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Mini-Conference on

“GENDER, EQUALITY AND DISCRIMINATION”

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**Gender, Equality and Discrimination: Recent developments in
Georgian Legislation and Case-Law of the Constitutional Court of
Georgia**

REPORT BY

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I am extremely honoured to be here today. I would like to start with words of thanks to the Federal Supreme Court of Switzerland for their hospitality and giving us the opportunity to visit the beautiful city of Lausanne.

I cannot emphasise enough the importance of this year's mini-conference topic that reflects #MeToo campaign spread across the world since the end of the last year. Digital #MeToo hashtag took hold in every corner of the world in multiply languages crossing economic, racial and other boundaries, increasing the public awareness of sexual assault and giving people a sense of magnitude of a problem. Even though, digital campaign had real-world results there is much more to do for gender equality. Gender equality is essential for the achievement of human rights for all. Yet discriminatory laws persist in every corner of the globe and we are informed continuously about the gender pay gap affecting a number of professions, sexual discrimination at the workplace that affect both genders meaning that no country in the world can yet say they have achieved gender equality. So we have a lot of work, and the work is universal: whether we are East, West, North, South, rich or poor, these issues bind all of us as humanity.

Therefore, by focusing on Georgian legislation and the case law of the Constitutional Court of Georgia, I would like to speak about gender, equality and discrimination issues in my country.

This year Georgia celebrates the centennial anniversary of its first Democratic Republic and 97th anniversary of its first Constitution, which was adopted in 1921. Moreover, we celebrate the achievements of the first elected female members of the Georgian Parliament in 1919 and their devotion to equality.

Georgia is one of the first countries in the world to introduce women's rights at the legislative level and gave equal rights for both genders in elections. In 1919, the Constituent Assembly (Parliament) was elected by exercising the most democratic suffrage in that period. In the election list of different parties there were more than 20 women, five of whom became female lawmakers, and as the first country worldwide, empowered a Muslim woman with parliamentary authority.

The progressive character of this measure is pointed out by the fact that the congress of the United States proposed the constitutional amendment (XIX amendment) on women's suffrage rights only on the 4th July of 1919¹ and it became operational only on 18th August of 1920. Women in Germany² and Austria³ have been enjoying equal suffrage only since 12th November of 1918. In the United Kingdom, women from thirty years of age were given the right to participate in parliamentary elections only from 6th February, 1918 (at the same time property census was considered)⁴, whereas men were eligible to vote from twenty-one years of age and the voting age of men and women has become equal only from 1928.⁵ Swiss women have managed to fully participate in elections only on the basis of the amendments made during the referendum held on 7th February of 1971.⁶

¹ <http://lexis.com>.

² The Decree of Nov. 30, 1918, on elections of the Constituent Assembly. *Verordnung über die Wahlen zur verfassunggebenden deutschen Nationalversammlung vom 30 Nov. 1918*

³ The law of Nov. 12, 1918 law on German-Austrian state and governance forms. *Gesetz vom 12 Nov. 1918 über die Staats und Regierungsform von Deutschösterreich. Staatsgesetzblatt in retrodigitalisierter Form bei ALEX – Historische Rechts- und Gesetzestexte.*

⁴ Representation of the People Act 1918, www.parliament.uk/documents/upload/1918-rep-people-act.pdf.

⁵ Representation of the People (Equal Franchise) Act 1928, www.parliament.uk/documents/commons-information-office/g01.pdf.

⁶ *Frauen Macht Geschichte: frauen und gleichstellungspolit. Ereignisse in der Schweiz 1848–1998, 2 Mappen, 1998–99, S. Hardmeier, Frühe Frauenstimmrechtsbewegung in der Schweiz, 1997, Y. Voegeli, in: Historisches Lexikon der Schweiz Schwabe, 2008.*

Henceforth, 1921 Constitution of the First Democratic Republic of Georgia enshrined equal political, civil, economic and family rights for both men and women. It should be said in all fairness, that the 1921 Constitution can unquestionably be considered as one of the most advanced and perfect supreme legislative acts oriented toward human rights in the world for its time. It also declared the rights of minorities and their access to social, economic and cultural development. Unfortunately, the Constitution of 1921 ceased to exist because of annexation and occupation of Georgia by Soviet Russia.

In the early nineties of the 20th century, after gaining its independence, Georgia adopted a new Constitution. And it is not coincidental that the 1995 Constitution, which is now in force, states in the preamble that it is based on the historical and legal bequest of the 1921 Constitution, thus acknowledging the political and legal hereditary linkages between modern Georgia and the then-independent Republic of Georgia.

In 2017, the Constitutional revision process took place and by introducing a new provision on equality Georgia has embarked upon the democratic tradition of the Constitution of the First Democratic Republic. The provision on equality acknowledges the role of the state in ensuring gender equality and takes the responsibility to implement special measures to ensure substantive equality between men and women.

Georgia is a signatory to many international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women ([CEDAW](#)) and is required to ensure *de facto* equality between men and women. Georgia's Law on the Elimination of all Forms of Discrimination marked an important milestone in bringing its legislative framework into conformity with international human rights standards. Though the important steps Georgia has made in harmonising the national legal framework with international standards, including most recently the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence ([Istanbul Convention](#)) and enacting a series of accompanying amendments in national legislation, it is important to recall that the legislative framework alone does not secure the right to equality and non-discrimination without its effective implementation. Although Georgia faces significant obstacles in implementing existing rights and protections throughout its territory.

In recent years, Georgia has strengthened its national institutional framework to advance women's equality. Currently, the gender equality national mechanism includes the Gender Equality Council within the Parliament, the Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence within the Executive branch, and the Gender Equality Department of the Public Defender's office. It should be underlined that the Public Defender's Office plays a crucial role in the independent monitoring of the full range of gender issues.⁷

Since in Georgia women's participation in decision-making processes remains very low, a few months ago the Parliament of Georgia made its first attempt to vote on a bill introducing mandatory gender quota for parliamentary and local elections in Georgia. The MPs of Georgia could not reach a consensus and the bill failed. But, it is supposed that the working process on the bill will be continued and the 9th sitting of the Parliament of Georgia will take this historic decision for ensuring substantive gender equality in the country.

The right to equality before the law is recognised in various forms in almost every legal system. Today in a democratic society there is a broad consensus on the importance and protection of this principle: "The protection of the quality of equality before the law is an objective criterion for assessing the quality of the rule of law in the relevant country, limited by the dominance of

⁷ Gender Equality in Georgia: Barriers and Recommendations (Parliament of Georgia, January 2018) www.parliament.ge/en/ajax/downloadFile/84647/ENG-Vol1_GenderEqualityinGeorgia_BarriersandRecommendations_Final

democracy and human rights. Thus, this principle can be seen as the basis and purpose of the democratic and legal state."⁸

Right to equality before the law is enshrined in Article 14 of the Constitution of Georgia, which states: *"Everyone is free by birth and is equal before law regardless of race, color, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence"*.

Article 14 of the Constitution of Georgia as well as Constitutions of other states and international human rights instruments provide a list of certain grounds addressing the legislator and pointing to the criteria which shall not serve as grounds for unequal treatment. The grounds in the list are related to the aspects of human identity and are based on the respect for human dignity and have their historical premises. Different treatment based on these grounds creates cases of heightened risk of discrimination and demands particular attention from the legislator. This follows from the fact that any sort of hierarchy in social status of human beings is unacceptable. The presence of the list of grounds points to the heightened scrutiny of the different treatment in these cases. However, this does not exclude that there can be other cases of unreasonable different treatment of human beings, which also require prohibition by the Constitution.⁹

The fact that constitutional right provisions tend to be open-ended and abstract, general legal rules enshrining liberty, equality, freedom of speech, etc, leave more room for judicial interpretation than most statutes. It is the constitutional court that appears to be the ultimate arbiter in this interpretation process. Therefore, let me draw your attention and briefly overview one of the Court's landmark cases to illustrate how the court in this case interpreted the constitutional provision guaranteeing equality.

Claimants asserted that the impugned provision violated the constitutional right to non-discrimination and specifically, non-discrimination on the grounds of the place of employment. Among the grounds for discrimination, Article 14 does not mention "place of employment", which was the basis of granting advantage under the disputed norm. However, the Court determined, that granting privilege to a certain group of persons based on this characteristic still required constitutional-legal review with regard to Article 14 of the Constitution:

"Article 14 of the Constitution establishes not only the fundamental right of equality before the law, but the fundamental principle of equality before the law. It aims to ensure equality before the law, not to allow essentially equal persons to be treated as unequal and vice versa. If we look at it from grammatical perspective, the list of grounds in Article 14 seems to be exhaustive, but the aim of the norm is significantly larger in scale, than to simply prohibit discrimination based on the characteristics listed in it...Solely narrow grammatical interpretation would impoverish Article 14 of the Constitution of Georgia and reduce its importance in the constitutional-legal realm."¹⁰

Therefore, the list of discrimination grounds was determined as non-exhaustive and it was declared, that constitutionality of different treatment that is based on other grounds should also be reviewed with regards to Article 14 of the Constitution of Georgia.

Even though the Constitutional Court of Georgia has interpreted the content and scope of Article 14 of the Constitution guaranteeing equality in its various judgments, there were a few norms challenged with respect to discrimination based on gender.

⁸ Judgment of the Constitutional Court of Georgia N^o 1/493, December 27, 2010.

⁹ Judgment of the Constitutional Court of Georgia N^o 2/1/473, March 18, 2011.

¹⁰ *"Citizen of Georgia Shota Beridze and others v. the Parliament of Georgia"* Judgment of the Constitutional Court of Georgia N 2/1-392 of 2008.

I would like to refer to one of the recent decisions of the court. The complainant challenged the norm of the Law on military duty and military service before the Constitutional Court with respect to equality on the basis of gender. He argued that mandatory registration for military service is discriminatory with respect to men, while women are not subject to the military registration specialty and are free from military work. In the present case, the court sided with the complainant's position that the disputed norm differentiates essentially equal people on the base of gender, enshrined by the Article 14 of Georgian Constitution but this differential treatment is justified, reasonable and legitimate. In the judgment, the Constitutional Court states:¹¹ *“the norm which provides differential treatment on the classical and specific grounds or is very intensive will be subjected to the view of constitutionality through employing “strict scrutiny” in application all principle of proportionality. According to the test of “strict scrutiny” “to prove legitimate aim it is necessary to demonstrate that the state interference is absolutely necessary there is compelling state interest thereto.”*

Based on this reasoning, the Constitutional Court of Georgia did not uphold the claim and considered the country's defense and discharging the military commitment as one of the form of constitutional obligation and selecting the discharging of this obligations fall under the state's discretion.¹²

Another case regarding gender equality is currently pending before the Constitutional Court of Georgia and concerns the issue of paternal leave for biological fathers and its reimbursement. The claimant argues that it is unconstitutional and discriminatory that men do not have the right to take paternity leave and a right for its reimbursement in order to take care of their newborn child. According to the claimant “Apart from restricting their equality rights, holding back the parental leave and its reimbursement from men also results in limiting their labour rights. Likewise, it unjustly interferes with the rights of family wellbeing and spouse equality guaranteed by Georgian Constitution. Namely, the current legislation does not give spouses the ability to care for their child and share this responsibility according to their own intention and agreement”. Additionally, by the definition of the complainant, the right to family wellbeing incorporates not only marriage recognised by the legislation; but its content is considerably wider and encompasses also cohabitation without registered marriage and babies born in this common-law marriage.

Considering that taking care of a newborn is not only a right, but also a responsibility, the claimant demonstrates, that intervention in women's right to equality before the law is obvious. Particularly because the existing legislative regulation imposes responsibility of child care only on a woman. It reinforces the discriminatory, unequal and patriarchal views that are established in society about a woman's pre-determined role and function, which is expressed by responsibility of child care. Given these points, the claimant believes that the questionable standards oppose Article 14 of the Georgian Constitution. The given case has been considering by the full board of Court and we do not know yet whether the Georgian man will be given the right to paternity leave in the near future.

Dear Chair, distinguished delegates,

Let me thank you for your attention and in conclusion I would like to quote Kato Mikeladze, the Georgian feminist of the early 20th century:

“The greatest disaster of mankind and the nation is to forget and neglect equal rights and civil liberties of women“.

¹¹ *“Citizen of Denmark Heike Kronquist vs. the Parliament of Georgia”*, Judgment of the Constitutional Court of Georgia, N 3/1/512 of June 26 2012.

¹² *“Citizen of Georgia Giorgi Kekenadze vs. Parliament of Georgia”* Judgment of the Constitutional Court of Georgia, №1/7/580 of September 30 2016.