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The Constitution and Gender Equality

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The fact that the Constitution stipulated gender equality in principle is very important because it has bearing on the constitutional status of women and their basic human rights. Therefore, this issue is in the focus of our particular attention.

Democratic constitution is legitimised by a consensus not only of political actors in the constitutional process, but also a consensus of the broadest possible group of citizens on the most important issues that the society in which they live rests on. Constitutional process and procedure for adopting constitution have to enable consensus to be reached on fundamental issues for organizing political entity and position of citizens, both women and men in it and within that closely stipulate and specify the constitutional principle of gender equality. The constitution sets and defines the framework for democratic transition. Adoption of constitution means the determination of the scope of individual freedom for individuals and definition of new identities and institutional framework of common life in future. This applies to all individual citizens, women and men, and to the political community. The constitution is not only fundamental act but it is also a fundament, the act on the basis of which the decisions that enable existence of citizens and the state as a constitutional democracy get its legally formal shape. The selection of principles and criteria in approaching these issues and those derived from will have bearing on the status of an individual in the state (the scope of individual liberties primarily) and the nature of political community.

In order to have constitution that will respond to those requirements, women and men need to be equally involved in the process. As early as in the time of the French Revolution and the preparation of the Declaration on Freedoms and Rights of Men, Olympia de Gruge (1775-1793) in the Declaration of rights of women and female citizens rightly and extraordinarily warned that female citizens have legitimate right to actively participate in creation and adoption of the Constitution. “The Constitution is null if most of individuals that make a nation did not take part in its adoption.”, it was written in the Declaration.

1. Constitutional guarantees – general framework

Basic provisions in the constitution and introductory general provisions in the sections on human rights and freedoms set forth more guarantees that do not refer to gender equality only, but to all human rights and freedoms that are pledged by constitution. That is why it is only in the context of these constitutional guarantee that it is possible to analyse substantially those guarantees that more directly refer to the relations and constitutional guarantees of gender equality, too.

This time I will just list general constitutional provisions that are relevant to comprehending the contents, quality and scope of constitutional guarantee of gender equality:

The concept of constitutional state

The human rights' contents and capacity granted by constitution, particularly when it comes to freedoms and rights protecting the quality of life and those fields in which women are factually (and pretty often normatively) discriminated against (work, employment, remuneration etc.) depend to a large degree on how the constitution defines the basic principles that the state as a political entity relies upon. This is very important issue in transitional countries having in mind that they are relevant to rights which in pre-transitional period were effectively used, and which are facing attack, abolishment or substantial restriction in the time of transition.

Liberal concept of constitutional state puts upfront the market economy and the rule of law as the basic values. Its consequences for the status of human rights is liberally understood individual freedom as the scope of human rights that state cannot have access to except in case that the freedom or right is violated. Then the intervention of the state in this field is accepted. It is legal and legitimate since it is only focused on removing the harm that affected freedom or right.

Liberal-democratic principle of constitutional state respects market economy, grants the rule of law, but it adds to those values one not less important component – social justice as the principle that guides the state (welfare state) through protection of social security of citizens. For quality and contents of human rights it means recognition and guarantee not only of basic human and political rights but also social-economic rights that are equally important set of human rights. Apart from that, the principle of social justice entails and calls for an active approach of the state (laws, measures, programs, activities) in realization and effective exercising of social-economic rights. Without that it is impossible to exercise these rights. For effective realization of gender equality these guarantees are very important, particularly in countries in transition.

Policy of equal opportunities as obligation of the state

The policy of equal opportunities is an instrument that the state has at its disposal, particularly the one that respects the principle of social justice to take measures towards exercising equality of men and women. That is why from the standpoint of constitutional guarantees of gender equality it is important that the basic provisions of the constitution¹ guarantee equality of women and men and bind state to lead policy

¹ This is illustrated by comparative constitutional practice and international documents (Articles 3 and 4 of the Convention on Elimination of all Forms of Discrimination Against Women; Final document of the 4th UN Conference about Women/Beijing 1995; Charter on European Security, paragraph 3; Declaration on Equality Between Women and Men as the Fundamental Criterion of Democracy, Sections A, B/Istanbul 13-14 XI 1997; Article 16 of the CoE Directive No. 78 from “7th November 2000 etc).

of equal opportunities and undertake special measures as the instruments of realization of the policy of equal opportunities². The constitution should use non-discriminatory terminology by using he/she form or using neutral form (everyone/no one)³.

Relationship between international and national law

Human rights belong to universal values that are not only protected by the national legislation, but even more so by international law. Universal guarantees of human rights granted by international documents on human rights are accepted in the new constitutional practice, in the national legislations and enshrined by constitutions that, among other things, spell out principles indicative of the relation between international and national law. Having in mind that many acts of international law protect gender equality and particularly when it comes to the rights in special fields, the relation between international and national law has special importance for constitutional definition of gender equality.

The principle of direct application of international law (ratified conventions and generally accepted rules of international law). It is necessary to point out here how important is an explicit constitutional rule by which national courts are obliged to try the cases not only on the basis and within the framework of constitution and law, but on the basis of international treaties, too.

Primacy of international law over national law and harmonization of national laws with international standards.

The right to protection of human rights before international bodies which includes two basic forms of protection: first, oversight (monitoring) over the implementation of international human rights standards and the obligation of the state, on one side, and the right of other subjects (such as NGOs) to oversee the exercise of rights granted by international documents; and other which grants right to individuals to address international bodies for human rights protection, including relevant international courts, for the purpose of seeking protection of their human rights.

The obligation of the state to guarantee and provide implementation of the decisions rendered by international bodies that are related to protection of human rights. The constitution explicitly defines obligation of the state (i.e. its authorities) to enforce the decisions of international bodies for the protection of human rights.

Prohibition of restricting rights and freedoms under the pretext that they were not pledged by the constitution, some constitutions have it, indicates to the primacy of international over national law, too.⁴

² The text of the provision could be worded like this: “The Constitution grants equality of women and men (female and male citizens). The state will foster equality of women and men and pursue the policy of equal opportunities, which includes special measures of affirmative action (positive discrimination), too”.

³ Inter-parliamentary Union’s documents should be consulted – particularly its Plan for Correcting Imbalance between the Participation of Women and Men in Political Life – line B IV/Paris 1994, requires that the language used in legislation must not be discriminatory and recommends to the states to revise constitutions and eliminate the terms which might lend themselves to gender stereotypes.

Direct application of constitution

The type of legislative act that guarantees the contents of certain right or freedom is particularly important for the status of certain right or freedom. If such substance is granted by constitution then we have to do with basic or constitutional rights whose contents cannot be defined by legislator. When it is the case with rights whose contents is not defined directly by constitution but it is left for legislator to define it, then we have the case of legal and not constitutional rights.

In respect to the solidity of guarantees and treatment of the protection, constitutional rights have exclusive place in the catalogue of human rights since the legislator is not allowed to define its contents, whereas it is not the case with legal ones. Legislator can define only the way (procedure) of exercising constitutional rights, whereas in case of legal ones, it has full constitutional authority not only to define the procedure for exercising those rights but also the contents of the right. Statutory rights are defined by a blanket norm⁵ in constitution and this being such that, it cannot be directly applied, but it is necessary to have a law to stipulate the contents and scope of each of these rights.

For the status of constitutional rights the following constitutional guarantees are important:

Explicit constitutional norm about **direct application of constitutional provisions** on human rights, especially before the courts.

The constitution prescribes the system of the protection of those rights specially **direct constitutional-judicial protection** of the basic rights before constitutional court (or other judicial instances that are entrusted with deciding about protection of constitutionality).

The constitutionally inaugurated **instruments of direct constitutional-judicial protection** of human rights and freedoms (institute of constitutional petition).

Exceptions and restrictions of human rights

The exceptions and restrictions of human rights granted by constitution are legitimate and constitutional only provided that they have been made in cases prescribed by constitution (terms of making exceptions or restrictions), by constitutionally prescribed procedure and within the scope allowed by constitution (the purpose that was sought to be achieved by restriction becomes measure of legitimacy of the scope of restriction). All other cases are sanctioned by prohibition.

This important principle protects human rights granted by constitution in particularly sensitive situation when the rights are restricted or there are some exceptions from constitutional guarantees. That is why such rules have to be spelt out by constitution.

⁴ The text of the provision can be worded as follows: “The Constitution grants equality of women and men (female and male citizens). The state encourages the equality of women and men and fosters the policy of equal opportunities, which involves affirmative actions (positive discrimination), too.

⁵ For example: a norm granting the right to health care is worded like this in constitution: “The health protection is granted in compliance with the law.”, or “Everyone is entitled to health care in compliance with the law”.

It should act as the prohibition for state, group or individuals to undertake any action on abolishing any right granted by constitution or its restriction that goes beyond what constitution allows and following procedure prescribed by constitution.

The pledge of acquired rights

Finally, among general pledges, there is a very important one for preserving freedom and rights that have already been acquired and as such efficiently used, specially in the field of work, education, employment, health care, family relations etc. These are at the same time the fields in which there were some incentives to contribute to effective realization of equality of women and men.

The preservation of acquired rights must be protected by a constitutional pledge which would explicitly **guarantee preservation of acquired rights**,⁶ specially their contents, scope and quality. There are two basic arguments that support such a viewpoint. First, that those rights were effectively used by citizens and it would be hard to defend the standpoint that acquired level of freedoms and rights should be narrowed and the other, that in the countries in transition these very rights have been affected by restrictions and limitations on the basis of referring to European standards which are often well below the acquired standards of rights in countries which are aspiring towards European integrations.

2. Basic (constitutional) rights

The set of basic human rights (constitutional rights) is granted by constitution to everyone without discrimination on the basis of sex. There is no need to elaborate here each of the rights that come from within the category of basic rights (right to life, freedom of thought, freedom of consciousness, personal freedom etc.) having in mind that the constitution grants each of these rights to each person under the same conditions. That is why we set out some of the basic rights as they more directly and explicitly define equality as the prerequisite for exercising basic human rights.

2.1 Equality of women and men and prohibition of discrimination

Among basic constitutional rights, the granted equality of women and men is the basic presumption and condition for exercising all other freedoms and rights.

Granting equality⁷ between women and men on the basis of sex, which at the same time includes marital status, family status, maternity, parenthood and sexual orientation⁸.

⁶ The text of this provision could be worded as such: “acquired level of human and minority rights, individual and collective ones, cannot be reduced. This Constitution shall not abolish nor change rights and freedoms acquired on the basis of ratified and published international treaties.”

⁷ We want to indicate that in comparative constitutional practice this right is granted as the right to equality and equal treatment. Relying on international standards, we need to define the meaning and contents of the rights granted by the constitution in terminologically clear way. The value that is the subject of protection is the relation of the state to its subjects – individuals (male and female citizens) that is based on their equality. In this case the guarantees are related to equality, and not on equal treatment, because there are differences between two sexes. That is why the constitution can grant only equality (equal status) and not equal treatment of sexes.

⁸ Convention on Elimination of All Kinds of Discrimination of Women, Article 1.

Prohibition of any direct or indirect discrimination on the basis of sex represents a form of granting equality, too. As one can note, constitutional guarantees can be determined as positive (pledge of equality) or only negative (prohibition of discrimination) or positive and negative combined.

It would not be too much to grant equality by positive constitutional norm and at the same time explicitly prohibit every discrimination based on sex in constitution. The decisive argument for such a stand lies in the fact that in this way the constitution can identify basic forms of violating right to equality (direct and indirect discrimination)⁹. In case when the norm on equality is defined as positive only, it does not list all kinds of discrimination precisely and it remains insufficient in this segment.

In the constitutional provisions that refer to **prohibition of incitement and fomenting of intolerance and hatred** it is obvious that this prohibition is related only to affecting some of the values that are protected by the constitution (belonging to some race or nation) or granted freedoms (i.e. freedom of confession, freedom to declare one's nationality, freedom of association to political party), but it does not explicitly prohibit instigation and fomenting of intolerance and hatred based on sex. By quoting just some of the personal traits (race or nationality) or convictions (such as religious) it tends to overlook other not less important forms of discrimination based on personal traits (for example: colour of skin, sex, age, mental or physical disability) or convictions (for example: political)¹⁰.

Right to asylum (shelter) is the right granted by most of the constitutions. It is the right that foreigner acquires under certain conditions. These conditions are stipulated by constitution and the function of defining the procedure for exercising right on asylum is delegated onto the legislator. It is obvious that constitutions most often do not list persecution on the basis of sex among the eligibility conditions that a foreigner asking for shelter can recall.

It indicates that when determining the reasons and basis on which one can request and get an asylum due to persecution should also include sex.

Finally, we should mention that this, we dare say "systemic mistake" in constitutions related to sanctioning actions against fundamental constitutional rule on gender equality, gets repeated even when the constitution stipulates the **reasons for prohibition of work of political parties**. Among the reasons for prohibiting the work of some political party they do not list gender discrimination but just racial, national and religious hatred and discrimination. Similar examples can also be found in the provisions on the reasons for **prohibition of work of religious communities** include only fomenting racial, national and religious hatred and discrimination, but not gender discrimination.

⁹ See Article 1 and 2 of the Convention on Elimination of All Kinds of Discrimination of Women.

¹⁰ The text of the article could read as follows: "The Constitution prohibits any incitement or encouragement of inequality or instigation and inducement of hatred and intolerance based on race, sex, nationality, religion or political or other conviction, age, physical or mental disability, social origin, material status, degree of education, culture, language, place of birth or any other personal status or trait".

2.2 Equality before the law

Although **granting equality¹¹ before the law¹²** is just one field in which equality between women and men (female and male citizens) is exercised, it is justified to have specially pledged equality before the law since it is concerned with the status of an individual before the law on one side and provision of the minimum of equality on the other. Even in comparative constitutional practice, there are many examples in which general guarantee of equality is accompanied with another two special guarantees. One of these is the equality before the law. The other has to do with the equality in political life and taking part in performing public functions.

Apart from equality before the law, there are some examples of special guarantees for **equality of citizens in protection of their freedoms and rights**. Explicit guarantee of equality in which the emphasis is on protection of human and civil rights and freedoms have human rights and freedoms at the forefront, as they are the values on which the constitutional drafters focused special attention. Having in mind that these are the values that are granted to all persons, special constitutional guarantee of equality of individuals in protection of their individual and constitutionally granted rights indicates that the intention of the constitution drafters was to provide equal protection to each individual along with ensuring effective exercise of human freedoms and rights without any difference whatsoever.

Finally, it is necessary to explicitly grant the **right to effective court protection of human rights** that are granted by constitution and international law¹³. The rule formulated in this way grants right to effective court protection of human rights and freedoms as an individual right of every person whose right is violated.

2.3 Special measures for achieving equality

Capacity (or obligation) of the state to undertake **special measures** (measures of affirmative action, positive discrimination) which are necessary to exercise equality and necessary protection and progress for persons or groups of persons that have unequal status so as to enable them to fully exercise human rights under equal terms. The quality and nature of special measures, their contents and effectiveness undoubtedly depend on whether the constitution stipulates the obligation of the state to undertake special measures so as to attain equality of women and men or it has just left some scope for such measures to be undertaken.

If special measures are defined as of the state, then they represent an instrument for conducting policy of equal opportunities in the state that relies on two equally legitimate values: rule of law and social justice. The latter one does not necessarily exclude nor is in conflict with market economy.

¹¹ In this case we should correctly use the term: equality, because in this case we have to deal with the rights that every person has before the law and those rights are equal. The value protected by this constitutional norm is one right – the right to be equal before the law.

¹² Constitutional rule is also defined as the right to equal legal protection, specially emphasizing the fact that this right is enjoyed without any discrimination.

¹³ The wording of this norm should read as follows: “Everyone is entitled to effective court protection in case of violation of his/her right or minority right granted by generally accepted rules of international law, accepted and ratified international treaties and by this Constitution, as well as to the right to redress on the account of violation and deprivation of the right eliminated.

It is necessary to have the constitution explicitly stipulate the **character and nature of special measures** by pointing out non-discriminatory character of these measures.

In addition, it is necessary to determine temporal effect of granted special measures to be executed in certain period of time. It is also necessary to have constitution stipulate the **temporal effect** of special measures – until the goal for introducing such measures is achieved.

3. Constitutional guarantees for rights related to marriage, family, parenthood

This group of rights is closely tied to rights to privacy on one side, basic personal rights (right to free choice, general constitutional guarantee for equality of men and women, right to life etc.) on the other side, and series of reproductive rights on the third. It is, thus, a very sensitive and on many accounts complex field of human rights that has strong bearing on the status of women in community. Owing to the importance of these rights, the Convention on the Elimination of all Forms of Discrimination against Women dedicates its special attention to them¹⁴.

3.1 Freedoms and rights related to marriage

Rights and freedoms related to constitutional guarantees and protection of marriage including many different guarantees among which the following are very important:

General guarantees for **right to enter into marriage**.

Freedom to decide about entering into marriage that is most common in constitutions in form of a rule that guarantees right to getting married on the basis of a free consent of future spouses. Although the Convention on the Elimination of all Forms of Discrimination against Women¹⁵ introduces yet another important element of freedom to decide about entering into marriage – personal consent of future spouses - the constitutions rarely explicitly stipulate this rule.

Equality of spouses as the basic principle marriage is based on, spousal relationships for as long as the marriage lasts and relationships that are made after dissolution of marriage¹⁶. We can note that in comparative constitutional practice equality as a principle on which the relationships are based is mentioned only in relation to entering into marriage and not as the principle on which marital relations or relationships upon dissolution of marriage are based.

Some constitutions also have an explicit rule about **equal treatment of marital and extramarital union** in all or only in some of the rights (for example: property rights, making marital with extramarital children equal in relation to parents; parental rights). In this way the prohibition of discrimination on the basis of marital status is actually implemented in constitution.

¹⁴ See Article 16 of the Convention on the Elimination of all Forms of Discrimination against Women.

¹⁵ Convention on the Elimination of all Forms of Discrimination Against Women, Article 16, paragraph 1, line b.

¹⁶ Convention on the Elimination of all Forms of Discrimination against Women, Article 16.

In relation to constitutional pledge of rights to entering into marriage, we can note that constitutional guarantees in some cases are inherently discriminatory since they do not observe prohibition of discrimination on the basis of sexual orientation. In this case constitution defines right to enter into marriage as the right of men and women of certain age to enter into marriage, and it defines equality of spouses as the equality of husband and wife.

3.2 Family

Most often constitution explicitly grants special protection to family, mother and child by a general constitutional pledge. Although these rights are undoubtedly part of statutory rights, it is obvious that constitutions do not tend to explicitly prescribe obligations of the state to provide for this protection. Very often there are no classical referrals to the law that in greater detail stipulates the right of family, mother and child to special protection.

In compliance with the general rule that all statutory rights in constitution have to be defined as an obligation of state to enable efficient use of the granted rights to its subjects, constitution needs to define this right as the obligation of the state.

3.3 Parental rights

The constitution also regulates parental rights. The contents and scope of defining this law are rather different. That is why it is necessary to closely analyse constitutional guarantees so as to consider their real scope and contents.

Parental right is defined by constitution in a general norm as the **equal right and obligation of father and mother**. In this case the principle of equality of father and mother in parental rights and obligations as the value granted and protected by constitution comes to the forefront.

Parental rights can be more closely determined by the contents of the rights and then constitution lists rights and obligations that come under the scope of parental rights (such as: maintenance, bringing up, educating and rearing children and providing religious and moral education for them in compliance with their convictions etc.).

Constitution also stipulates **possibility to deprive someone of parental rights or to have them restricted**. Parental rights can be restricted only upon the court judgment. The restriction can refer to one or both parents and the interest of a child is the basic reason for allowing restriction. The restrictions are possible only in compliance with the law, in the interest of a child and in compliance with the law.

Rights of legal guardians are made equal with parental rights, which is explicitly stipulated by some constitutions.

Specific problem comes up with the ways in which constitutions define rights before and after baby delivery.

Constitutions most commonly explicitly grant **special rights to mothers before and after baby delivery**. Constitutions formulate this right as the right of mother to support (assistance) and protection in statutory prescribed period before and after the baby delivery or as the right to maternity leave.

The provisions on **special rights after baby delivery** (maternity/parental leave) that constitution grants to mothers only, and not to fathers are not in line with the principle of equality of father and mother in enjoying parental rights.

Constitution rather often grants **special protection of mothers** by a general norm without specifying what it refers to and which regulations closely stipulate the meaning of special protection mother is entitled to according to constitution or the responsibilities of state in realization of these special rights.

In some constitutions special protection is extended and it covers **single parents, and** most commonly the age limit is specified for children. In this way the contents of parental rights is extended and it includes not only the obligations of parents towards children (and vice versa), but also rights that parents have to special support and protection that the state can accord.

All specified special rights are statutory rights. The law should define their contents more closely, but constitutions often do not have provisions that stipulate statutory definition of these rights. Apart from it, we can note that these special rights are not stipulated as the obligation of the state, but just as rights of mothers. Consequently, constitutions do not define instruments, means and responsibilities for their realization.

3.4 Freedom to decide about births

Freedom to decide about births is one of the freedoms that represents a very clear indicator of the status of women's human rights in constitutional system, and real commitment of authorities (state) to accord these rights to a full degree and ensure their protection.

Examples of comparative constitutionality indicate that there are no explicit guarantees of freedom to decide about births in the constitutions, and even when there are they tend to be quite vague and leave broad scope for various interpretations. In wording pledging this freedom neutral form of normative expression is only nominally used ("**Anyone** has right to..."), or the subject entitled to freedom is generalized ("**Every person** is free to decide..."), or the contents of the freedom is drastically narrowed in terms of quality and limited by subjects ("Spouses are free to decide..."). We can also note that very often the pledge of freedom to decide about births is stipulated together with the provision on the role of state in administering population policy and giving incentives for bearing children, which clearly complements the picture of various forms of restricting freedom to bear children. It clearly indicates that legislators tend to avoid clear and unequivocal pledge of freedom to decide about births as rights of women.

Constitutional guarantee of freedom to decide about childbirths that presumes genuine freedom of deciding can be formulated only as the **right of woman to freely decide about births**.

4. Rights to work and in relation to work

International documents on human rights¹⁷ put emphasis on this very field in which, apart from political life, there is factual discrimination of women. Consequently, it is necessary to have a special guarantee for basic rights in field of work and employment in constitution, and specially these ones:

- Access to jobs and functions at equal conditions;
- Right to equal opportunities and equal treatment in choosing profession and employment without discrimination on the basis of sex;
- Right to fair salary and reward for the work of equal value, with no difference;
- Right to respect of personal dignity at work;
- Special protection at work and special conditions for the work of women, youth and disabled persons;
- Right to professional training, advancement and equal opportunities for promotion.
- Right to respect of personal dignity at work.
- Right of working women to maternity protection. Constitutional protection of reproductive rights includes particularly the protection of the status of employment in terms of recruitment, and particularly protection from dismissal during pregnancy and maternity leave. This form of protection is particularly granted by the Convention on the Elimination of all Forms of Discrimination against Women¹⁸. Signatory states to this Convention pledged themselves to “prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status”. Apart from granting special protection at work and special conditions at work, it is necessary to have constitution prohibit discrimination on the basis of marital status and maternity and prohibit dismissal from work during the period of pregnancy and maternity leave.¹⁹
- Right to equal opportunities and equal treatment of employees with family obligations.
- Obligation of the state and employer to undertake legal measures to ensure rights in relation with work and on the basis of work.
- Prohibition of forced labour and explicit provision that any form of sexual or economic abuse of persons who are in position of inferiority shall be considered forced labour.
- Social insurance of all employees and members of their families is obligatory.

¹⁷ For example Article 11, paragraph 1 of the Convention on the Elimination of all Forms of Discrimination against Women: Strategies G-1 and G-2 of the Declaration on Equality of Women as Fundamental Criterion for Democracy, Istanbul 1997; Convention 111 of the International Labour Organization –Prohibition of Discrimination of Women in Fields of Work and Employment; Article 23 of the Charter on Basic Rights in the EU, No. 36/01 from 7th September 2000, European Charter on Social Rights etc.

¹⁸ See Article 11, paragraph 2 of the Convention on the Elimination of all Forms of Discrimination against Women

¹⁹ The text of this norm can read as follows: “Discrimination of women on the basis of marital status and maternity is prohibited. The dismissal from work during pregnancy, maternity leave or parental leave is prohibited”.

5. Right to education, right to health care and right to social welfare and protection

Constitution grants **accessibility of all forms of education** under equal terms.

Apart from general pledge of right to health care, the constitution also contains **special insurance of health care** as the right the children, women, pregnant women and elderly are entitled to. The rights thereof are defined as the obligation of the state and the law to define the source of funds (public revenues) from which the realization of this right to health care of children, women, pregnant women and elderly is covered.

In compliance with the principle of social solidarity, the state is obliged to undertake actively the measures of economic and social assistance to citizens and social groups which out of various reasons came into the position of inequality with a view to remove economic and social impediments for exercising equality *vis- a-vis* their rights.

6. Political rights

The fact the constitution grants political rights (right to participating in public affairs, electoral right, right to political association, right of citizens to perform public service and political functions etc.) indicates that these rights are granted by a general norm that is equal for everyone, which can include the presumption that women and men are granted those rights under equal terms and that they do not enjoy them effectively under equal terms. Contrary to constitutional practice many international documents do grant those rights²⁰.

It is obvious that in relation to this, legal terminology is discriminatory (as it always refers to he citizen), by rule, since due to the contents of these rights it is impossible to use neutral forms (anyone, everyone).

What is regularly missing is the special measures for removing factual inequality.

Due to that all, constitution should explicitly, and generally²¹ but also by a separate norm grant **special measures for exercising electoral right** both for parliamentary and local elections, and the constitutional provisions about parliament and government should grant that **at least on vice-president** in a chamber of representatives should be appointed from the less represented gender.

²⁰ For example article 4 and 7 of the Convention on the Elimination of all Forms of Discrimination against Women; line 14 of the Conclusions of the Conference on Women – New Deli 18/II/1997; Section A of the Declaration of Equality of Women and Men – Istanbul 1997; Section C, part III 1-4 of the Universal Rights of Democracy – Paris 1994; Strategy G – 1 and G – 2 of the Final Document of the IVth UN Conference on Women - Beijing 1995; articles 87-92 of the Final document

²¹ The text of the norm should read as follows: “ With a view to ensuring full equality of women and men in elected and appointed offices, the law shall stipulate measures of affirmative action (positive discrimination) for representation of less represented sex. Special measures will remain in force until their goals are met.”

7. Prohibition of human trafficking

Constitutional prohibition of human trafficking represents an important, and we dare to argue even essential, guarantee of the constitutional status of women since it is women (and children) themselves who are victims to human trafficking. By stipulating sanctions for this phenomenon in its constitution, the state expresses its readiness to undertake measures and act towards eliminating human trafficking, including relevant sanctions by which such violation of constitution prohibition is punished.

This brief overview pointed at some of the basic rights that should surely make way into the constitution if the state wants to ensure guarantees of equality of women and men, create possibilities for their equal treatment in private, economic, political and social life and introduce general constitutional rule about equality (prohibition of discrimination), having in mind that thereby someone's gender denomination could be made effective and better substantially defined in certain fields.