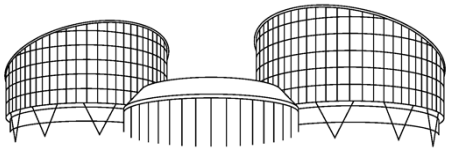

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF GAIDUKEVICH v. GEORGIA

(Application no. 38650/18)

JUDGMENT

Art 2 (substantive and procedural) (+ Art 14) • Discrimination • Positive obligations • Failure to take adequate preventive action to protect applicant's daughter from domestic violence, culminating in her death, and to effectively investigate law-enforcement authorities' response • Backdrop of systemic failure to address gender-based violence • Deficient implementation of criminal-law mechanisms in response to death • Failure to examine possibility of gender-motivated murder despite multiple previous incidents of domestic violence and pre-death injuries

STRASBOURG

15 June 2023

FINAL

15/09/2023

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of Gaidukevich v. Georgia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Carlo Ranzoni*, President*,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lado Chanturia,
María Elósegui,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 38650/18) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Ms Albina Gaidukevich ("the applicant"), on 9 August 2018;

the decision to give notice of the application to the Georgian Government ("the Government");

the parties' observations;

the fact that the Ukrainian Government did not express the wish to intervene in the present case (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court);

Having deliberated in private on 4 April and 16 May 2023,

Delivers the following judgment, which was adopted on the latter date:

INTRODUCTION

1. The application concerns the alleged failure of the relevant domestic authorities to protect the applicant's daughter, A.L., from domestic violence, which culminated in her death. The applicant complained under Articles 2 and 3 of the Convention taken separately and in conjunction with Article 14.

THE FACTS

2. The applicant was born in 1968 and lives in Tbilisi. She was represented by Ms T. Dekanosidze, a lawyer practising in Tbilisi, and Ms J. Evans, Ms J. Gavron, Ms J. Sawyer, Mr P. Leach, Ms K. Levine and Ms R. Remezaite, lawyers based in London.

3. The Government were represented by their Agent, Mr B. Dzamashvili of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. CIRCUMSTANCES LEADING TO THE DEATH OF THE APPLICANT'S DAUGHTER

5. The applicant's daughter, A.L., was born on 23 July 1993. In 2012 she started dating G.K. and soon after they moved into a flat together in Tbilisi. In January 2013 they had a child. According to the material in the case file, their relationship was marred by constant arguments related to G.K.'s gambling addiction, excessive drinking and financial problems, as well as his violent behaviour. In 2016 they stopped living together, and A.L. and her son started living with A.L.'s godmother. At the same time, according to the case file, she maintained regular contact with G.K., allowing him to see their child at his home.

A.L.'s complaints to the police about G.K.

6. During the four years preceding A.L.'s death, the latter complained to the police about G.K.'s violent behaviour on at least sixteen occasions.

7. On 6 February 2013 A.L. called the emergency services to say that G.K. had verbally and physically abused her. A patrol was dispatched to the scene. After interviewing A.L., a police officer issued a restraining order against G.K. The restraining order was confirmed on the same day by the Tbilisi City Court for a period of one month. G.K. was ordered not to approach A.L.

8. On 7 May 2013 A.L. called the emergency services again, stating that G.K. had physically assaulted her and was not allowing her to leave the apartment with their child. When a patrol arrived, she denied any violence and simply stated that he was not allowing her to leave. The police drew up an incident report and left.

9. On 12 June 2013 A.L. called the emergency services and asked for help because of a dispute with G.K. Soon after, however, she called back, saying that the dispute was over and that there was no need for the police to come.

10. On 28 September 2013 another "domestic dispute" took place. A patrol was dispatched in response to A.L.'s emergency call. On the officers' arrival, according to the relevant police report, she refused to cooperate.

11. On 3 October 2013 A.L. called the emergency services for help. Shortly after, she called them back, saying that the dispute with G.K. was over and that no police intervention was required. The day after, on 4 October 2013, A.L. called the police again. G.K. was arrested for non-compliance with lawful orders of the police (an administrative offence under Article 173 of the Code of Administrative Offences). On the same date, the administrative proceedings initiated against him were discontinued and he was issued with a warning.

12. On 10 November 2013 A.L. called the police again. When the officers arrived, she said that G.K. had been harassing her but had left. The police then also left.

13. On 8 December 2013 A.L. called the police for help because of a "domestic dispute". Shortly after, she called again, saying that G.K. had left and that she no longer required their help.

14. On 18 December 2013 the police were called to their apartment again. A.L. claimed that G.K. was drunk and that she wanted him to leave. He left with the help of the police and no restraining order was issued.

15. On 21 April 2014 A.L. called the police for help. When the officers arrived, she complained that G.K. was drunkenly knocking on her door and would not let her sleep. At the request of the police G.K. left. No restraining order was issued.

16. On 5 July 2014, in response to another violent incident reported to the police, a new restraining order was issued by a police officer against G.K. On 6 July 2014 the Tbilisi City Court confirmed the restraining order and ordered G.K. not to contact or approach A.L. for a period of twenty-five days. At the same time, G.K. was convicted of non-compliance with lawful orders of the police.

17. On 6 December 2014 A.L. called the police again. When a patrol arrived, A.L. told the officers that no violent incident had taken place and that she simply wanted to leave the apartment peacefully. The officers informed A.L. about the various options available to people affected by domestic violence. She declined a restraining order against G.K. The officers drew up an incident report and left.

18. On 16 January 2015 a patrol was dispatched in response to an emergency call by A.L. She complained that G.K. had verbally and physically assaulted her. A restraining order was issued against G.K., which was subsequently confirmed by the Tbilisi City Court on 17 January 2015. The court noted that there was sufficient evidence in the case file to show that A.L. was being subjected to physical, psychological and economic abuse by G.K. and therefore required protection under the domestic violence legislation. G.K. was ordered not to approach her for a period of five days. In connection with the same incident, G.K. was convicted of non-compliance with lawful orders of the police. A criminal investigation was also initiated under Article 126^1 of the Criminal Code (domestic violence cited in paragraph 43 below). On 19 February 2015 the investigation was discontinued for lack of the elements of a crime. The investigation concluded, on the basis of the statements of G.K. and A.L., that while the former had "lightly" slapped A.L. in the face, the slap had been minor, causing no physical pain, and that the violence in any event was not systematic.

19. On 21 November 2015 the police were called again. At the scene, A.L. said that she had had an argument with G.K. According to the incident report, she did not request a restraining order and the police left.

20. On 15 October 2016 A.L. called the police, saying that she was having a dispute with G.K. By the time a patrol arrived at the scene, G.K. had already

left. A.L. told the officers that G.K. had insulted her and left. An incident report was drawn up.

21. The day after, on 16 October 2016, she called the police again. She claimed that she was at her relative's home and that G.K. had come over and insisted on seeing her. By the time the police arrived, G.K. had already left. An incident report was drawn up and A.L. did not request a restraining order.

II. LEGAL STEPS TAKEN BY THE APPLICANT AFTER THE DEATH OF HER DAUGHTER

22. On 19 February 2017 the applicant's daughter was found hanged in the bathroom of G.K.'s apartment. It appears from the case file that their child was also in the apartment at the time of his mother's death.

A. Criminal proceedings against G.K.

23. On the same day a criminal investigation was opened into the circumstances of A.L.'s death, under Article 115 of the Criminal Code (incitement to suicide, cited in paragraph 42 below). The police, who were called by neighbours, inspected and assessed the scene, after taking photographs and removing the body and ligature. According to the relevant on-site examination report, the body had bruises on the neck and forehead.

24. When questioned the following day, G.K. told the investigators that A.L. had come to his home on 18 February 2017 at around 10 p.m. They had had an argument, which had escalated with A.L. throwing an icon at him and him slapping her in response. The situation had then de-escalated and he had gone to bed. He had woken up in the middle of the night, noticing that A.L. was nowhere to be seen. In the search for her, he had entered the bathroom, where he had seen her with a rope tied around her neck. The other end of the rope had been attached to the drying tube. G.K. had then cut the rope with a knife and taken down A.L.'s body. In his second interview the next day, he confirmed his version of events, adding that during the altercation on 18 February 2017 A.L. had punched him in his face, while he had slapped her on her left cheek.

25. Between 19 and 24 February 2017 many witnesses were interviewed, including the neighbours who had seen A.L.'s body and called the police. They stated that they had heard a scream coming from G.K.'s apartment at around 2 a.m. They had immediately gone there and on entering the bathroom had seen A.L. lying on the floor and G.K. performing cardiopulmonary resuscitation (CPR) on her.

26. On 22 February 2017 A.L.'s aunt wrote to the police, providing information about her niece and G.K.'s violent relationship. She requested, in view of the multiple injuries identified on A.L.'s face, comprehensive forensic expert report to establish the cause of death.

27. On 21 April 2017 a forensic medical report was issued, according to which A.L. had died of asphyxiation. The report further noted various multiple injuries on her body and face, including ligature marks around the upper neck, bruises and abrasions on the forehead, nose, right temple and eye, as well as on the upper and lower limbs. According to the report, A.L.'s injuries could have been inflicted by a sharp solid object and dated back to various dates. The injuries around the face, the right wrist, two abrasions on the right knee and two bruises on her shins were all fresh. They had no causal link to her death.

28. On 23 June 2017 the applicant requested the prosecution to amend the classification of the offence, asserting with reference to Article 53 § 3.1 of the Criminal Code (see as cited in paragraph 41 below) that the possible discriminatory and gender-based motive of the crime had been omitted. She also claimed that what was at stake, in view of the multiple pre-death injuries identified on the applicant, was an attempted gender-motivated murder of her daughter. The request was rejected.

29. By a judgment of 9 February 2018, the Tbilisi City Court found G.K. guilty of aggravated incitement to suicide (by ill-treatment of a family member) and sentenced him to three years' imprisonment. The court found that on the night of 18 February 2017 G.K. had physically assaulted A.L., causing her multiple injuries around the head. The court further noted that A.L. had been subjected to systematic domestic violence and that all of this had led her to commit suicide. The applicant requested the prosecution to appeal against the first instance court decision, arguing that the discriminatory motive behind the acts of G.K., constituting an aggravating factor pursuant to Article 53 § 3.1 of the Criminal Code, had been omitted. The prosecution rejected the above request.

30. Acting on appeal by G.K., the Tbilisi Court of Appeal upheld his conviction on 26 November 2018. On 9 July 2019 the Supreme Court allowed, in part, an appeal on points of law by G.K., changing his conviction from incitement to suicide (Article 115 of the Criminal Code) to domestic violence (Article 126^1 of the Criminal Code). The Supreme Court found it established that on the night of the incident G.K. had caused injuries to A.L. It considered, however, that this was not sufficient to amount to particular physical or moral pain, which could have incited her to commit suicide. The Supreme Court stated that the previous history of violence against the applicant's daughter was irrelevant for the purposes of the criminal case at hand, as it was only dealing with the alleged incident of domestic violence of 18 February 2017. As a result of the reclassification, his prison sentence was reduced to one year and he was freed after the court hearing.

B. Criminal complaints against the relevant law-enforcement authorities

31. On 22 May 2018 the applicant filed a complaint with the Chief Prosecutor's Office, requesting that a criminal investigation be launched into the failure of the relevant law-enforcement officers to protect her daughter's life and give proper consideration to the repeated reports of domestic violence.

32. On 3 July 2018 the prosecution authorities opened a criminal case against the police for negligence (an offence under Article 342 § 1 of the Criminal Code). On 27 November 2018 the applicant was interviewed and told the prosecution authorities the entire history of her daughter's violent relationship with G.K.

33. Between March and May 2019, the public prosecutor's office interviewed twenty police officers who either had information or had directly intervened in the various instances of A.L.'s alleged abuse, including on 6 March 2013, 10 November 2013 and 21 November 2015. The majority of them gave evidence indicating that the incidents were not of a particularly violent nature and that A.L. had been duly provided with information about shelters for victims of domestic violence and other steps she could take.

34. On 21 and 22 December 2021 three other police officers were interviewed in connection with the incident of 16 October 2016.

35. On various dates the applicant enquired with the prosecutor's office about whether there had been any progress in the investigation. In reply, the prosecutor in charge informed her that the criminal investigation into police negligence was pending, but that no charges had been pressed against anyone and it was not necessary to grant her victim status at that time. She received no response to her complaint directed against the public prosecutors.

36. According to the case file, the relevant criminal proceedings are still pending.

C. Civil actions against the law-enforcement authorities

37. On 29 May 2018 the applicant sued the Ministry of the Interior and the Chief Prosecutor's Office under Article 1005 of the Civil Code for failure to protect her daughter's life, claiming compensation in respect of non-pecuniary damage in the amount of 100,000 Georgian laris (GEL – approximately 30,000 euros (EUR)). Referring to the case of *Opuz v. Turkey* (no. 33401/02, §§ 128-30, ECHR 2009), she claimed that by failing to protect her daughter against domestic violence, the relevant authorities had discriminated against her as a woman. By a judgment of 2 May 2019, the Tbilisi City Court allowed the claim in part, awarding her compensation of GEL 25,000 (approximately EUR 8,000). The court found that there was a causal link between the inactivity of the relevant police officers and A.L.'s

death. Referring to the incidents of 6 February 2013, 6 July 2014 and 17 January 2015, the court noted that the police had issued restraining orders against G.K., subsequently confirmed by the courts, directing him not to approach A.L., however that had not proven to be enough. They had failed to take prompt and effective measures to stop the domestic violence against A.L.

38. The above-mentioned decision was confirmed by the Tbilisi Court of Appeal on 12 February 2020, with the court increasing the amount awarded in respect of non-pecuniary damage to GEL 50,000 (approximately EUR 15,900). As well as finding the Ministry of the Interior at fault, the appellate court established that the prosecutor's office had also failed in discharging its positive obligations *vis-à-vis* the applicant's daughter. In particular, it concluded that instead of requesting information from the Ministry of the Interior about the previous incidents of violence committed by G.K., the relevant prosecutor, in the absence of any information and failing to establish a full picture of the continued domestic violence to which A.L. had been subjected for years, had simply discontinued the criminal proceedings into alleged domestic violence on 19 February 2015.

39. The judgment of 12 February 2020 became final on 14 April 2022, when the Supreme Court concluded the proceedings. It confirmed the reasoning of the appellate court, noting that in view of the sixteen emergency calls made to the police by A.L., the three restraining orders issued against G.K. and the initiated but quickly discontinued criminal proceedings against G.K. in which it had been established that G.K. had slapped A.L., the relevant law-enforcement bodies had known or should have known about the existence of real and immediate risks to the safety of the applicant's daughter. The Supreme Court went on to conclude that the relevant law-enforcement bodies, although adequately equipped to avert or at least mitigate the tragic outcome, had failed to act with due diligence to stop gender-based violence against the applicant's daughter. The Supreme Court also confirmed the award of GEL 50,000 made by the appeal court.

D. Public Defender's report and subsequent recommendation

40. On 27 December 2017 the Public Defender, having analysed the manner in which the Ministry of the Interior handled alleged domestic violence cases, including that involving A.L., issued a report identifying major deficiencies in the system and giving a number of recommendations to the key authorities concerned. Among the main deficiencies, the Public Defender noted the following: a lack of follow-up monitoring of victims of alleged domestic violence; failure by the Ministry of the Interior to inform the Social Service Agency of allegations of domestic violence and seek its support for victims; failure by the emergency services to analyse reports of domestic violence with a view to, among other things, establishing a risk of continued violence; and failure to prepare individual action plans to ensure

the safety of victims. Among other things, the Public Defender recommended that the Ministry of the Interior introduce a system to monitor the enforcement of restraining orders, prepare guidelines on risk assessment in cases of domestic violence and on individual action plans to address the violence in each such case, and analyse information about alleged cases of domestic violence received by the emergency services.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

41. Under Article 53 § 3.1 of the Criminal Code, discrimination on the grounds of, *inter alia*, gender was considered to be a bias motivation and an aggravating circumstance in the commission of a criminal offence, warranting the imposition of a more severe punishment than the commission of the same offence without such discriminatory overtones.

42. Article 115 of the Criminal Code, as worded at the material time, provided that incitement to suicide, defined as "bringing someone to the point of suicide or attempted suicide by intimidation or violent treatment, or by systematically abusing the honour or dignity of the victim", was punishable by up to four years' imprisonment.

43. Article 126[1] proscribed the offence of domestic violence, qualifying it as "abusive behaviour by a family member consisting of either regular insults, blackmail or degrading treatment which has resulted in physical pain or mental suffering and which has not entailed the consequences provided for in Articles 117, 118 and 120 of the Code." The offence of domestic violence was punishable by up to one year's imprisonment. The same offence committed in aggravating circumstances, such as repeatedly or in the presence of a minor, was punishable by up to three years' imprisonment. For the purposes of this provision family member included a former spouse and also members who maintain or maintained a common household.

44. Other relevant domestic law, as well as international material concerning violence against women in Georgia, is comprehensively summarised in paragraphs 25-40 of the Court's judgment in the case of *Tkhelidze v. Georgia* (no. 33056/17, 8 July 2021).

45. In its latest evaluation report on Georgia published in 2022, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) noted with great concern that stereotypical and discriminatory attitudes by investigators and others in the criminal justice system were prevalent in Georgia and frequently constituted a significant barrier to justice for victims of gender-based violence (GREVIO/Inf(2022)28). The report called "for immediate measures to ensure a more prompt and appropriate response by prosecution services in all cases of violence against women ..." and urged the Georgian authorities to ensure on-the-job training for law-enforcement officials to overcome persistent attitudes, beliefs and practices that stood in the way of an effective police

response to domestic violence. GREVIO further proposed that "action be taken with urgency in order to ensure that sentencing in cases of violence against women and domestic violence preserve the dissuasive function of the criminal penalties prescribed by the Georgian Criminal Code and that they be commensurate with the gravity of the offence". The evaluation report also stated that the full range of aggravating circumstances was not frequently resorted to, and that sentences were often mitigated. GREVIO encouraged the Georgian authorities to take appropriate measures "to ensure that all aggravating circumstances ... [were], in practice, effectively applied by the judiciary."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 14 OF THE CONVENTION

46. Relying on Articles 2, 3 and 14 of the Convention, the applicant complained that the domestic authorities had failed to protect her daughter from domestic violence and conduct an effective criminal investigation into the circumstances leading to her death.

47. Having regard to its case-law and the nature of the applicant's complaints, the Court, being master of the characterisation to be given in law to the facts of a case, considers that the issues raised in the present case should be examined solely from the perspective of the substantive positive and procedural aspects of Article 2 of the Convention, taken in conjunction with Article 14 (compare *Kurt v. Austria* [GC], no. 62903/15, § 104, 15 June 2021; see also *A and B v. Georgia*, no. 73975/16, § 32, 10 February 2022). The relevant parts of these provisions read as follows:

Article 2

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

Article 14

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

A. Admissibility

1. The parties' submissions

48. The Government submitted that the applicant had lost victim status for the purposes of Article 34 of the Convention given the outcome of the criminal proceedings conducted against G.K. and the civil proceedings conducted against the law-enforcement authorities. They further argued that the application, as far as the criminal proceedings against the police was

concerned, was inadmissible as it had not been submitted to the Court within the six-month time-limit. According to them, the applicant had lodged the related criminal complaint fifteen months after the death of her daughter in disregard of the "due diligence" requirement to act promptly. Also, she had maintained from the outset that the investigation had been inadequate. In such circumstances, in view of the lack of trust in the process, she should have been expected to lodge her application with the Court earlier. As an alternative argument, they also submitted that the application was premature as at the time it was lodged with the Court, the relevant criminal proceedings against police were still ongoing. Lastly, the Government asserted that the applicant's complaint under Article 14 of the Convention was inadmissible for non-exhaustion of domestic remedies as she had failed to lodge an anti-discrimination action under the Discrimination Act of 2 May 2014.

49. The applicant disagreed with the Government's *ratione personae* objection, arguing that the various domestic remedies pursued by her had not resulted in either sufficient acknowledgement of the violation of her various rights under the Convention or sufficient redress. She submitted that the gist of her complaints was the inaction of the law-enforcement authorities, which had contributed to the continued domestic violence and eventual death of her daughter. The applicant asserted that the length of the relevant criminal proceeding coupled with their inefficiency exempted her from the obligation to continue waiting for the outcome of the impugned investigation. As to the Discrimination Act, she dismissed this remedy as irrelevant to criminal matters covered by the Criminal Code.

2. The Court's assessment

50. The Court notes that in her criminal complaints against G.K. and the law-enforcement officers, the applicant consistently raised the issue of discrimination. The national authorities were therefore expected, as part of the criminal investigation into the applicant's allegations, to look into that aspect of her complaint. The applicant had no reason to doubt the effectiveness of the criminal remedy, as treatment such as that alleged by her is punishable under domestic criminal law, the legal classification thereof being dependent on the specific circumstances of the case. In view of the Court's relevant case-law, the applicant was not therefore obliged to pursue another remedy (see *Mikeladze and Others v. Georgia*, no. 54217/16, § 52, 16 November 2021, with further references, and *Alković v. Montenegro*, no. 66895/10, § 53, 5 December 2017).

51. In so far as the objection regarding the applicant's diligence in filing a criminal complaint against the law-enforcement authorities is concerned, the Court takes note of the applicant's delay in lodging a separate criminal complaint in this respect. It considers, however, that this delay was not decisive in the present case inasmuch as the criminal investigation into the circumstances that led to the death of her daughter was already pending and

the relevant authorities were in possession of evidence suggesting that the response of the law-enforcement authorities to the continued domestic violence of A.L. might have been deficient. Furthermore, the Court notes the Government's submission on the merits that the relevant criminal investigation has been effective for the purposes of Article 2 of the Convention and the fact that the applicant has been diligent in maintaining regular contact with the prosecution authorities and submitted various procedural requests in the hope of a more effective outcome, without showing, at any stage, any loss of interest in the proceedings (contrast *Cerf v. Turkey*, no. 12938/07, §§ 62-64, 3 May 2016; see *Manukyan v. Georgia* (dec.), no. 53073/07, § 30, 9 October 2012; and *Akhvlediani and Others v. Georgia* (dec.), no. 22026/10, § 25, 9 April 2013). In such circumstances and having regard to the developments in the investigation, the Court does not consider that the applicant failed to fulfil her obligation to show due diligence (see in this connection *Gablishvili and Others v. Georgia*, no. 7088/11, § 50, 21 February 2019; see also *Mikeladze and Others*, cited above, § 51).

52. The Court further observes that in the present case the question of possible loss by the applicant of her victim status on the basis of the outcome of the various sets of domestic proceedings is closely linked to the substance of her complaints, as is the Government's plea of inadmissibility based on the premature nature of the application. The Court therefore considers it appropriate to join the two matters to the merits of the complaint made by the applicant under the procedural limb of Article 2 of the Convention read together with Article 14 (see *A and B v. Georgia*, cited above, § 35, with further references). It further considers that the application is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

53. The applicant submitted that although the relevant authorities had known of the danger to A.L. from G.K.'s violent behaviour, they had failed to protect her from the continued domestic violence that had culminated in her death. She argued in this connection that her daughter's case was a manifestation of the authorities' discriminatory passivity and systemic failure to address gender-based violence in Georgia. The applicant further alleged that the inadequate and discriminatory responses of the police and the prosecution authorities to G.K.'s abusive behaviour, coupled with their failure to investigate the circumstances contributing to A.L.'s death and hold the implicated law-enforcement agents criminally responsible for their failure

to protect her life, were at the heart of the respondent State's breach of its positive obligations under Articles 2 and 14 of the Convention.

54. As to redress, the applicant maintained that the investigation and prosecution of G.K.'s conduct had not complied with the relevant Convention standards as, ultimately, he had not been convicted in connection with A.L.'s continued abuse and/or death. The scope of the investigation had been narrow from the very outset, as the possibility of femicide as the reason for A.L.'s death had never been looked into. G.K.'s possible discriminatory motive had been ignored, as had various aggravating circumstances, such as a crime committed against a former spouse and/or in the presence of a minor. The Supreme Court in its judgment of 9 July 2019 had downplayed the years of abuse to an isolated incident of domestic violence on the night of A.L.'s death.

55. The Government submitted that G.K.'s conviction had been the direct result of an effective investigation conducted into A.L.'s death. The applicant had also been duly compensated in the amount of GEL 50,000, and the failures of the law-enforcement agencies had been fully acknowledged by the domestic civil courts. In such circumstances, and noting the fact that a criminal investigation had been opened against the police for negligence, the Government maintained that the authorities had fully complied with their procedural obligations. In connection with the investigation against the police, the Government in addition noted, with reference to the relevant case material, that it was conducted by independent authorities in a thorough and adequate manner.

56. As to the substantive positive obligations, the Government submitted that domestic law contained effective mechanisms for the protection of victims of domestic and gender-based violence. They further claimed, referring to the domestic courts' decisions, that the national authorities had acknowledged and redressed the Convention violations concerned.

2. The Court's assessment

(a) General principles

57. The positive obligation under Article 2 of the Convention to take preventive operational measures to protect someone whose life is at risk from violence by another individual was first articulated in *Osman v. the United Kingdom* (28 October 1998, §§ 115-16, *Reports of Judgments and Decisions* 1998-VIII). As held in that judgment, bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. However, if the authorities know or ought to know of the existence of a real and immediate risk to the life of an identified individual or

individuals from the criminal acts of a third party, they must take measures within the scope of their powers which, judged reasonably, might be expected to avoid that risk. The scope and content of those obligations in the context of domestic violence were clarified in *Kurt* (cited above, §§ 157-89 and 190) and most recently summarised in *Y and Others v. Bulgaria* (no. 9077/18, § 89, 22 March 2022) as follows:

(a) The authorities must respond immediately to allegations of domestic violence;

(b) When such allegations come to their attention, the authorities must check whether a real and immediate risk to the life of the identified victim or victims of domestic violence exists by carrying out an autonomous, proactive and comprehensive lethality risk assessment. They must assess the real and immediate nature of the risk, taking due account of the particular context of domestic violence;

(c) If the risk assessment reveals that a real and immediate risk to life exists, the authorities must take operational preventive and protective measures to avert that risk. Those measures must be adequate and proportionate to the level of risk assessed.

58. The Court further reiterates that the obligation to conduct an effective investigation into all acts of domestic violence is an essential element of the State's obligations under Articles 2, 3 and 8 of the Convention (see, as a recent authority, *Tunikova and Others v. Russia*, nos. 55974/16 and 3 others, § 114, 14 December 2021). To be effective, such an investigation must be prompt and thorough; these requirements apply to the proceedings as a whole, including the trial stage (see *M.A. v. Slovenia*, no. 3400/07, § 48, 15 January 2015, and *Kosteckas v. Lithuania*, no. 960/13, § 41, 13 June 2017). The authorities must take all reasonable steps to secure evidence concerning the incident, including forensic evidence. Particular diligence is required in dealing with domestic violence cases, and the specific nature of the domestic violence must be taken into account in the course of the domestic proceedings. The State's obligation to investigate will not be satisfied if the protection afforded by domestic law exists only in theory; above all, it must also operate effectively in practice, and that requires a prompt examination of the case without unnecessary delays (see *Opuz v. Turkey*, no. 33401/02, §§ 145-51 and 168, ECHR 2009; *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 46, 28 January 2014; and *Talpis v. Italy,* no. 41237/14, §§ 106 and 129, 2 March 2017). The effectiveness principle means that the domestic judicial authorities must on no account be prepared to let the physical or psychological suffering inflicted go unpunished. This is essential for maintaining the public's confidence in, and support for, the rule of law and for preventing any appearance of the authorities' tolerance of or collusion in acts of violence (see *Okkalı v. Turkey*, no. 52067/99, § 65, ECHR 2006-XII (extracts)).

59. The Court also reiterates that a State's failure to protect women against domestic violence breaches their right to equal protection before the law and that this failure need not be intentional (for the relevant general principles, see *Y and Others*, cited above, § 122).

(b) Application of the above principles to the circumstances of the present case

(i) Procedural obligations and victim status

60. The Court observes that the applicant's complaint under the procedural limb of Article 2 of the Convention is twofold: firstly, that the ongoing investigation into possible negligence on the part of the law-enforcement authorities has been deficient; and secondly, that the investigation conducted against G.I. concerning the continued abuse and death of the applicant's daughter was inadequate. The Court will address them in turn.

61. Starting with the potential criminal responsibility of the law-enforcement authorities, the Court reiterates that in cases concerning possible responsibility on the part of State officials for deaths occurring as a result of their alleged negligence, the obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case (see, among many other authorities, *Kotilainen and Others v. Finland*, no. 62439/12, § 91, 17 September 2020). However, there may be exceptional circumstances where only an effective criminal investigation would be capable of satisfying the procedural positive obligation imposed by Article 2. Such circumstances can be present, for example, where a life was lost or put at risk because of the conduct of a public authority that goes beyond an error of judgment or carelessness. Where it is established that the negligence attributable to State officials or bodies goes beyond an error of judgment or carelessness, in that the authorities in question – fully realising the likely consequences and disregarding the powers vested in them – failed to take measures that were necessary and sufficient to avert the risks, the fact that those responsible for endangering life have not been charged with a criminal offence or prosecuted may amount to a violation of Article 2, irrespective of any other types of remedy that individuals may exercise on their own initiative (see *Tkhelidze v. Georgia*, no. 33056/17, § 59, 8 July 2021, with further references; see also *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, § 135, 18 November 2021, with further references).

62. The Court observes that the crux of the present application is that the inactivity and negligence of the law-enforcement authorities was one of the main reasons why the domestic abuse was allowed to escalate, culminating in A.L.'s death. It notes that in previous domestic violence cases against Georgia it considered, in view of their particular circumstances, that there was a positive obligation to investigate inaction on the part of the law-

enforcement officials involved (see *Tkhelidze*, cited above, § 60, in which the Court referred to the high level of risk that the victim had been facing and which had been known or should have been known to the police, and *A and B v. Georgia*, cited above, §§ 43 and 45, in which the Court noted the fact of the perpetrator being a police officer and of the possible acquiescence or connivance of the relevant law-enforcement officers in his actions). Despite certain factual differences between the above-mentioned cases and the present case, the Court considers, in view of the nature of the applicant's allegations, and having regard to the fact that violence against women was reported to be a major systemic problem that was not being adequately addressed by the State at the material time (see *Tkhelidze*, cited above, § 56), that there was at least a prima facie case of negligence in the present case, going beyond mere error of judgment or carelessness, which called for a criminal investigation (ibid., § 59, and *A and B v. Georgia*, cited above, § 43). The Government did not argue that no investigation into possible negligence on the part of State officials had been required, and, indeed, such an investigation was initiated. The Court will accordingly examine its effectiveness.

63. It starts by noting that despite almost five years having passed since the initiation of the proceedings, the investigation against the law-enforcement authorities for negligence has not produced any findings. It appears that between May 2019 and December 2021 not a single investigative measure was carried out. The Court reiterates that the protracted nature of proceedings is a strong indication that they were defective to the point of constituting a violation of the respondent State's positive obligations under the Convention, unless the State has provided highly convincing and plausible reasons to justify the length of the proceedings (see *Mazepa and Others v. Russia*, no. 15086/07, § 80, 17 July 2018). This is particularly so when the proceedings concern potential responsibility on the part of law-enforcement agents. No justification for such a delay was provided in the present case.

64. As to the substance of the investigation, the Court notes with concern that the competent investigative authority did not make enough attempts to establish responsibility on the part of the police officers for their alleged failure to respond properly to the multiple incidents of gender-based violence occurring prior to A.L.'s death, even if at the same time that responsibility was established and acknowledged by the civil courts. The part of the applicant's complaint calling into question the inaction of the public prosecutors has been left unanswered (compare *A and B v. Georgia*, cited above, §§ 24-25 and 44). She repeatedly sought but failed to receive information from the investigative authority on this aspect of her criminal complaints (see paragraph 35 above). Furthermore, no disciplinary inquiry into the police's alleged inaction has ever been conducted. In the light of the relevant circumstances of the case, in particular the existence of indications

pointing to possible gender-based discrimination as forming at least in part the deficient response of law-enforcement officers to A.L.'s complaints (see, in this connection, GREVIO's evaluation report cited in paragraph 45 above) and the fact that despite three restraining orders and continued incidents of violence they failed to initiate a proper investigation into the allegations of domestic abuse (see paragraph 18 above), the Court considers that there was a pressing need to conduct a meaningful investigation into the response of the police and public prosecutors and their inaction, which might have been motivated by gender-based discrimination, in the face of A.L.'s complaints (compare *Tkhelidze*, cited above, §§ 51 and 60).

65. At this juncture, the Court cannot but note that the applicant successfully availed herself of a civil remedy, obtaining an acknowledgement of the negligence attributable to the State and just satisfaction for the suffering caused by the continued abuse and eventual death of her daughter. The Court has already noted in another domestic violence case against Georgia that it was positive that the national civil courts had acknowledged the law-enforcement authorities' failure to take measures aimed at putting an end to gender-based discrimination and protecting the victims of domestic violence (see *A and B v. Georgia*, cited above, § 45). The Court notes, however, that, as in the above-mentioned case, in the present case the civil courts did not extend their examination to the question of whether the official tolerance of incidents of domestic violence might have been conditioned by the same gender bias. Furthermore, and in line with what has already been stated above, despite a positive outcome for the applicant in the form of a financial award, her civil action was incapable, without the benefit of the conclusions of a criminal investigation, of making any findings as to the individual criminal responsibility of the relevant law-enforcement agents.

66. Turning to the second limb of the applicant's complaint, which concerns the prosecution and conviction of G.K., the Court starts by observing that A.L.'s suicide was hastily accepted by the authorities as the reason for A.L.'s death, on the very first day of the investigation, without any other version being ever considered (see paragraph 23 above, and compare *Durmaz v. Turkey*, no. 3621/07, §§ 56-58, 13 November 2014). That account of events was primarily based on the statement of G.K., who could in no way be considered an impartial witness. The investigative authorities did not inquire whether, in view of the multiple injuries identified on A.L.'s body and face and having regard to the multiple previous incidents of domestic violence, it was possible that they were dealing with a potential case of gender-motivated murder. Having conducted initial interviews with witnesses and uncovering the allegations of domestic abuse, the investigation clearly failed to respond appropriately and follow up on this information to uncover all relevant details relating to domestic violence. The Court considers that the circumstances of A.L.'s death – which presented the characteristics of a form of gender-based violence – should have incited the investigative

authorities to respond with particular diligence in carrying out the investigative measures. The investigation did not involve, however, any examination of the previous incidents of domestic violence and of the possible role of gender-based discrimination in the commission of the offence. In the latter respect, the Court notes that whenever there is a suspicion that an incident or death might be gender-motivated, it is particularly important that the investigation be pursued with vigour (see *Tërshana v. Albania*, no. 48756/14, § 160, 4 August 2020).

67. As regards G.K.'s trial, the Court notes that he was convicted of a single incident of domestic violence, with the Supreme Court dismissing as irrelevant the years of violence that A.L. endured prior to her death (see paragraph 39 above). All preceding incidents of alleged domestic violence had therefore been simply left unremedied. In this connection, the Court observes that domestic violence is rarely a one-off incident; it usually encompasses cumulative and interlinked physical, psychological, sexual, emotional, verbal and financial abuse of a close family member or partner transcending circumstances of an individual case (see *Volodina v. Russia*, no. 41261/17, § 71, 9 July 2019). The recurrence of successive episodes of violence within personal relationships or "behind closed doors" represents the particular context and dynamics of domestic violence (ibid., § 86, and see *Kurt*, cited above, § 164). Thus, the Court has already recognised that domestic violence could be understood as a particular form of a continuous offence characterised by an ongoing pattern of behaviour (see *Rohlena v. the Czech Republic* [GC], no. 59552/08, § 72, ECHR 2015, and *Valiulienė v. Lithuania*, no. 33234/07, § 68, 26 March 2013) in which each individual incident forms a building block of a wider pattern. The Court does not see how the approach of the Supreme Court can be reconciled with the above case-law.

68. Furthermore, G.K.'s trial and conviction did not involve any examination of the possible role of gender-based discrimination in the commission of the crime (see, in this connection, GREVIO's evaluation report cited in paragraph 45 above); and in the absence of any aggravating circumstances, he was sentenced to one year in prison.

69. The Court thus concludes that, in the circumstances of the present case, having regard in particular to the deficient manner in which the criminal-law mechanisms were implemented in response to A.L.'s death, and notwithstanding the commendable acknowledgement by the civil courts of the negligence attributable to the State and the amount of just satisfaction awarded for the suffering caused (compare *A and B v. Georgia*, cited above, § 46), the applicant has retained her victim status within the meaning of Article 34 of the Convention (see paragraph 49 above) and that there has been a violation of the procedural limb of Article 2 read in conjunction with Article 14 of the Convention.

(ii) Substantive positive obligations

70. During the four years or so preceding A.L.'s death, the Tbilisi police received sixteen emergency calls from her (see paragraphs 6-21 above) and issued, in relation to those, three restraining orders against G.K. (see paragraphs 7, 16 and 18 above). Since all the emergency calls concerned arguable assertions of domestic violence against A.L., the authorities' response to them must be assessed from 6 February 2013, the date on which she first contacted them about the matter (see *Halime Kılıç v. Turkey*, no. 63034/11, § 93, 28 June 2016; *Talpis*, cited above, § 111; and *Y and Others*, cited above, § 90).

71. As to whether the authorities responded immediately to the various incidents of alleged violence, it appears from the case file that on thirteen occasions the police responded immediately by dispatching a patrol. On three occasions, a restraining order was issued, which did not appear to have been breached by G.K. On at least three occasions, however, shortly after the emergency calls, A.L. withdrew her requests for help and the police did not follow up on the calls. The Court notes in this connection that because of the particularly vulnerable situation of victims of domestic violence, the legislative framework must enable the authorities to investigate domestic violence cases of their own motion as a matter of public interest. Thus, a person's failure to lodge or the subsequent withdrawal of criminal complaints should not prevent the authorities from starting or continuing criminal proceedings against the alleged offender or relieve them of their duty to assess the gravity of the situation with a view to seeking an appropriate solution (see *Levchuk v. Ukraine*, no. 17496/19, § 87, 3 September 2020; see also *Volodina*, cited above, § 99). In this context, the Court also refers to the prosecution's failure, as concluded by the domestic courts, to conduct an adequate investigation into the allegations of domestic violence in November 2015 (see paragraphs 18 and 39 above). In the Court's view, by failing to act rapidly and diligently, the national authorities contributed to the creation of a situation of impunity conducive to the recurrence of acts of violence by G.K. against A.L. (see *Talpis*, cited above, § 117, with further references).

72. As to the quality of the risk assessment, the Court notes that the domestic authorities were under a duty to protect the applicant's daughter as an alleged victim of domestic violence from a real and immediate threat of further violence and, in that sense, had to conduct a risk assessment at regular intervals as an integral part of their obligations under the Convention (see, in the context of Article 2 and the lethality risk assessment, *Kurt*, cited above, § 190, taking due account of the particular context of domestic violence (see *Volodina*, cited above, § 86) and its recurring nature. The Court has repeatedly stressed that the dynamics of domestic violence must be duly taken into account by the authorities when they assess the risk of a further escalation of violence, even after the issuance of a restraining order (see *Kurt*, cited above, § 175). There is nothing in the case file to suggest that on any of the

sixteen above-mentioned occasions of alleged domestic violence the Tbilisi police attempted to analyse G.K.'s conduct through the prism of what it could portend about his future course of action (compare *Opuz*, cited above, § 147). Except for the three instances when a restraining order was issued, it does not appear that any other alleged incidents of violence were followed up in any manner; the police do not appear to have even drawn up basic records showing that a risk assessment had been conducted (see *Kurt*, cited above, § 174), or informed A.L. of the outcome of any such assessment (ibid.). They appear to have been concerned solely with the question of the seriousness of isolated incidents, overlooking the particular context of domestic violence and its dynamics (see *Levchuk*, cited above, §§ 80 and 86; see also *Landi v. Italy*, no. 10929/19, §§ 88-90, 7 April 2022). Even assuming that some sort of risk assessment did take place, albeit informally, on some of the above-mentioned occasions, it was not autonomous, proactive or comprehensive, as required (see *Kurt*, cited above, §§ 169-74). The direct result of this deficient risk assessment system, or rather the absence thereof, as also noted by the Public Defender in her report (see paragraph 40 above), was that the police failed to assess the situation in its entirety, resulting in the domestic violence investigation initiated on 16 January 2015 being discontinued (see paragraph 18 above; see also *Tkhelidze*, cited above, § 54). As the civil courts subsequently concluded in this regard, rather than collecting information about the whole history of the violent relationship between A.L. and G.K., keeping a proper record of and analysing all the emergency calls, the relevant authorities simply preferred to conclude that a single slap was not serious enough to amount to a crime of domestic violence (see paragraphs 38-39 above).

73. Turning to the question of whether the authorities knew or ought to have known that there was a real and immediate risk to A.L.'s life, the Court can only agree with the conclusion of the Supreme Court in its decision of 14 April 2022 that the relevant law-enforcement bodies knew or should have known about such a risk (see paragraph 39 above). Had the authorities carried out a proper risk assessment of all the incidents cumulatively, it seems indeed likely that they would have assessed that G.K. posed a real and immediate risk to A.L., as those notions are to be understood in the context of domestic violence (see *Kurt*, cited above, §§ 175-76; compare *Tkhelidze*, cited above, § 53, and contrast *Tërshana*, cited above, § 151). After all, on three occasions the Tbilisi City Court found A.L.'s allegations about the incidents on 6 February 2013, 5 July 2014 and 16 January 2015 sufficiently credible to issue restraining orders against G.K. (see paragraphs 7, 16, and 18 above). It does not seem, however, that those who took charge of A.L.'s complaints had been specifically trained in the dynamics of domestic violence, as required under the Court's case-law, the importance of which has already been recognised by the Court (see *Kurt*, cited above, § 172).

74. As to whether the authorities took adequate preventive measures in the circumstances, the only operational measures taken to protect the applicant's daughter were the three restraining orders issued against G.K. However, as established by the domestic civil courts, these were not enough. Indeed, as found by the Supreme Court in its decision of 14 April 2022, the police and the prosecution authorities failed to comply with their obligations, by, among other things, failing to institute a proper criminal investigation into the years of physical and psychological abuse suffered by A.L. The direct consequence of these failures, according to the Supreme Court, was her death. The Court cannot but observe that the deficient response of the law-enforcement authorities in the present case appears to be particularly alarming when assessed within the relevant domestic context of documented and repeated failure by the Georgian authorities to prevent and stop violence against women, including domestic violence (see *Tkhelidze,* §§ 56-57, and *A and B v. Georgia,* § 49, both cited above).

75. Having regard to the foregoing considerations, the Court concludes that the respondent State has breached its substantive positive obligations under Article 2 of the Convention read in conjunction with Article 14.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. Article 41 of the Convention provides:

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

A. Damage

77. The applicant claimed 35,000 euros (EUR) in respect of non-pecuniary damage. She further requested that the Court indicate to the respondent State that there was a need to implement the following four general measures: (i) to establish automatic internal review and accountability mechanisms within the Ministry of the Interior and Prosecutor's Office; (ii) to investigate all deaths of women related to domestic and other gender-based violence as possible femicide; (iii) to ensure the conduct of a thorough lethality risk assessment; and (iv) to ensure that family members of victims of femicide find justice.

78. The Government submitted that if the Court were to find that the applicant had suffered non-pecuniary damage, it had to bear in mind that she had already been awarded 50,000 Georgian laris (GEL) in the domestic proceedings.

79. The Court accepts that the applicant must have suffered non-pecuniary damage which cannot be compensated for solely by the

finding of a violation. Taking note of the compensation already awarded in the domestic proceedings, the Court finds it appropriate to award her EUR 20,000 under this head (compare *Tkhelidze*, § 65, and *A and B v. Georgia*, § 53, both cited above).

80. As regards the applicant's request for additional measures to be indicated to the respondent State, the Court considers that, in the case at hand, it would be for the respondent State to choose, subject to supervision by the Committee of Ministers, the exact means to be used in its domestic legal order to discharge its obligations under the Convention, including those in relation to the problem of the discriminatory passivity of the law-enforcement authorities in the face of allegations of violence against women (see *A and B v. Georgia*, cited above, § 54, with further references).

B. Costs and expenses

81. The applicant sought reimbursement of 7,575 pounds sterling (GBP – approximately EUR 8,700) for the legal fees of two of her London-based representatives (Ms K. Levine and Ms J. Gavron) from EHRAC in the proceedings before the Court. She also sought reimbursement of approximately EUR 3,900 for various administrative and translation expenses. She submitted a copy of the legal services contract she had signed with EHRAC, confirming that she was under a legal obligation to pay fees to its lawyers based on an hourly rate of GBP 150, as well as any administrative expenses that they incurred in the proceedings before the Court. The contract was further supplemented by time sheets for both lawyers detailing the number of hours worked, and nature of work performed, and by various financial documents concerning the administrative and translation expenses.

82. The Government submitted that the applicant had failed to show that the relevant expenses had actually been incurred and were necessary and reasonable as to quantum.

83. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 12,600, plus any tax that may be chargeable to the applicant under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the question relating to the applicant's victim status and *dismisses* it;

2. *Declares* the application admissible;

3. *Holds* that the applicant may claim to be a victim for the purpose of Article 34 and that there has been a violation of Article 2 under it substantive positive and procedural limbs taken in conjunction with Article 14 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 12,600 (twelve thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 June 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Carlo Ranzoni President