



Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
28 July 2021

Original: English

Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under article 4 (1) of the Optional Protocol, concerning communication No. 125/2018^{*,**,**}

<i>Communication submitted by:</i>	N.D. and K.S. (represented by counsel, Tamar Dekanosidze and Jessica Gavron)
<i>Alleged victim:</i>	B.D. (deceased)
<i>State party:</i>	Georgia
<i>Date of communication:</i>	9 September 2017 (initial submission)
<i>References:</i>	Transmitted to the State party on 26 January 2018 (not issued in document form)
<i>Date of adoption of decision:</i>	28 June 2021
<i>Subject matter:</i>	Domestic violence and femicide
<i>Procedural issue:</i>	Non-exhaustion of domestic remedies
<i>Articles of the Convention:</i>	2 (b)–(f) and 5 (a)
<i>Article of the Optional Protocol:</i>	4 (1)

* Adopted by the Committee at its seventy-ninth session (21 June–1 July 2021).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Nicole Ameline, Marion Bethel, Leticia Bonifaz Alfonzo, Louiza Chalal, Corinne Dettmeijer-Vermeulen, Naéla Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Aruna Devi Narain, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Natasha Stott Despoja, Genoveva Tisheva, Franceline Toé-Bouda and Jie Xia.

*** Pursuant to rule 60 (1) (c) of the Committee's rules of procedure, Lia Nadaraia did not participate in the examination of the communication.



Background

1. The authors of the communication, dated 9 September 2017, are N.D. (the alleged victim's mother) and K.S. (the alleged victim's daughter), born in 1947 and 1999, respectively. They submit the communication on behalf of B.D., born in 1978, who died as a result of violence on 6 March 2014. The authors claim that the rights of the alleged victim under articles 2 (b)–(f) and 5 (a) of the Convention on the Elimination of All Forms of Discrimination against Women were violated. The Convention and the Optional Protocol entered into force for the State party on 25 November 1994 and 1 November 2002, respectively. The authors are represented by counsel, Tamar Dekanosidze and Jessica Gavron.

Facts as submitted by the authors

2.1 In 2004, B.D. entered into an unregistered marriage with O.S. and lived with him in Rustavi, together with her daughter K.S. from a previous relationship and the children from his previous marriage. The victim worked as a salesperson at a grocery shop and sales agent for a cosmetics company, while her husband worked irregularly as a construction worker.

2.2 The victim and her husband's relationship started well, but a few years after the birth of their child in 2007, her husband slowly became violent. He started to control her behaviour, would take money from her to buy alcohol and became jealous of her life outside the family home. He would become angry and beat her if she defied him, often in front of the children but never in front of guests. He would also threaten their daughter and, if the victim tried to intervene, he would abuse her physically.

2.3 In August 2013, the victim was thrown out of the house by her husband after a fight. She and her daughter stayed with a friend for 10 days. In early September 2013, in an attempt to distance herself from her husband, the victim rented a small room in the same block of flats as her husband and lived there with the children. However, this did not prevent the husband from continuing to abuse her physically.

2.4 On 1 September 2013, the victim went to Rustavi Central Hospital and was treated for her injuries. According to the medical records for the visit, she claimed that her husband had inflicted multiple abrasions and hematomas on her neck, right forearm, outer thigh and chest. The Rustavi Central Hospital notified the Kvemo Kartli Main Police Department of the Ministry of the Interior about the acts of domestic violence.

2.5 On the same day, the third unit of the Rustavi City Division of the Kvemo Kartli Main Police Department launched an investigation into the matter on account of intentional light bodily harm under article 118.1 of the Criminal Code. On 3 September 2013, an assistant investigator requested the relevant medical records from the Rustavi Central Hospital. On 25 September 2013, the prosecutor of the Rustavi Regional Prosecutor's Office ended the investigation for lack of evidence.

2.6 In autumn of 2013, the victim called the police and visited the police station because her husband had forced his way into her apartment and beaten her.¹ The police came to her apartment but no record was made of the measures taken. After several days, the victim again reported violence to the police. The police considered issuing her husband with an oral or written warning but, as there was no evidence of physical abuse, no action was taken. One officer, however, gave the victim his personal telephone number to use in the future.

¹ The authors do not specify the date.

2.7 The victim filed a third police report when her husband went to her apartment asking for money and tried to force his way in, causing the door to splinter and crack.² Fearing for her safety, the victim called the personal number of the police officer. The officer, however, did not attend because the victim informed him that her husband had left. The officer appears not to have recorded the incident or taken any other action.

2.8 On 2 March 2014, at 2.59 p.m., the victim called the police emergency number and asked repeatedly for urgent assistance because her husband had forced his way into her apartment and was beating her. At 3.05 p.m., the patrol inspector of the Kvemo Kartli Main Police Department arrived at the victim's apartment but her husband was no longer there. The patrol inspector drew up a report, in which it was stated that the victim's husband, motivated by jealousy, had systematically inflicted physical and mental abuse on the victim.

2.9 The Kvemo Kartli Main Police Department launched a preliminary investigation on 2 March 2014 and interviewed the husband. He admitted having inflicted verbal, but not physical, abuse on the victim because a strange man was with her. He apologized and promised not to abuse her verbally again and to contact her only when he wanted to see the children. The victim was interviewed on the same day and retracted claims that she had been physically abused. The authors allege that, on that occasion, she showed signs of physical abuse consisting of bruises to the face and body. On 20 January 2016, the Rustavi Regional Prosecutor's Office stated that no investigation had been launched owing to the lack of a corpus delicti and in the light of the husband's undertaking not to behave similarly in the future.

2.10 On 6 March 2014, the husband stabbed the victim nine times with a kitchen knife in her apartment. The victim died in hospital from her injuries.

2.11 On 7 May 2014, the Rustavi City Court convicted the husband of murder under articles 11 and 108 of the Criminal Code and sentenced him to a prison term of 7 years and 6 months.³ The City Court took into account the fact that the husband had shown remorse for his crime, cooperated with the investigation, had been given a positive assessment and had no prior criminal record.

2.12 On 21 July 2016, counsel for the authors⁴ filed a request with the General Prosecutor's Office to open an investigation into the assistant investigator of the Rustavi City Police Department and the regional prosecutor for possible negligence, claiming that they had failed to respond adequately to the victim's complaints of domestic violence, which had been motivated by discrimination. On 28 October 2016, a follow-up letter was sent to no avail.

2.13 On 28 October 2016, counsel for the authors applied to the General Inspection of the Chief Prosecutor's Office to have the regional prosecutor disciplined for failing to identify the discriminatory motive in the gender-based violence against and murder of the victim but no reply was received.

2.14 On 22 February 2017, counsel for the authors filed a complaint with the Tbilisi City Court against the Ministry of the Interior, claiming compensation for moral damages for the failure of the police to protect the victim against the attempts on her life, motivated by gender discrimination. Although first-instance courts are required by law to decide cases within three months, the matter remained pending at the time of submission of the communication.

² The authors do not specify the date.

³ The authors note that, under article 108 of the Criminal Code, the minimum sentence is 7 years' imprisonment and the maximum sentence is 15 years' imprisonment.

⁴ The Georgian Young Lawyers' Association, where Tamar Dekanosidze works.

Complaint

3.1 The authors claim that the victim's rights under articles 2 (b)–(f) and 5 (a), read in conjunction with article 1, of the Convention were violated. They submit that the victim's death was the result of a culmination of domestic violence that posed a real risk to her life, of which the national authorities were, or ought to have been, aware but to which they failed to respond adequately. The State party knew, or should have known, about the risk to the victim's health and life, given that the authorities had been notified on four occasions about the domestic violence to which the victim had been subjected.⁵ Moreover, the victim repeatedly showed physical signs of domestic violence in the form of bruises and scars on her face and body, which should have been evident to the police on those four occasions. They submit that the immediacy of the danger should be determined with reference to whether a threat has already materialized and whether it is likely to reoccur.⁶

3.2 The authors claim that the authorities of the State party failed: (a) to follow the legally required procedure with respect to a report of an incident of domestic violence, including by conducting proper interviews, opening investigations and prosecuting the perpetrator;⁷ (b) to undertake a lethality risk assessment given the severity of the domestic violence;⁸ and (c) to take any protective measures such as the issuance of a restraining order or preventive arrest. The authors argue that the actions of the national authorities served only to augment the vulnerability of the victim and the danger to which she was exposed.

3.3 The authors claim that the State party failed to comply with its duty to provide the victim with equal protection under the law and that this amounted to degrading and inhuman treatment, as it ultimately put her life at risk, in violation of article 2 (c) and (e) of the Convention.

3.4 Furthermore, the authors claim that the decisions and failings of the national authorities constituted direct and indirect discrimination against the victim and that, because the gender-related aspects of the crime were not raised, they failed to ensure appropriate punishment for the perpetrator, thereby violating article 2 (d) and (e). They also submit that the State party failed to enact criminal law provisions to effectively prosecute crimes such as the victim's murder as femicide, thereby violating article 2 (b). Lastly, the authors claim that the root cause of those failures by the State party relates to its non-compliance with the obligation to transform gender hierarchies and stereotypical attitudes towards women, which constitutes a violation of articles 2 (f) and 5 (a).

⁵ See paragraphs 2.5 to 2.8. The authors also refer to European Court of Human Rights, *Opuz v. Turkey* (application No. 33401/02).

⁶ See European Court of Human Rights, *Öneryildiz v. Turkey* (application No. 48939/99); and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

⁷ The authors list specific examples of when the police and the prosecutor failed to perform legally required tasks and refer to article 16 of the Act on the prevention of domestic violence and the protection of and assistance to victims of such violence. Under article 16, the police is required: (a) to take measures envisaged under the law to eliminate domestic violence; (b) to conduct separate interviews, including with minors, with the alleged victim of domestic violence, witnesses and the perpetrator, all of which shall be recorded in writing; and (c) to inform victims of domestic violence of their rights. Under article 16 (4), the police is required to draw up a report on the act of violence and measures taken and to submit it to the supervising prosecutor.

⁸ The authors note that lethality assessments are not common practice in Georgia and refer to the report of the Special Rapporteur on violence against women, its causes and consequences on that country ([A/HRC/32/42/Add.3](#)), issued in 2016, in which reference is made to the State party's systematic failings in that regard.

State party's observations on admissibility and the merits

4.1 On 25 July 2018, the State party submitted its observations on the admissibility and the merits of the communication.

4.2 The State party recalls the facts of the case, including the episodes of violence against B.D. on 1 September 2013 and 2 March 2014 and her murder on 6 March 2014. The State party submits that, in each instance, proceedings against the victim's husband were discontinued because B.D. denied that he had physically abused her.

4.3 The State party recalls that, on 7 May 2014, her husband was found guilty of murder and sentenced to a prison term of 7 years and 6 months.⁹

4.4 The State party submits that, on 15 August 2016, the General Inspection of the Chief Prosecutor's Office launched an inquiry under article 100 of the Code of Criminal Procedure, in the course of which the prosecutors N.K. and T.K. of the Rustavi Regional Prosecutor's Office were questioned. The inquiry was concluded on 12 September 2016, with a ruling that the actions of the two prosecutors did not constitute violations of article 100. It was further concluded that the actions of patrol inspector S.N. and investigator A.M. of the Rustavi Police Department did not constitute matters for that inquiry. The related materials were sent to the respective unit for assessment of the responsibility of those police officers.

4.5 On 22 September 2016, the General Inspection of the Chief Prosecutor's Office sent the materials regarding the inquiry into the prosecutors of the Rustavi Regional Prosecutor's Office to the Kvemo Kartli Regional Prosecutor's Office and requested it to examine the alleged responsibility of the police officers S.N. and A.M.

4.6 On 28 September 2016, a criminal investigation was initiated. On 4 November 2016, the first author, N.D., was called for questioning. She refused to appear, owing to her high blood pressure.

4.7 On 27 September 2017, the second author, K.S., stated to investigators that she had submitted a complaint about the police officers because they had not reacted adequately to her mother's calls.

4.8 The State party notes that the investigation is ongoing.

4.9 The State party also submits that, on 26 February 2018, the Tbilisi City Court partly satisfied the complaint of the first author against the Ministry of the Interior, dated 21 February 2017. The Court ordered the Ministry to pay the authors 25,000 Georgian lari (€8,200) as compensation for non-pecuniary damages. The Court found that the police, having been informed of the threat posed to the victim, failed to do its legal duty and to protect her. However, the Court rejected the claims regarding the responsibility of the prosecutors and found that the preliminary investigation materials forwarded by the Ministry of the Interior to the Rustavi Regional Prosecutor's Office did not constitute a sufficient basis for launching an investigation. The Court found, therefore, that there was no direct link between the conduct of the Prosecutor's Office and the damage inflicted.

4.10 The State party submits that the communication is inadmissible under article 4 (1) of the Optional Protocol, as domestic remedies have not been exhausted.

4.11 The State party notes that the authors submitted the complaint before the end of the criminal investigation against the investigator A.M. and the patrol inspector S.N. It submits that, although the national authorities received the authors' complaint two years after the victim's murder, they reacted quickly and launched an inquiry and a criminal investigation and duly informed the authors and their legal representatives.

⁹ The judge took into account mitigating circumstances (see para. 2.11).

Thus, the authors have deprived the authorities of the opportunity to remedy the alleged violations of their rights at the national level.

4.12 The State party argues that the authors have failed to provide any plausible explanation for not awaiting the results of the criminal investigation and have submitted no complaint regarding the ineffectiveness of or lack of progress in the investigation.

4.13 The State party submits that the authors have filed the communication without waiting for the Tbilisi City Court to render its final judgment on their complaint against the Ministry of the Interior and thereby deprived the national authorities of the opportunity to remedy the alleged violations of their rights.

4.14 The State party also provides extensive information about the measures that it has taken to combat domestic violence and violence against women, such as legislative amendments, the adoption and implementation of national strategies and action plans, the conduct of pertinent training and awareness-raising campaigns and the assessment of recent developments by national and international evaluators.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 14 January 2019, the authors provided comments on the State party's observations.

5.2 They claim that the State party's observations regarding the events of 1 September 2013 and 2 March 2014 exemplify the facts of the case and the situation in general.

5.3 The authors provide additional information in relation to the exhaustion of domestic remedies. On 13 August 2018, the Chief Prosecutor's Office confirmed that a criminal investigation had been initiated. However, to date no charges have been laid and no one has been confirmed as a victim. The letters from the Chief Prosecutor's Office of 4 November 2016 and 13 August 2018 confirm that the investigation is not considering any discriminatory motive on the part of the police.

5.4 The authors state that they have received no response to their complaint against the prosecutor Z.M., who failed to identify a discriminatory motive in the gender-based violence against and murder of the victim.

5.5 On 22 February 2017, the authors filed a complaint with the Tbilisi City Court against the Ministry of the Interior and the Chief Prosecutor's Office. At the time of submission of the present communication, however, no hearing had been scheduled. On 26 February 2018, the Court made a ruling partially in favour of the authors. On 24 July 2018, the authors appealed against the ruling. On 25 July 2018, the Ministry of the Interior also filed an appeal. Both appeals are pending.

5.6 The authors submit that they have sought to exhaust the domestic remedies available to them. Those remedies are, however, unlikely to bring effective relief and the processes involved are unreasonably prolonged.

5.7 The authors claim that they cannot appeal against the decision of the General Inspection regarding the actions of the prosecutors and that therefore no further domestic avenue is available to them in that regard.

5.8 The authors emphasize that, more than four years after the events in question, the criminal investigation remains pending and no charges have been brought against the investigators. In the two years in which the investigation has proceeded, neither author has been granted the status of victim. The authors also note that, in a number of other cases of violence, including murder, against women, inquiries into the

criminal negligence of investigators have not resulted in action. It should therefore be considered that the investigation has been subject to undue delay. Moreover, in view of its limited scope, the investigation cannot be considered as offering a reasonable prospect of success.

5.9 The authors claim that the ruling of the Tbilisi City Court and any ruling by the Court of Appeal are not effective domestic remedies, since the Court did not take into account the discriminatory behaviour of the State bodies. The compensation awarded is, moreover, inadequate given the damage suffered. The authors state that the Tbilisi City Court has no power to order an investigation or hold individuals liable and that, because the claim of moral damage is insufficient to provide redress, it cannot constitute appropriate relief.

5.10 The authors claim that the authorities failed to adhere to the requirements of public prosecution in response to the victim's claims of domestic violence. They refer to the case law of the European Court of Human Rights, in particular *Opuz v. Turkey* (paras. 139 and 145), in which the Court stated that, based on the seriousness of the crime, the authorities should pursue the case as a matter of public interest, even when the victim withdraws her complaint. The law in the State party provides for the ex officio prosecution of all crimes envisaged under the Criminal Code, including domestic violence.

5.11 The authors submit that the mechanisms now in place to combat domestic violence were absent at the time of the events in question. They welcome the measures taken by the Government since 2015 and note that prior legislation did not protect women from domestic violence.

5.12 The authors ask the Committee to request the State party to pay monetary compensation for material and non-material damage; amend the legislation and criminalize femicide; ensure that sanctions commensurate with the gravity of the crime are in place and provide victims with adequate compensation; include a legal definition of "femicide" in the Criminal Code; apply the requirements of public prosecution and ensure that investigations are not discontinued solely on the basis of the victim's refusal to submit a complaint against the perpetrator; implement fully the recommendations made by the Committee in *X and Y v. Georgia* (CEDAW/C/61/D/24/2009); investigate and prosecute acts of domestic and gender-based violence as crimes of discrimination; eradicate gender stereotyping, including blaming of victims and sympathizing with perpetrators; implement the risk assessment instrument and monitoring mechanism introduced in September 2018; ensure that all measures taken to combat violence against women and domestic violence are implemented from a gender perspective and include effective preventive measures; ensure that the police keep full records of all reports of domestic and gender-based violence; and put in place a behaviour modification programme for perpetrators to minimize the risk of their inflicting further harm on victims.

5.13 The authors also ask the Committee to request the State party to ensure that judges are trained in awarding compensation when the authorities of the State party fail to respond adequately to cases of domestic violence and recognize the element of discrimination in such cases; that inquiries are held when the investigative authorities fail to respond to reports of domestic and gender-based violence; that disciplinary procedures or inquiries into the conduct of police and prosecutors in cases of alleged crimes are launched automatically; that the hypothesis of femicide is considered in cases involving the murder of women; and that annual statistics on femicide are collected.

Issues and proceedings before the Committee*Consideration of admissibility*

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 66, the Committee may examine the admissibility of the communication separately from the merits.

6.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.3 In accordance with article 4 (1) of the Optional Protocol, the Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. The Committee notes that the authors submit that they have sought to exhaust the domestic remedies available to them but that those remedies are unlikely to bring effective relief and their application is unreasonably prolonged. It takes note, first, of the authors' assertion that the discriminatory motive was not considered in the criminal investigation, which has not resulted in any charges being laid against those allegedly responsible or in the award to anyone of the status of victim. Second, it notes the authors' submission that it is impossible to appeal against the decision of the General Inspection, leaving no other means of initiating an investigation into the potential liability of the prosecutors in their handling of the case. In this connection, however, the Committee observes that it is possible to appeal in court against decisions of the General Inspection under the national legislation. Third, it takes note of the authors' statement that they received no response to their complaint against the prosecutor Z.M., who failed to identify a discriminatory motive in the gender-based violence against and murder of the alleged victim. Fourth, it notes that, on 22 February 2017, the authors filed a complaint with the Tbilisi City Court against the Ministry of the Interior claiming compensation for moral damages and that only on 26 February 2018 did the Court partially accept their claim. In that regard, the Committee observes that the Tbilisi City Court awarded compensation for non-pecuniary damages to the authors, recognizing the police failure to take adequate measures to protect the victim from the perpetrator. The court thereby ruled in favour of the authors' claim and confirmed that the law enforcement authorities had failed to fulfil their positive obligations (protect the right to life). Lastly, the Committee observes that, on 24 July 2018, the authors appealed against that decision and requested that the Ministry of the Interior and the Chief Prosecutor's Office jointly be imposed the payment of compensation for non-pecuniary damages in the amount of 100,000 Georgian lari; the appeal is pending.

6.4 The Committee also notes the State party's observation that the authors submitted the present communication before the completion of the criminal investigation against investigator A.M. and patrol inspector S.N. The State party submits that, despite receiving the complaint of the authors two years after the alleged victim's murder, the national authorities reacted quickly and initiated a criminal investigation. The State party also submits that the authors failed to provide a plausible explanation as to why they could not await the results of that investigation or to submit any complaints concerning the ineffectiveness of or lack of progress in the investigation. The State party claims that the authors submitted the communication before the Tbilisi City Court had ruled on their complaint against the police, thereby preventing the national authorities from remedying the alleged violations of their rights.

6.5 The Committee refers to its jurisprudence, according to which an author must have raised in substance at the national level the claim that he or she wishes to bring before the Committee¹⁰ so as to enable the national authorities or courts to have an opportunity to deal with such a claim.¹¹ The Committee notes that the criminal investigation is ongoing and that the authors have not filed any complaints regarding its ineffectiveness or duration. The authors have not provided convincing arguments that the criminal investigation into this type of crimes is ineffective. The Committee notes that the authors did not appeal in reaction to the lack of a response to their complaint against the prosecutor Z.M. The Committee further notes that the communication was submitted to it before the Tbilisi City Court, which had already ruled partially in favour of the authors, had considered their case. The Committee observes that the authors' application for appeal review of the Tbilisi City Court ruling of 26 February 2018 is still pending, and that the authors have not put forward any convincing argument that would demonstrate that this remedy is unreasonably prolonged or unlikely to bring effective relief.

6.6 In the light of these considerations, the Committee considers that it is precluded from examining the present communication as long as the authors have not availed themselves of all available procedures set out under the law of the State party.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 4 (1) of the Optional Protocol on the ground that all available domestic remedies have not yet been exhausted;

(b) That this decision shall be communicated to the State party and to the authors.

¹⁰ *Kayhan v. Turkey* (A/61/38, part one, annex I), para. 7.7.

¹¹ *N.S.F. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/38/D/10/2005), para. 7.3.