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## Do Russian Women Have the Right to Self-defense against Domestic Violence?

By Davtyan Mari Davitovna<sup>1</sup>

### Abstract

This article concerns the analysis of court practices for criminal cases relating to female victims of domestic violence who have been charged with murder or intentional infliction of grievous bodily injuries of their partners. The author directly connects the observance of women's rights in domestic violence self-defense cases with the problem of the lack of legal mechanisms of protection against violence in Russia. Russia remains the last country in the Council of Europe which has yet to create legal mechanisms to protect women against domestic violence. The lack of a law against domestic violence, a mechanism for protection orders, standards for investigating domestic violence, and comprehensive social support for victims are recognized as the main barriers in the access of victims of domestic violence to justice.

While today, Russian society and the academic community in particular can talk about victims of domestic violence as victims of delinquency and crime, the discussion of situations where women who are subject to violence are charged with murder or causing grievous bodily injuries has only started recently. Based on the examples of several sentences of women, the author aims to trace how domestic violence is regarded by courts in similar cases.

An analysis of court proceedings on criminal cases where women are charged with the murder of or the infliction of serious harm to the health of their partners in situations of domestic violence self-defense demonstrates that the judges are often guided by gender stereotypes and myths of domestic violence when sentencing. Law enforcement officers (police, investigators, and prosecutors) do not consider domestic violence against charged women as a significant circumstance relevant to the criminal case of the murder or causing bodily injuries to their partners or other male relatives. Non-recognition of domestic violence as a phenomenon in the legal field of Russia, stereotypical attitudes towards cases of domestic violence and survivors, and refusal to investigate domestic violence incidents showcases that women charged with crimes in the situation of domestic violence self-defense have lost their right for access to fair justice.

*Keywords:* Russia, Domestic violence, Self-defense, Access to justice.

### Introduction

The topic of domestic violence has become a much-debated issue in Russia in the past few years<sup>2</sup>. According to data from a survey conducted by the Russian Public Opinion Research Center, 78% of Russians believe that domestic violence is an important issue for our country, while 90%

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<sup>2</sup> Mezentseva E. "Sama Vinotata!" (*"It's her own fault!"*), or domestic violence in the era of equality of the sexes // TACC. 2019. URL: <https://tass.ru/opinions/6737525> (accessed: 01.07.2020).

of the respondents are of the mind that domestic violence is unacceptable<sup>3</sup>. Russia, which remains the last country in the Council of Europe which has yet to create legal mechanisms to protect women from domestic violence, has been criticized numerous times by the international community regarding the absence of effective measures to protect victims of domestic violence.

The lack of legislative regulation of this issue has led to the situation that the official statistics from law enforcement agencies do not reflect the true scale of domestic violence in Russia. Meanwhile, sociological research over 20 years shows that domestic violence affects millions of women across the country.

From 2014 through 2016, the Russian Federation Ministry of the Interior's official statistics reported that the total number of victims of domestic violence increased from 42,829 to 65,543 individuals, over 70% of whom were women. With that being said, the share of women survivors in cases of violence between spouses exceeded 90%. At the same time, in 2017 a marked decline (by almost 45%) in the number of individuals subject to domestic violence was noted, and this trend continued in 2018<sup>4</sup>. We suppose that the downturn in the number of victims of violence committed in a domestic setting is not connected with a reduction in the prevalence of this phenomenon, but rather with the partial decriminalization of Article 116 of the Russian Federation Criminal Code. This is regarding the abolition of criminal liability for the battery of loved ones (so-called decriminalization of domestic violence). It is also worth mentioning that the statistics of individuals subject to domestic crimes only include those who are considered family members from a legal standpoint (parents, children, brothers, sisters, other blood relatives, and spouses). The statistics do not account for cases of crime committed among partners who are not officially married or among former spouses.

At the same time, results from social research and social surveys demonstrate that at least one-third of women in Russian face domestic violence. According to the results from research, which was conducted by the Moscow State University Women's Council from 2002 – 2003,<sup>5</sup> more than half of all women (58%) experienced aggression from one of the men close to them (current or former husband, fiancé, or lover). In current marriages, husbands hit their wives at least once in over 40% of families. In one in every ten families the husband attempted to hit their wife. Families “completely free of beatings”, where the husband never even tried to hit their wife, made up only 45%. The number of women threatened with physical violence or who were physically abused totaled 55.7% (according to the male sample, 48.7%). Physical force was used at least one time against half of the women (50.1%) (according to the male sample, 40.8%).

In 2011, a report on the Reproductive Health of the Russian Population was prepared for Rosstat of the RF.<sup>6</sup> In preparing this report, personal interviews were conducted with 10,000 women aged 15 to 44 from across Russia. Data from the report found that over one third (38%) of Russian women experienced verbal abuse in their relationships with partners. One in five (20%)

<sup>3</sup> Russian national survey “RPORC-Sputnik”. 2019. URL: <https://wciom.ru/index.php?id=236&uid=10077> (accessed: 01.07.2020).

<sup>4</sup>The number of victims of crimes associated with violent acted committed against family members. Russian Rosstat official statistics. URL: [http://www.gks.ru/wps/wcm/connect/rosstat\\_main/rosstat/ru/statistics/population/motherhood/#](http://www.gks.ru/wps/wcm/connect/rosstat_main/rosstat/ru/statistics/population/motherhood/#) (accessed: 21.07.2020).

<sup>5</sup>Gorshkova, I.D. and I.I. Shurigina. Violence against women in contemporary Russian families. MAKS Press, 2003. Pg. 136. URL: <http://www.womenmsu.msu.ru> (accessed: 01.09.2020).

<sup>6</sup> Rosstat Russia. Report on Reproductive Health of the Russian Population. 2011. URL: [http://www.gks.ru/free\\_doc/new\\_site/population/zdrav/zdravo-2011.pdf?fbclid=IwAR307Y-fpXXvSGKtd\\_RDwVUAs4-NDIzH9yWvWd-0Z-IwlVFGZ1y82NXznkw](http://www.gks.ru/free_doc/new_site/population/zdrav/zdravo-2011.pdf?fbclid=IwAR307Y-fpXXvSGKtd_RDwVUAs4-NDIzH9yWvWd-0Z-IwlVFGZ1y82NXznkw) (accessed: 23.09.2020).

reported cases of physical violence and 4% of women said that they had situations in their lives when their current or former partners forced them to engage in sexual activities against their will. The current levels of violence (this refers to the situations during the 12 months that preceded the survey) turned out to be lower: 18% of the respondents reported cases of verbal abuse in the 12 months prior, 6% - cases of physical violence, and less than 1% - sexual violence.

On the 9<sup>th</sup> of July 2019 the Public Opinion Institute Anketolog published the results from their research dedicated to the issue of domestic violence in Russia. The report found that 73% of Russians believe that violence by men against their wives is widespread in Russia. Among women, 52% of the respondents were subject to physical abuse several times by their loved ones. At the same time, 39% of women who at one point or another experienced physical violence from a loved one said that this person was their husband, while 16% said it was a partner.

Serious social problems require government participation for their resolution. However, the government is not eager to start work on this and over the last 30 years has not given significant effort to resolve the problem of domestic violence in Russia.

In the concluding remarks<sup>7</sup> and practice as per precedents<sup>8</sup>, The UN Committee on the Elimination of Discrimination Against Women has called upon Russia numerous times to adopt a special law against domestic violence, create mechanisms of interdepartmental interaction between all the needed specialists, and regularly conduct professional preparation of these specialists, develop the systems of assistance and crisis centers across the country, introduce measures of protection against stalking and repeat offense of violence against victims, including restraining orders, and also collect objective statistical data from the whole country. In the case *Volodina vs Russia*<sup>9</sup>, The European Court on Human Rights also recognized that Russia is not fulfilling its obligations in preventing domestic violence, protecting victims, and effectively investigating and punishing crime in this field.

While today Russian society, and the academic community in particular, can talk about victims of domestic violence as victims of delinquency and crime, the discussion of situations where women who are subject to violence are accused of murder has only started recently. The discussion of this issue was preceded by several high-profile court cases regarding women who seriously injured or killed their husbands, partners, or other relatives, defending themselves from domestic violence.

According to a review of court cases from 2016-2018 regarding part 1 of Article 105 of the RCC (the Russian Federation Criminal Code) (murder), roughly two and a half thousand Russian women were convicted of murder and 80% of these cases were related to domestic violence against women. In most cases, their partners or close relatives were the victims. Only 5% of the total number of women convicted of murder were found innocent. Review of court cases on part 1 of Article 108 of the RCC (murder when exceeding the limits of self-defense) showed that in 83% of

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<sup>7</sup>The Committee for the Elimination of Discrimination Against Women. Concluding remarks to the combined sixth and seventh periodic reports to the Russian Federation (CEDAW/C/USR/7) // United Nations Human Rights. URL: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fUSR%2fCO%2f7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fUSR%2fCO%2f7&Lang=en) (accessed: 20.06.2020).

<sup>8</sup>The Committee for the Elimination of Discrimination Against Women. Opinion of Communication No. 100/2016, adopted by the Committee regarding point 3 Article 7 of the Facultative agenda (per Communication № 100/2016 on the case of X. and Y. vs Russia) // United Nations Human Rights. 2019. URL: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2f73%2fd%2f100%2f2016&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2f73%2fd%2f100%2f2016&Lang=en) (accessed: 20.06.2020).

<sup>9</sup>Resolution of the European Court on human rights № 41261/17 from 09.07.2019. URL: <http://hudoc.echr.coe.int/eng?i=001-194321> (accessed: 20.06.2020).

cases, the women convicted were defending themselves from their partners. In an additional 8% of such cases, they were defending themselves from their close relatives and family members. In 4% and 5% of these cases respectively, they were defending themselves from acquaintances and unknown persons. 38% of “women’s” sentences mention that the cohabitant regularly beat the woman before the incident<sup>10</sup>.

An analysis of court sentences shows that in reviewing criminal cases regarding women defending themselves from their partners, fathers or other relatives, the judges impart the same prejudices and stereotypes that women face regarding domestic violence. Firstly, there is the myth of “provocative behaviour” and “proper reasonable behaviour”<sup>11</sup> of women, as well as the conviction that domestic violence does not pose a serious threat, and therefore does not require an objective investigation of the circumstances. These myths lead to the situation that judges do not recognize the right for the self-defense of victims of domestic violence, instead convicting their guilty in intentionally inflicting harm on one’s health or homicide.

### **Domestic Violence in Russia: Legal Framework**

The topic of domestic violence in Russia began to be seriously raised at the end of the 80’s and start of the 90’s of the last century by feminist groups and activists, which was directly connected with the development of the neofeminist women’s movement of that time<sup>12</sup>.

From the very beginning, representatives of the women’s movement indicated the need to adopt a law against domestic violence. Starting in 1996 up to the present, numerous bills against domestic violence were drafted but time and time again were rejected by the State Duma of Russia as they were deemed irrelevant. The first bill for federal law “On Preventing Domestic Violence” was introduced to the RF State Duma in 1996 but was removed from consideration in 2001. The same fate was met by bills introduced in 1997 and 1999. Following this, for almost 20 years up to 2016, this topic was not considered by the government. In 2016, Parliament Member S.Sh. Murzabyeva and member of the Federation Council of Russia, A.V. Belyakov, introduced a federal bill “On Preventing Domestic Violence” to the RF State Duma, which was developed by members of the Ministry of Labour’s Coordination Committee on Gender Issues starting in 2012. This bill was actively supported by not only women’s nongovernmental organizations, but by the RF Presidential Committee on the Development of Civil Society and Human Rights as well. The bill also did not make it to the first round of reviews and was removed from consideration.

The last bill draft which was presented by the Federation Council of Russia was widely criticized by the public at the end of 2019. Not only did conservative representatives (religious figures and activists and representatives of traditional parents’ associations) who are fundamentally against any legal regulation of this topic express negativity towards the bill. The bill was also criticized by those who actively support the adoption of legislation against domestic violence on the basis that the bill excluded physical violence as a defining factor and did not propose any effective protection measures for victims whatsoever, and the indicated aim of the law was the reconciliation between the victim and aggressor.

<sup>10</sup>Novaya Gazeta. *I’m going to kill you right now, bitch*. No. 132 from 25 November, 2019.

<sup>11</sup> All-Russian Association of Women's Public Organizations "Consortium of Women's Non-Governmental Associations". Methodological manual "Domestic Violence: Social and Right Aspect". Moscow. 2013. // <http://wcons.net/materialy-i-publikacii/virtualnaya-biblioteka/metodicheskoe-posobie-domashnee-nasilie-socialno-pravovoj-aspekt> (accessed: 23.09.2020).

<sup>12</sup>Khodreva N. The History of Crisis Centers for Women and Trends of their Development // The Women’s Movement in the Context of Russian History. M., 1999. p. 43-44.

### *Decriminalization of Battery against Loved Ones*

In 2016, the Supreme Court of the Russian Federation proposed to abolish criminal liability for battery (Article 116 of the RF Criminal Code) and move an article on battery to the category of administrative offenses, reducing the penalty to a fine of 30,000 roubles or arrest to 15 days or compulsory work for a period of sixty to one hundred and twenty hours.

This suggestion was met with sharp criticism from all experts working with issues of domestic violence. Battery is one of the most common forms of physical violence in the family. Although injury from battery in itself is not considered to be harmful to one's health, such actions violate human rights to be free from violence and create the threat of danger for individuals. Battery belongs in the category of so-called "preventable" crimes. Timely identification and holding individuals who have committed battery accountable allows for the prevention of more serious crimes, such as murder (Article 105 of the RF Criminal Code) or grievous bodily harm, including death of the victim due to negligence (Article 111 of the RF Criminal Code). In 2016, rights defenders managed to uphold criminal liability for battery. However, it was partially decriminalized and text from Article 116 of the RF Criminal Code (Battery) was moved to the Code of the Russian Federation on Administrative Offenses, while Article 116 of the the Russian Federation Criminal Code was amended to criminalize battery against loved ones (spouses, children, other relatives)<sup>13</sup>. This was the first time when a legislator acknowledged the need for specific protection against violence by family members. Furthermore, while previously battery was considered a private offense, or in other words, according to the procedure in which all the obligations of criminal prosecution were to be taken up by the victim, these cases began to be examined in public-private prosecution, where the victim was only required to file a statement. These legislative changes seemed a very positive step forward, but they did not last long.

Already by February 2017, after the intervention of conservative activists and church representatives, who staged a campaign against prosecution for domestic violence, battery of one's loved ones was decriminalized. "Decriminalization of domestic violence" was exactly how the new amendments to Article 116 of the RF Criminal Code<sup>14</sup> were presented to society and it carried both legal as well as ideological consequences. Despite serious criticism from the international community as well as Russian mass media and rights defenders, the amendments to Article 116 of the RF Criminal Code were signed. Society considers this state position as not only a demonstrative refusal of the government to protect victims of domestic violence, but as an acceptance of domestic violence.

Staff of legal agencies had a negative opinion of the decriminalization of battery of loved ones. The head of the Russian Investigative Committee Aleksandr BASTRIKIN criticized the decriminalization of battery in the family and linked the increase in domestic violence with the decriminalization of battery.<sup>15</sup> The Minister of the Russian Ministry of the Interior Vladimir

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<sup>13</sup> Federal Law of July 3, 2016, N 323-FZ "On Amendments to the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation on Improving the Grounds and Procedure for Exemption from Criminal Liability".

<sup>14</sup> Federal Law of February 7, 2017, N 8-FZ "On Amendments to Article 116 of the Criminal Code of the Russian Federation"

<sup>15</sup> BASTRIKIN linked the increase in domestic violence to the decriminalization of beatings. Kommersant. 28.05.2018 URL: <https://www.kommersant.ru/doc/3642937> (accessed: 23.09.2020).

Kolokol'tsev did not support the decriminalization of Article 116 of the RF Criminal Code (Battery), stating that now police officers face challenges with enforcement.<sup>16</sup>

Precinct police officers who are responsible for preventing domestic offenses also have a negative opinion on the decriminalization of battery in the family. According to a survey<sup>17</sup> of precinct officers, most of them consider domestic violence to be a widespread problem which is impossible to solve by the current legislation. 63% of police staff indicated that moving battery from a criminal offense to an administrative rights violation is ineffective against domestic violence. 74% of the police staff indicated that their work was not simplified after the decriminalization of battery and that administrative prosecution for battery does not protect family members from violent acts in the future (76% of respondents). Seventy-one percent of police staff noted that the Article on battery must be brought back into the Russian Criminal Code and must be a public or private-public offense, and the responsibility for the investigation of these crimes must be borne by the police and not the victims. Seventy-five percent of police staff deemed it necessary that a separate law against domestic violence be enacted.

Decriminalization of battery against loved ones became one of the most widely discussed topics in society. This subject split society into two groups: those who support lighter punishments for battery and those who think that beating loved ones should be criminalized.

In December 2016, 44% had a negative opinion of decriminalization, 23% positive, and 34% were unable to answer.<sup>18</sup> In 2017, lighter punishments (transfer from the category of criminal offense to administrative offense) for individuals who commit such crimes for the first time was supported by more than half of our citizens (59%). 33% of Russians speak out against this approach. 41% of respondents predict positive effects from adopting such a law: according to them, the number of cases of domestic violence will decrease. Conversely, 13% expect the situation to worsen and 40% suspect that there will be no significant changes.<sup>19</sup>

As of August 2019, the majority of Russians assert that they have a negative opinion of the decriminalization of battery of loved ones. 67% of women who were asked, spoke out against decriminalization, 20% for, and 13% were unable to answer. Among men, 45% believe that violence in the family must be punished by way of criminal proceedings, 33% support decriminalization, and 23% abstained from answering.<sup>20</sup>

### *Responsibility for Domestic Violence and Ineffective Investigation*

In the absence of legal protection from domestic violence, including protection or restraining order mechanism, victims are left to use the general norms of Russian legislation. However, in such cases victims face substantial barriers, first and foremost, related with myths about domestic violence and stigmatization of victims.

16 Rossiiskaya Gazeta. Vladimir Kolotnikhev spoke about the decriminalization of beatings in the family. 2017. URL: <https://rg.ru/2017/12/20/vladimir-kolokolcev-rasskazal-o-dekriminalizacii-pobojev-v-seme.html> (accessed: 23.09.2020).

17 The survey of precinct police officers who are advancing their training at the Russian National Institute for the Advancement of Training for Staff at the Russian Ministry of the Interior in 2019. 70 police staff members from 38 regions of Russia took part in the survey. The survey was conducted as part of a round table organized by the Consortium of women's NGOs <http://wcons.net/category/biblioteka/> (accessed: 23.09.2020).

18Public Opinion Fund. Assault in the Family: How widespread is domestic violence in Russia and is it right to soften responsibility for it? 01 December 2016. URL: <https://fom.ru/posts/13124> (accessed: 23.09.2020).

19Russian Public Opinion Research Center. To beat means to love? Russians on decriminalization of domestic violence. 19 January 2017. URL: <https://wciom.ru/index.php?id=236&uid=512> (accessed: 23.09.2020).

20Public Opinion Fund. Results from a public opinion survey. 02 August 2019. URL: <https://ria.ru/20190802/1557107607.html> (accessed: 23.09.2020).

Myths about domestic violence are probably some of the most tenacious gender stereotypes<sup>21</sup>. Not only are ordinary citizens subject to these myths, but so are representatives of legislative agencies, judges, police officers, and ordinary officials. They also play a significant role in that the state, time and time again, refuses to resolve the issue of domestic violence<sup>22</sup>. Myths about domestic violence had a great impact on enacting the law to decriminalize battery against loved ones. Speaker of the RF State Duma Vyacheslav Volodin pointed out, “We have looked at both the analysis and the conclusions of sociological research and we see that the majority of society - 59% - advocated to not strictly regulate issues in such minor conflicts which do not cause harm to health.” The Speaker equated the situation of domestic violence to that of a regular conflict, stating that the act was intended to preserve and strengthen Russian families.<sup>23</sup>

This is not the only case when the myth that domestic violence is a private family matter influenced legislation.

In the Russian Federation cases on domestic violence are most often reviewed through the procedures of private prosecution as per the RF Code of Criminal Procedure (Article 116.1 “Battery by a person subjected to administrative punishment for battery” and Article 115 “Intentional infliction of light bodily injuries”). These types of crimes follow the process of private prosecution. Such cases are only initiated by a statement from the victim which is to be filed in a specific form to a magistrate’s court. At the same time, the victim is entrusted with the functions of a private prosecutor who has an obligation independently investigate the case, prosecute, provide evidence, submit petitions, and take other actions, which, in the case of domestic violence, is practically impossible for the victim. The police and prosecutors are not involved in these cases. Furthermore, cases of private prosecution are closed in connection with the reconciliation of the parties or with a single failure of the private prosecutor to appear in court without good reason, which increases the danger of pressure on the victim by the aggressor.

The procedure of private prosecution in situations of domestic violence have been criticized numerous times by rights defenders<sup>24</sup> and the UN Committee on the Elimination of Discrimination Against Women<sup>25</sup> as not in accordance with the governmental requirements for protecting the rights of victims of domestic violence.

A complaint for private prosecution was also filed with the RF Constitutional Court, but the court did not find any rights violations of the victim. In Judgment No. 7P from the 27<sup>th</sup> of June 2005, the Russian Federation Constitutional Court noted that the procedure of private prosecution in criminal proceedings does not contradict the Constitution of the Russian Federation given that: (a) the crime does not present significant public danger, their disclosure does not pose difficulties and the victim can independently carry out criminal prosecution; (b) the peculiarities of criminal proceedings for private prosecution cases are determined by the specifics of cases of crimes usually committed on the basis of interpersonal conflicts mainly in the field of intra-family relations [...], and the need to take into account the subjective perception the victim of the act committed against

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<sup>21</sup>Women’s Crisis Centers: Experience of Founding and Work / Edited by E.V. Israelyan and T.U. Zabelinaya. M., 1998. p. 132.

<sup>22</sup>A.S. Sinel’nikov. Lessons Learned: Adolescents and Issues of Domestic Violence. Average Evil: Research on Violence in the Family / Edited by O.M. Zdravomyeslova. M., 2003. p. 92.

<sup>23</sup>Rossiiskaya Gazeta. Volodin explained why the State Duma is decriminalizing battery in the family. 2017. URL: <https://rg.ru/2017/01/24/volodin-obiasnil-pochemu-gosduma-dekriminalizuet-semejnye-poboii.html> (accessed: 23.09.2020).

<sup>24</sup>E.V. Krasnenkova. Criminological Measures of Preventing Domestic Violence // Police Activity. 2016. No. 3. p. 334-340.

<sup>25</sup>Ziegeweid J. Justice for Russian Women? Russia Begins to Face Its Domestic Violence Problem.



them [...] as well as the conciliatory nature of judicial activity, consistent with the purpose of justice of the peace.

Confirming that private prosecution cases are most often related to situations of domestic violence, the RF Constitutional Court is fundamentally building its arguments on the dissemination of stereotypes that domestic violence does not pose a significant public danger and that the government does not have to intervene in cases of domestic violence, including to defend the rights of victims. It is this such legal development that perpetuates the spread of stereotypes in society that domestic violence is a “private matter” of the family. Most survivors say that police refused to register or investigate their complaints of domestic violence, often arguing that the women are guilty or complicit in their own abuse and encouraging them to resolve their domestic situation by themselves<sup>26</sup>. A similar attitude which is held by law enforcement bodies leads, among other things, to the fact that the police do not review statements on domestic violence filed by women as a basis to conduct a thorough investigation with the aim of holding the perpetrator responsible. In this way, gender stereotypes have a direct impact on judges in particular and the court system as a whole, leading to numerous rights violations of women.

### **Domestic Violence Self-defense Cases**

Cases on women’s self-defense in situations of domestic violence raise great challenges in comprehension among not only ordinary citizens, but also among professional law enforcement officers. Despite that the institute of self-defense is one of the oldest judicial institutes, well-known even among Roman lawyers<sup>27</sup>, the issue of a human’s right to defend their life and health themselves has always been a thorn in our legal system. The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention in Article 2, directly secures a human’s right to life and contains a clause that deprivation of life is not considered a violation of this article when it is the result of an absolutely necessary use of force to protect anyone from unlawful violence.

Under Article 37 of the Criminal Code of Russia (RCC), it shall not be deemed a crime when harm is inflicted in the state of justifiable defense against a person who is attacking (i.e. the defense applies in cases of protecting the person and the rights of defendant or of other persons, the legally-protected interests of society or the state from a socially-dangerous attack if the attack involves violence that threatens the life of the defendant or another person or there is an immediate threat of such violence). Self-defense may also be used against an attack that does not involve lethal violence threatening the defendant or another person or does not involve an immediate threat of such violence if the limits of justifiable defense have not been surpassed (i.e., no deliberate actions have been committed which were not proportionate with the nature and danger of the attack).

However, people causing serious injury to their aggressor or killing them often find themselves as defendants, outside the bounds of self-defense, or charged with premeditated

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<sup>26</sup> Human Rights Watch. The Report “I Could Kill You and No One Would Stop Me” Weak State Response to Domestic Violence in Russia. 2018. URL: [https://www.hrw.org/sites/default/files/report\\_pdf/russia1018\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/russia1018_web.pdf) (accessed 23.09.2020).

<sup>27</sup>P.N. Kobets. The Institute for Self Defense - One of the First Criminal Law Institutions // Science Symbol. 2015. No. 4. URL: <https://cyberleninka.ru/article/n/institut-neobhodimoy-oborony-odin-iz-pervyh-ugolovno-pravovyh-institutov> (accessed: 23.09.2019).

grievous bodily injuries or murder<sup>28</sup>. From the start, the investigation is on the side of the aggressor and tries to prosecute the one who uses self-defense, forcing the person to prove their own innocence<sup>29</sup>.

Cases on self-defense in situations of domestic violence are not only exceptions, but also further burdened by the influence of myths and stereotypes connected with domestic violence. Besides classic well-known myths about domestic violence such as provocation by the victim, the victim's consent to violence against her and others, domestic violence self-defense cases are further complicated by more specific myths regarding the victim. These myths are so deeply rooted in the psyche of our society that they directly impact law enforcement practices, including court decisions<sup>30</sup>.

### *The Myth of the Ideal Victim*

An analysis of court practices on self-defense cases in situations of domestic violence shows that law enforcement officers have a deep-held myth of the “ideal victim,” who always acts “reasonably” and “rationally,” even in the most stress-inducing situations. The danger of this myth is that women who do not fit into these rigid standards are fundamentally excluded from an objective evaluation of the situation that happened to them.

One of the clearest cases regarding self-defense of a victim of domestic violence is the case of Galina Katorova from Nahodka<sup>31</sup>, which created great waves in mass media<sup>32</sup> and marked the beginning of the public discussion in Russia of domestic violence self-defense.

Katorova lived in Nahodka in Primorsky Krai with her husband and small daughter. From 2008, Katorova was subject to systematic physical and psychological violence. One night in March 2013, in the presence of a witness, Katorova's husband attacked her twice in a short time. He beat her repeatedly with his hands and legs on her head and torso. During the second beating, when Katorova's husband started to strangle her, she stabbed him several times in the torso area, and as a result he died. The investigation was initiated for a criminal case as per part 1 of Article 105 of the RCC (murder). In the resolution by the Nahodkinsky Municipal Court, Katorova was found guilty of committing a crime as per part 4 of Article 111 of the RCC (intentional infliction of

<sup>28</sup>V.V. Kolosovsky. Qualifying errors in criminal assessment of self-defense: theory and practice. Chelyabinsk. 2014. p. 4.

<sup>29</sup>N.A. Vorob'eva. Issues in the Application of Legislation on Self Defense. // Modern Law. 2018. N 5. p. 88 - 91.

<sup>30</sup>Shadow report on the fulfillment of the Convention on the Elimination of Discrimination Against Women in the Russian Federation (2010-2014). All-Russian Association of Women's Public Organizations “Consortium of Women's Non-Governmental Associations”. URL:

[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/RUS/INT\\_CEDAW\\_NGO\\_RUS\\_19553\\_R.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/RUS/INT_CEDAW_NGO_RUS_19553_R.pdf) (accessed: 23.09.2020), and also the Alternative report to the United Nations Committee on the Elimination of Discrimination against Women «Domestic violence against women in the Russian Federation» by the “ANNA” Centre for the Prevention of Violence. URL:

[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/RUS/INT\\_CEDAW\\_NGO\\_RUS\\_21870\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/RUS/INT_CEDAW_NGO_RUS_21870_E.pdf) (accessed: 23.09.2020).

<sup>31</sup>Information from the official website of the Nahodkinsky City Court of Primorsky Krai on Criminal Cases №1-514/2018. URL: [https://nahodkinsky-prm.sudrf.ru/modules.php?name=sud\\_delo&name\\_op=case&\\_id=20093319&\\_deloId=1540006&\\_caseType=0&\\_new=0&srv\\_num=1](https://nahodkinsky-prm.sudrf.ru/modules.php?name=sud_delo&name_op=case&_id=20093319&_deloId=1540006&_caseType=0&_new=0&srv_num=1) (accessed: 23.09.2020).

<sup>32</sup>Internet publication Medusa // “He merely smashed your head into the wall, while you cut him with a knife” How Russia judges women who kill their husbands – domestic abusers. Report by Sasha Sulim. URL: <https://meduza.io/feature/2017/12/27/on-tebya-tolko-golovoy-o-stenku-bil-a-ty-ego-nozhom-porezala> (accessed: 23.09.2020).

grievous bodily injuries, resulting in the death of the victim by negligence) and sentenced to three years in prison.

In its guilty verdict, the court evaluated Katorova's actions, indicating that the conflict had:

two conditional phases with a gap between them. Katorova did not take advantage of the temporary truce with her husband and did not leave the scene of the crime, although she had the opportunity to do so... The defendant, upon remaining in the kitchen after the first incident when her husband inflicted bodily harm on her, felt a suspension of hostility and peace but did not take full advantage of this<sup>33</sup>.

At the same time, the court assessed the arguments of the defense that Katorova was unable to leave the kitchen because it was not safe for her and her child and her husband would not let her out, as, "unfounded and insolvent, as it is a speculation and does not correspond to the actual circumstances of the offense." The court considered that Katorova's "attitude was not serious enough of more grave possible consequences of her actions, including to the death of her husband by her negligence. However, she should have and could have foreseen the advent of such consequences of her actions." It is worth noting that the court did not give any assessment on the actions of the dead person, nor the level of danger of violence he inflicted, which is always crucial for a proper evaluation of the lawfulness of self-defense.

In this case, the court actually assigned Katorova the conditional duty to anticipate the next attack of her spouse, and to also leave her residence, rather than resort to self-defense. Katorova's guilty verdict was canceled by a court of appeals and she was given an acquittal<sup>34</sup>. The Primorsky Krai court agreed with the viewpoint of the defense that Katorova had the right to self-defense despite the presence or absence of the ability to leave the apartment. However, this progressive position of the court remains rare.

Courts apply strict standards in domestic violence self-defense cases regarding what the "rational" and "reasonable" behaviour of women should be in situations of regular acts of violence and risks to life. The courts impose the conditional obligation on women to predict the real danger to their lives and health in cases of attack and to objectively analyze the circumstances, give an unbiased evaluation, and resort to specific actions, which should be certain to entail minimal negative consequences, and thanks to which it would probably be possible to avoid an attack or minimize harm.

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<sup>33</sup> Verdict of guilty against Katorova G.V. under Part 1 Article 105 of the RCC by Nakhodkinsky City Court of Primorsky Territory dated February 15, 2018, case No. 1-51 / 2018. URL: [https://nahodkinsky--prm.sudrf.ru/modules.php?name=sud\\_delo&name\\_op=case&\\_id=20093319&\\_deloId=1540006&\\_caseType=0&\\_new=0&srv\\_num=1](https://nahodkinsky--prm.sudrf.ru/modules.php?name=sud_delo&name_op=case&_id=20093319&_deloId=1540006&_caseType=0&_new=0&srv_num=1) (accessed: 23.09.2020).

<sup>34</sup> Information from the official website of Primorsky Krai Court for Criminal Cases No. 22-2315/2018. URL: [https://kraevoy--prm.sudrf.ru/modules.php?name=sud\\_delo&srv\\_num=1&name\\_op=case&case\\_id=7383820&delo\\_id=4&new=4](https://kraevoy--prm.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=case&case_id=7383820&delo_id=4&new=4) (accessed: 23.09.2020).

*The Refusal of Courts to Recognize Domestic Violence as Life Threatening Situations*

According to a ruling of the Supreme Court,<sup>35</sup> the self-defense provision under Article 37 of the Russian Criminal Code is not applicable if the means of force were not exactly equal: it is possible to defend yourself only with arms/hands if the other party uses only arms/hands, despite the weight, height, and other physical parameters of aggressors. Furthermore, Russian courts refuse to acknowledge situations of domestic violence as life-threatening and as a threat to women's health. Therefore, domestic violence victims' actions of self-defense are often considered as "excessive" self-defense. This regulation leads to the significant disadvantage of domestic violence victims who usually cannot defend themselves with equal means and subsequently negatively influences women's right to self-defense in cases of violence.

In the case of K.T., which was first reviewed by the Nagatinsky regional court in Moscow and then in the Moscow City Court, the courts did not consider it possible to recognize the right of the victim of domestic violence to self-defense<sup>36</sup>. K.T. was a victim of domestic violence for many years. K.T. reported the police numerous times in regard to violence by her husband. Her husband A., in a state of inebriation, attacked her: he choked and grabbed K.T. by the hair, following which she needed to call the police. A. spent the night at the police station. Upon returning home the following day, he threatened K.T. with murder in the presence of a witness. That very same evening A. burst into K.T.'s apartment and in hysterics, screaming and shouting at her, pushed her, causing her to fall to the floor and then onto the staircase, he cut the phone cord so the police couldn't be called, yelled that he would kill her, grabbed her by the neck and started to hit her head against the wall. K.T. grabbed a knife and stabbed her husband in the leg once. A. passed away from the injury. K.T. was charged with intended serious harm to health, causing death (part 4 Article 111 of the RCC). Subsequently, the forensic medical examination indicated that in addition to six chronic bruises, K.T.'s injuries were found in the form of bruises on the body including on the back of her head and abrasions that could be caused under the circumstances indicated. However, the court in the first instance found her guilty. The court of appeals re-qualified the charge and found her guilty of intentionally causing grievous bodily harm committed in excess of self-defense (Article 108 of the RCC)<sup>37</sup>. In the second instance, the court deemed that in "stabbing an unarmed victim while defending oneself against their attack, K.T. exceeded the limits of self-defense considering that her actions clearly did not match the nature of the need for protection and the danger of A.'s attack."

In evaluating the violence that K.T. was subjected to, the judges in both instances considered that it could not be lethally dangerous and that K.T. had no basis for fearing for her life, and therefore she, according to the judges, overstepped the bounds of self-defense.

In another case, S. was charged with murdering her partner Sh., who previously used systematic physical violence against her.<sup>38</sup>. On the day of his death, throughout the entire day in

<sup>35</sup>Resolution of the Russian Federation Supreme Court Plenum from 27 September 2012 N. 19, Moscow "On the application by the courts of legislation on self-defense and damage inflicted upon arrest of a person who has committed a crime". Para 11.

<sup>36</sup>Information from the official website of the Nagatinsky Regional Court of Moscow on case №01-153/2015. URL: [https://nagatinsky--msk.sudrf.ru/modules.php?name=sud\\_delo&name\\_op=doc&srv\\_num=1&number=334241601&delo\\_id=1540006&new=&text\\_number=1](https://nagatinsky--msk.sudrf.ru/modules.php?name=sud_delo&name_op=doc&srv_num=1&number=334241601&delo_id=1540006&new=&text_number=1) (accessed: 23.09.2020).

<sup>37</sup>Information from the official website of the Moscow City court on criminal case No. 10-9630/2015. URL: <https://mos-gorsud.ru/mgs/services/cases/appeal-criminal/details/2ecb5dac-83b6-46cc-befd-ccca5b1123e1?respondent=Кулакова> (accessed: 23.09.2020).

<sup>38</sup>Appellate judgment of the Perm Krai Court from 27 July 2017 on case No. 22-4551.

the process of conflict, Sh. threw various objects at S., including electrical household appliances, and forks and knives, which led to the police being called, who took him away. However, after a short period of time upon returning from the police, her partner attacked S., hitting her, and attempted to strangle her while threatening to kill her and she fell down from a blow. Allthe while Sh. insulted her and threatened her with violence. S. started to stand up and saw a knife on the floor, took it, and after standing, fatally stabbed Sh. twice. In the first instance, the court found S. guilty of murdering Sh. (part 1 Article 105 RCC). The court of appeals re-qualified S.'s case, finding her guilty of murder in excess of the limits of self-defense (part 1 Article 108 of the RCC). At the same time, the court of appeals found that S. had grounds for employing self-defense to protect herself from violence by Sh., however, she chose a method and means of protection which clearly did not correspond to the nature and danger of the attack. According to the court, S.'s actions in this situation clearly did not correspond to the nature and degree of public danger of the attack since, according to the testimony of the convict herself, the deceased grabbed her by the neck, expressed threats of murder, and struck her causing her to fall, while S. stabbed the victim no fewer than two times in the chest.

The available data, according to the court, indicates that S. committed murder in excess of the limits of self-defense considering that she used a knife immediately after being attacked and threatened with lethal violence, however she resorted to an excessive method and means of protection, which was clearly not necessary and there was no need to inflict death.

An analysis of the case law demonstrates that courts usually do not consider the long-term characteristics of violence by the dead person, nor that the physical strength of women compared with that of their husband is not equal, and, therefore, she is unable to defend herself from an attack in another way besides using a weapon.

### *The Refusal to Investigate Violence against Women Defending Themselves*

In cases of domestic violence when women have been attacked, in the majority of cases they are physically weaker than their aggressor and can only defend themselves with the use of some kind of weapon or object used as a weapon. In domestic situations, this object is most often a kitchen knife. Upon arrival at the scene, the police already see the outcome of this defense: a seriously injured or killed man and a woman in a state of shock who does not deny flailing a knife. Although women say that they were forced to defend themselves, in most cases the police do not take any actions to investigate the objective picture of what happened. This means that the evidence of the woman's defense is simply not recorded by the police. Often women are not sent for medical examination immediately following the incident and their physical injuries are in no way recorded.

In the criminal case of T.<sup>39</sup>, who defended herself from a brutal beating, she stabbed her partner once with a knife. The partner survived. The police, upon arriving at the scene, immediately arrested T., and her plea that she needed medical attention was simply ignored. Emergency medical services were provided only after she was placed in a prison cell, where she lost consciousness and was hospitalized. A medical forensics examination found that T. had the following injuries: closed-head injury, concussion, bruising of the right and left zygomatic region as well as the right and left temporal regions, and abrasions to the right temporal region, which came about from repeated blows of solid blunt objects (object). T. pointed out that the partner had repeatedly inflicted beatings on her, but these circumstances were also not verified by investigation and no assessment was given to them. T. was charged with intentionally causing grievous bodily harm with a knife, the punishment for which is up to 10 years in prison (para 3 part 2 Article 111 RCC). While the

<sup>39</sup> Judgement of the Kuzminsky District Court of Moscow of 26.06.2017 on the case No. 01-0288/2017.

police actively investigated the criminal case against T., no actions were carried out to verify T.'s statement about the crime committed against her, and a criminal case against her partner was not initiated. The criminal case against T. was re-qualified and she was held liable for intentional infliction of grievous bodily harm committed in excess of the limits of self-defense (Article 108 of the RCC).

In the verdict the court stated that: "Thereby, in taking into account the circumstances in which the defendant T. injured the victim N., resulting in the latter being more seriously harmed, the court concludes that the prevailing situation at the time of the crime gave the defendant every reason to believe that a real dangerous public threat was being committed against her, however, considering that this assault was not violent and life-threatening to T., or with an imminent threat of such violence, the actions of the latter in this case are in accordance with the requirements of the criminal law should be considered as committed in excess of the limits of self-defense." Meanwhile, the court did not indicate how the defendant T. could evaluate the extent of the danger to her life in the moment of the attack and his further intentions. A case regarding the violence against T. by her partner was never opened and investigated.

In another instance, an adult, F., lived with her father A. in the same apartment. The father systematically beat F. over many years. F. filed complaints with the police against her father regularly upon being beaten, attempts of strangulation, and threat of death with a knife. For all of F.'s appeals, initiation of a criminal or administrative case were refused and there was no investigation of the situation.

In February, 2018, A. once again severely beat F. and she called the police, but the police did not come. On the next day, A. again attacked F., punching her in the face and started to push her against the windowsill. He then grabbed her by the hair with one hand and held her neck with the other. Understanding that he would not stop, F. began to fight back with a knife, and hit him in the leg. A. was stabbed and cut in the thigh area and died from profuse blood loss. F. was charged with murder. The court, in evaluating the circumstances of the attack of the deceased A. on F. stated: "F.'s bodily injuries, which included a bruise on the right shoulder and two bruises on the left hand and hematomas at the time of admission, containment and release from the detention facility, are not evidence that A.'s actions were associated with life-threatening violence, nor do they evidence an imminent threat from that violence." The court recognized A.'s behavior as against the law, but did not consider this behavior as a basis for self-defense, failing to recognize such a right for F.

As evidence of F.'s guilt of murder, the court referenced the case materials, which indicate that for a number of F.'s appeals, decisions were made refusing to initiate a case on administrative proceedings, including an appeal by F. on the day preceding the murder. As per the verdict by the Leninsky Regional Court in Vladivostok, F. was found guilty of murder and sentenced to 6 years in prison<sup>40</sup>. This verdict was left unchanged by higher authorities.

The refusal to objectively investigate circumstances of violence against women result in women being deprived of evidence that they acted lawfully when they defended themselves. Previous experience of domestic violence is not investigated by courts and not perceived by them as related to self-defense. In this way, the inaction of the authorities in cases of domestic violence lead to the situation that women do not have legal protection mechanisms, and are forced to protect themselves on their own, while the systematic refusal of the authorities to initiate and investigate

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<sup>40</sup>Judgment of the Leninsky regional court in the city of Vladivostok from 13.05.2019 No. 35/2019.

cases of domestic violence become proof for prosecutors that violence against women is not dangerous and does not require defense.

## **Conclusion**

Systemic issues of protecting victims of domestic violence such as the lack of a necessary legal framework, lack of restraining and protection orders, refusal to investigate acts of domestic violence, and stereotypes of victims by law enforcement agencies have led to women in Russia being left completely defenseless in cases of domestic violence.

Guided by stereotypes, courts continue to demand women victims of domestic violence to objectively and quickly predict the reality of the risk to their lives, to act “rationally” and to avoid danger as soon as possible, leave their apartments or take any other action, including choosing such methods of protection that minimize the harm caused to the attacker.

It is worth noting that such requirements for courts are idealistic. The courts ignore the indisputable fact that the woman who is attacked cannot control the actions of the attacker, and accordingly, it is unacceptable for the victim to be obliged to predict the actions of the attacker with a high degree of probability. At the same time, only the victim can assess their ability to protect themselves from attack in the moment. Meanwhile, the courts, in pointing out the possibility of “more reasonable behavior”, analyze the situation post factum, and their conclusions are probabilistic. It is impossible to assure victims that the choice of a different strategy of behavior would lead to more favorable consequences.

The situation of domestic violence is most frequently not regarded by judges as presenting a danger to the lives of women, which courts indicate in resolutions themselves, recognizing women as exceeding self-defense. At the same time, courts usually do not specify how women should assess the risk of a danger to their lives and health by aggressors in situations when the latter attacks. It is evident that it is not possible to predict in advance how the attack by an aggressor will be in each situation, and namely, which of the many blows may be the last for the victim. In such cases, women’s fear for their lives seems quite reasonable.

The stereotypical attitude of police officers, prosecutors, investigators, and judges towards cases of domestic violence has a negative effect on defending the rights of women to prevent exposure to violence and discrimination. Often employees of law enforcement agencies fail to see the need to intervene in “private business” and do not recognize domestic violence as a rights violation which requires investigation. The refusal to acknowledge situations of domestic violence as life threatening and as a threat to women’s health leads to the fact that circumstances of domestic violence are not considered by investigators and judges when considering cases of the murder of women by their partners. This subsequently negatively influences women’s right to self-defense in cases of domestic violence and access to justice.

Systematic refusal by law enforcement agencies to initiate and investigate cases of domestic violence when filed by women results in women remaining without effective protection by the law and forfeit their right to self-defense. In this way, the state has left many women who are living in situations of violence with the choice: to become injured, and perhaps even be killed, or to defend themselves, saving their lives and health, but risking their freedom.

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