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Meeting: 1577th meeting (December 2026) (DH)

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Communication from Georgia concerning the case of Bakradze v. Georgia (Application No. 20592/21)

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Communication de la Géorgie concernant l'affaire Bakradze c. Géorgie (Requête n° 20592/21) **[anglais uniquement]**

The Government of Georgia

Action Report

BAKRADZE v. Georgia (no. [20592/21](#))

Judgement of 7 November 2024, Final on 17/03/2025

I. CASE DESCRIPTION

1. The applicant, a former judge, claimed the absence of adequate judicial review of alleged discrimination against her in two judicial selection procedures in 2015 and 2016 (violation of Article 14 in conjunction with Articles 10 and 11).
2. The European Court of Human Rights (*hereinafter* – "the Court") established that the manner in which the applicant's interviews before the High Council of Justice (*hereinafter* – "the HCJ") were conducted went beyond the legitimate scope of assessing integrity and disclosed bias and prejudice in relation to her association. In those circumstances, a *prima facie* case of discrimination was established. The domestic courts, however, failed to shift the burden of proof onto the HCJ, at which point the HCJ should have dispelled any perception of bias and demonstrated that the differential treatment was based on objective and reasonable grounds.

II. INDIVIDUAL MEASURES

(a) Details of Payment of Just Satisfaction

3. The just satisfaction awarded by the Court in respect of non-pecuniary damage (EUR 4,500) was paid to the applicant on 24 April 2025 within the time-limit set by the judgment.

(b) Reopening of Domestic Proceedings

4. According to the information provided by the Common Courts of Georgia, the applicant has not lodged a request for the reopening of domestic proceedings under the applicable legislation. Furthermore, the statutory three-month time-limit has expired.

III. GENERAL MEASURES

(a) Applicable Standards on Judicial Selection in the Common Court System and Safeguards Ensuring Non-Discrimination

5. The procedure for the selection and appointment of judges to the common courts was elaborated in the context of the 2017 constitutional reform and the ensuing judicial reforms, with a view to ensuring a system of judicial appointments that is transparent, objective, merit-based and competitive.
6. Selection and appointment of judges to the first-instance and appellate courts are carried out by the HCJ. Under the Organic Law of Georgia on "Common Courts", candidates are assessed against the criteria of good faith and professional competence.¹ Article 35 § 3 of the same Law provides that, in cases of appointment through a competitive procedure, the HCJ must apply the procedure prescribed by domestic legislation for the selection of candidates to be submitted to the Parliament of Georgia for election to the office of judge of the Supreme Court.² In accordance with this procedure, the proceedings before the HCJ are conducted in public, and candidate hearings are held in compliance with the principle of equal treatment.³
7. The procedure for conducting public hearings of judicial candidates is regulated by the decision of the HCJ of 9 December 2020.⁴ Article 4 of that decision lays down, *inter alia*, the following procedural safeguards:
 - hearings are held in open sessions of the HCJ, which is obliged to ensure audio and video recording of the proceedings;⁵
 - before the commencement of the hearing, the Chairperson informs the candidate that the hearing is public and recorded, explains the right to request the recusal of a HCJ member, and asks the candidate if such a request is made;⁶

¹ Available at: <https://matsne.gov.ge/ka/document/view/90676?publication=61>, Article 35¹ (1).

² *Ibid.*, Article 35 (3).

³ *Ibid.*, Article 34¹ (10).

⁴ Available at: <https://matsne.gov.ge/ka/document/view/5048966?publication=0>.

⁵ *Ibid.*, Article 4 (5).

⁶ *Ibid.*, Article 4 (7).

- candidates may be questioned only by members of the HCJ, with each interview limited to a maximum of one hour;⁷
 - questions posed by HCJ members shall enable the collection of information necessary for the assessment of candidates in accordance with Article 34¹ § 11 of the Organic Law of Georgia on "Common Courts", in particular with regard to the criteria of integrity and professional competence;⁸
 - interviews shall be conducted fairly and with respect for the candidates, and questions shall not reflect any preconceived attitude towards them.⁹
8. Following the public hearings, each member of the HCJ is required to provide written reasons for every score awarded under the criterion of professional competence and for each element assessed under the criterion of integrity. These assessments and the accompanying reasoning are made public and published on the HCJ's website.¹⁰
 9. At the final stage of the procedure (*voting*), the shortlist of candidates is determined on the basis of the aggregate scores for competence and integrity. Voting in the HCJ is conducted openly, and every member is required to provide written reasoning for any position expressed. Decisions on the appointment of judges to vacant positions in the first-instance and appellate courts are adopted by a majority of not less than two-thirds of the full composition of the HCJ.¹¹
 10. Judicial candidates may, at any stage of the selection procedure, appeal decisions of the HCJ to the Qualification Chamber of the Supreme Court.
 11. As set out above, the applicable legislative and subordinate normative provisions contain safeguards designed to secure equal treatment and prevent discrimination in procedures for the selection of judicial candidates. In particular, Article 34 § 10 of the Organic Law of Georgia on "Common Courts" requires public hearings of judicial candidates to be conducted in accordance with the principle of equal treatment. Under Article 35 § 3 of the same Law, that requirement

⁷ *Ibid.*, Article 4 (9).

⁸ *Ibid.*, Article 4 (11).

⁹ *Ibid.*, Article 4 (12).

¹⁰ Available at: <https://matsne.gov.ge/ka/document/view/90676?publication=61>, Article 34¹ (11).

¹¹ *Ibid.*, Article 35 (3).

applies at all stages of the selection procedure and to candidates for judicial office at every level of jurisdiction.

12. Additional safeguards apply to the conduct of interviews. Article 4 § 12 of the decision of the HCJ of 9 December 2020 requires interviews to be conducted fairly and with due respect for each candidate. Questions must also be formulated and put without disclosing any preconceived view concerning the candidate.
13. Taken together, these provisions require members of the HCJ to treat candidates equally throughout the selection procedure and provide safeguards against discriminatory treatment during interviews and other stages of the process.

(b) Domestic Case-Law on the Reversal of the Burden of Proof in Prima Facie Discrimination Cases and the Reasoned Dismissal of Unsupported Claims

14. The Government submit that the violation established in the present case is of an isolated character and does not disclose any underlying pattern, systemic deficiency, or indication of recurrent shortcomings in domestic judicial practice.
15. The domestic case-law described below shows that, where a complainant, at the initiation of proceedings, produces facts and evidence sufficient to establish a *prima facie* presumption of discriminatory conduct, the burden of proof shifts to the respondent. In such circumstances, the respondent is invited by the courts to provide an explanation by: (a) establishing that no such difference in treatment existed; or (b) demonstrating that the difference in treatment pursued a legitimate aim, was based on objective and reasonable justification, was necessary in a democratic society, and was proportionate to the aim pursued. In particular:
 - **Judgment of the Civil Chamber of the Tbilisi City Court of 25 February 2021** – The case involved a visually impaired individual who had been denied access to banking facilities unless accompanied by another individual. The court held that the complainant had made out a *prima facie* case of differential treatment and thus transferred the burden of proof to the respondent. Since the respondent had not presented an objective and reasonable justification for the differential treatment, the court ruled in favour of the complainant and determined that she had suffered discrimination.¹²

¹² Judgement of the Tbilisi City Court of 25 February 2021, Case №2/11007-17.

- **Decision of the Tbilisi Court of Appeal of 22 November 2023** – The case concerned a wheelchair user who was unable to access the premises of the regional branch of the Levan Samkharauli National Forensic Bureau owing to the absence of adequate infrastructure, in particular a wheelchair ramp. The Court of Appeal held, on the basis of the facts and evidence submitted, that the complainant presented enough evidence of a *prima facie* case of discriminatory treatment and accordingly shifted the burden of proof to the respondent public institution. As the respondent failed to discharge the burden of proof by adducing admissible and credible evidence, and did not demonstrate that persons with disabilities enjoyed equal access or that the inequality was based on objective and reasonable justification, the Court of Appeal upheld the finding of the Tbilisi City Court that the complainant had been discriminated against on the ground of disability.¹³
- **Judgment of the Tbilisi Court of Appeal of 19 February 2024** – The case concerned two university applicants who challenged the decision of the National Assessment and Examinations Centre refusing to reschedule a foreign language examination fixed on a Saturday, a day on which, on account of their religious convictions, they were unable to sit the test. The Court of Appeal found that the applicants had submitted facts and evidence sufficient to establish a *prima facie* presumption of discriminatory treatment and therefore shifted the burden of proof to the respondent authority. The National Assessment and Examinations Centre failed to discharge that burden, as the institution did not demonstrate that the refusal to provide alternative examination dates pursued a legitimate aim, was based on objective and reasonable justification, and struck a fair balance between the aim pursued and the means employed. The Court of Appeal accordingly allowed the applicants' appeal and held that the refusal amounted to discrimination on the ground of religion.¹⁴
- **Judgment of the Tbilisi Court of Appeal of 11 April 2025** – The case concerned the dismissal of an employee from a banking institution. The Court of Appeal accepted the conclusion of the first-instance court, which had determined that the complainant had established a *prima facie* presumption that the manager's decision to terminate her employment, while the contracts of the other staff members were maintained, had been motivated by her pregnancy. The respondent failed to discharge the shifted burden of proof, as no relevant and sufficient evidence was produced, and

¹³ Decision of the Tbilisi Court of Appeal of 22 November 2023, Case №28/6070-23.

¹⁴ Judgment of the Tbilisi Court of Appeal of 19 February 2024, Case №38/2345-22.

no material was submitted to contradict the complainant's assertion that her contract alone had been brought to an end. The Court of Appeal therefore found that the complainant had been subjected to discrimination on the ground of sex, in particular on account of her pregnancy.¹⁵

16. Therefore, the case-law of the domestic courts demonstrates that allegations of discrimination have been examined and addressed with the requisite diligence and scrutiny, in a manner ensuring the real and effective protection of individuals against bias and unequal treatment. In particular, where complainants succeeded in establishing a *prima facie* presumption of discrimination, the courts shifted the burden of proof to the respondents and required them to dispel any appearance of bias and to demonstrate that the differential treatment pursued a legitimate aim, was supported by objective and reasonable justification, was necessary in a democratic society, and was proportionate to the aim pursued.
17. Conversely, where a claimant alleges discrimination on one or more grounds, including on the ground of opinion, by the HCJ or another respondent, the domestic courts examine the complaint in the light of the applicable domestic and international standards and the relevant case-law of the Court. Where such a claim is dismissed, the domestic courts set out the reasons for the dismissal and provide a detailed assessment of the factual and legal grounds supporting that conclusion. Recent examples include:
- **Judgment of the Tbilisi City Court of 4 June 2025** – The case concerned allegations that a judge appointed for a three-year probationary term had been subjected to arbitrary, biased and discriminatory treatment during the assessment of professional competence and integrity. The Tbilisi City Court applied the relevant burden-of-proof test and found that the claimant had failed to present facts capable of giving rise to a presumption of discrimination. In particular, the claimant had not challenged the assessment reports, identified any specific inaccuracies or inconsistencies in the evaluations, or produced evidence indicating bias. The first-instance court also explained why the Facebook post relied upon by the claimant did not substantiate the allegations. The claim was accordingly dismissed on the ground that the termination of the judicial mandate resulted from the expiry of the probationary term and that the refusal to admit the claimant to the interview stage was based on the results of the statutory evaluation procedure.¹⁶

¹⁵ Judgment of the Tbilisi Court of Appeal of 11 April 2025, Case №28/738-25.

¹⁶ Judgment of the Tbilisi City Court of 4 June 2025, Case №3/13-24.

- **Decision of the Kutaisi Court of Appeal of 14 February 2025** – The case concerned allegations that an employee had been subjected to differential treatment on account of the political opinions of the employee's spouse. Referring to the relevant case-law of the Court, the Kutaisi Court of Appeal reiterated that not every difference in treatment amounts to discrimination. A claimant must identify specific facts capable of giving rise to a *prima facie* case that the contested treatment was linked to a prohibited ground. Once such a presumption has been established, the burden of proof shifts to the respondent to provide a non-discriminatory explanation. The appellate court found that the allegations were based primarily on the claimant's subjective perception and were not supported by sufficiently strong, clear and concordant evidence. The court also observed that, in cases concerning discrimination on the ground of opinion, the views relied upon and the surrounding circumstances must be capable of establishing a causal link between those views and the contested treatment. Mere disagreement or a difference of opinion between an employer and an employee was insufficient to establish such a presumption. Having regard to the evidence before the court, the appellate court concluded that the termination of employment had been based on lawful grounds and had not been motivated by the political opinions of the claimant's spouse. The discrimination claim was therefore dismissed for duly stated reasons.¹⁷
- **Decision of the Kutaisi Court of Appeal of 31 January 2024** – The case concerned public servants who alleged that their dismissal following an institutional reorganisation, and the failure to offer them alternative positions, had amounted to discrimination on the ground of political opinion. The first-instance court upheld the discrimination claim. The Kutaisi Court of Appeal, however, found that the claimants had not presented facts capable of giving rise to a *prima facie* case of discrimination. Referring to the case-law of the Constitutional Court of Georgia, the appellate court observed that a claimant must identify persons in a comparable situation and demonstrate a difference in treatment linked to a prohibited ground. The appellate court considered that the allegation of politically motivated dismissal was insufficient in the absence of supporting evidence. The evidence also indicated that another public servant who had openly expressed opposing political views had remained in office following the reorganisation. The appellate court therefore concluded that no presumption of discrimination had arisen and dismissed the claim.¹⁸

¹⁷ Decision of the Kutaisi Court of Appeal of 14 February 2025, Case №2/8-1089-2024.

¹⁸ Decision of the Kutaisi Court of Appeal of 31 January 2024, Case №3/8-448-23.

- **Decision of the Supreme Court of Georgia of 10 March 2025** – The case concerned the refusal to admit a candidate to the trainee programme of the High School of Justice. The claimant alleged that the outcome of the selection procedure had been influenced by previously expressed critical opinions. Referring to the relevant domestic law and the case-law of the Court, the Supreme Court reiterated that a claimant alleging discrimination on the ground of opinion must present facts capable of giving rise to a *prima facie* case of differential treatment. In particular, the opinions relied upon and the surrounding circumstances must disclose a sufficiently clear connection between those opinions and the contested decision. A mere difference of opinion or the claimant's subjective perception of unfavourable treatment was not sufficient to shift the burden of proof to the respondent. Having examined the interview records, the questions put to the claimant and the remaining material in the case file, the Supreme Court found no indication that the refusal of admission had been connected to the claimant's critical opinions. The claimant had therefore failed to establish a *prima facie* case of discrimination, and the Supreme Court upheld the conclusions of the lower courts.¹⁹

18. The foregoing examples demonstrate that the domestic courts examine allegations of discrimination in the light of the applicable domestic and Convention standards. Where such allegations are not supported by sufficient evidence, the courts give reasons for their conclusions, addressing, as appropriate, the absence of a relevant comparator, the lack of a causal link with the alleged prohibited ground and the failure to establish a *prima facie* case of discrimination.

(c) Capacity-Building Measures for the Judiciary to Ensure the Convention-Compliant Examination of Discrimination Cases

19. The High School of Justice (*hereinafter* – "the HSJ") regularly provides training on equality and non-discrimination as part of the annual training programme for judges and court officials. Most recently, on 27 and 28 June 2026, the HSJ delivered a course entitled "Prohibition of Discrimination: Domestic Legislation and International Standards, Minority Rights".²⁰ The course was attended by judges and court officials from the Supreme Court of Georgia, the Tbilisi Court of Appeal and the Tbilisi City Court.

¹⁹ Decision of the Supreme Court of Georgia of 10 March 2025, Case №86-534(3-24), <<https://www.supremecourt.ge/ka/fullcase/33897/0>>.

²⁰ Available at: https://www.hsoj.ge/geo/media_center/news/1864-2026-06-29-diskriminaciis-akrdzalva-shida.

20. The course covered, *inter alia*, Article 14 of the Convention, Protocol No. 12 to the Convention, the examination and adjudication of discrimination claims, and the relevant case-law of the Court and the United Nations Committee on the Elimination of Discrimination against Women.
21. The theoretical component of the training programme for judicial candidates also includes courses entitled "Anti-Discrimination Legislation and Judicial Practice" and "Case-Law of the European Court of Human Rights".

(d) Publication and Dissemination

22. The judgment was translated into Georgian and published in the *Official Gazette of Georgia* (Legislative Herald of Georgia).²¹

IV. CONCLUSION

23. In view of the above, the Government take the view that the violation found by the Court in the present case has been duly remedied and respectfully invite the Committee of Ministers to close the examination of this case.

²¹ Available at: <https://matsne.gov.ge/ka/document/view/6604389?publication=0>.