts that cause damage to human dignity and honor;

Coercion - the physical or psychological coercion of a person to perform or not to perform an action for which he or she has the right to abstain or to refrain, or to have an unintentional influence on himself / herself;

Sexual violence - sexual intercourse through violence, threats of violence or the use of victim helplessness; Sexual intercourse or any other act of a sexual nature or fornication towards a minor;

Economic violence - an act that results in the restriction of the right to food, housing and other conditions of normal development, the exercise of property and labor rights, as well as the use of co-owned property and the right to dispose of one's share;

Emotional violence - addiction and attachment to one's partner. It is noteworthy that emotional violence has always existed, but today it has become widespread.¹³

Gender-Based Violence - Violence committed on the basis of gender, male hegemony and female neglect with reference to the "traditional role".¹⁴

It is noteworthy that as far back as the 80s of the last century, it was widely believed that domestic violence was a fairly safe marital dispute in which it is desirable for outsiders not to interfere.¹⁵

3.2. Hidden Domestic Cruelty

Hidden domestic cruelty is one of the most serious and widespread forms of domestic violence. It exists in every country of the world and covers all strata of society. It refers to the violation of the constitutional rights and freedoms of one family member by another through physical, psychological, economic, sexual violence or coercion, during which the victim finds it difficult to expose the abuser due to fear of the abuser or misbehavior in society.

According to the Law of Georgia on "Prevention of Domestic Violence, Protection and Assistance for Victims of Domestic Violence" and 11th Article of the Criminal Code of Georgia, family members are: mother, father, grandfather, grandmother, wife, child (stepchild), adoptive,

¹² Kazachenko I. Ya., Sabirov R. D., *Criminal Law Concept of Violence*, Sverdlovsk, 1981, 26 (in Russian).

¹³ Sharapov R.D., *Physical Violence in Criminal Law*, St. Petersburg, 2001, 49-50 (in Russian).

¹⁴ Kazachenko I. Ya., Sabirov R. D., *Criminal Law Concept of Violence*, Sverdlovsk, 1981, 29.

¹⁵ Kherkheulidze I., *Responsibility for Domestic Crime and Review of Relevant Georgian Legislation - Criminal Law (Manual)*, 4th ed., General Part, Tbilisi, 2019, 500 (in Georgian).

foster family (foster-mother, foster-father), granddaughter, sister, brother, spouse's parents, son-in-law, daughter-in-law, as well as ex-spouse, persons in unregistered marriage, guardian.

Domestic violence is characterized as covert and persistent in nature, as it is perpetrated by a family member or members against another family member / s. It is a mistake to think that violence arises only on the basis of a conflict between a married couple. Domestic violence is considered to be committed against any member of the family by: physical violence, psychological violence, economic violence, sexual violence, coercion. In other relationships, people are more likely to hide their personal vicious sides. And in a family where its members live under one roof, there is more opportunity for a person to satisfy his personal and unhealthy ambitions, as well as to unload from aggression - to "let off steam".¹⁶

Domestic violence often leads to serious health problems, physical and emotional disorders, which can be fatally finished. Domestic violence can be reflected in the development of the adolescent's personality in such a way that the adolescent becomes more interesting from a criminological and criminal point of view, ie he or she becomes a criminal.¹⁷

Violence consists of three components: the victim, the abuser, and the act itself (violence). Taking into consideration its character and consequences, the violence is often regarded as a criminal.

Under Georgian law, a **victim** is a family member who has suffered physical, psychological, sexual violence or coercion.

An **abuser** is a family member who commits physical, psychological, economic, sexual violence or coercion against another family member.¹⁸

Violence includes all forms of unlawful acts, expressed by threats or acts resulting in damage or destruction of property, or the insult or death of a person.

One of the tendencies of domestic violence is due to its hidden nature: the subjects of violence are usually dependent on each other, so in most cases family members hide this fact.¹⁹

Judgment №1c / 79-17 of the Investigative Panel of the Tbilisi Court of Appeals of 18 January 2017 states that "domestic violence, which was traditionally considered to be a "domestic affair" of the family, has gone beyond this narrow understanding and it is now considered as a crime that threatens not only the marital relationship, but also the development of young children in a normal mental environment."²⁰

Hidden cruelty often occurs in front of a juvenile, or violence is addressed directly at him. According to Article 19 of the Convention on the Rights of the Child, "a child must be protected from all forms of violence, abuse, ill-treatment and exploitation committed by parents or family members."²¹

¹⁶ *Todua N.*, Report at the Conference on Violence Against Women, May, 2019 (in Georgian).

¹⁷ *Shalikashvili M.*, Criminology of Violence, Tbilisi, 2012, 96 (in Georgian).

¹⁸ *Ivashchenko A.V.* Violence and Criminal Law, Omsk, 1999, 29-30 (in Russian).

¹⁹ *Ivanidze M.*, Family Crime, Iv. Javakhishvili University, "Guram Nachkebia-75", 2016, 51 (in Georgian).

²⁰ Judgment of the Investigative Panel of the Tbilisi Court of Appeals 181c / 79-17 of January 18, 2017.

²¹ Convention on the Rights of the Child, 20/11/1989 Adopted by the United Nations General Assembly. Georgia joined the mentioned agreement in 2020. Recipient of the document - Minister of Foreign Affairs, type of document - International Treaty and Agreement of Georgia, website of the Ministry of Foreign Affairs, 25/05/2000.

Paragraphs “a” and “b” of the second part of 126th 1 Article of the Criminal Code consider aggravating circumstances as domestic violence committed with the prior knowledge of a juvenile and a juvenile in the presence of his / her family member; From the legislative point of view, the amendment to Article 53th 1 of the Criminal Code of Georgia made on November 30, 2018 was noteworthy, according to which the commission of a crime by one family member against another family member was considered as an aggravating circumstance of responsibility.

Hidden domestic cruelty and violence by one member of the family against another is a complex phenomenon that is deeply rooted in society - in cultural beliefs and unequal distribution of power between the genders. Gender-based violence is perpetrated in all societies and is aimed at the social, psychological and economic subordination of one gender (mostly women) to the other gender.

According to intercultural studies of violence, the victims of domestic violence are mostly women, and the abusers are men. As it is well known, the form of violence is more severe if a woman is economically dependent on the abuser. Violence is encouraged and sanctioned by gender stereotypes and gender-based hierarchies of power (the husband is the wife's ruler), making it doubly difficult for law enforcement to fight against.

The German scientist Busmann has been researching domestic violence for many years, and according to his conclusion, the most dangerous place in modern civilized society is the family. For those who want to be a victim or abuser and to gain an experience of violence, creating a family for them will be the best way to achieve the mentioned goal.²²

According to world statistics, one of the most spread forms of domestic violence is a honor killing. Victims of this type of violence are mostly women, who are considered to be ashamed of the family and are killed in order to restore family dignity.²³

Subjects of the violence are usually interdependent, in most cases, the family hides this fact, which is conditioned by several factors: the victim's fear of the abuser, economic dependence on the abuser, and the latter's prohibition on disclosure to the victim. As a result, exposing the abuser by the victim during the trial becomes tantamount to heroism.²⁴

Based on the analysis of Georgian court practice, I believe that in addition to economic and social moments, the victim often finds it difficult to perceive himself as a victim and to break the stereotypes established in society, which complicates his rational decision to be done. There are also cases when both the victim of violence and other family members are ashamed that they or their family member is being abused.²⁵

3.3. Theories of Domestic Violence

There are a number of theories (Lenore Walker, Landerberg, Duluth, etc.) regarding domestic violence:

²² *Siegmund-Schultze N.*, *Suddeutsche Zeitung*, August 8, 2005, 36.

²³ *Pope N.*, *Honor Killings in the Twenty-First Century*, Palgrave Macmillan, Official Journal of the South Asian Society of Criminology and Victimology (SASCV), 2014, 41-43.

²⁴ *Schramm E.*, *Ehe und Familie im Strafrecht*, Iena, 2018, 58-60.

²⁵ *Shalikashvili M.*, *Victimology-Science about Victims of Crime*, Tbilisi, 2011, 123 (in Georgian).

A special place among the theories is taken by the so-called the theory of "**Studied Behavior**". Researchers believe that violence against one another by a family member is a behavior learned in childhood that was perpetrated on him.²⁶

The second theory is called the "**theory of loss of control**" and is manifested under the influence of alcohol or narcotic and psychotropic substances. Opinion on this issue is divided: the second group of scientists argues that violence is the result of an inability to control anger and frustration.²⁷

Among the theories popular is the theory known as "**Learned Helplessness**", developed by the American psychologist Lenore Walker.²⁸

According to this theory, the decision of women to continue living with abusive husbands lies in the fact that due to constant abuse, living independently of the abuser has taken away the necessary willpower and she will not be able to live without him.

The "**cycle of violence**" is the next theory (Lenore Walker's theory), which has gained increasing popularity in the United States. It consists of three stages:

1. **Escalation of tension** (verbal confrontation and insults, clashes before the incident);
2. **Serious incident** (at intervals from 2 to 24 hours);
3. **Post-incident effective repentance** (attempting to reconcile with the victim after analyzing the abuser's behavior).²⁹

These theories are united by the various forms and species of violence expressed against another person (the victim, in our case a family member).³⁰

Recent case law analysis has also shown that due to the worldwide pandemic (Covid-19), family members gathered together at home, which further complicated their intolerance and, consequently, increased the crime of domestic violence. I believe that in terms of working with the abusers, only the imposition of an obligation under a restraining order by the police before a serious incident of escalation of tension is of a formal nature. The country should have programs that will enable early intervention of the abuser, ie "prevention of violence before violence".³¹

3.4. The modern reality of domestic violence in terms of legislation

The catastrophic increase in statistics on domestic violence has been reflected in criminal law legislation. By an amendment to the Criminal Code of Georgia made in May 2012, 11th Article of the Criminal Code of Georgia defined a circle of family members and indicated a list of crimes

²⁶ *Uorker L.*, Handbook of Psychology, The London School of Economics and Political Science, 1992, 211-235.

²⁷ *Kaqegehiro D.K., Laufer W.S.*, Handbook of Psychology and Law, Wharton School University of Pennsylvania, Philadelphia, USA, 1992, 23-24.

²⁸ *Uorker L.*, Handbook of Psychology, The London School of Economics and Political Science, 1992, 211-235. See also *Bochorishvili K., Meskhi M., Khutsishvili K., Feradze M., Saakashvili N., Argghanashvili A., Shavlakadze N., Zazashvili N.*, Handbook for Police Officers on Issues of Domestic Violence, Tbilisi, 2010, 24-43 (in Georgian).

²⁹ *Ibid.*

³⁰ *Ivanidze M.*, Family Crime, Iv. Javakhishvili University, "Guram Nachkebia-75", 2016, 51 (in Georgian).

³¹ *Mchedlishvili-Hedrikhi St.*, Report at the Conference on Violence Against Women, May, 2019 (in Georgian).

under the Code, in case of which the relevant reference to this article should be made. Under the same amendment, 126th 1 Article was added to the private part of the Criminal Code, which clarified the criminal nature of domestic violence and the responsibility for the act committed.

Although the amendment to the Criminal Code does not fully prevent the threats posed by the nature of this action, so **I believe** that the legislative **amendment** to the 11th 1 Article of the Criminal Code of Georgia is **timely**. This article exhaustively defines the responsibility for the list of crimes for domestic crime, in case of which the relevant reference should be made to the mentioned article, as well as the note in terms of defining the circle of family members, the responsibility for the list of crimes for domestic crime in terms of defining the circle of members, will facilitate the investigation and the court in terms of correctly defining the subject and object of the crime;

Accordingly, the legislative marking out of a separate article in the Criminal Code (126th 1 Article of the Criminal Code) on violence by one member of the family against another, I believe, indicates the excessive diligence of the legislator. The existence of this crime is possible in the 126th 1 Article of the Criminal Code. With reference to 11th 1 Article, even if it separated as an aggravating circumstance.

4. Public Attitudes Towards Hidden Cruelty

Despite legislative changes, facts of violence against women remains a major problem. The Public Defender's 2021 Parliamentary Report is also focused on public attitudes towards hidden cruelty. "Hidden facts of domestic violence is remaining as a big problem in the country. The scale of domestic violence and the public's unemotional attitude towards this problem are worrying" – is mentioned in the report.³²

Part of the society believes that the cruelty hidden from one member of the family towards another should be exposed as much as possible, while another part of the society evaluates this opinion negatively and believes that their exposure firstly insults the family, after which the victim feels humiliated in society and this negatively affects his health. There is also the opinion that what happens in someone else's family does not relate to anyone else and the person standing on the side prefers to stay on the side again.³³

The opinion of the German scholar Eduard Schramm is interesting in this regard: in court practice there are sometimes the cases discussed when the wives or family members can no longer protect themselves from the dominant husband or father and secretly mention them as a "family tyrant" or "domestic tyrant", however, even in case of injury or severe consequences, they often refuse not only to testify but also to seek reasons for justifying it. In every such virtual case, a simple forgiveness is used. In such a case, we are not dealing with a specific attack, but with a generally dangerous situation that needs to be addressed at the legislative level.³⁴

The practice of the Georgian court in this regard is also noteworthy. The generalization of case law has shown that due to the nonhomogenous response of the public on the "splurging" of

³² 2021 Parliamentary Report of the Public Defender of Georgia. April 1, 2021.

³³ Guidelines for Responding to Domestic Violence, UN Women, 2014, Tbilisi, 2014, 10.

³⁴ *Schramm E.*, *Ehe und Familie im Strafrecht*, Iena, 2018, 78.

the domestic violence, during the interrogation of the abuser family member, the victim often exposed abuser not only for the fact on which the investigation was launched, but also for the psychological and physical violence against them over the years, and the victims refused to testify against the accused at the court hearing,³⁵ which is the basis for the latter's acquittal and justification, and in my opinion, in a way, this fact weakens the force of prevention in relation to 126th Article of the Criminal Code of Georgia.

According to a German scientist, Eduard Schramm, not testifying against a close relative puts the abuser in a privileged position. In most cases, when it comes to kinship, there is the privilege of the offender, which in terms of legal policy, is motivated by a variety of reasons. The issue is related to the assistance of a relative with whom he or she finds himself or herself in a certain conflict situation, which the abuser seeks to eliminate or resolve by committing an offense. In such a case, relative is protected from a possible danger and punishment and obstruction of the law while exposing the offender.³⁶

According to the Georgian court practice, in relation to domestic violence, when imposing a measure of restraint on the accused, the victim often appeals to the court and categorically requests that the most severe form of restraint be applied to the abuser. Due to the nature of the violence, the court in such a case imposes a non-custodial measure as a measure of restraint. In such a case, during the substantive hearing of the case, as a rule, the injured (victim) refuses to testify against the accused (abuser) in accordance with subsection of Article 49 (d) of the Criminal Code of Georgia. I think it is worth considering at the legislative level that, given the position of the victim, where it is undeniable from the outset that the victim will not testify in court, the first case of violence should be considered as an administrative offense and criminalized only if repeated.

4.1. Increase the Statistics of Domestic Violence in the World and in Georgia

According to a USA study, a gender imbalance in **intimate violence** is conspicuous. Nine out of ten victims of similar violence are women. The US has the highest rate of rape, domestic violence, and spousal murder in the industrial world. Here, every year, 4 million women become victims of domestic violence. Statistically, one woman is raped every 6 minutes, and one woman is beaten every 18 seconds, and 4 women are killed by rapists every day. It is noteworthy that every year 2-3 million women in America become victims of violence by a male partner; Two times more women are sexually abused by their husbands than by a stranger; At least one in four women has been a victim of some form of violence in their lifetime.³⁷ The term "violence" used to refer to violence against women and children, but now it also refers to violence against another family member. According to world statistics, the most common type of domestic violence is beating a wife, the causes of which are: 1. Jealousy; 2. Disrespect to the husband; 3. Showing the predominant role of

³⁵ *Kvatchadze M., Melashvili L., Jugheli N., Gvinjilia E.*, Reflection of International Standards in Cases of Domestic Violence, Supreme Court of Georgia, Research and Analysis Center, Journal "Justice and Law", #3'18, 2017, 7-8 (in Georgian).

³⁶ *Schramm E.*, Ehe und Familie im Strafrecht, Iena, 2018, 108.

³⁷ *Goodman L., Leidholdt D.*, Lawyer's Manual on Domestic Violence Representing the Victim, 5th ed., Supreme Court of the State of New York, appellate Division, First Department, Hon. John T Buckley, Presiding Justice, 2006, 45-47.

men on the basis of gender; 4. Addiction to alcohol or drugs. In addition to physical violence, there are frequent cases of psychological violence, such as: constant control of the wife, isolation from her own parents and friends; Threats, intimidation, verbal abuse, humiliation, etc.³⁸

These statistical indicators only cover the cases where the fact of violence has been followed by a legal response. Other cases of violence are not included in the final statistics. According to the official website of the Ministry of Internal Affairs, in 2020, law enforcement issued 10,266 restraining orders to protect victims of domestic violence, which is by 34% more than the indicator in 2019. What is the situation in Georgia in this regard? In March 2021, according to the National Statistics Office of Georgia, in 2020, the highest rate of violence against women was recorded - 6564 cases.³⁹

5. Comparative-legal Analysis of Domestic Violence Compared to other Countries

Despite the severity of the issue, in a number of countries, domestic violence was limited to criminological measures and the problem is still unresolved in criminal terms (Russia, France, Turkey).

According to the Criminal Code of **Russia and France**, violence against one family member by another, including even against a juvenile, is not even considered as an aggravating circumstance in the form of violent crimes.⁴⁰

The **French** Criminal Code considers **murder of a spouse** as an aggravating circumstance and envisages life imprisonment for it or imprisonment for twenty years for violence that resulted in the death of the victim if the victim was a spouse or a person living with the abuser.⁴¹

France adopted a law in 2010 “on violence against women and among spouses and its impact on children”. The law protects both genders from violence, especially women and children in relationships with different statuses, will it be marriage, civil relations or just cohabitation. The law consists of civil and criminal norms.⁴²

Italy adopted a law on violence against women in August 2013. The law envisages mandatory detention if a person has been witnessed for violence or persecution, and also provides for a mandatory investigation if a complaint is lodged with the police. The law provides for police eviction of the abuser from the home / apartment even if the home / apartment is in his or her ownership and provides free legal aid to all female victims who file an appeal against the abuser.

The law simplifies anonymous reporting on domestic violence. A neighbor, co-worker, friend or family member can report the incident to the police.⁴³

³⁸ *Kimmel M.*, *The Gendered Society*, 4th ed., Oxford University, Oxford, 2011, 381.

³⁹ Report of the Ministry of Internal Affairs of Georgia, 13.02.2021 (in Georgian).

⁴⁰ *Kozochkina I.D.* (ed.), *Criminal Legislation of Foreign Countries (England, USA, France, Germany, Japan)*, Collection of Legislative Materials, Moscow, 1998, 193-205 (in Russian); see also, *Criminal Code of the Russian Federation* dated 06/13/1996, # 63-FZ, Moscow, 2021 (as amended on 07/01/2021) (as amended and supplemented, effective from 08/22/2021) (in Russian).

⁴¹ *Kozochkina I.D.* (ed.), *Criminal Legislation of Foreign Countries (England, USA, France, Germany, Japan)*, Collection of Legislative Materials, Moscow, 1998, 197 (in Russian).

⁴² *Krilova N.E.*, *Serebrennikova A.V.*, *Criminal Law of Modern Foreign Countries (England, USA, France, Germany)*, Moscow, 1997, 142-145 (in Russian).

⁴³ *Criminal Procedure Code of the Republic of Italy*, Part I, 2011, https://legislationline.org/sites/default/files/documents/83/Italy_CPC_updated_till_2012_Part_1_it.pdf [20.08.2022].

The new law makes it almost impossible to withdraw a complaint about domestic violence. It often happens when the victim woman refuses to help with the investigation, which is usually caused by fear of the abuser. Under the new law, police must continue to investigate, even when the victim no longer cooperates with them. The law aggravates the punishment if the victim is a pregnant woman or if the violence took place in the presence of a child.

Turkey has taken a relatively different approach to this issue. The Convention adopted in Istanbul on May 7, 2011 (the so-called Istanbul Convention) identified a violence against women as a form of discrimination, but there is currently no form of domestic violence in Turkish criminal law, where, according to tradition, there is a view - husband is the wife's ruler.⁴⁴

It is noteworthy that the movement against domestic violence in the **USA** began in the 60s of last century. Violence against women, both in the family and at the community level, has been recognized as a national problem. In 1990, the "Basic Federal Act on Violence Against Women" was adopted, which allowed victims to receive compensation.

The Inter-American Convention on human rights for the prevention, punishment and elimination of violence against women entered into force in 1995, in which violence is discussed as "physical, sexual or psychological violence" committed within the family or by a partner, regardless of whether the woman lives with the abuser. Due to the particularly high rate of violence, American countries (**Chile, Argentina, Peru, El Salvador, Guatemala, Costa Rica, Colombia, Honduras, Nicaragua, Bolivia, Mexico**) have adopted special laws which criminalize femicide (Law of Access for Women to a Life Free of Violence).⁴⁵

A special part of the **German** Criminal Code contains a separate department entitled "Criminal offenses committed against civil status, marriage and family", which clearly reveals that these two institutions are objects of criminal protection, although under their law, the offense committed under domestic violence is not separated independently.⁴⁶

Until the end of the 19th century, there were no laws in the **UK** banning domestic violence. Nowadays, although harsh domestic violence against women is still widespread, victims of domestic violence are the best protected in the UK in terms of legality, and not only the abusers are protected with British law protecting but also the outsider who provides information to law enforcement.⁴⁷

6. Generalization of Georgian Court Practice on Hidden Domestic Cruelty

Domestic violence is a sensitive event for all people, because it happens between people who are emotionally connected to each other, so it is difficult to talk about it, which makes it difficult for the victim to find help, and the perpetrator is even more afraid of the syndrome of impunity.⁴⁸

⁴⁴ *Semyonovich D.*, Report on Violence Against Women, Outcomes and Consequences of Violence, Human Rights Council, 2016.

⁴⁵ *Kozochkina I.D.* (ed.), Criminal Legislation of Foreign Countries (England, USA, France, Germany, Japan), Collection of Legislative Materials, Moscow, 1998, 97 (in Russian);

⁴⁶ *Schramm E.*, Ehe und Familie im Strafrecht, Iena, 2018, 38.

⁴⁷ *Kimmel M.*, The Gendered Society, Oxford University, 4th ed., 2011, 123.

⁴⁸ *Khatiashvili G.*, Guidelines for Combating Violence Against Women and Children and Domestic Violence, Tbilisi, 2021, 51 (in Georgian).

The regularity and continuity of the cruelty hidden by one member of the family towards the other is well reflected in the case law. Currently, research was done on the case law in the Kvemo Kartli region, where the most common case of hidden cruelty is violence against a wife by her husband.

6.1. Violence against a Wife Committed by her Husband

On January 22, 2020, at approximately 16:00, in one of the villages of Gardabani district, P. S. in his own house, without no reason, hit the right hand to his wife – R.Ts. to her head and overturned the index finger of his left hand, at which time R. Ts. suffered physical pain.⁴⁹

In this case, the court acquitted him. The victim, despite the fact that during the investigation, during the interrogation, explained in detail each fact of escalation of tension on the part of her husband until the last incident, at the court hearing, did not testify against her husband. In my opinion, due to the old stereotypical views that a woman had no right to speak publicly about what happened in the family ("dirty linen was exposed"), the psychological and physical cruelty suffered by her husband over the years remained hidden and unpunished.

By the **judgment 30.11.2020 №1-286-20** of Rustavi City Court, D.B. was acquitted against his wife D.S. of the charges of violence and threats (under the first part of 126th Article of the Criminal Code of Georgia (in two episodes) and 11th and 151th of the Criminal Code of Georgia under the second part of Article (d)); D.B. was charged with multiple counts of gender-based violence against his wife, DS, over the years, resulting in the victim suffering physical pain and psychological suffering. During the next physical violence, there was a reasonable fear of being threatened, which is why she turned to law enforcement. During the investigation, during the survey, a detailed description of what she had suffered over the years due to physical and mental injuries inflicted on her by her husband, however, during the substantive hearing of the case, the court did not give testimony against her spouse;

At the investigation stage, interrogation protocol of D.S. failed to form the basis for a conviction. There was no other direct evidence that would unequivocally confirm the reality of the violence and threats committed by D.B. against the addressee of threaten, due to the same hidden nature of the violence that led to the acquittal of D.B.⁵⁰

A study of practice in only one region revealed that there are not so few such cases, when the victim refuses to testify against the abuser in accordance with 49th Article's part 1, clause "d" of the Criminal Procedure Code of Georgia, due to poor representation in the eyes of the affected society, economic dependence on her husband, lack of a home or various other reasons, she continues to live with him.

6.2. Violence Against Men Committed by Women

It is noteworthy that over the years, the victimized nature of cruelty concealed in the family by the husband (unlawful violence, severe abuse or other serious immoral acts against victim, as

⁴⁹ Rustavi City Court Judgment 04.02.2021. №1-186-20 (in Georgian).

⁵⁰ Judgment of Rustavi City Court 30.11.2020 №1-286-20 (in Georgian).

well as repeated unlawful or immoral behavior of the victim is the result of strong mental trauma) has resulted in the worst consequences for the victim due to strong, sudden spiritual excitement. The following example stands out in this regard.

In the village of T., Marneuli Municipality, T.K., who lives with her three young children, was systematically, verbally and physically abused by her husband R.K., while drinking alcohol, and threatened by killing both her and her children. He committed various acts of sexual violence against T.K. (forcing her to have sexual intercourse with him in a perverted manner, including in the presence of young children);

On the night of December 25-26, 2016, while trying to carry out another similar action, T.K., who was in a state of strong spiritual excitement - a state of physiological affect, intentionally killed her husband by hitting him an ax several times in the face.⁵¹

In the present case, I believe that it was precisely because of the hidden cruelty perpetrated by the spouse and public fears that the group where the victim lived with the abuser was found to be more harmful.

6.3. Violence against Parents Committed by a Child

According to statistics, the most hidden form of domestic violence is a violence committed by against his or her mother; The non-disclosure of the hidden cruelty, it is clear, is explained by the maternal nature, but such cases could be found in the practice of Kvemo Kartli courts.

An example of hidden cruelty by mother is the criminal case against G.G. G.G. was charged with committing the crimes under 126th Article, Part 1 of the Criminal Code of Georgia and under 11th and 151th Article, Part 2, Subparagraph "d" of the Criminal Code of Georgia.

G.G. systematically cursed his mother T.G., almost daily, and addressed her with insulting words, for which the latter suffered; During the next fight, she was threatened with death, and due to G.G.'s drunkenness and inadequacy, T.G perceived this fear as real and developed a reasonable fear of being threatened.

Despite the systematic psychological violence and threats committed by G.G. towards T.G., at the substantive hearing, T.G. did not testify against her son in court, which in given case, as in the other examples described above, became the basis for the acquittal.⁵²

S.M. verbally abused his mother, V.M., in his own apartment, during a domestic dispute; Offended by a remark from his father, S.M., physically assaulted his father, I.M., as a result of which the latter suffered physical pain.⁵³

In this case, despite the fact that S.M. was convicted on the basis of physical violence against parents in the past, at the court hearing, the parents V.M. and I.M. refused to testify against their child in accordance with Article 49, Part 1, Subparagraph "d" of the Criminal Code of Georgia.

⁵¹ Rustavi City Court 05.04.17. Judgment, Case №1-65-17 (in Georgian).

⁵² Rustavi City Court judgment 2021, 11.03.2021 № 1-579-20 (in Georgian).

⁵³ Rustavi City Court judgment 13.01, 2020, Case № 1-499-20 (in Georgian).

6.4. Violence against a Sister Committed by a Brother

T.D. carried out violence against his sister, E.D., punched her in the eye with her right fist, and threatened to kill her by demonstrating a knife. E.D. suffered physical pain, perceived the threat in real and developed a reasonable fear of being suffered.⁵⁴

In this case, despite the fact that the victim herself called the police, during the investigation, during the interrogation, as in the cases described above, she voluntarily explained the details of the incident, did not testify her brother in court and one more abuser remained unpunished due to the acquittal, which detracts the importance of prevention to expose the abuser under these articles.

6.5. Violence against Children Committed by Parents

Also interesting is the hidden side of parental violence against a child: A.L., in his home, by gender discrimination motive, because he was the head of the family and everything only had to be believed to him by the female members of the family, he systematically verbally abused and offended his child, T. L.. A.L., for failing to comply with his request, pulled T.L. into his hair, during which T.L. suffered physical pain. On the same day, T.L. was struck in the face with an outstretched hand, at which time T.L. suffered physical pain and psychological suffering.

During the court hearing, the adult victim T.L., and the mother of T.L., who witnessed this fact in the family, did not testify against her husband A.L. on the court. In this case, as in the other cases described above, in the absence of other evidences, the court acquitted A.L.⁵⁵

Tendencies of hidden domestic cruelty that in almost every third case of the courts, where the basis for acquittal of abusers become the reason of not testifying them by victims in court, indicate a publicly unacceptable topic in terms of exposing a domestic abuser. Despite the legal framework for combating violence, it is clear from practice studies that a victim who tries to save himself from the abuser becomes the object of public reprimand and, because of his mentality, often wrong advice or fear, still lives with the abuser, sometimes with fatal consequences. It should also be noted that state-funded shelters for victims of violence, as well as rehabilitation and psychological centers for the temporary accommodation of abusers, have not yet been established in the districts, also the issue of social services for the problem of domestic violence has not been resolved, which in my opinion will not create irreparable problems for the victim when exposing a violent family member.

6.6. Regarding the Qualification of Gender-based Violence:

On January 25, 2020, M.I. physically assaulted his wife, E.I., during a dispute over household issues in his apartment, causing the latter suffered physical pain. During the investigation, M.I.'s actions were qualified under the first part of 126th 1 Article of the Criminal Code of Georgia, on the grounds of gender intolerance.⁵⁶

⁵⁴ Rustavi City Court judgment 25.08.2020, Case №1-34-20 (in Georgian).

⁵⁵ Rustavi City Court judgment 16.10.2020, Case № 1-961-19 (in Georgian).

⁵⁶ Rustavi City Court 15.09.2020, Judgment, Case №1-118-20 (in Georgian).

In such case, the qualification of the action as a sign of gender intolerance is very interesting. The court ruled out gender-based violence on the basis of the evidence in the case and indicated that it should be corroborated by solid evidence and not presumptions. According to the victim, the testimony was not even explicit, but there was not even a general reference to demonstrating the predominant role of men in the family on the basis of gender in the case of violence by the accused. Moreover, the testimony of the victim at the court hearing, as well as the protocol of his interrogation during the investigation, confirm that the victim points out the cruelty committed against him by his wife on domestic grounds and generally denies gender-based humiliation, unlawful and unlawful Networking and being considered her property because of her gender. Investigations often use gender-based qualifications unreasonably, which, in my opinion, requires separate study and analysis. It is necessary to understand that the dominant motive in domestic violence by men is not a woman's gender.⁵⁷

I believe that the victim's (injured) refusal to testify against the abuser in court (to hide the cruelty), which is often the result not only of financial and social background, but also of environmental pressure, taking society to a dangerous situation, which will lead the death of justice", as the German scientist Eduard Schramm explains, it⁵⁸, which in turn, in my opinion, as mentioned above, requires consideration at the legislative level from a procedural point of view.

7. Conclusion

Hidden cruelty in the family is one of the most serious and common forms and unfortunately has remained a problem for years. The reality is that the most dangerous place for millions of people in any country in the world is often their own family. Hidden violence is a complex phenomenon that is deeply rooted in cultural beliefs and the unequal distribution of power between the sexes. Gender-based violence and cruelty take place in all societies and aim at the social, psychological and economic subordination of one gender (mostly women) to the other gender. The way to solve this problem is to verify (assure) the privileges established in the society and the family, which are benefited today by the dominant members of the family (often men) and the hidden cruelty is usually perceived as a problem in everyday life. In addition to refining the procedural legal framework, I also consider the development of a special program for abusers at the initial stage, from the escalation of tension to a serious incident, as a way to alleviate the problem, also, the establishment of state-funded shelters not only in the capital, but also in the regions, including social services for victims of violence, which will allow a member of the family who is abused to realize his or her will.

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⁵⁷ *Todua N.*, Report at the Conference on Violence Against Women, 2019.

⁵⁸ *Schramm E.*, Ehe und Familie im Strafrecht, Iena, 2018, 8.

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