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Problems of qualification of torture and humiliating or inhuman treatment in domestic violence cases according to the practice of the general courts of Georgia

In the practice of general courts of Georgia, the problem of qualification of crime is not a rare case. This especially refers to crimes between which to draw a line is difficult. Among such cases are the crimes provided for by articles 144¹ (torture)¹ and 144³ (humiliation or inhuman treatment)² of the Criminal Code of Georgia. It is important to separate them – from each other and from other crimes.

The scientific article presents the criminal law cases of the domestic violence³ category, in which the above-mentioned problem appeared and which were considered by all three courts of Georgia.

Key words: torture, degrading treatment, inhuman treatment, qualification, domestic violence, judicial practice

1. Introduction

The paper deals with the problems of qualification of torture and humiliating or inhumane treatment in domestic violence cases according to the practice of the general courts of Georgia.

Identifying the guilty persons, bringing them to criminal responsibility and sentencing is the primary duty of the state. Nevertheless, in judicial practice, due to the number and complexity of the

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¹ The first part of Article 144¹ of the Criminal Code of Georgia – “Torture, i.e. exposing a person, or a third person to such conditions or treating him/her in a manner that causes severe physical pain or psychological or moral anguish, and which aims to obtain information, evidence or confession, threaten or coerce, or punish the person for the act he/she or a third person has committed or has allegedly committed”.

² The first part of Article 144³ of the Criminal Code of Georgia – “Humiliating or coercing a person, placing him/her in an inhuman, degrading and humiliating condition, which inflicts severe physical and psychological suffering on him/her”.

³ Article 11¹ of the Criminal Code of Georgia – “A domestic crime shall mean a crime under Articles 109, 115, 117, 118, 120, 126, 133¹, 133², 137-141, 143, 144-144³, 149-151¹, 160, 171, 187, 253-255¹, 381¹ and 381² of this Code, which is committed by one family member against another family member. Criminal liability for a domestic crime shall be determined according to an appropriate article of the Criminal Code of Georgia specified in this article, with reference to that article”. With the first part of the note of the same article – “For the purposes of this Code, the following persons shall be considered family members: a mother, father, grandfather, grandmother, spouse, person in an unregistered marriage, child (stepchild), foster child, foster carer (foster mother, foster father), stepmother, stepfather, grandchild, sister, brother, parent of the spouse, parent of the person in an unregistered marriage, spouse of the child (including the one in an unregistered marriage), former spouse, person who previously was in an unregistered marriage, guardian, custodian, supporter, person under guardianship and custodianship, beneficiary of support, as well as other persons that maintain or maintained a common household”.

cases, the problems of qualification of torture and inhuman or degrading treatment appeared,⁴ which was reflected in the acquittal or the judgements changed by the superior instance.

Article 3 of the European Convention on Human Rights – the prohibition of torture is one of the few lists from which deviations are not allowed. No exceptional circumstances can be adduced by a state party to justify an act of torture within its jurisdiction.⁵ Torture is an absolute right and cannot be justified by any public necessity or state interest.⁶

Despite the fact that the European Court of Human Rights has a large practice in relation to the presented issues, the research of the practice of the general courts of Georgia, along with its relevance, is a great news for the Georgian reality. In addition, it should be noted that one of the most relevant categories – **domestic violence** – is selected in the paper for discussing the practice of torture and humiliating or inhumane treatment.

The article provides a basic picture of the practice of the general courts of Georgia on the separation of torture and degrading or inhuman treatment from each other and from other crimes in cases of the domestic violence category.

2. Separation of torture and degrading or inhuman treatment in domestic violence cases according to the practice of the general courts of Georgia

Let's consider the judgement, in which G.G., along with another crime, was found guilty under the first part of Article 11¹,144¹ of the Criminal Code of Georgia. The actions committed by G.G. were expressed in the following: In his home, drunk G.G. asked his wife L.B. to prepare dinner. His wife did not prepare dinner on time and G.G., offended by this, decided to punish L.B., for which he intended to torture her, citing gender intolerance, as if cooking in the family is only a woman's duty. He first grabbed L.B. by the hair and beat her and when she tried to resist, in order to facilitate the criminal act, he decided to tie him up and imprison her. For this purpose, G.G. knocked L.B. to the floor and tied her hands with a plastic bandage, the so-called “Khamuti”. When he tried to bind his legs as well, L.B. resisted and in order to subdue her, G.G. stuck a knife in his leg, causing physical pain. After tying her hands and feet, G.G. abused L.B. verbally and physically, in particular hitting his hands and feet on her body for several hours.⁷

Despite the defence's appeal (appellant asked for a judgement of acquittal), the judgment of the Court of Appeals upheld the judgement of the Court of First Instance.⁸

⁴ See Also, *Mamaladze E., Dateshidze N.*, Prohibition of Torture: Reflecting the Standards Under Articles 3 and 6 of the European Convention on Human Rights in National Judicial Practice, Tbilisi, 2019, 10 (in Georgia).

⁵ *Svanidze E.*, Effective Investigation of Mistreatment, European Standards Guidelines, Tbilisi, 133 (in Georgia).

⁶ *Lekveishvili M., Mamulashvili G., Todua N.*, Private Part of Criminal Law, Book I, Part One, Tbilisi, 2023, 394 (in Georgia).

⁷ Judgement of Bolnisi District Court of November 13, 2018 on case No. 1/112-18.

⁸ Judgement of the Criminal Chamber of the Tbilisi Court of Appeals of March 29, 2019 on case No. 1B/219-19.

According to the judgment of the Supreme Court of Georgia, the judgment of the Court of Appeals was amended: the action of the convicted G.G. was reclassified from the first part of Article 11¹,144¹ of the Criminal Code of Georgia to the first part of 11¹,144³ of the same Code.⁹ As it became clear by studying the materials, the Supreme Court did not agree with the legal assessment of the first instance and appeals courts, which they gave to the victim L.B. of the act committed by the convicted G.G. – in the part of torture. The lower courts considered that the convicted person committed the said act towards his wife in order to punish her for the act he had committed. The act of the victim, by which she provoked the anger of the violent husband and his punishment by the latter, consisted in the fact that she did not bring food in time to the violent man who returned home late in the evening and was drunk, because of this, the convict, citing gender intolerance, as if cooking in the family is only a woman's duty, decided to punish L.B., for which he intended to torture her. In this part, the legal conclusion of the courts completely coincided with the reasoning and conclusion given in the prosecutor's resolution about the person's accusation.

The court of cassation evaluated the conflicting statements given by the victim in the investigation with the beyond reasonable doubt standard and came to the conclusion that the reason for the action of the convicted G.G. was completely certain and determined by the answers given by L.B. – Aggression towards his wife caused by drunkenness (and not punishment) due to which there was no legal basis for the qualification of the act committed by the convict as torture, because the subjective sign necessary for the existence of the legal composition of torture was not established, in particular, the special purpose of punishing the victim. Although the lower courts did not critically evaluate the victim's conflicting testimony regarding the specific purpose of the punishment, but, the Supreme Court of Georgia correctly reclassified the action of the convicted G.G. from the first part of Article 11¹,144¹ of the Criminal Code of Georgia to the first part of Article 11¹,144³ of the same Code. According to the conclusion of the Chamber of Cassation, the actions of the convicted G.G. in the part of verbal and physical abuse inflicted on the victim L.B., as well as other forms of violence committed against her, included such illegal actions as humiliating and inhuman treatment.

Despite the correct qualification of G.G.'s action by the cassation court, in terms of disposition, G.G.'s action should have been evaluated only as inhuman treatment, while G.G.'s action was also evaluated as humiliating treatment. All three courts of instance considered the factual circumstances described in the resolution to charge the person as established beyond a reasonable doubt, with the only difference being that the Court of Cassation excluded the special purpose of punishment, which ultimately led to a change in qualification and G.G.'s action was assessed as both degrading and inhumane treatment. If the court came to the above-mentioned conclusion, then by the same judgment, it should have determined which actions were humiliating and which were inhumane on the part of G.G. Moreover, in the above-mentioned decision of the Court of Cassation, the precedents of the European Court of Human Rights should have been considered¹⁰ and analyzed them, which would

⁹ Judgment of the Criminal Chamber of the Supreme Court of Georgia of November 1, 2019 on case No. 356AP-19.

¹⁰ For example, “Treatment is considered inhuman when it is committed with premeditated intent, exceeds the minimum threshold of cruelty and causes actual bodily harm or severe physical or mental suffering, and when the treatment humiliates or degrades a person, shows a lack of respect or demeans his dignity, or

make the legally correct assessment of G.G.'s action more justified, taking into account the specifics of the crime and its elements.

Ill-treatment that does not amount to torture because it lacks sufficient intensity and purpose qualifies as inhuman or degrading treatment. As with all assessments related to Article 3 of the European Convention on Human Rights, this assessment is made on the basis of relativity.¹¹ The main difference between torture and inhumane treatment lies in the severity of the suffering inflicted. Inhuman treatment refers to inhumane treatment of less severity and intensity than torture.¹²

It's interesting another criminal case, which attracts special attention. G.R., along with other crimes, was charged with subsection "f" of part 2 of Article 11^{1,144} of the Criminal Code of Georgia,¹³ which was expressed as follows: G.R. forced his wife I.K. to admit that she had sexual relations with her own cousin by threatening to kill her with a knife, in particular, to cut her head. After I.K.'s denial of this fact, G.R. began to abuse his wife on the basis of her gender, he took out a baton, a large roll of adhesive tape from his parka and forcibly dragged the victim to the bathroom, as a result of which I.K. severe mental and physical pain and moral suffering.¹⁴ G.R. slowly pulled pieces of the victim's dress, wrapped around his arm and hit him in the face, with the aim of forcing the victim to name the identity of her lover. I.K. was able to escape, open the door and call people for help, however, G.R. dragged his wife by force into the house and locked the door from the inside, after which he threw her on the bed and started suffocating her with a strong hand on her throat. At the same time, he threatened to kill, during which the victim experienced great fear and suffering. G.R.'s actions, physical violence, aggression, as well as his suspicions, caused the victim to feel insecure, psychological depression, humiliation and his moral suffering.¹⁵

G.R. was found guilty of all the presented charges by the court, among them, under subsection "f" of part 2 of Article 11^{1,144} of the Criminal Code of Georgia, and the form and measure of punishment was determined – 7 years of imprisonment. In the opinion of the court, physical violence on the part of G.R. on the part of his wife in a locked apartment for several hours, threatening to take her life with a knife, beating her on the motive of naming her lover, humiliation, which was expressed in the request to I.K. to admit the fact of sexual contact with her own cousin in order to influence and suppress the psyche of the victim, together with the knife, the so-called demonstration of "scotch tape"

provokes A feeling of fear, suffering and inferiority in him to such a degree that it can break his moral or physical endurance shall be considered as degrading treatment", See: *Pretty v. The United Kingdom*, (Application no. 2346/02), 29 April 2002; See also, *Ireland v. The United Kingdom*, (Application no. 5310/71), 18 January 1978; *Gäfgen v. Germany*, ECHR, (Application no. 22978/05), 30 June 2008; *Bouyid v. Belgium*, ECHR, (Application no. 23380/09), 28 September 2015.

¹¹ Prohibition of torture, implementation of Article 3 of the European Convention on Human Rights, Guide, Tbilisi, 2005, 64.

¹² *Bokhashvili B.*, Case Law of the European Court of Human Rights, Tbilisi, 2004, 151 (In Georgian).

¹³ "...by violating the equality of persons, or due to their race, colour, language, sex, religion, belief, political or other views, national, ethnic, social belonging, origin, place of residence, material status or title...".

¹⁴ It should be noted that moral suffering is one of the manifestations of mental suffering, therefore, it is not correct to separate it separately. In addition, international conventions do not use this word – moral. See *Dvalidze I., Kharanauli L., Tumanishvili G., Tsikarishvili K.*, Crimes against human rights and freedoms according to the Criminal Code of Georgia, 2019, 151.

¹⁵ Judgment of the Tbilisi City Court's Criminal Affairs Board of March 9, 2020 on case No. 1/4381-19.

and a baton is a violation of the right protected by Article 3 of the European Convention on Human Rights. The purpose of carrying out the above-mentioned actions was to humiliate I.K. and diminish his dignity – in such a way that G.R. would confirm his superiority and power to the victims, so that the latter would have a feeling of helplessness and would not dare to resist him. The court found that the infliction of physical pain and mental suffering on I.K., which the victim spoke about during the interrogation, should be considered as humiliating the person, both in the eyes of others and in her own eyes, as putting the person in a state of insulting honor and dignity.¹⁶

It should be noted that, although the city court correctly discussed the commission of inhuman treatment by G.R., however, the fact that it is evident from the wording of the accusation itself, that G.R. committed inhuman treatment by demanding confession of infidelity from his wife.

Because of G.R.'s treatment of the victim by its nature, intensity and duration reached severe physical pain, mental and moral suffering, which was carried out in order to obtain a confession, the state prosecution had to qualify G.R.'s action as torture and the case proceeded in court. It is true that the court could not aggravate the presented charge (torture is a more serious crime than inhumane treatment), however, considering the committed action, the court should not have ordered¹⁷ 7 years of imprisonment, while for the relevant article, part and clause of torture, imprisonment of nine to fifteen years is provided.

The findings of the City Court were fully shared by the Court of Appeals¹⁸ and the Supreme Court.¹⁹

3. Separation of torture and degrading or inhuman treatment from domestic violence according to the practice of the general courts of Georgia

According to the decree to prosecute as the accused, G.K. Since September 2018, has been systematically verbally abusing his wife Jh.O. on the grounds of gender and intolerance. In particular, he told her that he, as a man, had the right to treat his wife as he wanted, and Jh.O. was obliged to obey his every request and act according to his instructions. In October 2018, G.K., because of jealousy, beat Jh.O. in the head, causing Jh.O. to suffer physical pain and suffering. In December of the same year, G.K. brought his wife to the area surrounding the village, from whom, by repeatedly hitting her hands and feet on her body, he demanded to confess the alleged sexual intercourse and her partner's name. After receiving the refusal, G.K., due to the recognition of the mentioned relationship,

¹⁶ Judgment of the Tbilisi City Court's Criminal Affairs Board of March 9, 2020 on case No. 1/4381-19.

¹⁷ “Determining the sanction for persons exposed in improper treatment is the discretion of the national legislation and the courts. International standards do not provide any formal list of sanctions to be applied to perpetrators of torture, inhuman or degrading treatment or punishment”; 14th General Report on CTP Activities, CTP/Inf (2004) 28, para 44; See – Svanidze E., Mistreatment and the fight against impunity, 17-18; International standards require that punishment be proportionate to the severity of the mistreatment. See – Ali and Ayse Duran v. Turkey, ECHR, (Application no. 42942/02), 8 April 2008.

¹⁸ Judgment of the Criminal Chamber of the Tbilisi Court of Appeals of November 27, 2020 on case No. 1b/728-20.

¹⁹ Judgment of the Criminal Chamber of the Supreme Court of Georgia of June 25, 2021 on case No. 23AP-21.

in order to punish her, with an interval of about 10 minutes, for 3-5 minutes, he injured Jh.O. and she experienced severe physical pain and mental suffering. G.K. was charged with the first part of Article 126¹ of the Criminal Code of Georgia²⁰ and the first part of Article 11¹,144¹ of the same Code.²¹

According to the court's decision, G.K. He was acquitted in the charge filed under the first part of Article 126¹ of the Criminal Code of Georgia (2018, September-October episode), and the charge filed under the first part of Article 11¹,144¹ of the same code was reclassified to the first part of Article 126¹ of the same code. Finally, G.K. was found guilty of committing a crime under the first part of Article 126¹ of the Criminal Code of Georgia.²²

In the judgment, the court cited the victim's right not to testify²³ against a family member²⁴ as the main argument for acquittal and requalification, and other evidence was not sufficient to convict G.K. beyond a reasonable doubt. In this case, the court of first instance accepted the stated position of the victim as a fact and evaluated the action of G.K. in relation to other evidence, however, it left out of attention the approach of the Council of Europe Convention on "Measures for the Prevention and Suppression of Violence against Women", according to which criminal prosecution should not be entirely dependent on the application or complaint filed by the victim.²⁵ Consequently, since the victim did not testify, the perpetrator's actions were incorrectly qualified.

In the analysis of the this judgment, special attention is drawn to the reclassification of the charges against G.K. under the first part of Article 11¹,144¹ to the first part of Article 126¹ of the Criminal Code of Georgia. The approach of the court of first instance is correct, when the victim was not interrogated in court, it became impossible to determine without a doubt whether such treatment of G.K. served a special purpose – recognition of infidelity on the part of the spouse or punishment, for which no special purpose has been identified that is mandatory for the composition of torture – obtaining information or confession, intimidating or coercing a person or punishing a person for an act committed or likely to be committed by him. Accordingly, in this case, the qualification of the crime as torture was excluded, however, the nature, intensity and serious consequences of the action committed by G.K. were not taken into account and G.K. was found guilty only for domestic violence.

The decision of the court of first instance was fully shared by the court of appeals.²⁶

²⁰ "Violence, regular insult, blackmail, humiliation by one family member against another family member, which has resulted in physical pain or anguish and which has not entailed the consequences provided for by Articles 117, 118 or 120 of this Code".

²¹ Judgment of Gurjaani District Court of July 16, 2019 on case No. 1/45-19.

²² Judgment of Gurjaani District Court of July 16, 2019 on case No. 1/45-19.

²³ In general, what causes the non-testification of victims in family crime cases requires a separate study. The victims, who are repeatedly subjected to violent acts by their spouses, provide detailed information to the body conducting the process within the framework of the investigation, however, they refuse to testify in court proceedings. It is likely that these persons are still victims of psychological or other types of violence.

²⁴ According to Article 49 of the Criminal Procedure Code of Georgia, Part 1, Sub-Clause "d" – "A witness shall have the right to: ...d) avoid giving a testimony that discloses the commission of a crime by himself/herself or by his/her close relative".

²⁵ "On Measures to Prevent and Suppress Violence against Women" Council of Europe Convention, 2011, Article 55.

²⁶ Judgment of the Criminal Chamber of the Tbilisi Court of Appeals of December 10, 2019 on case No. 1b/1819-19.

The Supreme Court of Georgia in the above-mentioned case partially satisfied the cassation appeal of the state prosecutor (the prosecutor requested to declare G.K. guilty for torture), accurately assessed the evidence in the case and qualified G.K.'s action as inhuman treatment instead of domestic violence, and in the first episode (2018, the fact of September-October), as the previous instances, left it unchanged. The Cassation Chamber considered that the injuries inflicted by G.K. on Jh.O., which caused severe pain (physical and mental) and suffering to the victim, went beyond the scope of domestic violence and reached the level of cruelty that constitutes inhuman treatment, a crime, stipulated by the first part of Article 11¹,144³ of the Criminal Code of Georgia.²⁷

Probably, the conclusion of the Supreme Court was fully derived from the evidence gathered in the case, In particular: injuries inflicted on the victim, including numerous cigarette burns on the body, would cause severe physical and mental pain to a person with normal physical development and health. In addition, it was definitely established that Jh.O. had unbearable pain from the injuries. Also, it was proven that, the victim was under stress after the violence, had difficulty speaking, needed the help of a psychiatrist, suffered from post-traumatic restlessness, anxiety and a sense of doom, which clearly indicated the mental pain and moral suffering experienced by the victim, which is why the Supreme Court correctly made a legal evaluation of G.K.'s action.

The situation is different in another case under consideration, in which G.G. was charged with other crimes under the first part of Article 11¹,144³. G.G.'s actions in terms of inhumane treatment were expressed in the following: In the last few years, G.G.'s wife F.Ch. was constantly insulted for no reason, spat in her face and humiliated her every day, as a result of which the victim experienced psychological suffering. He also often used physical abuse. In particular, he grabbed her by the throat and shook her, punched her on her right arm and face, as a result of which she fell down. He sat on the body of the fallen man and held his throat tightly with both hands. The victim was short of breath and blinded, however, he was able to bite in the chest, took advantage of the temporary hand release and managed to escape to the bedroom. G.G. followed her back and slapped her in the face with an outstretched hand. The victim fell on the bed. He held both of her hands with one hand, and with the other he placed a lit cigarette on the thigh of her right leg and laid it down. F.Ch. managed to escape again and ran to ask for help, however, G.G. tried to stop her again and punched her in the body. As a result of the above-mentioned violent actions, F.Ch. suffered severe physical pain.²⁸

During the oral hearing of the case, F.Ch. refused to testify against her close relative – G.G. The court explained that the victim's refusal to testify did not imply the defendant's innocence a priori. Such an action on the part of the victim may have been due to a number of factors, including the emotional attitude of the victim not bring her family member to criminal liability and etc.

In this case, the court paid attention to the victim's behavior after committing the crime, which contributed to the objective investigation – she applied herself to the police with a report about the crime, gave a number of statements to the investigation, conducted a medical examination to detect traces of violence, submitted to the investigation possible whistle-blowing materials of the accused,

²⁷ Judgment of the Criminal Chamber of the Supreme Court of Georgia of April 10, 2020 on case No. 149AP-20.

²⁸ Judgment of the Tbilisi City Court's Criminal Affairs Board of March 31, 2021 on case No. 1/4615-20.

participated in the investigative experiment protocol, she pointed to the place where the accused physically abused her, lit a cigarette and threatened to kill her. F.Ch. voluntarily participated in the psychological examination, her behavior was certainly aimed at establishing the truth in the criminal case, however, her refusal to testify in court was indeed similar to the behavior of a victim of domestic violence who, given the time that had passed, forgave the abuser for such behavior towards her and by taking the stand and not testifying in court, she tried to avoid criminal liability for her spouse and/or to neutralize the future danger. Accordingly, the court G.G. pleaded guilty to all charges.²⁹

It should be noted that the court's reasoning may indeed be based on the nature of the crime committed, but when the victim does not testify, it is important to evaluate other evidence to convict the person beyond a reasonable doubt standard.

The factual circumstances described in the judgment of the city court and the conclusions reached were fully shared by the appeal court and left the judgment against G.G. unchanged.³⁰

According to the judgment of the Supreme Court of Georgia, the action of G.G. was reclassified from the first part of Article 11¹,144³ of the Criminal Code of Georgia to the first part of Article 126¹ of the same Code.³¹

The court of cassation analyzed in detail both the charges presented to G.G., which included both – psychological suffering and physical abuse and separately assessed the evidence of psychological suffering and physical abuse.

In relation to psychological suffering, the court did not consider the evidence presented by the prosecution to find the person guilty, since this part of the charge was confirmed only by the forensic psychological examination report, according to which the victim suffered psychological suffering. No other evidence was found in the case materials. During the testimony, the neighbors of the convict and the victim indicated that, except for the day of the accident, they did not hear such a noise from their house that they went up to them. As for other witnesses, the Court of Cassation noted that they did not directly witness the act of violence and only indirectly, based on the testimony of the victim, point to criminal actions. On the other hand, F.Ch., as mentioned, did not testify against her husband.³²

As for physical abuse, the lawyer noted in the cassation appeal that the fact that G.G. committed domestic violence was not a matter of dispute for the defense, but categorically excluded the facts of intentionally burning him with a cigarette and humiliating, inhumane treatment. According to the conclusion of the medical examination, during the personal examination of F.Ch., there were injuries that belonged to the light degree of bodily injuries, not affecting health. As for the protocol of the investigative experiment, the victim recalled the facts and indicated the places where G.G. threatened to kill her and physically abused her. Although F.Ch. did not testify against her husband at the court session, the first instance and appeal courts shared the protocol of the investigative experiment and

²⁹ Judgment of the Tbilisi City Court's Criminal Affairs Board of March 31, 2021 on case No. 1/4615-20.

³⁰ Judgment of the Criminal Chamber of the Tbilisi Court of Appeals of June 21, 2021 on case No. 1b/705-21.

³¹ Judgment of the Criminal Chamber of the Supreme Court of Georgia of September 28, 2021 on case No. 682AP-21.

³² Judgment of the Criminal Chamber of the Supreme Court of Georgia of September 28, 2021 on case No. 682AP-21.

since the protocol of the investigative experiment contained only the testimony of the victim, it could not be considered as proof of guilt.

In this case, the Court of Cassation invoked the practice of the European Court of Human Rights, according to which, “*Ill-treatment must reach a minimum threshold to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, in particular, such as: the duration of the treatment, its physical and spiritual consequences, and in some cases the sex, age, health and condition of the victim*”.³³ However, “*claims of ill-treatment must be supported by relevant evidences*”.³⁴ The court, in order to evaluate the evidence presented, establishes the standard of proof – “beyond a reasonable doubt”, but additionally notes that such proof can be derived from sufficiently strong, clear and interrelated inferences or perception of similar, indisputable facts.³⁵

Based on all of the above, the evidence presented in the case could not satisfy the conditions stipulated by the disposition of the first part of Article 11¹,144³ of the Criminal Code of Georgia. In order to qualify the action under this article (humiliation, coercion, putting in inhumane, degrading honor and dignity), it must cause severe physical, mental pain or moral suffering to the victim, which was not identified in this case, but was definitely confirmed by G.G. to F.Ch. only the fact of inflicting physical insults on (apart from intentionally burning him with a cigarette), which is why the Chamber of Cassation correctly reclassified the accusation provided for in the first part of Article 11¹,144³ of the Criminal Code of Georgia to the first part of Article 126¹ of the same Code, all signs of the composition of the action were confirmed beyond a reasonable doubt.

Probably, conclusion of the Supreme Court was derived from the fact that the defense itself did not deny physical violence on the part of G.G.'s wife. In addition, the testimony of the neighbors confirmed the fact of a conflict and the presence of an agitated victim in the house, and according to the report of the medical examination, the injuries on the body of F.Ch. were of a light degree, not harmful to health. Therefore, when there was no testimony of the victim at the court session, G.G.'s action is a classic example of domestic violence.

As for the next case, according to the decree on the accusation of a person, Z.M. was accused of committing the following crimes: According to subsection “k” of part 2 of Article 11¹,126 of the Criminal Code of Georgia³⁶ and the first part of Article 11¹,144³ of the same code. Z.M.'s action in the part of inhumane treatment was manifested in the following: during cohabitation, in a residential apartment, on the grounds of gender intolerance, Z.M. systematically verbally abused his wife – I.M., humiliated, spat on and forced her to kneel before him, as a result of which the latter experienced moral suffering and mental pain. As a result of mutual reconciliation and analysis of the evidence, the court found in the judgement that Z.M. During the period of cohabitation, he systematically humiliated and insulted his wife on the grounds of gender discrimination, however, the evidence presented did not

³³ See *Labita v. Italy*, ECHR, (Application no. 26772/95), 6 April 2000.

³⁴ See *Labita v. Italy*, ECHR, (Application no. 26772/95), 6 April 2000.

³⁵ See *Ireland v. The United Kingdom*, (Application no. 5310/71), 18 January 1978.

³⁶ “...Regular beating or another type of violence which caused physical or mental suffering of a affected person but did not entail a consequence provided for by Article 117 or 118 of this Code... against a minor’s family member in the presence of the minor”.

prove the strength and quality of such actions by the accused, which would cause severe physical, mental pain or moral suffering to the victim.³⁷

In the decision, the court drew a line between inhumane treatment and family violence and pointed out that the objective side of humiliating and inhumane treatment – humiliation, coercion, putting a person in an inhuman, dignity and honor-destroying condition, is manifested in the action, the result and the causal connection between the action and the result.³⁸

The court also explained that the law has criminalized domestic violence, which involves the violation of the constitutional rights and freedoms of one family member to another by physical, psychological, economic, sexual violence or coercion. Insult is the humiliation of another person's honor and dignity, expressed in an inappropriate manner. In this case, the defendant systematically insulted and humiliated his wife, which was confirmed by the victim's report, in which she indicated that she suffered psychological suffering as a result of his actions, which lasted for years and had a systematic character. The above was found to be in complete agreement with the audio recordings, according to which, in some cases, on the basis of disagreements on household issues or for no reason, the accused systematically humiliated the victim, verbally insulted, cursed, addressed with obscene words, cursed, bullied. Also, he belittled the victim's family members, mocked and ironically referred to his ethnic origin, told about the details of his sexual relationship with another women. The contents of the audio recordings revealed that the accused indicated to the victim that he could not make decisions on her own and did not have the right to act freely. The court drew attention to the fact that that a child, who was 15 years old, had prepared food himself caused Z.M.'s anger, however, he considered this matter only the woman's responsibility. In addition, the witness L.G., who often heard the voice of conflict from the family of the accused and the victim, learned from the victim that her husband systematically humiliated and insulted her. The information of two witnesses contain valuable information for the court, that after the accused came home, the teacher (victim) returned to the room upset and could not continue the lesson. It is true that the conclusion of the forensic psychological examination established that I.M. did not experience psychological suffering, however, according to the same conclusion, the victim focused on Z.M.'s aggressive expressions and acts of violence, which is why they no longer live together, which confirms Z.M.'s systematic insult and humiliation towards his wife.³⁹

Here, the court drew attention to the judgment of the Supreme Court of Georgia, according to which, in order to determine whether a person's illegal actions caused the suffering of the victim, it is not necessary to have a forensic psychological expert opinion, this issue is a subject of the court's assessment – based on the factual circumstances of the case and the analysis of the presented evidences.⁴⁰

Finally, the court considered that during the substantive review of the case, the insulting accusation against Z.M. in the part of humiliating and inhumane treatment was not confirmed,

³⁷ Judgement of the Tbilisi City Court's Criminal Affairs Board of September 6, 2019 on case No. 1/1564-19.

³⁸ Judgment of the Tbilisi City Court's Criminal Affairs Board of September 6, 2019 on case No. 1/1564-19.

³⁹ Judgment of the Tbilisi City Court's Criminal Affairs Board of September 6, 2019 on case No. 1/1564-19.

⁴⁰ Judgment of the Criminal Chamber of the Supreme Court of Georgia of April 5, 2019 on case No. 617AP-18.

however, at the same time, based on the relevant, admissible and indisputable evidence in the case, the court considered it unequivocally confirmed that Z.M. He systematically insulted and humiliated his wife, which caused the suffering of the victim, which is why the court reclassified the insulting action against Z.M. from Articles 11¹, 144³ of the Criminal Code of Georgia to Article 126¹ of the same Code, therefore, he was acquitted of the charges presented in Article 126 of the same Code.

It should be noted that Z.M.'s actions in the case of Z.M.'s accusation, expressed in verbal abuse, were not of the intensity and perceptibility that caused the victim to feel insurmountable suffering. As for the humiliating words in the records: “kneel”, “you are a slave”, etc., the court of first instance correctly considered it in the context of gender discrimination and, despite its similarity at first sight with the content of Article 144³ of the Criminal Code of Georgia, did not considered as humiliating and inhumane treatment, which intensity and degree of suffering could be close to torture. It should be noted that all the above-mentioned evidences indicated such forms of influence on the victim by the accused, such as – systematic humiliation. Because of that Article 144³ of the Criminal Code of Georgia differs from Article 126¹ of the same Code in terms of the degree of impact and result, in this case, the impact inflicted by Z.M. on his wife for the purpose of humiliating and insulting could not really cause the degree of suffering of the victim, which is necessary for the action. For qualification under Article 144³ of the Criminal Code of Georgia, even more so, in the situation when the victim did not testify to the court about the mental pain and moral suffering experienced by him. Accordingly, the reasoning of the Tbilisi City Court in the qualification part is fully acceptable.

The conclusions reached in the judgment of the city court were rightly shared by the appeals⁴¹ and Supreme Courts of Georgia.⁴²

4. Conclusion

With this article, the reader got acquainted with the practice of the national courts and the European Court of Human Rights, their problems and definitions, which concern torture and degrading or inhuman treatment in cases of family violence category.

It is necessary to distinguish torture and inhuman or degrading treatment both – from each other and from other crimes. It is not controversial that the practice of the European Court of Human Rights should be shared in the decisions of the local courts. Otherwise, depending on the severity of the crimes, it is possible that a different action and its incorrect qualification will cause great harm both – to the accused/convict, as well as to the victim and to the interests of justice in general.

As a conclusion, it can be said that Georgian judicial practice, like the legislation, started not too long ago around the research topic, therefore, there is a difference of opinion, which was also clearly seen in the above-mentioned court decisions. However, it should be noted that the practice of the general courts of Georgia, in this regard, is on the path of development. However, along with practice, the issues require more theoretical research to present legal problems and minimize or eliminate them.

⁴¹ Judgment of the Criminal Chamber of the Tbilisi Court of Appeals of November 29, 2019 on case No. 1b/1617-19.

⁴² Judgment of the Criminal Chamber of the Supreme Court of Georgia of June 25, 2020 on case No. 107AP-20.

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