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მართლმსაჯულებისთვის
Coalition for
an Independent and
Transparent Judiciary

Statement on cases of gender inequality and indirect discrimination at the High Council of Justice (HCoJ)

The Coalition is responding to the act of protest by Ana Dolidze and Nazi Janezashvili, non-judge members of the High Council of Justice (HCoJ), expressed in temporarily leaving the interviews of judicial candidates for the Supreme Court on the 22nd and 23rd of July. The non-judge members of the HCoJ explained the protest as a reaction to gender-based discrimination in relation to them. In their joint statement, they emphasized that the decision of the HCoJ about holding interviews after working hours neglects their parental obligations. Nazi Janezashvili stated that her 9-month year old child requires her attention and interaction, which are limited by the inappropriate schedule introduced by the HCoJ. This practice has become regular, leading us to believe that the HCoJ plans to continue the process in the same format and timeframe.

The Coalition believes that creating working conditions depriving women of the opportunity to take care of their children and fulfill their parental obligations is essentially a form of indirect gender discrimination. Moreover, holding the interviews after working hours damages the quality of the selection process. Holding the interviews without consideration of any fixed working hours excludes the possibility of comprehensive and proper evaluation of candidates and goes against their interest, as well as the interests of the members and staff of the HCoJ, as well as the observers of the process. Such practice can be considered as an attempt of the HCoJ to

accelerate the process at the expense of its quality.

The 11th Article of the Constitution of Georgia provides guarantees of essential equality between men and women. These guarantees differ from the formal equality by taking special measures to address the historically unequal treatment of women.

The Law of Georgia on the Elimination of All Forms of Discrimination prohibits indirect discrimination, defined as a formally neutral and essentially discriminatory practice that puts certain people in a disadvantageous position compared to others or treats individuals in essentially unequal conditions identically.

As the collection of gender-based statistics is problematic in Georgia, we can refer to the recent European Commission (EC)^[1] statistics to support the argument that women are put in disadvantageous conditions when unfixed working hours are introduced. The statistics supporting the existence of indirect discrimination indicate that the employment rate of women in Europe (65.3%) lags behind the employment rate of men (76.8%), while higher education is more prevalent among women compared to men in the majority of age groups. Thus, it is clear that the low employment rate among women cannot be caused by the lack of their qualifications. According to the statistics from Eurostat, the EC indicates that factors such as parental role and family care obligations have a negative impact on the level of employment among women. More specifically, the statistics show that in the 25-49 year age group more than 50% of women are unemployed only because they have to take care of a child or a vulnerable family member.

Unfixed working hours and impossibility to adapt working schedules to the needs of a child force most women to refrain from work and career development. Therefore, such factors influence women disproportionately more harshly than men. Additionally, in most cases, indirect discriminatory decisions are made by men in leadership positions who have not experienced a disproportionately heavy burden of childcare due to culturally affirmed gender roles and stereotypes.

Unfortunately the neglect of women's obligations related to care is not a novelty in the Georgian court system. The Coalition's 2016 research^[2] revealed the same problem. In interviews, former and acting female judges indicated that promotions were achieved at the expense of familial and parental obligations. Maintaining such values and attitudes in the court system excludes the possibility of reaching gender

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equality in the future. Gender equality significantly differs from gender balance and means not only having female judges in the system but also providing them with promotion opportunities comparable to men.

Today the interviews of Supreme Court judicial candidates are observed by thousands of women, for whom it is vital to see that the court system acknowledges the historical inequality of women in the country. The essential equality of women is achievable only if their parental needs are considered. **Therefore, the demands of the HCoJ non-judge members to observe working hours that are compatible with their parental obligations have to be met to convince women to address the courts in the future in cases where their rights and equality require protection. Above all, this will not only respond to the needs of two non-judge members of the HCoJ, but rather, will protect the equal rights of all HCoJ members who have children, and have the obligation to provide care for family members.** Holding interviews beyond any rational timeframe damages the selection process itself and undermines the interests of the candidates, the HCoJ staff and observers.

The Coalition urges the HCoJ to consider the statements made by the non-judge members, and uphold their right to essential equality guaranteed by the Constitution of Georgia and national legislation, by providing adequate and proper working conditions for women in the court system. We call on the HCoJ to hold interviews during the working hours and refrain from unfixed work schedules.

1 European Commission, European Semester Thematic Factsheet, Women in Labour Market, 2017. Available (22.07.2019).

https://ec.europa.eu/info/sites/info/files/european-semester_thematic-factsheet_labour-force-participation-women_en_0.pdf

[2] Coalition for Independent and Transparent Judiciary, The Judicial System: Past

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Reforms and Future Perspectives, 2016, pp. 29-37 2016.გვ.29-37. Available (22.07.2019). http://coalition.ge/files/the_judicial_system.pdf