



LEGAL PERSPECTIVES OF  
**GENDER EQUALITY**  
IN SOUTH EAST EUROPE

**LEGAL PERSPECTIVES  
OF GENDER EQUALITY IN SOUTH EAST EUROPE**

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# LEGAL PERSPECTIVES OF GENDER EQUALITY IN SOUTH EAST EUROPE



# CONTENT

**Foreword ..... 6**

## PART ONE

**GENDER EQUALITY IN THE EUROPEAN UNION..... 9**

GENDER EQUALITY IN THE EUROPEAN UNION ..... 10  
*Genoveva TISHEVA*

## PART TWO

**COMPARATIVE OVERVIEW OF GENDER EQUALITY IN SOUTH EAST EUROPE..... 35**

COMPARATIVE OVERVIEW OF GENDER EQUALITY IN SOUTH EAST EUROPE..... 36  
*Dr. Veronika EFREMOVA*

## PART THREE

**GENDER EQUALITY IN THE LEGAL ENVIRONMENT OF SOUTH EAST EUROPE:  
COUNTRY REPORTS ..... 43**

COUNTRY REPORT ON LEGAL PERSPECTIVES OF GENDER EQUALITY  
IN ALBANIA ..... 44  
*Prof. Dr. Oriona MUÇOLLARI*

COUNTRY REPORT ON LEGAL PERSPECTIVES OF GENDER EQUALITY  
IN BOSNIA AND HERZEGOVINA ..... 58  
*Prof. Dr. Jasna BAKŠIĆ MUFTIĆ and Senior Assistant LL.M Ivana GRUBEŠIĆ*

COUNTRY REPORT ON LEGAL PERSPECTIVES OF GENDER EQUALITY  
IN CROATIA ..... 94  
*Ass. Prof. Dr. Ivana GRGUREV*

COUNTRY REPORT ON LEGAL PERSPECTIVES OF GENDER EQUALITY  
IN MACEDONIA ..... 101  
*Ass. Prof. Dr. Karolina RISTOVA – AASTERUD*

COUNTRY REPORT ON LEGAL PERSPECTIVES OF GENDER EQUALITY  
IN MONTENEGRO ..... 135  
*Prof. Dr. Vesna SIMOVIĆ*

COUNTRY REPORT ON LEGAL PERSPECTIVES OF GENDER EQUALITY  
IN SERBIA..... 161  
*Prof. Dr. Dragica VUJADINOVIĆ*

COUNTRY REPORT ON LEGAL PERSPECTIVES OF GENDER EQUALITY  
IN SERBIA..... 186  
*Ass. Prof. Dr. Bojan URDAREVIĆ*

**CONCLUSIONS AND FUTURE SCENARIO ..... 208**

## FOREWORD

*“Gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance.”*

**- Kofi Annan -**

Dear Reader,

Advancing and mainstreaming gender equality is widely recognized as ends to achieve the rule of law, human rights protection and sustainable economic and social development. The status and quality of higher education are useful indicators of a country’s social and economic development. The South East European (SEE) countries as part of EU accession process face their duty to “fully embrace the fundamental principle of equality between women and men. Monitoring the transposition, implementation and enforcement of EU legislation in this area remains a priority of the enlargement process.”

Universities and other institutions engaged in higher education are strategically placed to undertake multidisciplinary research - which is the engine that stimulates and give necessary attention to gender equality issues. The recently established South East European Law School Network (SEELS) between eleven public Law Faculties from Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia, within the scope of development and introduction of its new regional legal educational, research and training programs will have as one of the responsibilities to promote and protect gender equality in higher education.

The initial activity towards promoting gender equality by the SEELS Network, was analysing the national legal framework and compliance with EU Gender Equality Law in SEE countries, national policy and institutional framework on gender equality, gender equality in legal professions and legal education, Curricula Gender mainstreaming and addressing gender bias in judiciary training programs. Legal experts from the SEELS members prepared Country reports on “Legal Perspectives of Gender Equality in South East Europe” and presented papers at the first Regional Conference held on 24th and 25th September 2012 at the University of Sarajevo, Law Faculty.

The Conference was organized by the South East European Law School Network (SEELS) and supported by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, Open Regional Fund for South East Europe-Legal Reform with the aim to gather all of the relevant actors and institutions dealing with gender related issues in SEE countries. It enabled networking, sharing the knowledge, experience, best practices and lessons learnt by representatives from the academic community, state officials, judicial training academies, NGOs’ representatives and international community.

The papers compiled in this Book present the author's results and findings in the carried out comprehensive research and comparative overview of gender equality in SEE countries. The papers assess the progress made in this respect, by identifying shortcomings and making precise recommendations to better assist these countries in achieving de iure and de facto gender equality.

The orientation of SEELS' members towards fostering the gender equality principle within their working environment will request high-level commitment among key experts at different levels at universities in the period to come.

Skopje, November 2012.

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South East Europe - Legal Reform



# **PART ONE**

## **GENDER EQUALITY IN THE EUROPEAN UNION**

## **GENDER EQUALITY IN THE EUROPEAN UNION**

*Genoveva TISHEVA*

- a) Overview of the existing EU legislation on gender equality
- b) The relationship between EU Law and the national legal orders. Enforcement of the EU Gender Equality Law.
- c) Gender Mainstreaming as a main concept of EU soft law
- d) Documents of EU soft law:
- e) EU Roadmap for gender equality
- f) EU “Women’s Charter”: Strategy for equality between women and men 2010- 2015
- g) A European Gender Equality Pact 2011- 2020
- h) Institutional support for gender equality in the EU

## I. Overview of the existing EU legislation on gender equality

### Primary legislation

Equality between women and men is a fundamental principle of the European Union, as recognised in Article 23 of the Charter of Fundamental Rights of the European Union. Article 119 of the Treaty of Rome in 1957 already contained a provision on equal pay for men and women. Since then, a considerable body of law has been developed. With the Treaty of Amsterdam, the equal treatment between women and men entered a new phase, giving a significant impulse to primary legislation and the Union's ability to act in this field through the issuing of specific legal bases. The relevant provisions in the EC Treaty (TEC) are now contained within the Treaty on the Functioning of the European Union (TFEU).

These are as follows:

- Article 8 (ex Article 3(2) TEC): this Article provides that the mission of the Union is to eliminate inequalities and to promote equality between men and women;
- Article 19 (ex Article 13 TEC): this Article empowers the Union to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation;
- Article 153 (ex Article 137 TEC): this Article empowers the Union to adopt directives in the areas of inter alia equality between men and women with regard to labour market opportunities and treatment in work and working conditions;
- Article 157 (ex Article 141 TEC): this Article provides for the principle of equal pay and empowers the Union to adopt measures to ensure the application of the principle of equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.

### Secondary legislation – EU Directives:

The directives covering the area of equal treatment between men and women are a specific form of binding EU legislation and have laid down the legal ground for significant changes in national legislation, attitudes and practices. So far the legislation has brought about new concepts in equality in the member states with far reaching consequences, such as a prohibition of direct and indirect discrimination, the application of the equal pay principle to occupational social security schemes and clear provisions on remedies in case of discrimination, to give only a few examples. More examples of the key EU gender equality concepts will be given further on.

The first equal treatment Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the member states relating to the application of the principle of equal pay for men and women deals with equal pay for men and women.

Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, followed in 1976. These two Directives and Article 141 EC (now Article 157 TFEU) form the most fundamental “acquis” in the area of equal treatment of men and women.

In 1978, Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security was adopted.

Seven years later Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes, which complements the previous Directives, was adopted. This Directive was amended in 1996 by Directive 96/97/

EC of 20 December 1996 on the implementation of the principle of equal treatment for men and women in occupational social security schemes. This Directive provides for the necessary adaptations to the 1986 Directive to take account of the Court's important Barber judgment.

In 1986, Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of selfemployed women during pregnancy and motherhood was adopted.

In 1992, Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding was adopted. While it addresses primarily the working conditions for pregnant workers and workers who have recently given birth or are breast-feeding, it also includes a statutory right to paid maternity leave of at least 14 weeks.

In 1996, the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC was adopted as Directive 96/34/EC. The text includes primarily non-transferable leave for parents of at least 3 month, but payment for leave was left to the discretion of national governments.

In 1997, Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex was adopted. This Directive has laid down the ECJ's jurisprudence as a formal act of law. It provides that in cases of discrimination on grounds of sex the complainant only has to establish before a court or other competent authority, facts from which it may be presumed that there has been discrimination, while it is for the respondent to prove that there is no breach of the principle of equal treatment.

In 2002 the equal treatment in employment Directive 76/207/EEC was substantially amended by Directive 2002/73/EC of 23 September 2002. The main new elements of this Directive are a new definition of indirect discrimination and definitions of harassment and sexual harassment as forms of discrimination. Protection against victimisation and the right of associations to engage on behalf or in support of complainants in judicial or administrative procedures are addressed. Provisions in relation to bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex (equality bodies) and their tasks are included in the Directive. An obligation on member states to promote social dialogue with a view to fostering equal treatment has been established. Clear provisions on legal remedies and sanctions without prior upper limit are also included in the Directive.

In 2004, Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services was adopted. This Directive extends, for the first time, Community gender equality legislation to areas outside the field of employment.

In 2006, Directive 2006/54/EC of the European Parliament and of the Council of 5 June 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) was adopted. This Directive brings together in one instrument six of the existing directives in the area of gender equality (Directives 75/117 – equal pay; 76/207 as amended by Directive 2002/73 – equal treatment in relation to employment and vocational training; 86/378 as amended by Directive 96/97 – equal treatment in occupational social security schemes; and 97/80 – burden of proof), amends certain provisions of the earlier Directives and incorporating the ECJ case-law in this area. This Directive contributes to legal certainty and clarity by providing a coherent, easily accessible and more easily readable and well structured legal text.

In 2010, two further Directives were adopted. Directive 2010/18/EU implements the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repeals Directive 96/34/EC. This Directive extended the period of parental leave to a period of at least four months, one month of which is permitted to be transferred between the parents in certain circumstances. The issue of payment for parental leave continues to be left to the discretion of national governments.

Finally, Directive 2010/41/EU was adopted. This Directive on the application of the principle of equal treatment between men and women engaged in an activity in a selfemployed capacity repeals Council Directive 86/613/EEC. The new Directive improves the situation of women who are selfemployed workers or the spouses of the selfemployed workers, and introduces maternity benefits for this group of people. These maternity benefits shall enable interruptions of their activities of at least 14 weeks.

### **Judgments of the Court of Justice of the European Union (CJEU):**

The “acquis” on gender equality has also been shaped to a considerable extent and clarified by a large number of judgments from the CJEU. The case-law has been an essential complement to the EU legislation on equal treatment, providing member states with interpretation of EU Law, thus leading to legislative changes in the member states. The European Court of Justice (ECJ) has played a very important role in the field of equal treatment between men and women, in ensuring that individuals can effectively invoke and enforce their right to gender equality.

It is important to note that as the promotion of equality between men and women throughout the European Union is one of the essential tasks of the EU, according to Article 8 TFEU, the EU shall aim to eliminate inequalities, and to promote equality between men and women. This obligation of gender mainstreaming reiterated also in Article 29 of the Recast Directive, means that both the EU and the member states shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities. Although these provisions do not create enforceable rights for individuals as such, they are important for the interpretation of EU Law and they impose obligations upon both the EU and the member states.

In fact the numerous acts and provisions of EU soft law are essential for leading the member states in their legislative and policy reforms. Similarly, the soft law documents play an important role in driving the legislative process at EU level. Such key documents are, for example, the EU Roadmap for gender equality, the EU “Women’s Charter” and the Strategy for equality between women and men 2010- 2015, the European Gender Equality Pact for 2011-2020<sup>1</sup>.

When implementing the EU Law on gender equality, member states and the EU institutions are assisted by the European Union Agency for Fundamental Rights (FRA). The European Institute for Gender Equality (EIGE) creates the data and research support for the gender equality legislation and policy. Financial assistance is provided by the PROGRESS 2007-13 programme; gender equality being one of its five priority areas.

The development of EU Gender Equality Law and its transposition in the member states and the EEA countries (in addition to the 27 EU member states, also Iceland, Liechtenstein and Norway) has been a step-by-step process, starting at least for the ‘oldest’ EU member states, in the early sixties.

<sup>1</sup> Documents and literature on EU Gender Equality Law can be found at [http://ec.europa.eu/justice/gender-equality/law/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/law/index_en.htm), last accessed 15 August, 2012

At the national level, the Treaty Articles and, in particular, the directives must be implemented. This means, to start with, a transposition of the legal provisions into national law<sup>2</sup>. This was partly done by amending relevant national legislation, like the Labour Code, acts relating to employment and social security legislation. The respective states also introduced specific gender-equality acts. In more recent times, the equal treatment of women and men has been incorporated into general anti-discrimination acts which also relate to other grounds, such as race, disability or sexual orientation (e.g. Bulgaria, Hungary, Ireland, Slovakia, Sweden, the United Kingdom). In some countries, for instance Cyprus, Greece, Germany, Portugal and Spain, certain provisions in their Constitution also play an important role in guaranteeing equality between women and men<sup>3</sup>.

### Concept of equality in the EU. Central concepts of EU gender discrimination law

The ECJ has held that the principle of equality is one of the general principles of EC law<sup>4</sup>. Within the sphere of EC law, this principle of equality corresponds to the Aristotelian conception of equality and precludes comparable situations from being treated differently, and different situations from being treated in the same way, unless the treatment is objectively justified. Thus, the principle that everyone is equal before the law is a basic principle of EC law<sup>5</sup>.

The protection of fundamental rights is also one of the general principles of EC law. The requirements flowing from the protection of fundamental rights in the Community legal order are binding on the EC institutions. They are also binding on member states when they implement EC rules, or act within the scope of Community law. The ‘fundamental rights’ identified by the ECJ are drawn from the constitutional traditions of the member states and, in particular, the European Convention on Human Rights (ECHR). Among the fundamental rights protected by the ECJ, particular aspects of equality have been identified. These include religious equality<sup>6</sup> and the prohibition of sex discrimination<sup>7</sup>. More broadly, the Court has held that fundamental rights ‘include the general principle of equality and non-discrimination’<sup>8</sup>.

The significance of recognising equality as a general principle can be seen in the decision of the ECJ in *Mangold*,<sup>9</sup> which involved the issue, inter alia, of the application of the prohibition of age discrimination in the EU Employment Discrimination Directive<sup>10</sup> in Germany<sup>11</sup>. A major problem apparently standing in the way of the application of the Directive was that the time limit for transposition of the age discrimination provisions of the Directive had not yet passed for Germany. The ECJ, however, did not find this to be an insuperable barrier for several reasons. Crucially, one of the reasons articulated by the ECJ, was that the principle of non-discrimination on grounds of age must be regarded as a general principle of Community law and that the application of the general principle of equal treatment was not conditional on the expiry of the period allowed for the transposition of

<sup>2</sup> Prechal, Sasha and Burri, Susanne, *EU Rules on Gender Equality: How are they transposed into national law*, Luxembourg: Publications Office of the European Union, 2010.

<sup>3</sup> For a more detailed discussion of EU Gender Equality Law and its implementation at the national level see the more extensive publication *EU Gender Equality Law*, published by the Office for Official Publications of the European Communities in 2008, in electronic form available at: <http://ec.europa.eu/social/main.jsp?catId=641&langId=en>, accessed 28 August 2009 and *Gender Equality Law in 30 European Countries*, available at the same website. Both publications are aimed at a broad – but not necessarily legal – public and explain the most important issues of the EU gender equality *acquis* and its implementation.

<sup>4</sup> Cases 117/76 and 16/77 Ruckdeschel [1977] ECR 1753.

<sup>5</sup> For more details see: *The concept of Equality and Non-discrimination: a Practical approach*, European Network of Legal Experts in the field of Gender Equality, [http://ec.europa.eu/justice/gender-equality/law/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/law/index_en.htm), last accessed 15 August, 2012.

<sup>6</sup> Case 130/75 Prais v Council [1976] ECR 1589.

<sup>7</sup> Case C-149/77 Defrenne v Sabena [1978] ECR I-1365 at [26], [27].

<sup>8</sup> Case C-442/00 Caballero v Fondo de Garantía Salarial (Fogasa) [2002] ECR I-11915 at [32].

<sup>9</sup> *Mangold v Rudiger Helm*, Case C-144/04 [2005] ECR I-9981.

<sup>10</sup> Council Directive 2000/78/EC of 27 November 2000, [2000] OJ L303, 16.

<sup>11</sup> This paragraph draws significantly on Christopher McCrudden and Haris Kountouros, Human rights and European Equality law, in Helen Meenan (ed), *Equality Law in an Enlarged European Union: Understanding the Article 13 Directives* (CUP, 2007), 72 at 89–90.

a directive implementing the principle of non-discrimination in a specific area. The Court held that the principle of non-discrimination as a general principle of Community law on grounds of age and, by analogy, on the other grounds designated by Community law, meant that 'it is the responsibility of the national court, hearing a dispute involving the principle of non-discrimination to provide the legal protection which individuals derive from the rules of Community law and to ensure that those rules are fully effective, setting aside any provision of national law that may conflict with that law'<sup>12</sup>. This seems to imply that, even if the parties to the case may not rely on the provisions of the Directives before national courts, the national court is still obliged to respect the primacy of the general principle of equality in Community law, thus appearing to create the possibility of the evolution of a body of EU non-discrimination law through direct application of the general principle.

The central concepts of EU Gender Equality Law are laid down in the respective Directives<sup>13</sup> and are often the subject of further interpretation by the ECJ. The following five concepts will be briefly discussed.

- *Direct discrimination* occurs '(...) where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation.'
- As a rule, direct discrimination is prohibited, unless a specific written exception applies, such as that the sex of the person concerned is a determining factor for the job, for example a male character in a film has to be a man.
- *Indirect discrimination* occurs '(...) where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.'
- Indirect discrimination is very much concerned with the effects of a certain treatment and takes into account everyday social realities. For instance, less favourable treatment of part-time workers will often amount to indirect discrimination against women as long as women are mainly employed on part-time terms. Unlike in the case of direct discrimination, the possibilities for justification are much broader. The landmark case is *Bilka* case. The case concerned access to a pension scheme: parttimers could only access the scheme if they had worked at least 15 years full time over a total period of 20 years. The Court found that if a lower proportion of women worked full time, the policy regarding part-timers would be contrary to Article 157 TFEU, if that result could not be explained by factors other than discrimination on the ground of sex.
- The concept of *positive action* is defined in EU Law as follows: 'With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or prevent or compensate for disadvantages in professional careers.' Like indirect discrimination, positive action also takes into account everyday social realities but it goes much further, in the sense that it may require further steps to be taken in order to realise true, genuine equality in social conditions.
- The measures permitted as positive action provisions aim at eliminating or counteracting the detrimental effects on women in employment or in seeking employment which arise from existing attitudes, behaviour and structures based on the idea of a traditional division of roles in society between men and women. Similarly, they should help to fight stereotypes. As an example of positive action the following can be mentioned: the preferential treatment

<sup>12</sup> Mangold v Rudiger Helm, Case C-144/04 [2005] ECR I-9981at [77].

<sup>13</sup> The definitions given here are from the Recast Directive 2006/ 54.

of female employees in the allocation of nursery places when the number of places, due to financial constraints, is rather limited or – even more far-reaching and controversial – female quotas in recruitment and promotion. A landmark case on this issue is *Kalanke* from 1995- it forbids national rules which guarantee women absolute and unconditional priority for appointment, even if they are underrepresented.

- *Instruction to discriminate* on grounds of a person's sex is in EU Law equated with discrimination. Thus, where an agency is requested by an employer to supply workers of one sex only, both the employer and the agency would be liable and would have to justify such sex discrimination.
- *Victimisation* - as a matter of EU Gender Equality Law, persons who have made a complaint or instigated legal proceedings aimed at enforcing compliance with the principle of equal treatment have to be protected against dismissal or adverse treatment in reaction to their action
- Both *harassment on grounds of a person's sex* and *sexual harassment* are equated with sex discrimination and are explicitly prohibited. They cannot be justified. *Harassment* occurs '(...) where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment'. *Sexual harassment* occurs '(...) where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.' Both concepts include the violation of a person's dignity and the creation of an intimidating, hostile, degrading, humiliating or offensive environment. The main difference is that in case of harassment on grounds of a person's sex, the person is ill-treated because he or she is a woman or a man. In the case of sexual harassment it rather involves a person being subject to unwelcome sexual advances or, for instance, that the behaviour of the perpetrator aims at obtaining sexual favours. In concrete situations the distinction between the two may be very unclear indeed.

Some specific aspects related to these concepts and to specific gender equality issues covered by the EU standards will be further highlighted also in the context of comparing the legislation and practice in different EU Member States<sup>14</sup>.

### - Burden of proof

As a result of difficulties which are inherent in proving discrimination, the EU Gender Equality Law provides for a shift in the burden of proof. An alleged victim of discrimination has to establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination. It is, however, for the respondent to prove that there has been no breach of the principle of equal treatment. The principle in short - where persons establish facts from which discrimination may be presumed to exist, it shall be for the respondent to prove that there has been no contravention of the principle of equal treatment, and the plaintiff may benefit from any doubt that might remain. If the member states so wish, they may introduce more favourable rules for plaintiffs. These rules do not apply in criminal proceedings. Again, various aspects of this law of evidence in discrimination cases were initially developed by the ECJ and only later laid down in legislation. For an example, where an undertaking applies a system of pay which is totally

<sup>14</sup> For more details on national transposition see Prechal, Sasha and Burri, Susanne, *EU Rules on Gender Equality: How are they transposed into national law?*, Luxembourg: Publications Office of the European Union, 2010.

lacking transparency, it is for the employer to prove that this practice in the matter of wages is not discriminatory, if a female worker establishes, in relation to a relatively large number of employees, that the average pay for women is less than for men. / Danfoss case, C- 109/88/.

In most member states and the EEA countries, a shift in the burden of proof is implemented in national law, or it already existed as a matter of national law, at least in certain cases, such as pregnancy discrimination. A shift in the burden of proof does not apply in criminal law and sometimes also not in administrative proceedings. The latter may, however, be questionable under EU Gender Equality Law. Also in relation to the transposition of the Goods and Services Directive, all transposition legislation shifts the burden of proof, except for the case of criminal provisions. This means that the burden of proof also changes in areas other than the traditional areas of employment discrimination.

This being said, it is still often very difficult to establish even a presumption of discrimination as the necessary data are often not readily available as *prima facie* evidence of discrimination.

### - The problem of comparisons

It is for instance striking that particularly in the United Kingdom much emphasis is put on the *comparison*, i.e. a person who is treated less favourably should be compared to another person who is in a comparable situation. The comparator may be real or hypothetical. In many other countries discrimination, or at least a serious presumption of discrimination, is more readily accepted. It suffices to establish that a person has been put at a disadvantage for reasons of being female or male, without engaging in comparisons of the situations. In Italy and the Netherlands, contrary to the United Kingdom, any reference to a comparable situation is lacking. However, this does not mean that in concrete cases no comparisons are made. For instance, in equal pay cases comparisons of the work performed are often necessary.

In the United Kingdom the use of the words 'on the ground of' and 'less favourably' in the context of pregnancy discrimination might be regarded as requiring some kind of comparison, but the previous explicit requirement for a comparator was abandoned after a decision of the High Court that it was inconsistent with EU Law and the better view is that, properly interpreted, the legislation does not require a comparator. In other states it is generally accepted that a comparison is not required in the case of pregnancy. This is also the view of the ECJ. The Court held that the refusal to appoint a woman because she was pregnant amounts to direct sex discrimination, which is prohibited. In Estonia, there even exists a broader definition of direct sex discrimination. In addition to less favourable treatment in connection with pregnancy and childbirth, it also relates to less favourable treatment in connection with parenting and the performance of family obligations.

### - Exceptions

The general scheme of Gender Equality Law, at least as laid down in the directives, is that direct discrimination can in principle only be justified on the basis of the exceptions laid down in the directives themselves. This is an important difference from indirect discrimination, which might be justified for a broader range of reasons.

One of the most important exceptions concerns occupational activities for which the sex of the worker is a genuine and determining factor. Because this is an exception to a fundamental principle it has to be interpreted strictly. Thus the derogation is further tightened by the requirement that it must be appropriate and necessary for achieving the legitimate aim pursued. These requirements resulted, for instance, in the general exclusion of women from the Royal Marines (the British

Royal Navy's amphibious infantry requiring a high level of physical strength and fitness) or from the German army (*Bundeswehr*) not being accepted by the ECJ<sup>15</sup>. Only the specific nature of the posts in question or the particular context in which the activities in question are carried out may justify an exception.

Before a major amendment to the Equal Treatment Directive by Directive 2002/73, EU Gender Equality Law also provided for protective legislation as a special category of exceptions. Under this heading certain types of *protective legislation* could be justified, in particular as far as it was necessary to protect women during pregnancy or their procreative function. The existing protective legislation concerned issues like restrictions on night work or on certain dangerous or strenuous work, such as mining, ground excavation, work in hyperbaric chambers, the lifting of heavy materials etc. While in some countries this protective legislation excluded women during pregnancy or was clearly linked to maternity or parenthood, in other countries the exclusion was more general, like in relation to the prohibition of night work. Interestingly, while a great volume of protective legislation existed in the former Central and Eastern European countries, by contrast there was very limited protective legislation in the Scandinavian countries. The difference between the countries in this respect can be explained by social, ideological and/or historical reasons.

Some of these protective provisions have been scrutinized as to their compatibility with EU Law and have been abolished, sometimes after the intervention of the ECJ<sup>16</sup>. In France, for instance, the prohibition of night work for women was not abolished until 2001.

The ECJ has made it clear that protective legislation is only allowed to meet women's specific need for protection related to pregnancy and childbirth and it cannot be used to exclude women from a certain type of employment solely on the ground that they ought to be given greater protection than men against risks which affect men and women in the same way<sup>17</sup>. Indeed, this does not mean that all forms of protective measures are no longer allowed. However, under the current EU Gender Equality Law, they must fit under the 'sex of the worker as a determining factor exception' or under the provisions of the Pregnant Workers Directive.

The transposition of the exception where the *sex of the worker is a determining factor* for the activity at stake basically takes two different forms: either the national transposing legislation contains a 'general' exception setting out abstract criteria of general application across the employment field for cases where the sex of the worker is a determining factor for an occupational activity, or a specific list, identifying particular occupational activities where the sex of the worker is a determining factor. Obviously, a combination of both exists as well.

The usual activities listed concern singers, actors, fashion or photographic models, military personnel (usually certain units in the armed forces, such as service on submarines in the French navy), private security bodies, wardens in women's shelters, personal care involving physical contact, membership of religious orders or access to the priesthood. Sometimes the reservation appears to be based on the nature of the job, sometimes it is determined by the context in which the specific activity takes place. In some cases, however, an exception may seem to be specific, but in fact it may turn out to be rather wide.

In some countries, *positive action* is also considered to be an exception to the principle of equal treatment. However, other countries understand positive action as an instrument to achieve

<sup>15</sup> ECJ 26 October 1999, Case C-273/97 Angela Maria Sirdar v The Army Board and Secretary of State for Defence [1999] ECR I-07403 (Sirdar) and ECJ 11 January 2000, Case C-285/98 Tanja Kreil v Bundesrepublik Deutschland [2000] ECR I-69 (Kreil).

<sup>16</sup> E.g. Case C-158/91 Criminal proceedings against Jean-Claude Levy [1993] ECR I-04287 (night work).

<sup>17</sup> Case C-222/84 Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary [1986] ECR I-01651; Case C-285/98 Tanja Kreil v Bundesrepublik Deutschland [2000] ECR I-00069; Case C-203/03 Commission of the European Communities v Republic of Austria [2005] ECR I-00935.

real equality in everyday life. In any case, targets and quotas for the promotion or recruitment of women are rare.

### - Pregnancy and maternity protection, parental leave

Another important exception to the principle of equal treatment or, arguably, necessary differentiation, concerns the protection of women with regards to *pregnancy and maternity*. Discrimination for reasons of pregnancy is to be considered as direct discrimination under EU Law and therefore also in the member states. Similarly, disorders and complications related to pregnancy, which may result in incapacity to work, form part of the risks inherent in pregnancy and less favourable treatment on that ground, or perhaps even dismissal, amount to direct discrimination as well. Finally, any less favourable treatment of a woman related to pregnancy or maternity leave is included in the prohibition of discrimination.

At the same time, protection for reasons of pregnancy and maternity justifies different treatment for those women concerned. Thus, special rights, related to pregnancy and maternity, such as maternity leave, do not amount to discrimination against men. While such rights have been seen in the past as an exception to the principle of equal treatment, nowadays they are rather considered as a means to ensure the implementation of the principle of equal treatment for men and women regarding both access to employment and working conditions. In fact, they aim to accommodate the main biological difference between women and men.

In *Dekker case/ C- 177/88/* it is recognized that pregnancy required a specific approach as it uniquely affected women and could not be compared with the circumstances of a male comparator.

Even if the protection of pregnancy and maternity is generally very strong – at least on the legislative side – overall, there is very little litigation. Among the pregnancy and maternity cases that are brought to the national courts, the issue of dismissal is a major focus. Women are reluctant to bring cases to court for fear of victimisation and due to a lack of evidence or the belief that complaining or commencing a case will result in more harm than good. It is not rare for an employer to use tactics to induce the female employee to resign ‘voluntarily’. The result is that the law in the books is very different from the law in everyday practice.

One of the continuously recurring problems in relation to gender equality in employment is the reconciliation of family/private life with work. For this purpose, Article 33 states that ‘to reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity, and the right to paid maternity leave and to parental leave following the birth or adoption of a child’. This provision guarantees that issues related to pregnancy, maternity and parental leave are to be considered as fundamental rights. The protection offered to the European citizen is therefore reinforced as issues of pregnancy, maternity and parental rights are transformed from employment and social law to human rights law. The Charter itself should be considered as providing for minimum protection, allowing for measures that are further reaching. The Charter itself stipulates that nothing in the Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms.

The measures contained in the Pregnant Workers Directive are supplemented by the Parental Leave Directive 2010/18 which sets minimum standards designed to facilitate the reconciliation of work with family life. This Directive implements the Framework Agreement of the European social partners on parental leave and time off on grounds of *force majeure*. It provides that member states shall grant all employees, in principle, a non-transferable and unpaid right to four months parental leave which can be used until the child has reached the age of 8, although the precise age is to

be determined by the member states. The Directive provides that in order to encourage a more equal take-up of leave by both parents, at least one of the four months shall be provided on a non-transferable basis. However, the modalities of application of the non-transferable period are left to the member states. A further problem is that this right remains unpaid and this has proven to be a considerable deterrent, in particular amongst fathers. This is regrettable because to expressly place fathers in the maternity equation is a step towards a more balanced share of family responsibility and thus towards the achievement of the principle of equality.

The Parental Leave Directive further provides **protection from discrimination** for workers on the grounds of applying for or taking parental leave and, at the end of the leave, workers have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship. Workers also have the right to request **changes to their working hours** for a limited period; in considering such requests, employers must balance the needs of the workers and the company.

The position of fathers and paternity leave has recently been the subject of a decision by the Court of Justice in Case C-104/09 *Roca Alvarez* [2010] ECR I-8661 (Judgment of 30 September 2010). Paternity leave can be useful not only for men but it can also represent a source of support for mothers.

In most European countries, parental leave is an individual and non-transferable (i.e. non-transferable to other persons) right granted to both natural and adoptive parents. Parental leave is generally taken by women although the leave is often transferable between the parents. The fact that parental leave is often not paid is probably one of the reasons why more women take this leave than men. Some countries have introduced policies to encourage fathers to take parental leave. For example, in Italy the length of parental leave is extended from 10 to 11 months when the father takes at least three months leave. Another example is Norway, where the ten weeks paid parental leave for the father may not be transferred to the mother. In Slovenia there exists a rather generous paternity leave of 90 days.

Like in the case of pregnancy and maternity, parental leave rights are generally well articulated and in many instances extend further than the EU requirements. Yet, their application in practice is far from efficient and court cases are scarce. Again, the law in the books is one thing, everyday reality is another.

In the more recent Recast Directive (2006/54), the issue of the reconciliation of work, private and family life is explicitly emphasised on several occasions. Most notably, the member states are requested to encourage the social partners to promote equality between men and women as well as to provide flexible working arrangements, with the aim of facilitating the reconciliation of work and private life.

#### - Equal pay

*“Every day women in Europe experience one of the most deep-rooted injustices - being paid less than men for work of equal value”.*

Council of Europe Commissioner for Human Rights on 8 March, 2011

As was already observed above, the principle of equal pay for men and women for equal work or work of equal value, today contained in Article 157 TFEU, has been entrenched ever since the 1957 Treaty. In order to facilitate the implementation of the principle, a directive was adopted in 1975. Indeed both direct and indirect discrimination are prohibited. Obviously, the introduction of legal principles alone does not eradicate unequal pay between men and women. Unfortunately, still today, the difference between the remuneration of male and female employees remains one of the

great concerns in the area of gender equality: women in the EU earn on average 15% less than men, and progress has been slow in closing the gender pay gap, while women in broader Europe earn on average 17, 5% less than men. The differences can be partly explained by other factors, such as traditions in the career choices of men and women; the fact that men, more often than women, are given overtime duties, with corresponding higher rates of pay; the gender imbalance in the sharing of family responsibilities; glass ceilings; part-time work, which is often highly feminised; job segregation etc. However, another part of the discrepancies cannot be explained except by the fact that there is pay discrimination. And it is this pay discrimination that the principle of equal pay may help to eradicate<sup>18</sup>. Criteria and situations that disadvantage women are such, like part-time work - *Bilka* case 1987, job-sharing - *Hill* 1998, mobility - *Danfoss*, etc.

The most salient issue in the area of equal pay is the very broad interpretation of the notion of 'pay' by the ECJ. Pay includes not only basic pay, but also, for example, overtime supplements, special bonuses paid by the employer - *Krueger*, travel allowances - *Garland* 1982, sick pay - *Rinner Kuhn* 1989, compensation for attending training courses and training facilities - *Botel* 1992, termination payments in case of dismissal - *Barber* case 1990, *Seymour Smith* 1999 and occupational pensions. Another important feature that should be highlighted is that the Equal Pay Directive requires that the member states ensure that provisions in collective agreements, wage scales, wage agreements and individual employment contracts which are contrary to the principle of equal pay shall be or may be declared null and void or may be amended. Moreover, it provides that where job classification schemes are used in order to determine pay, these must be based on the same criteria for both men and women and should be drawn up to exclude discrimination on the grounds of sex. Comparators for assessing equal/unequal pay may be: opposite sex. Comparable situation, in the same establishment or service, whether public or private - *Defrenne II*, can be different employer but single source for determination of pay, multiple comparators are possible.

The principle of equal pay under EU Law is, in general, fully reflected in the legislation of the member states and the EEA countries. This is often the case at both Constitutional and legislative level, either as a part of general labour law or as provided for in specific anti-discrimination legislation. Both direct and indirect discrimination are explicitly covered and the requirement of 'equal pay for similar work or work of equal value' is also often covered.

An important instrument for the realisation of the equal pay principle is the review of pay scales and job evaluation schemes. However, these pay scales and job evaluation schemes have not everywhere been scrutinized in depth. Further, while in many instances direct discrimination has been abolished, it is far from certain whether the scales and schemes applied are really sex-neutral. Indirect discriminatory features are less easy to detect and deal with. Moreover, there is the particular problem that work which is mainly performed by women is still in many cases intrinsically considered to be of lower value. Such problems exist, for instance even in Norway, where there is a highly segregated employment market. The pay differences there are often justified by 'market value' arguments and 'historical differences'. Other justifications for pay differences that are often put forward in many countries and which are also generally accepted are differences in education, the scarcity of labour, seniority, the quality of the work, and efficiency. Indeed, they are part and parcel of the criteria used for the establishment of 'equal value'.

An important instrument for achieving equal pay are *collective agreements*. As a rule they contain provisions on pay as such (they may even contain pay scales) and they often combine this with the issue of equal pay for men and women. Alternatively, pay equality is considered to be included in the more general provisions on gender equality in the collective agreement in question.

<sup>18</sup> On the gender pay gap see Prechal, S, Legal Aspects of the Gender Pay Gap, Commission's Network of legal experts in the fields of employment, social affairs and equality between men and women 2007, available at <http://ec.europa.eu/social/main.jsp?catId=641&langId=en&moreDocuments=yes>, last accessed 10 August, 2012.

### - Statutory schemes of social security

Equal treatment of women and men in statutory schemes of social security was introduced in 1979 (Directive 79/7). Statutory schemes ensure certain benefits for workers which is not so much a matter that falls under the employment relationship, but is rather a matter of – general – social policy. They concern protection in the case of sickness, invalidity, old age, accidents at work, occupational diseases, and unemployment. Survivors' and family benefits are in principle excluded. The Directive contains a long list of derogations, i.e. areas in which discrimination is still allowed.

The two most important derogations pertain to:

- The determination of different pensionable ages for men and women in old-age pensions and retirement pensions;
- Certain advantages related to the fact that the persons concerned had brought up children and may have interrupted employment for that purpose.

Interestingly, it is in particular the former 'socialist' countries that maintain the difference in pensionable age. In these countries the difference is regarded as fair since it compensates for unequal working conditions for men and women. Although the difference has given rise to some litigation, the (male) complainants have not been successful, at least not in the Czech Republic. The lower pensionable age for women, when a woman has raised one or more children, does not apply to men, even where they raise children alone. The Czech Constitutional Court has upheld this form of discrimination.

It has to be noted that the demographic trends and the constraints of the financial crisis brought to the trend of increasing pensionable age of women also in the new member states. Another feature is the difference between the pensions systems of the old member states and the new member states. The systems of the latter not always correspond to the three - pillar social security system of the old members, on which the EU Law is based.

### - Goods and services

The equal treatment of men and women in the access to and the supply of goods and services has been introduced in the EU Gender Equality Law relatively recently (in 2004). Here, for the very first time, gender equality outside the field of employment is addressed. Direct and indirect discrimination, including less favourable treatment of women for reasons of pregnancy and maternity, is prohibited, as well as harassment and sexual harassment and instruction to discriminate wherever goods or services are offered or supplied. The Directive also contains a provision on positive action.

An important exception is that the Directive does not apply to the content of media and advertising nor to education. Another exception relates to goods and services provided exclusively or primarily to members of one sex when there is a justification for doing so. Even so, the aim pursued must be legitimate and the means chosen to achieve that aim must be appropriate and necessary. Until very recently, special rules were applied in the area of insurance. In principle, the use of sex as a factor in the calculation of premiums and benefits could not result in differences in individual premiums and benefits. However, some exceptions for the use of different gender-based actuarial data – e.g. the fact that, on average, women live longer than men – were allowed. With the recent *Test-Achats* case - C- 236/09, judgement from 01 March, 2011, this exception was removed, as contrary to the EU primary law. This gives hope for the removal of the other exclusions from the scope of the Directive<sup>19</sup>.

<sup>19</sup> For a detailed discussion on the transposition of the Directive see Burri, S and McColgan, A, Sex-segregated Services, European Network of Legal Experts in the field of Gender Equality, European Commission 2008, available at <http://ec.europa.eu/social/main.jsp?catId=641&langId=en&moreDocuments=yes>, last accessed 19 June 2009, and Burri, S and McColgan, A, Sex Discrimination in the Access to and Supply of Goods and Services and the Transposition of Directive 2004/113/EC, European Network of Legal Experts in the field of Gender Equality, European Commission.

## II. Enforcement and compliance. The relationship between EU Law and the national legal orders

One of the premises of economic and political integration is *legal integration and cooperation*, both in the vertical and horizontal sense, namely legal integration between the Union and member states, and among member states themselves. This would imply a process of fusion between different legal orders, without losing their individual characteristics, by involving mechanisms of giving- and- receiving, cooperation, loyalty to the common legal order established through the will of sovereign states. However, one might ask how easy has it been for member states to surrender their prerogatives and sovereign powers to the Union<sup>20</sup>.

The primacy of the EU Law over the national legal orders was explicitly enshrined in the draft Constitutional Treaty. The Constitutional Treaty or the Treaty Establishing a Constitution for Europe was never ratified as the French and the Dutch voted against it in May and June, 2005. Several years after that, the Lisbon Treaty was signed on 13 December, 2007 and entered into force on 01 December, 2009.

Many of the provisions of the Constitutional Treaty were placed in the Lisbon Treaty but not the explicit provision of Article 1-6 establishing primacy of the EU Law over the national laws of the member states.

Instead, Declaration No. 17 annexed to the Lisbon Treaty was adopted, called Declaration concerning primacy of the EU Law. It says that “.....in accordance with well settled case law adopted by the Court of Justice of the EU, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of the member states, under the conditions laid down by the said case law”. An Opinion of the Council Legal Service in that sense was incorporated into this Declaration.

Prior to the term of primacy used in the draft Constitutional Treaty, the term of supremacy of the EU Law was used in the doctrine.

Indeed, the ECJ observed that *by creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from limitation of sovereignty or transfer of powers from the States to the Community, the member states have limited their sovereign rights, albeit within limited fields, and have created a body of law which binds both their nationals and themselves*<sup>21</sup>.

The ECJ has created a system whereby the laws of the Community take precedence over conflicting laws in the member states. Consequently, the national courts are obliged to ensure the practical effectiveness of supremacy by upholding Community law.

Community law cannot take precedence over national law in a field where the Community lacks competence. The doctrine of supremacy in European Community law has evolved through the jurisprudence of the ECJ in a vast number of cases.

Independently of the legislation of member states, Community law therefore not only imposes obligations on individuals but is also intended to center upon them rights which come part of their national heritage. Those rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the member states and upon the institutions of the Community.

Not all Community law and Treaty articles can produce direct effect. The ECJ has since then in other cases specified a set of rules when Treaty articles and directives can produce direct effect. If a

<sup>20</sup> *Supremacy of European Law revisited: New developments in the context of the Treaty Establishing a Constitution for Europe*- paper submitted by Darinka Piqani, LL.M. in Comparative Constitutional Law with Specialization in European Union Law, Central European University, Budapest (Hungary). PhD from European University Institute, Florence, Italy.

<sup>21</sup> Case Gend en Loos from 1963.

provision is to have direct effect it must fulfill a number of criteria such as being clear, unambiguous, unconditional, containing no reservation on the part of the Member State, and not dependent on any national implementing measure. The doctrine of direct effect was a product of the ECJ as a law.

The case of *Costa-ENEL* created the supremacy doctrine of European law<sup>22</sup>. The CJEU ruled that Community law is hierarchically supreme to the law of the member states. In case of a conflict between national law and EC law, the latter will prevail and have supremacy over national law of the member states.

The case of *Internationale Handelsgesellschaft – 1970* concerned the question of whether EC law should have supremacy over the Constitutions of the member states and especially if Community law takes primacy over the fundamental rights provisions in national Constitutions<sup>23</sup>. The case is said to mark the classic claim of full supremacy of Community law. The Court held that Community law should take precedence over all provisions in national law whatever its legal status even the member states' Constitutions.

Three things should be noted. First, the ECJ's statement is limited to Treaty provisions and "directly applicable measures of the institutions". Secondly, it does not state that conflicting national provisions are void, but merely that they are "inapplicable". Thirdly, it concerns not only national legislation which conflicts directly with a Community provision, but also national laws, which "encroach upon the field within which the Community exercises its legislative power". The powers of member states can be limited even where the conflict is only indirect or potential.

It has been quite difficult for constitutional courts of old member states to perceive the principle of supremacy in the same way as the ECJ: the Italian and German constitutional courts - at least at the very early stages of the supremacy debate - have been the most troublesome courts when it comes to giving away their power of constitutional review of secondary community law under national constitutional standards.

The last enlargement of the European Union has given a new dimension to the supremacy debate in Europe. Constitutional Courts of Central Eastern Europe countries are elaborating their own doctrine on issues of relation between European Law and national law, with special regard to national constitutional provisions. They tend not to hinder the integration process, but in the same time show strong concerns of not giving up their task as guardians of national constitutions.

There is no immediate nexus between direct effect and supremacy, in other words one category does not imply or exclude the other one. The absence of direct effect does not imply the absence of supremacy. Indeed, for community law also, there is no conclusive link between direct effect and supremacy: also provisions lacking direct effect are supreme over conflicting national law<sup>24</sup>.

Direct effect is not a universal character of Community law, but still supremacy has been accepted in principle. And then after all, consistency and coherence of the Union's legal order would be jeopardized by fragmental application of supremacy principle.

The "supremacy/primacy" principle means *supremacy/primacy in application* and not *in validity*. Supremacy, as the ECJ has ruled in several decisions, should be perceived as rule of conflict by indicating that in case of conflict between EU and national law, the former shall be applied. This does neither imply any hierarchy nor put in question the validity of national law.

<sup>22</sup> Case 6/64, *Flaminio Costa v ENEL* [1964] ECR 585.

<sup>23</sup> Case 11/70, *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] ECR 1125.

<sup>24</sup> Claes, Monica, *The National Court's Mandate in the European Constitution*, Hart Publishing 2006.

The enforcement of EU Gender Equality Law is related to three important more general issues- the direct effect of Gender Equality Law, the role of the ECJ / now Court of Justice of the EU/ and the role of the European Commission.

In 1975, in the famous *Defrenne II* case, the ECJ decided that individuals may rely on Article 119 EEC Treaty (now Article 157 TFEU) in the national courts in order to receive equal pay for equal work or work of equal value, without discrimination on grounds of sex. Later case law also clarified that directives can be relied upon in the national courts, though with certain limitations. In any event, this possibility to use EU Gender Equality Law in national proceedings is a powerful tool for individuals to enforce their EU equality rights wherever Gender Equality Law is not properly transposed into national law or where it is not adequately applied and protected.

Whenever EU Gender Equality Law is relied upon in the national courts, the courts are able and sometimes even obliged to request preliminary rulings – a sort of binding advice on the interpretation of EU Law provisions – from the ECJ/ now Court of Justice of the EU. In the field of equal treatment, since 1971 the ECJ has delivered more than two hundred binding judgments, sometimes providing far-reaching interpretations of relevant provisions, like the judgment in *Defrenne II*. Generally speaking, the ECJ has played, in particular through this preliminary procedure, a very important role in improving the ability of women and men to enforce their equality rights.

Finally, the European Commission has an important task in the enforcement of EU Gender Equality Law. The Commission monitors and analyses whether the member states are fulfilling their obligations regarding the implementation of Treaty provisions and directives. The Commission may also initiate inquiries into specific problems in a certain Member State, either on its own initiative or on the basis of complaints by individuals or organisations, which can be submitted to the services of the Commission rather easily. The Commission has the power to bring a case before the Court of Justice of the EU. If the Court considers that the Member State has failed to fulfil an obligation under EU Law, EU Gender Equality Law included, and the Member State does not take the necessary measures to comply with the judgment of the Court in good time, the state might even be subjected to penalties.

An important part of EU gender discrimination law relates to the defence of equal treatment rights. Provisions have been enacted regarding protection through court proceedings, remedies and sanctions, the burden of proof, and protection against victimisation. Similarly, the promotion of equal treatment through equality bodies and through social dialogue are considered vital.

Namely, member states have the obligation to ensure that judicial procedures are available to all persons who consider them to have been wronged by a failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended. According to the ECJ's case law, national courts must provide effective judicial protection and access to the judicial process must be guaranteed<sup>25</sup>.

Viewed from this perspective, organisations that act on behalf of the victim or, at least support her/him, may play a very important role. To this one may add that in the area of the provision of goods and services, due to the specific difficulties associated with individual litigation in this context, such as low sums to be recovered against high costs, action by organisations are crucial. For these reasons, EU Gender Equality Law provides that *organisations and associations* which have, in accordance with the criteria laid down in national law, a legitimate interest in whether the provisions of the equal treatment directives are complied with, may act before the courts. Such organisations, for example associations for women's rights or trade unions, may engage, either on behalf or in sup-

<sup>25</sup> Well-established case law ever since Case C-222/84 Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary [1986] ECR I-01651.

port of the complainant, with his/her approval, in any judicial or administrative procedure provided for the enforcement of the obligations under the equal treatment directives.

Since 2002, by virtue of Directive 2002/73, the member states and EEA countries are obliged to designate equality bodies. The tasks of these bodies are the promotion, analysis, monitoring and support of equal treatment between women and men. They may form part of agencies with responsibilities at the national level for defending human rights or safeguarding individual rights. These bodies must have the competence to provide independent assistance to victims of gender discrimination, to conduct independent surveys concerning gender discrimination and to publish independent reports and make recommendations.

The realization of the equal treatment of women and men is certainly not only an achievement of the EU. At the national level the respective states may always adopt measures that are better and that go further, since, in this area, EU Law lays down minimum requirements only. On the other hand, it should also be stressed that, in many respects, EU rules and case law have provided a crucial impetus to gender discrimination law in the member states and the EEA countries.

However, a correct transposition of the EU rules into national law is not enough. What also matters is that the transposed rules are applied in everyday life and are effectively enforced through the appropriate mechanisms, like labour inspectorates, equality bodies and, where necessary, the courts. Unfortunately the law in the EU standards and law in practice still differ, sometimes dramatically. One of the basic preconditions in this respect is that not only lawyers and judges familiarize themselves with the EU Gender Equality Law.

### III. Gender Mainstreaming as one of the main concepts of EU gender equality soft law

Since Beijing 1995, gender mainstreaming has marked the beginning of a renewed effort to address what is seen as one of the roots of gender inequality: the genderedness of systems, procedures and organizations. The world-wide adoption of the Gender Mainstreaming strategy can be traced back to the UN conference in Beijing, and is connected to earlier international agreements, such as CEDAW. Supranational organisations such as the Nordic Council of Ministers, the Council of Europe, the World Bank and the International Labour Organization (ILO) started initiatives directed at their respective constituencies. Since Beijing, the EU has been among the major pioneers in developing Gender Mainstreaming, by starting a process of Gender Mainstreaming within the European Commission itself, by diffusing information to member states and candidate states, and through the reorganisation of EU-policies so that member states could hardly avoid engaging in Gender Mainstreaming (as in the case of the regulations for the Structural Funds). After Beijing, several national governments announced that Gender Mainstreaming will be adopted as part of their continuous efforts to achieve gender equality. Countries such as Sweden and the Netherlands took the lead in developing specific tools. All of the old and many new member states of the European Union have started to implement gender mainstreaming. The 1997 Treaty of Amsterdam places equality between women and men among the explicit tasks of the European Union and obliges the EU to promote gender equality in all its tasks and activities. The Gender Mainstreaming approach that has been legitimated by this Treaty is backed by legislation and by positive action in favour of women (or the «under-represented sex»). Moreover, it has been documented that the overall EU action has run counter to its goal of gender equality. The overall EU action has weakened women's social rights more seriously than men's<sup>26</sup>. The introduction of Gender Mainstreaming – the incorporation of gender and women's concerns in all regular policymaking – is meant to address precisely this problem of a contradiction between specific gender policies and regular EU policies. Yet, in the case of the

<sup>26</sup> Verloo, Mieke, *Mainstreaming Gender Equality in Europe*, *The Greek Review of Social Research*, 117, 2005.

Structural Funds, for instance, Gender Mainstreaming has also been used to further reduce existing funds and incentives for gender equality. Article 8 of the TFEU affirms Gender Mainstreaming - "In all its activities, the Union shall aim to eliminate inequalities and to promote equality between men and women". In the definition of the Council of Europe, which is the most frequently used definition, gender mainstreaming is the (re)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making (Council of Europe, 1998). Gender Mainstreaming is a typical example of a strategy that involves multiple levels in governance, but also multiple shifts in governance. Multiple levels because it involves not only national or regional state bureaucracies, but also supranational and international players. Multiple shifts in governance, because the strategy aims at reorganisation of policy processes and at shift in responsibilities. Gender Mainstreaming involves individual and institutional actors from inside and outside the state bureaucracy, including fields such as science and economy.

The understanding and adaptation of the Gender Mainstreaming concept varies widely in the member states of the EU, ranging from the equation of the concept with equal opportunities and equality to its being understood as affirmative action, equal treatment, equal participation, and reform of government. The main problem is a focus on women as the subject of change, and a focus on fitting women into the status quo rather than transforming the status quo. In Spain, for instance, Gender Mainstreaming in practice is just the reinforcing of positive discrimination policies. Thus, Gender Mainstreaming efforts in the EU risk bringing to integrating women and gender issues into specific policies rather than rethinking the fundamental aims of the EU from a gender perspective. An integral part of the Gender Mainstreaming (GM) and a tool for avoiding this risk is the application of the method of Gender Impact Assessment (GIA). It identifies positive or negative outcomes of proposed policies in terms of gender equality. GIAs are meant to inform decision-making at an early stage so as to be able to reorient or mitigate policies if necessary. Gender Mainstreaming goes beyond the strategies of ensuring equal treatment of women and men, beyond positive action. This is a strategy that addresses the problem of gender inequality at a more structural level, identifying gender biases in current policies, and assessing the impact of these gender biases in the reproduction of gender inequality. By reorganising policy processes so that the regular policy makers will be obliged and capable to incorporate a perspective of gender equality in their policies, this strategy aims at a fundamental transformation, by eliminating gender biases, and redirecting policies so that they can contribute towards the goal of gender equality.

#### IV. Roadmap for equality between women and men (2006-2010)

An important EU soft law document where Gender Mainstreaming was adopted as a tool for the implementation of the Roadmap for equality between women and men. The Roadmap was adopted with Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions<sup>27</sup>. It was followed by an implementation report in 2008 and an evaluation with a follow-up proposal in 2010. The Roadmap outlines six priority areas. For each area, it identifies key objectives and actions which should facilitate their implementation. The document assesses that despite the significant progress made through equal treatment<sup>28</sup> legislation and the social dialogue, the European Union (EU) still faces considerable challenges.

- **Equal economic independence for women and men** – the identified areas of concern here are employment and unemployment rates for women, the gender pay gap arisen

<sup>27</sup> COM(2006) 92 final – Not published in the Official Journal.

<sup>28</sup> Please see the following link: [http://europa.eu/legislation\\_summaries/employment\\_and\\_social\\_policy/equality\\_between\\_men\\_and\\_women/c10940\\_en.htm](http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/c10940_en.htm).

from structural inequalities in the labour market and direct discriminations, the lower number of women entrepreneurs in the EU, the need for adequate benefits from the social protection systems because of the interruptions of careers of women, the need to measure the different health risks for men and women, the double discrimination immigrant women and those from ethnic minorities are subject to.

- **The reconciliation of private and professional life** – with concerns about the fact that women have recourse to the arrangements of reconciliation policies more often, which could have a negative impact on their professional position and their economic independence; there is a need that access to childcare facilities and a work-life balance are made easier, and that the provision of services to the elderly is improved; that measures which encourage men to take parental leave or to work part-time should be encouraged.
- **Equal representation in decision-making** in politics and senior public sector management and research.
- **The eradication of all forms of gender-based violence** is another concern, especially in view of the absence of EU standards in this particular field. The EU condemns violations of fundamental rights to life, safety, freedom, dignity and physical and emotional integrity, and customary practices which violate these rights. The Commission suggests criminalising the trafficking of women and at the same time discouraging the demand for human beings for sexual exploitation, and taking measures that enable their reintegration into the labour market.
- **The elimination of gender stereotypes** through education, taking measures against gender segregation of labour and against stereotyping in the media.
- **The promotion of gender equality and the internationally recognised principles such as the Millennium Development Declaration and the Beijing Platform for Action in third countries** – in candidate countries, potential candidate countries, in the European Neighbourhood Policy (ENP), as well as in external development policies.

**Key actions** to overcome these problematic issues: modernization of the existing EU gender equality legislation, GM, raising awareness for the elimination of gender stereotypes, application of statistics broken down by sex, research on the gender dimension in health, etc.

## V. **The Women's Charter and the Strategy for equality between women and men 2010-2015**

### **Strengthening the commitment to equality between women and men: a women's charter**

The Commission has adopted a Women's Charter to improve the promotion of equality between women and men, in Europe and throughout the world. It is of great concern that gender inequalities have direct consequences on economic and social cohesion, on sustainable growth and competitiveness, as well as on demographic changes<sup>29</sup>. The Commission commits to GM in all of its policies and proposes five specific fields of action:

<sup>29</sup> Communication from the Commission of 5 March 2010 – A Strengthened Commitment to Equality between Women and Men – A Women's Charter: Declaration by the European Commission on the occasion of the 2010 International Women's Day in commemoration of the 15th anniversary of the adoption of a Declaration and Platform for Action at the Beijing UN World Conference on Women and of the 30th anniversary of the UN Convention on the Elimination of All Forms of Discrimination against Women [COM(2010) 78 final - Not published in the Official Journal].

- **Economic independence** – the Commission commits to ensure the full realisation of women's potential and the full use of their skills. Its action should facilitate a better gender distribution on the labour market and allow the number of quality jobs for women to be increased;
- **Equal pay** – the Commission commits to fight against pay gaps by mobilising all available instruments, including legislative instruments;
- The **representation of women in decision-making and positions of power** - the Commission undertakes to act for fairer representation of women, in particular by adopting incentives at EU level;
- Respect for **women's dignity and integrity**, but also an end to **gender-based violence**, including harmful customary or traditional practices – the Commission's action is specifically aimed at eliminating inequality in access to healthcare and eradicating all forms of gender-based violence;
- **External action of the EU** as regards equality between women and men should enable the development of sustainable and democratic societies to be supported – the Commission undertakes to defend equality between women and men in its relations with third countries. It is to carry out awareness-raising actions, cooperation with competent international and regional organisations, and will support state and non-state actors.

As a follow up of the Roadmap and based on the Women's Charter, and as part of the European Pact for Equality between Women and Men, the Commission adopted the Strategy for Equality between Women and Men 2010-2015<sup>30</sup>. The measures envisioned are in the areas mentioned explicitly in the Charter:

- **Economic independence of women** – increasing the female employment rate, including among those groups of women with the lowest employment rates, improving the quality of jobs and work/life reconciliation policies, promoting female entrepreneurship and self-employment, supporting gender equality in matters of immigration and the integration of migrants;
- **Equal pay** – with social partners, explore possible ways to improve the transparency of pay, seeking to encourage women to enter non-traditional professions, for example in the 'green' and innovative sectors;
- **Equality in decision-making** – monitoring progress made towards achieving the 25% target for women in top level decision-making positions in research; promote an increase in the number of women in the committees and expert groups established by the Commission, with the aim of achieving at least 40% female membership; promote greater participation of women in European Parliament elections;
- **Dignity, integrity and an end to gender-based violence** – proposing an EU-wide strategy on combating violence, ensuring that EU asylum legislation takes account of gender equality considerations, monitoring gender issues in the field of health;
- **Gender equality in external actions** – implementing the EU Plan of Action on Gender Equality and Women's Empowerment in Development (2010-2015), conducting a regular dialogue and exchange of experience with the European Neighbourhood Policy partner countries; integrating equal treatment considerations into humanitarian aid operations;

<sup>30</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 21 September 2010 - [COM(2010) 491 final – Not published in the Official Journal].

- **Horizontal issues** are central for the Strategy, as the role of men in gender equality, disseminating good practice on redefining gender roles in youth, education, culture and sport, the correct implementation of European legislation.

## VI. European Gender Equality Pact (2011-2020)

Five years after the adoption in 2006 by the European Council of the first European Pact for Gender Equality, a new Gender Equality Pact was adopted at the Council meeting in March 2011 in which member states committed to strengthening the gender equality element in EU cooperation. Five years after the adoption of the first European Gender Equality Pact, fresh impetus was needed, especially to confirm and support the close link between the Commission's Strategy for Gender Equality 2010-2015 and the joint EU growth strategy, Europe 2020. By adopting the tools of GM again, the Pact highlights issues such as the importance of reducing the gap between women and men in the labour market, improving access to childcare and combating all forms of violence against women. Namely, the Council urges action at Member State and, as appropriate, Union level in the following fields:

- Measures to close gender gaps and combat gender segregation in the labour market:
  - a) promote women's employment in all age brackets and close gender gaps in employment, including by combating all forms of discrimination;
  - b) eliminate gender stereotypes and promote gender equality at all levels of education and training, as well as in working life, in order to reduce gender segregation in the labour market;
  - c) ensure equal pay for equal work and work of equal value;
  - d) promote women's empowerment in political and economic life and advance women's entrepreneurship;
  - e) encourage the social partners and enterprises to develop and effectively implement initiatives in favour of gender equality and promote gender equality plans at the workplace; and
  - f) promote the equal participation of women and men in decision-making at all levels and in all fields, in order to make full use of all talents.
- Measures to promote better work-life balance for women and men:
  - a) improve the supply of adequate, affordable, high quality childcare services for children under the mandatory school age with a view to achieving the objectives set at the European Council in Barcelona in March 2002, taking into account the demand for childcare services and in line with national patterns of childcare provision;
  - b) improve the provision of care facilities for other dependants; and
  - c) promote flexible working arrangements and various forms of leave for both women and men.
- Measures to tackle all forms of violence against women:
  - a) adopt, implement and monitor strategies at national and EU level with a view to eliminating violence against women;
  - b) strengthen the prevention of violence against women and the protection of victims and potential victims, including women from all disadvantaged groups; and
  - c) emphasise the role and responsibility of men and boys in the process of eradicating violence against women.

It is interesting to mention the opinion of the largest network of women's organizations in Europe - the European Women's Lobby (EWL) which regrets that no binding concrete measures, including targets, are foreseen in the Pact, except the renewed commitment to the Barcelona child-care objectives. The EWL notes that the Council in the Pact states that gender equality policies are 'vital to economic growth, prosperity and competitiveness'. This has led to a narrowed down approach to women's rights and gender equality in the economic area, where the main focus is to increase women's employment in quantitative terms. More generally, the EWL regrets that the issue of equality between women and men is approached through this predominantly economic perspective, which is of course important, but this issue is therefore not put in the framework of human rights, which are at the core of European values, aiming at reaching equality between women and men and guaranteeing women's rights and human rights for all, ensuring dignity, democracy justice and integrity<sup>31</sup>.

Here are some other reactions from civil society: "The women who need protection the most are often left out of domestic violence programs and services," Gauri van Gulik from Human Rights Watch said, "We are thrilled the EU recognizes that all women deserve protection from violence and discrimination, but we need the legislation and programs to back this up. To start, we need a comprehensive directive on violence against women that leaves no woman behind".

## **VII. Institutional support for Gender Equality in the EU**

### **European Institute for Gender Equality**

The EU has established a European Institute for Gender Equality in Vilnius, Lithuania. Among other things, the Institute is responsible for providing technical support to the EU institutions and member states to fight discrimination based on sex and promote gender equality in all EU policy areas. The Institute will also gather and spread information concerning research and method development in the gender equality area as well as create opportunities for experience exchange between member states. Tasks of the European Institute for Gender Equality are:

- to collect and analyse comparable data on gender issues;
- to develop methodological tools, in particular for the integration of the gender dimension in all policy areas;
- to facilitate the exchange of best practices and dialogue among interested parties;
- to raise awareness among EU citizens.

The bodies of the Institute are: a Management Board (decision-making body); an Experts' Forum (consultative body); a Director (executive body) and his/her staff. The Management Board adopts the annual work programme, the medium-term work programme as well as the Institute's budget. The Experts' Forum supports the Director in ensuring the excellence and independence of the Institute. The Director, who is the legal representative of the Institute, is responsible for the daily management of the Institute and the implementation of the work programme.

### **High Level group on Gender Mainstreaming**

The High Level Group on gender mainstreaming is an informal group created in 2001 and comprises high-level representatives responsible for gender mainstreaming at national level. It is chaired by the European Commission at regular meetings convened in close collaboration with the Presidency. Among its main tasks, the Group supports the trio-presidencies in identifying relevant

<sup>31</sup> [http://www.womenlobby.org/spip.php?rubrique61&lang=en&debut\\_actu=10#pagination\\_actu](http://www.womenlobby.org/spip.php?rubrique61&lang=en&debut_actu=10#pagination_actu).

policy areas and topics to be addressed. The Group is also the main forum for planning the strategic follow-up of the Beijing Platform for Action<sup>32</sup>; including the development of indicators<sup>33</sup>. Since 2003 the Group has also been assisting the Commission in the preparation of the Report on Equality between Women and Men<sup>34</sup> to the European Council.

### **Advisory Committee on Equal Opportunities for Women and Men**

The Advisory Committee on Equal Opportunities for Women and Men was created in 1981 and assists the Commission in formulating and implementing the European Union activities aimed at promoting equality between women and men. The Committee fosters ongoing exchanges of experiences, policies and practices between EU countries and the various parties involved. To achieve these aims, the Committee delivers opinions to the Commission on issues of relevance to the promotion of gender equality in the EU. It comprises representatives of EU countries, social partners at EU level and NGOs.

In addition to these gender equality institutions, the Commission provides funding in the form of grants to projects or organisations which help implement EU policies. Grants are provided in the field of gender equality under the funding programmes listed below. Interested parties can apply by submitting an application for the calls for proposals published under the relevant programme.

*PROGRESS* is the EU's employment and social solidarity programme. It was established to financially support the implementation of the objectives of the European Union in employment, social affairs and equal opportunities. It also contributes to the achievement of the Europe 2020 Strategy. The *PROGRESS programme* finances actions with a transversal dimension, given that gender equality is an aspect that is common to a number of policies. For this reason, the Commission should explore the possibilities of integrating and assessing the impact of the gender perspective in budgeting at EU level.

*The Structural Funds* are a major source of funding. The Structural Funds will also help achieve the Barcelona targets on childcare and the development of health care facilities. The European Social Fund (ESF) plays a role in integrating women into the labour market, as well as in the integration of women from third countries into the EU, and in the elimination of stereotypes.

*The Daphne III* programme aims to contribute to the protection of children, young people and women against all forms of violence and attain a high level of health protection, well-being and social cohesion. Its specific objective is to contribute to the prevention of, and the fight against all forms of violence occurring in the public or the private domain, including sexual exploitation and trafficking of human beings. It aims to take preventive measures and provide support and protection for victims and groups at risk.

<sup>32</sup> Please see the link: <http://www.un.org/womenwatch/daw/beijing/platform/>.

<sup>33</sup> Please see the link: [http://ec.europa.eu/justice/gender-equality/tools/statistics-indicators/platform-action/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/tools/statistics-indicators/platform-action/index_en.htm).

<sup>34</sup> Please see the link: [http://ec.europa.eu/justice/gender-equality/document/index\\_en.htm#h2-2](http://ec.europa.eu/justice/gender-equality/document/index_en.htm#h2-2).

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# **PART TWO**

## **COMPARATIVE OVERVIEW OF GENDER EQUALITY IN SOUTH EAST EUROPE**

## COMPARATIVE OVERVIEW OF GENDER EQUALITY IN SOUTH EAST EUROPE

*Dr. Veronika EFREMOVA*

The principles of gender equality and non-discrimination are commonly agreed and fostered in the European Union. The promotion of gender equality is one of the fundamental goals of the European Union and thereby promoted in the EU's internal policies and within its own structure. EU common framework is to strengthen women's role in political, civil, legal, social, economic and cultural spheres, as well as to fight against discrimination.

The EU has placed high priority on the issue of gender equality, approving provisions and implementing policies for women's access and advancement. This should be followed by strengthening the promotion of gender equality and gender mainstreaming in curricula at the Universities. Education and research lead to creating new knowledge, new values and new attitudes.

By signing the Millennium Declaration, the South East European (SEE) countries have committed their leadership to supporting the attainment of national Millennium Development Goals (MDGs). The national Governments developed a strategic and institutional framework for monitoring, analysis and reporting on progress towards the achievement of MDGs. In this process of crucial importance is to mobilize all relevant segments in society to eliminate gender discrimination: political parties, the Government, the Parliament, the local self-government, the Universities, the judiciary centres, the non-governmental organizations, the trade unions and women-experts.

All SEE countries heading toward EU accession, together with their respective institutional framework, should promote and mainstream gender equality. These principles are translated into practicing gender mainstreaming in curricula development, promoting gender equality awareness and aiming towards an equal gender representation in research, academic staff structure and working methods.

Focus on the awareness of (non)pursuing of the gender equality principle within the SEE countries has been elaborated in the Country reports (hereinafter: Country reports) on "Legal Perspectives of Gender Equality in the SEE countries" prepared by outstanding professors working at the Law Faculties member of SEELS. The results from their work and research undertaken were presented at the first Regional conference held at the Law Faculty in Sarajevo on 24<sup>th</sup> and 25<sup>th</sup> September 2012.

What can be observe as common from the Country reports is that SEE countries have established legal framework on anti-discrimination based on sex and gender, have adopted related strategic documents such as national strategies and action plans, have established adequate institutional framework to deal with gender equality issues, have to certain extent increased women's presence in decision making and have reflected active role of the civil society in promotion of gender equality.

The Constitutions of SEE countries forbid any kind of discrimination based on gender (notwithstanding gender, race, religion, colour of skin, ethnicity, language, social belonging, political, religious and philosophical beliefs, economic, education and social standing, as well as parental situation), as well guaranteeing equal respect for human rights and freedoms for all citizens. Gender equality is one of the values guaranteed in various national legal acts in these countries such as: Gender Equality acts, Anti-discrimination acts, Labour acts, Civil Codes, Criminal Codes, Family acts, Acts on Equal opportunities for men and women, Acts on Political parties, Acts on Education, Acts on Health Protection, the Electoral Codes, Social security acts, etc.

Referring to the Law Faculties member of SEELS and by examining the existing curricula in terms of how far they incorporate gender aspects into the teaching and learning process, the authors of the Country reports identify a need for gender mainstreaming of curricula and courses development. The members of SEELS face the need for gender equal participation in particular fields of study, areas of expertise and services.

Present curricula at the most of the SEELS members reflect lack of developed courses on gender equality. Attention should be paid in the application of the gender insensitive language, when introducing the gender quotas in decision making bodies in order to ensure gender equality principle, and when creating educational plans and introducing courses on gender equality law.

The Judiciary training academies are to certain level addressing the gender bias in judiciary training programmes. The training programmes and curricula developed include issues of gender equality, gender anti-discrimination, family violence, promotion and protection of human rights of women and children. The advancement of anti-discrimination and gender-sensitive judiciary training programs is identified as a need for the Judiciary training academies in SEE countries.

Improvements are also made in the legal framework of some of the SEE countries by implementing the gender equality principle in the process of election of judges and public prosecutors (for an example by introducing the gender quote of 40% in Bosnia and Herzegovina).

On the other side, the SEE countries are lacking gender sensitive statistics related to the court system. Nearly no available official evidence exist about the number of male and female judges per courts in charge.

Gender representation in judiciary in SEE countries complies with the principle of gender equality, shown in Table 1. The overall figures express higher level of female gender representation in the judiciary system in SEE countries. From in total 6,302 judges, 2,168 are male and 4,134 female (Table 2).

Opposite to this, if analysed per courts, the figures are different. Gender disproportion is more expressed in the higher courts like Supreme and Constitutional courts in SEE countries where female are less represented then male judges. The biggest disproportion is at the position of Presidents, especially at higher courts. As illustrated in Table 3, it is the most evident in Albania (only 32% female judges are presidents of courts), in Macedonia (only 20%) and in Montenegro (only 23%).

**Table 1: Gender distribution of judges in SEE countries (per courts)**

Country	Courts	Judges in total	Male	Female	Presidents	
					Male	Female
Albania	Constitutional Court	9	7	2	1	2
	Supreme Court	17	12	5		1
	District and Appellate Courts	352	204	148	22	8
	All courts	378	223	155	23	11

Country	Courts	Judges in total	Male	Female	Presidents	
					Male	Female
<b>Bosnia and Herzegovina</b>						
State level	Court of Bosnia and Herzegovina	55	31	24		1
	Constitutional Court of Bosnia and Herzegovina	9	5	4		1
Federation of Bosnia and Herzegovina	Supreme Court of Federation of Bosnia and Herzegovina	33	13	21	1	
	Constitutional Court of Bosnia and Herzegovina	6	3	3		1
	Canton Courts	153	71	82	3	7
	Municipal Courts	437	138	299	14	14
Republic of Srpska	Supreme Court of Republic of Srpska	20	9	11	1	
	Constitutional Court of Republic of Srpska	9	9		1	
	District courts	67	31	36	5	
	Commercial district courts	39	13	26	3	3
	Basic courts	211	80	131	13	6
Brčko District	Appellate Court of Brčko District BiH	8	4	4	1	
	Basic Court of Brčko District	21	11	10	1	
	All courts	1069	418	651	43	33
Country	Courts	Judges in total	Male	Female	Presidents	
					Male	Female
Croatia	Constitutional Court	13	8	5		1
	Supreme Court	43	24	19	1	
	Administrative Court	33	5	28	1	
	High Commercial Court	33	12	21	1	
	Commercial Courts	115	44	71	8	5
	Higher Misdemeanour Court	45	17	28	1	
	Misdemeanour Courts	349	92	257	33	58
	Municipal Courts	838	233	605	31	36
	All courts	1469	435	1034	76	100

Country	Courts	Judges in total	Male	Female	Presidents	
					Male	Female
Macedonia	Constitutional Court	9	5	4	1	
	Supreme Court	20	11	9	1	
	Higher Administrative Court of the Republic of Macedonia	11	1	10		1
	Administrative Court of the Republic of Macedonia	29	6	23	1	
	Appellate Courts	105	50	55	2	2
	Courts of First Instances	517	213	304	23	4
	All courts	691	286	405	28	7
Country	Courts	Judges in total	Male	Female	Presidents	
					Male	Female
Montenegro	Supreme Court	18	9	9		1
	Administrative Court	10	5	5	1	
	Appellate Court	11	5	6	1	
	Commercial Courts	22	9	13	2	
	High Courts	53	25	28	2	
	Basic Courts	147	61	86	11	4
	All courts	261	114	147	17	5
Country	Courts	Judges in total	Male	Female	Presidents	
					Male	Female
Serbia	Supreme Court of Cassation	24	7	17		1
	Appellate Courts	216	66	150	2	2
	Higher courts	284	112	172	16	10
	Courts of Original Jurisdiction	1138	314	824	16	18
	Administrative Court	31	8	23		1
	Economic Appellate Court	26	9	17	1	
	Economic Courts	139	39	100	6	10
	Higher Misdemeanour Court	61	11	50	1	
	Misdemeanour Courts	539	133	406	12	33
	All courts	2434	692	1742	54	75

**Table 2: Gender distribution of judges in SEE countries (in total)**

Country	Judges in total	Male	Female	Presidents		
				Total	Male	Female
Albania	378	223	155	34	23	11
Bosnia and Herzegovina	1069	418	651	76	43	33
Croatia	1469	435	1034	176	76	100
Macedonia	691	286	405	35	28	7
Montenegro	261	114	147	22	17	5
Serbia	2434	692	1742	129	54	75
<b>Total</b>	<b>6302</b>	<b>2168</b>	<b>4134</b>	<b>472</b>	<b>241</b>	<b>231</b>

**Table 3: Gender distribution of judges in SEE countries (in percentage)**

Country	Judges in total	Male	Female	Presidents		
				Total	Male	Female
Albania	378	59%	41%	34	68%	32%
Bosnia and Herzegovina	1069	39%	61%	76	57%	43%
Croatia	1469	30%	70%	176	43%	57%
Macedonia	691	41%	59%	35	80%	20%
Montenegro	261	44%	56%	22	77%	23%
Serbia	2434	28%	72%	129	42%	58%
<b>Total</b>	<b>6302</b>	<b>34%</b>	<b>66%</b>	<b>472</b>	<b>51%</b>	<b>49%</b>

According to the data collected on national level on the issue of gender distribution at the academic staff of SEELS members presented in Table 4, in total 574 professors (Professors, Associate professors and Assistant professors) are working at the eleven Law Faculties member of SEELS (Law Faculties of Zagreb, Split, Rijeka, Sarajevo, Zenica, Podgorica, Tirana, Belgrade, Nis, Kragujevac and Skopje). From this number, 331 (58%) are male and 243 (42%) female professors. At the most of the SEELS members still exists discrepancy between the gender distribution of university professors.

**Table 4: Gender distribution at academic staff of SEELS members**

Institution	Position	Total	Men	Women
Law Faculty Montenegro	Professors	27	16	11
	Assistant Professors	12	5	7
Law Faculty Zagreb	Professors	55	37	18
	Assistant Professors	26	6	20
Law Faculty Tirana	Professors/ Assistant Professors	72	27	45
Law Faculty Skopje	Professors	57	39	18
	Assistant Professors	19	13	6
Law Faculty Sarajevo	Professors/ Assistant Professors	39	19	20
Law Faculty Zenica	Professors/ Assistant Professors	19	14	5
Law Faculty Belgrade	Professors/ Assistant Professors	120	74	46
Law Faculty Rijeka	Professors	16	10	6
	Assistant Professors	17	6	11
Law Faculty Split	Professors	15	10	5
	Assistant Professors	12	8	4
Law Faculty Nis	Professors	21	14	7
	Assistant Professors	15	10	5
Law Faculty Kragujevac	Professors	15	13	2
	Assistant Professors	17	10	7

In addition, Table 5 gives overview of evidently existing gender disproportion in the actual management structures at SEELS members. Namely, all eleven Deans of SEELS members are male. Referring the Vice-Dean positions, from in total 29 Vice-Deans, 18 (62%) are male and 11 (38%) are female.

**Table 5: Gender distribution at SEELS members' management**

Institution	Position	Total	Men	Women
Law Faculty Montenegro	Deans	1	1	
	Vice-Deans	2		2
Law Faculty Zagreb	Deans	1	1	
	Vice-Deans	3	3	
Law Faculty Tirana	Deans	1	1	
	Vice-Deans	3	1	2
Law Faculty Skopje	Deans	1	1	
	Vice-Deans	3	2	1
Law Faculty Sarajevo	Deans	1	1	
	Vice-Deans	2	1	1
Law Faculty Zenica	Deans	1	1	
	Vice-Deans	2	2	
Law Faculty Belgrade	Deans	1	1	
	Vice-Deans	3	2	1
Law Faculty Rijeka	Deans	1	1	
	Vice-Deans	5	3	2
Law Faculty Split	Deans	1	1	
	Vice-Deans	2	1	1
Law Faculty Nis	Deans	1	1	
	Vice-Deans	2	1	1
Law Faculty Kragujevac	Deans	1	1	
	Vice-Deans	2	2	

Regarding the future challenges for the region it has been detected the need to improve the actual national legal frameworks, to advocate gender equality mechanisms and better enforcement of legislation, to raise public awareness on anti-discrimination legislation, to gender mainstream curricula and courses at schools, Universities and Judiciary Academies, to conduct specialised educational and training programs on gender equality and gender mainstreaming for the gender experts, to guarantee more effective coordination between central and local governments, universities and NGO representatives on promotion of gender equality, to strengthen the capacities and monitoring mechanisms of the relevant authorities, to promote measures to ensure adequate gender representation in decision making and to introduce gender sensitive statistical records by state political, administrative, professional, educational, cultural and other institutions.

In this respect, and aiming to fulfill these challenges on a mid and long-term in SEE countries, the SEE Gender Experts' Law Forum is established under the SEELS Network by representatives from the academic community, governmental bodies, judiciary academies, NGOs, international organisations and gender experts from the region. The main competencies of the SEE Gender Experts' Law Forum will be to give recommendations for improvement of the national gender policies and strategies, to conduct surveys and analysis of the gender awareness in SEE countries, to give expert opinions on gender related laws, to promote introduction of gender mainstreamed curricula and courses, to develop gender media campaigns and to enhance regional cooperation, sharing knowledge, experience, best practices and lessons learnt among SEE countries.

# **PART THREE**

## **GENDER EQUALITY IN THE LEGAL ENVIRONMENT OF SOUTH EAST EUROPE: COUNTRY REPORTS**

## COUNTRY REPORT ON LEGAL PERSPECTIVES OF GENDER EQUALITY IN ALBANIA

*Prof. Dr. Oriona MUÇOLLARI*

### Introduction

In Albania, patriarchal social organizations have dominated gender relationships in the private sphere. During the communist era, the Albanian state imposed another structure within the public sphere, one that promoted equal opportunities for men and women in education and the labor market. Women were given a number of key, high level positions. As a result, literacy rates rose from low levels at the beginning of the communist regime to nearly 100 percent by 1989. Nonetheless, women in the communist regime had a double burden: at home they had complete responsibility for childcare and housework while men contributed much less and women were expected to contribute at work as much time and effort as men. The socio-economic changes during 1990s highlighted several stereotypes of gender roles and the patriarchal nature. Still many women and men do not recognize gender discrimination as it is, but see it as a “way of living”. Required reforms undertaken in the early 1990s further worsened women’s life style for two main reasons: on one hand the privatization of state owned companies significantly increased unemployment among women and on the other hand, a massive withdrawal of women from the labor market took place due to the closure of kindergartens and daycares and a significant reduction of spending on social protection<sup>1</sup>.

In Albania, there is an increased understanding among decision makers about the linkages between the advancement of gender equality and the realization of democratic governance and sustainable development. Recent years have seen significant strengthening of the laws and policies which promote gender equality – such as the adoption of the Law on Gender Equality (2004), the Law on Domestic Violence (2006), the National Strategy for Gender Equality and Domestic Violence (2011-2015) and the Law on “On Gender Equality in Society” (2008), which for the first time adopted a quota for women in decision making, and the Electoral Code (2008), which incorporated aspects of this quota. These steps have been taken by respective governments to support women’s advancement, and much of what has been done, has gone far in ensuring that Albania’s legal frameworks uphold international norms and standards.

Based on the preliminary results<sup>2</sup>, the total population of Albania is 2,831,741. The total population is composed of 1,421,810 males (50.2%) and 1,409,931 females (49.8%), which indicates an approximately equal sex distribution.

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<sup>1</sup> Albania Country Report, February 2010 <http://www.jica.go.jp/activities/issues/gender/pdf/e10alb.pdf>.

<sup>2</sup> Census 2011, Albania Preliminary Results of the Population and Housing; [www.instat.gov.al](http://www.instat.gov.al).

## I. National legal framework and compliance with international Gender Equality standards and norms

Gender equality means an equal visibility, empowerment and participation of both sexes in all the spheres of public and private life. Gender equality is the opposite of gender inequality, not of gender difference<sup>3</sup>.

The Council of Europe's work in the field of gender equality is based on two premises: gender equality is an integral part of human rights and gender equality is a fundamental criterion of democracy.

The legal status of women in Europe has undoubtedly improved over the last thirty years, but effective gender equality is still far from being reality. In the general perspective of protecting and promoting human rights, the Council of Europe seeks to combat any interference with women's liberty and dignity, eliminate discrimination based on sex, promote a balanced participation of women and men in political and public life and encourage the integration of a gender perspective in all programs and policies.

Given its primary concerns, any discrimination on the grounds of sex will directly undermine the values on which the Council of Europe is based and therefore it is logical that finding solutions to this problem and promoting gender equality has been a priority for that organization since its foundation.

The EU Strategy 2010-2015 for equality between women and men<sup>4</sup> spells out actions under five priority areas and one area addressing cross-cutting issues. The actions proposed follow the dual approach of gender mainstreaming, i.e. integration of gender equality goals into all policy areas, and implementation of specific measures.

Defining equal economic independence as a "prerequisite for women and man to exercise control over their lives and make genuine choices", priority area 1 focuses on measures towards increasing women's employment, including those that enable the reconciliation of work and private life, and the removal of barriers to employment and social security. Priority Area 2 includes actions towards ensuring equal pay for equal work and work of equal value, by also addressing structural issues like sex-segregated labor markets and women's educational attainment and professional development. Priority Area 3 aims at equality in decision making. Dignity, integrity and the end to gender-based violence are addressed in priority area 4, which foresees the establishment of a comprehensive and effective policy framework and measures, including criminal law. Priority Area 5 addresses the issue how the EU will further gender equality in all its work undertaken in third countries<sup>5</sup>.

The principle of equality between women and men as an integral part of human rights is reflected in the prohibition of discrimination based on sex contained in Article 14 of the European Convention on Human Rights (ECHR) of 1950 and its Protocol No. 12, which entered into force in April 2005<sup>6</sup>. The protocol No.12 of the ECHR is an important instrument for achieving equality between women and men because it secures a general prohibition on discrimination by any public authority, in particular on the grounds of sex, regarding the enjoyment of any right set forth by law and not only rights and freedoms of the ECHR.

<sup>3</sup> Information document prepared by the Gender Equality and Anti-Trafficking Division of the Directorate General of Human Rights and Legal Affairs of Council of Europe; <https://wcd.coe.int>.

<sup>4</sup> [http://europa.eu/legislation\\_summaries/employment\\_and\\_social\\_policy/equality\\_between\\_men\\_and\\_women/em0037\\_en.htm](http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/em0037_en.htm).

<sup>5</sup> Witberger, Dolly with an introduction by Knieper, Judith, Gender Equality in South- Eastern Europe, A resource guide for external consultants and trainers, commissioned and published by GIZ.

<sup>6</sup> ECHR enter into force in Albania by Law 8137, on 31.07.1996, published on Official Gazette 12.08.1996. The Protocol No.12 enters into force in Albania by Law 9264, on 29.07.2004, published on Official Gazette 16.08.2004.

The issue of the elimination of discrimination against women is considered as one of the foundation stones of democracy in Albania. Elimination of discrimination and promotion of gender equality are integral components of primary importance in the package of human/women's fundamental rights and freedoms and a mandatory standard to meet for the country's European integration. Gender equality is also a fundamental right and value in all the EU countries. In the context of its EU integration, Albania has been looking into gender discrimination and other issues<sup>7</sup>.

Albania ratified the CEDAW Convention in 1993<sup>8</sup>, while its Optional Protocol adopted by the General Assembly in its 54<sup>th</sup> Session on 6 October 1999, which entered in force on 22 December 2000, was ratified in Albania a few years later, in 2003<sup>9</sup>. Pursuant to the Constitution of the Republic of Albania<sup>10</sup>, "Any international agreement that has been ratified constitutes part of the internal juridical system after it has been published in the Official Journal of the Republic of Albania". The official CEDAW text was first published in the Official Gazette about 15 years after its ratification. This happened on 15 October 2008 in Official Gazette No. 33 (a supplemental edition – for unpublished acts). Therefore, from 1993, the year of its ratification, CEDAW officially became an integral part of the juridical system in the country only on 30 October 2008 (i.e. fifteen days after publication in the Official Gazette)<sup>11</sup>.

The recognition, ratification, and implementation of the CEDAW Convention have made a tangible contribution towards gender and substantive equality between men and women. It has to be pointed out, however, that the practical implementation of these instruments in Albania is still limited.

It has to be admitted that Albania has readily signed and ratified a series of international and regional instruments on the protection and observation of human/women's rights. This is undoubtedly a very positive indicator because it directly affects the "disciplining", of domestic legislation provisions, by making sure that minimum standards are at least respected *de jure*.

**The Constitution of Republic of Albania** (1998) it does not have a specific definition of equality between men and women however in general it can guarantee this impartiality. Article 18 forbids any kind of discrimination based on gender, Article 18 states that: a) all are equal before the law, 2) no one may be discriminated unjustly for reasons of gender, race, religion, ethnicity, language, political, religious and philosophical beliefs, economic, education, or social situation and parental situation, 3) no one maybe discriminated against for reasons mentioned in paragraph 2, if reasonable and objective legal grounds do not exist.

**The Civil Code** (approved on 03.05.2001, Law No. 8781) recognizes equal rights in all legal proceedings, such as the right to fair trial. The Civil Code states that all individuals possess skills to act when 18 years old and since that moment she/he can freely execute any juridical act. The Civil Code, banking legislation and other laws use impartial language related to gender issues, such as "every person", "parties", "physical person" etc. In other sections the law uses male gender terms such as "creditor" or the term "owner". The use of this language is evident in other laws as well.

<sup>7</sup> Articles 77 and 99 of the Stabilization and Association Agreement (SAA) provide Albania's obligations with regard to ensuring equal employment opportunities, and especially the provision of adequate health and safety standards in the workplace. As far as working conditions are concerned, the aim is to align the Albanian body of legislation to EU's *acquis communautaire* with regard to guaranteeing equal opportunities for women.

<sup>8</sup> Law 1769 of 9.11.1993.

<sup>9</sup> Law 9052 of 17.4.2003.

<sup>10</sup> Article 122/1.

<sup>11</sup> Shadow report on the implementation of the CEDAW Convention in Albania. NGO Shadow Report to the UN CEDAW Committee. June 2010, from Prof. Dr. Aurela Anastasi, Prof. Dr. Arta Mandro-Balili, Ms. Mirela Arqimandriti and Ms. Vera Lesko in the period from February 2010 to May 2010.

**The Penal Code** (approved on 21.03.1995, Law No. 7905) ensures equality between men and women in all areas of life, health, ownership, and dignity. Women receive the same punishment as men for the same offences.

**The Labor Code** (approved on 12.07.1995, Law no. 7961) contains a more detailed definition of discrimination in employment relations, whereas during the years 2003-2007, there was no legislative initiative recorded to review the respective definition in the Labor Code regarding gender balance. Article 9, paragraph 1 of the Labor Code prohibits all forms of discrimination in work and professional life, while paragraph 2 of this article defines discrimination in employment relations, pursuant to which, "Discrimination is the distinction, exclusion, or preference made on the basis of race, color, sex, age, faith, political opinion, ethnic belonging, or social origin, physical or mental impairment that infringe the right of the individual to be equal in employment and training"<sup>12</sup>.

**The Family Code** (approved on 08.05.2003, Law No. 9062, enacted at the beginning of 2004) is one of the most important laws concerning family rights, in order to eliminate the discrimination of women in issues that deal with marriage and family relations. The Family Code envisions equal rights regarding the age of marriage being 18 years old for men and women, as well as reciprocal rights and duties in the family and for the education and upbringing of children. The Code states that the equal rights of the spouses to customary or common administration of mutual properties and the right to resolve property status without limitations based on gender. Article 74 of the Family Code states that: The marital estate consists of:

- a) the wealth obtained by the spouses, together or separately, during the marriage;
- b) income from specific activities of each spouse during the marriage, which were not consumed, before the termination of joint ownership<sup>13</sup>;
- c) profits from the properties of each spouse, which have been acquired and not consumed before the termination of joint ownership;
- d) trade activity created during matrimony.

As regards to the rights and obligation that parents have to children the Family Code treats both spouses equally.

**The Electoral Code** (adopted on November 29, 2008, No. 10019). The new electoral code finally sanctioned the application of gender representation quotas in the multi name lists of political parties for the general elections. Furthermore, the Code attempts to establish a listing of the sexes as follows in Article 65: for every electoral zone, at least thirty percent of the multi name list and/or one of the three first names in the multi name list should belong to one of the sexes. It should be emphasized that the inclusion of the words "and/or" gives the parties the opportunity to not observe the listing of one of the first three names, but only observe the 30% minimum in the entire multi name list. Unlike the Law on Gender Equality, No. 9970, the Electoral Code includes a strengthening of the sanction for failure to observe Article 65, item 5. Article 175 of the Electoral Code notes: failure to meet one of the conditions envisioned in article 67, with regard to the makeup of the multi name list for elections to the Assembly, as a result leads to the CEC's rejection of the list.

**The Law on Measures Against Domestic Violence** (No. 9669 approved in June 2007) represents one of the most successful initiatives for bringing Albanian legislation in line with international standards, in the area of legislation against domestic violence. The law is an essential part of Albanian anti-discrimination legislation, drafted in the process of implementing different compulsory international acts, such as CEDAW, or other acts approved by the European Union. The law was presented to Parliament following a petition signed by 20,000 Albanian citizens.

<sup>12</sup> See ILO Convention provisions, No. 111.

<sup>13</sup> Law No.9062, dt.08.05.2003, Article 74.

**The Law on Gender Equality in the Society** (No. 9970, approved by the Albanian Assembly on 24.07.2008). The law completes in a visible manner the legal framework on gender equality in Albania and, for the first time, includes the application of a minimal representation quota for each of the sexes (30 percent) in the multi-name lists of candidates for members of parliament in general elections<sup>14</sup>.

The purpose of the law, as expressed in Article 2, is to: a) ensure effective protection against discrimination due to gender and any form of behavior that encourages gender based discrimination; b) determine measures for guaranteeing equal opportunities, between women and men, to eliminate gender based discrimination, in any form it may appear; c) determine the responsibilities of state authorities, national and local, to draft and implement normative acts as well as policies that support the development and encouragement of gender equality in society. The novelties of this law deal with the introduction of new definitions: gender based discrimination, gender mainstreaming, equal gender representation of 30 percent, the definition and allowance as non discriminatory of special temporary measures, the creation of new policy making, executing, and protective structures such as the National Gender Equality Council, gender employees at ministries and local employees on gender issues, the inclusion of special temporary measures on political and public decision making (expressed through the 30 percent quota). Concerning education and employment; the introduction of the concept and recognition of unpaid work, which is presently becoming increasingly one of the main themes regarding gender equality in many countries of the world; as well as the obligation to determine gender statistics and gender indicators in all areas. With regards to the inclusion in the multi name lists of candidates for members of parliament, it is noted: no less than 30 percent of each of the sexes shall be included in the list of candidates presented by the political parties in the proportional system for the elections to the Assembly of the Republic of Albania.

Furthermore, the law determines the sanction for parties that fail to respect this legal obligation: political parties pay a fine of up to one tenth of the state fund for their campaign financing, if they violate the provisions of this law, until the violation is corrected. This sanction is one of the items debated in discussions about the Electoral Code, considering also that it is one of the things that will change after discussions in the Special Commission for the approval of the Code.

**The Law On Health and Safety at Work** (No. 10237/18.2.2010) which brings issues such as the protection of pregnant and lactating women from hazardous substances, hard working conditions more in line with CEDAW and EU standards<sup>15</sup>.

**The Law for Protection from Discrimination** (4.2.2010), which protects Albanians from a number of forms of discrimination, including on the grounds of sexual orientation and gender identity. Article 1 of the law, which outlines the law's objective, states: "This law regulates the implementation of and respect for the principle of equality in connection to gender, race, color, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, restricted ability, affiliation with a particular group or for any other reason".

The law outlines detailed provisions for the protection from discrimination in employment, in education, and in the field of goods and service. The law establishes an independent, state funded Commissioner for Protection from Discrimination who "assures the effective protection from discrimination and from every other form of conduct that incites discrimination".

<sup>14</sup> <http://www.jica.go.jp/activities/issues/gender/pdf/e10alb.pdf> Albania Country Report, February 2010.

<sup>15</sup> See Directive 92/85 of the CEE "On the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding".

## II. National institutional, policy framework on gender equality/strategies

The institutional gender equality mechanism in Albania dates from 1991 when the Women's Sector in the Committee of Labor and Wages, established in 1991, was transferred in 1994 to the Ministry of Labor and Social Protection of the time (Fico, 2007). Immediately after the Beijing Conference, the mechanism was replaced by the Secretariat for Women and Youth in the Ministry of Culture, and in 1997 it was again made part of the Ministry of Labor and Social Protection as the Directory for "Women and the Family."

Based on the first and second report of Albania, prepared and submitted by Albania in session no. 28 (2003) of the CEDAW, the national mechanism for the protection and encouragement of women's rights, underwent a series of changes since its creation in 1992. In July 1998, the Council of Ministers expanded the competencies of the Department of Women and the Family at the level of the Council of Ministers. In this context, the Chairperson of the Committee reports directly to the Deputy PM and the budget of the Committee is part of the Council of Ministers' budget. In March 2001, the Committee for Women and the Family, upon decision of the Council of Ministers, became the Committee for Equal Opportunities<sup>16</sup>. In 2003, the Committee was again subordinated to the Ministry of Labor, Social Affairs, and Equal Opportunities.

In 2004, upon approval of the Law on "Equal Gender Society," the hierarchy of the Committee rose again, together with the obligation to report directly to the Deputy Prime Minister. In the spring of 2005, the Committee for Gender Equality was dismissed and most of its responsibilities were transferred to the General Directory of Equal Opportunities at the Ministry of Labor, Social Affairs, and Equal Opportunities.

The Ministry of Labor, Social Affairs and Equal Opportunities (MOLSAEO) is the responsible authority at central level for ensuring gender equality in Albania, women's empowerment and advancement. MOLSAEO is responsible for enforcing and monitoring the implementation of Gender Equality Law in labor and employment relations. The Ministry supervises and monitors the work of its subordinate institutions in charge of labor relations, which have regional offices as well with the following main functions:

- The National Employment Service observes the implementation of measures concerning equal opportunities policy in employment and vocational training process and alternatives;
- The Labor Inspectorate is responsible for monitoring employment contractual conditions, gender parity, social and health and safety norms applied to employees in the public and private sector. The Inspectorate has developed some basic monitoring standards concerning corporate social responsibility;
- The Inter-Ministerial Committee is responsible for monitoring the implementation of
- National Strategy for Gender Equality and Domestic Violence<sup>17</sup>.

MOLSAEO in particular is aware of the need to strengthen governmental mechanisms for gender mainstreaming. Since 2006, MOLSAEO has carried out the work on gender through the Department for Equal Opportunities and Policies (DEOP). DEOP's mandate is to design and develop policies for promoting gender equality and addressing problems of ethnic, ethno-cultural and linguistic minorities, as well as fighting racial discrimination. DEOP works to encourage and promote gender equality in all walks of life and to increase the overall participation of women in economic, political and cultural life of the country.

<sup>16</sup> Council of Ministers Decision, No. 415, dated 01.07.1998.

<sup>17</sup> Albania Country Report, February 2010, <http://www.jica.go.jp/activities/issues/gender/pdf/e10alb.pdf>.

Since 2006, at the central and local levels, progress has been made with the appointment of a Gender Focal Point (GFP) in 14 line ministries, who contributes to mainstreaming gender into sectorial development policies. It is important to mention that the GFP has this duty in addition to another full time position that they hold. In almost all ministries gender is not written in their job description. It is expected that with the enforcement of the Law on Gender Equality line ministries will appoint full time GFPs in the near future.

In the Parliament, a Sub-Committee for Juvenile and Equal Opportunities was established within the parliamentary Commission of Labor, Social Issues and Health. The Sub-Committee cooperates with MOLSAEO on issues of gender equality and child rights.

Based on the GEL, GFPs must be appointed at the regional and local levels as well. Their task will be to support the development of policies by ensuring gender mainstreaming at the local level. The network of GFPs is supposed to support the DEO in integrating a gender perspective into governmental policies at the national and local level. Presently only 5 out of 65 GFPs at the local level have been appointed.

The implementation of labor relations at the local level is closely monitored and supervised by regional offices of the National Employment Service, State Labor Inspectorate and State Social Service.

### III. Gender Equality in legal education<sup>18</sup>

There are different laws that deal with the right to education. These laws include Law No. 9741 on Higher Education in the Republic of Albania dated 21.05.2007 (amended), Law No. 7925 on Secondary Education in Albania, dated 21.06.1995 (amended), Law No. 8872 on vocational education and training in the Republic of Albania, dated 29.03.2002 etc. Articles 24-25 of the Law on Gender Equality are focused at issues that deal with equal treatment and protection against gender discrimination in the media and education. The law prohibits discrimination on the basis of gender on individuals working in educational institutions of all levels both private and public through the expressive prohibition of cases leading to discrimination. According to the law, the following is considered as discrimination:

- the introduction of restraining norms based on gender difference and when proper educational facilities are not established in both public and private intuitions which supply teaching or other training and instruction services and
- ensuring different opportunities which are objectively unjustified to men and women regarding their choice of a specific area of study, trainings and graduation and the length of study.

The Government of Albania has also approved the National Education Strategy 2004-2015 which aims to improve the quality of teaching, the development of vocational and secondary education as well as the integration of gender concepts in the curricular. In June 2009, the Government of Albania approved the National Strategy of Science, Technology and Innovation 2009-2015, with the main goal of doubling the number of researchers in Albania within the strategy's implementation timeframe for both genders, while the obtainment of scientific degrees by women is considered a priority<sup>19</sup>.

In the last 20 years, the education system in Albania has equal access for boys and girls. In terms of enrolment in schools, it's easily noticeable that, the group that has a lowest chance of attendance is girls from rural areas, while this chance is likely to decrease during upper-secondary

<sup>18</sup> Regarding the Chapter III and IV we should recognize that in Albania the data or statistics is a problem to find. Albania fails regarding this statistics. There is no official site to find this data.

<sup>19</sup> Albania Country Report, February 2010, <http://www.jica.go.jp/activities/issues/gender/pdf/e10alb.pdf>.

education. Two of the most apparent factors that may have an impact here are the combination of the patriarchal mentality over women and education, in some rural areas, as well as the safety/security of roads to schools. At the national level, drop-out rates are the same for males and females. But the same could necessarily apply to certain districts. In several areas the drop-out levels are higher among females and in some other it stands much higher for males.

Regarding the Gender distribution at the Law Faculty on the positions of Dean and Vice Dean, the proportion during the last 10 years was very disproportional, only men were elected and women were nominated (not elected) only for 2 months. In fact female candidates have participated but from the academic staff were elected always a man. While as a Vice Dean the proportion is different because from about the last 5 years a female is nominated from the male Dean and another male Vice Dean. The last year two female and one male Vice Dean were selected. Regarding the gender distribution of the academic staff for the 2011-2012 the number in total is 72, 45 are female, 27 are male. These numbers unfortunately show that even though most of the academic staff is female, again in the elected higher position are always elected male.

The number of Professors is 281, where only 61 are female. The number of Professors' Assistants is 237, where 105 are female. In the higher education level, University, there are ten Rectors, all male, no female, but there are ten Vice Rector male and three females. There are 29 males/men on the Dean's positions and 11 women. 105 Head of Department are male and only 47 are female<sup>20</sup>.

#### **Regarding the students in Law Faculty for the academic year 2011-2012<sup>21</sup>:**

<b>The bachelor level</b>	<b>1784 students out of which 1339 are female</b>
<b>The bachelor level part-time</b>	<b>1442 students out of which 739 are female</b>
<b>The Scientific Master</b>	<b>368 students out of which 297 are female</b>
<b>The Professional Master</b>	<b>275 students out of which 136 are female</b>
<b>The PhD</b>	<b>182 students out of which 89 are female</b>

From this data we realized, especially in the bachelor level, that there is a good percentage of females respectively to the male students but unfortunately, if we have a look at PhD level we find a different situation, there are mostly male. This means that the level of Gender equality in Albania is only understood as education that a woman should have as an such but not as a step for other academic development. As we saw above is the same for the academic staff, the female are good for the Vice Dean but not for the Dean position (higher positions).

Regarding the curricula in the Law Faculty mainstreaming gender balance and other diversity, the Law Faculty has been very careful in this regard. During the last years the Law Faculty has been part of different international projects with different stakeholders and has revised the curricula, subject by subject based on the international standards of the gender balance and non discrimination. In general the subjects revised were: Gender balance, Constitutional Rights, International Human Rights, Penal Right, Labor Law, Family Law, European Law, Migration Law, Philosophy of Law and Social Insurance Law.

#### **IV. Gender equality in legal professions**

Women in Albania still struggle to be elected and appointed to decision making positions. For instance, there is only one female minister in a Cabinet of 14 Ministers. There are eight female deputy ministers (22.8%) and five female ambassadors (10.2%). However, progress has been made.

<sup>20</sup> National Strategy for Gender Equality and Domestic Violence (2011-2015).

<sup>21</sup> This data are collected from the University of Tirana, Rectorate, but they aren't published.

In 2005 for the first time a woman was appointed as Speaker of the Parliament. Also, currently there is a woman Head of the High Court and a woman General Prosecutor, but otherwise the representation of women in the judiciary remains low. On the High Council of Justice, there are two women members out of 10 in total, and the Constitutional Court has only one woman member of eight in total<sup>22</sup>.

The International Parliamentary Union, in a recent report ranked Albania on 115 places of 142 countries monitored for women's representation in elected positions at the national level, giving Albania one of the lowest ranking in Europe. In the local elections in Albania in 2007, only 33 of the 1,073 candidates nominated for mayoral posts were women, and of these, only nine were elected. In the 2005 national elections, only, 7% of MPs were women.

At the local elections in 2011, at the position of Local Authority, only 1.31% were female and from the members of the Local Council only 12.4% were female. At the central level in this moment 16.7% are female instead of 7% at the 2005 election<sup>23</sup>.

1. Seats held by men in the national Parliament
2. Seats held by women in the national Parliament
3. Seats held by women in national Parliament, percentage
4. Total number of seats in national Parliament

1.Year	Value	2.Year	Value	3.Year	Value	4.Year	Value
1990	178	1990	72	1990	28.8	1990	250
1997	123	1997	17	1997	12.1	1997	140
2000	147	2000	8	2000	5.2	1998	155
2001	147	2001	8	2001	5.2	1999	155
2002	132	2002	8	2002	5.7	2000	155
2003	132	2003	8	2003	5.7	2001	155
2004	132	2004	8	2004	5.7	2002	140
2005	131	2005	9	2005	6.4	2003	140
2006	130	2006	10	2006	7.1	2004	140
2007	130	2007	10	2007	7.1	2005	140
2008	130	2008	10	2008	7.1	2006	140
2009	130	2009	10	2009	7.1	2007	140
2010	117	2010	23	2010	16.4	2008	140
						2009	140
						2010	140

Source: United Nations Statistics Division

Regarding the proportion of the gender distribution at court the data that we have are:

- At the both District and Appeal Court level:
  - Judges: 352 in total; 148 female and 204 male
  - Prosecutors: 289 in total; 87 female and 202 male.
- At the Magistrate School, candidate for judge and prosecutor as follows:
  - Judge and Prosecutor: 269 in total, 150 female and 119 male.

<sup>22</sup> The situation of women leaders at local level in Albania, prepared by Albanian Center for Economic Research with the cooperation ASET. September 2010, Tirana, Albania.

<sup>23</sup> Prof. Anastasi, Aurelia, Newspaper "Shqip", date 24 May, 2012.

Based on the above data we can understand that unfortunately as for the Bachelor level, even for the Magistrate School we have different proportion of male and female in school and different one when it comes to practice.

Regarding the proportion of the gender distribution among the lawyers/advocates, the data that we have is:

- During 2011 in total of 1.310: 302 female and 1.008 male
- During 2010 in total of 1.050: 254 female and 796 male

## **V. National achievements, challenges and recommendations for Gender Equality**

During the last years different positive changes have happened in the Albanian legislation aimed at advancing the situation of women and eliminating discrimination based on sex and gender, as well as those aimed at multiple and intersecting forms of discrimination against women, such as: the new Family Code, Law No. 9062 of 8 May 2003; Law No. 9669 on Measures against Violence in Family Relations of 18 January 2006; Law No. 9970 on Gender Equality in Society of 24 July 2008, which contains a definition of discrimination against women in line with Article 1 of the Convention; amendments to the Electoral Code of 29 December 2008 aimed at increasing the number of women running as candidates for national and local elections; Law No. 10221 on Protection from Discrimination of 4 February 2010, which makes Albania one of the few States parties that expressly prohibit discrimination, *inter alia*, on the grounds of gender, gender identity and sexual orientation; and amendments to the Penal Code with regard to trafficking in women and girls.

In addition to incorporating the quota into the Electoral Code, potentially the most significant step in increasing women's presence in decision making is the adoption of the law on "Gender Equality in Society" in July 2008, by the Albanian Parliament. In addition to strengthening the mechanisms in the government tasked with promoting and protecting gender equality, and ensuring the protection of women and men against discrimination in the workplace, with the adoption of the Gender Equality Legislation (GEL) the State has made impressive commitments towards ensuring equal representation in appointed and elected positions in the Government.

Some of the failures are related to the fact that development and progress are necessarily open ended processes and just like in any other country, in Albania too, there is room for hailing achievements, but also for assigning responsibilities. Some of the failures are related to inadequate measures taken by the government. Other failures are related to the specific nature of prevailing stereotypes in Albania. Their elimination will require more time and investment. Some of them could be eliminated, if the civil society were more persistent and more aware of its role, while at the same time urging the government to play its own crucial role.

Although it can be safely said that the civil society, being an integral part of the Albanian society, has played an active role in the fight for the elimination of discrimination against women and promotion of gender equality, it also feels responsible for the failure to achieve the required results. With this in mind, the suggestions and criticisms are of a constructive, rational and comprehensive nature and part of them are also addressed to the civil society, while also emphasizing the importance of more support from the State.

The State should systematically enhance knowledge, understanding and promote gender equality through education and training programs especially for Parliamentarians, the Judiciary, Law on Enforcement and Senior Government Officials. Making the participation in training courses part of the evaluation and promotion criteria for staff in the public administration, basing their work evaluation and promotion on the performance and concrete contribution to the elimination of dis-

crimination against women in under the remit of such institutions such as the National Employment Service, the State Labor Inspectorate, etc.

The State should accelerate its efforts to remove impediments faced by women in accessing justice, provide legal aid and raise awareness about how to utilize legal remedies against discrimination based on sex and gender, so as to increase the capacity of women to avail themselves of existing complaint mechanisms and seek redress for discrimination through the Albanian legal system, and to monitor the results of such efforts.

The State should monitor the impact of the gender equality and anti-discrimination legislation, identify inconsistencies and address them, as appropriate, with a view to ensuring that the implementation of the legislation is conducive to the effective elimination of discrimination against women, especially women belonging to disadvantaged groups, such as ethnic and linguistic minority women, women with disabilities, older women, women living in rural or remote areas, migrant women, women living with HIV/AIDS and women discriminated against on the grounds of their sexual orientation and gender identity.

The State is responsible to fully ensure the Government's accountability for formal and de facto, or substantive, equality of women and men and women's enjoyment of all human rights in the implementation of the international and regional standards. In this respect, the State should provide the gender equality institutions at the central and local levels with the necessary human, financial and technical resources for their effective functioning, to ensure its effective implementation, including through the monitoring and regular evaluation of strategies and measures used in its implementation; and to establish effective coordination between central and local government on policies designed to achieve the objectives of the action plan.

The State should continue its efforts to address gender stereotypes that perpetuate discrimination against women. It is a duty of the State to strengthen targeted educational programs, including initial and in service training programs for teachers at all levels of the educational system, and to develop a more comprehensive and wide ranging strategy across all sectors to eliminate stereotypes; working with a broad range of stakeholders, including women's and other civil society organizations, the media and the private sector, and specifically targeting rural areas and the minority communities in respect of family relations. The State, while respecting the independence of the media and the right to freedom of expression, should encourage the media to project positive, non stereotyped images of women and of their equal status and role in the private and public spheres. The State should take concrete steps to eliminate customary laws and traditions that discriminate against women.

The State should continue raising awareness of the importance of education for the empowerment of women and taking concrete comprehensive measures to overcome traditional attitudes and other obstacles to the education of girls and women. The State should intensify efforts to promote the access of girls and women living in rural or remote areas, including minority girls and women, to education and their retention at all levels of education. The State should enhance temporary special measures, currently in place in the form of quotas, in order to ensure the representation of women in high-level positions in Universities and other educational institutions.

In light of the above, considerable and broad based technical support is needed to ensure the effective implementation of the newly adopted NSGE-DV and the recent advances in the country's legal framework. Further, the inclusion of the NSGE-DV into the Government of Albania's National Strategy for Development and Integration (NSDI) provides an important opportunity to support a cross sectoral approach to advancing gender equality and increasing women's participation in public life.

The Albanian legislation in its entirety prohibits discrimination in the area of social security. What needs to be re-evaluated in the legal framework are some special measures of a temporary nature such as:

- a) the still existing difference in regards to age of full retirement between men and women (60 years of age for women and 65 years of age for men) while the required years of work to benefit this full pension is the same (35 years of years contributed to work in the social security scheme),
- b) the existence of differences in regards to benefits of the family pension for the husband/wife of the widowed (50 years old for women and 60 years old for men). While the law is clearly stated, in reality the great informality which exists causes that many women are not covered by the social security.
- c) it is still not made possible to evidence and to pay the domestic services of women as housekeepers, babysitters, caregivers, etc and to guarantee social security for these type of jobs as well.

The right to work is guaranteed by law without any discrimination for all those who are of legal working age. The Albanian legislation guarantees to everyone, without gender difference, the right to earn a living through his/her legal work of their choosing, the right for equal qualification and treatment in work relations, etc. With the actual level of unemployment, it seems that the legal guarantees are not enough. One of the main issues in Albania is the gap between equality *de jure* and *de facto* in regards to employment, access to business and credit services, health care services and social services.

There are some shortcomings in the area of legislation, which makes it important to introduce some improvements, especially to the Labor Code, social security legislation and others, but more specifically:

- By introducing improvements to the labor legislation that aim to provide for a combination of family responsibilities and work responsibilities. Look into the possibility of introducing changes in the primary or secondary legislation in order to provide for flexible working hours for people with family responsibilities and for more flexibility and security in the labor market for this category of people. Recognize paternity leave for fathers;
- Finding adequate legal mechanisms for the implementation of the “equal pay for equal work” principle. Drafting and adopting methodologies for determining the value of work, pursuant to the International Labour Organization (ILO) standards;
- Elimination of differences in the pension ages of men and women, through new legal regulations which envisage a gradual equalization of age, within a certain length of time;
- Development of a law on gender statistics, which shall also cover the area of labor relations, making it mandatory for each institution to reflect these statistics in their area of activity. At present this is regulated by an Instruction of the Minister of Labor, Social Affairs and Equal Opportunities;
- Development of a specific framework of rules and regulations, to be made part of the internal regulations in various industries and sectors, especially the private sector. These regulations should define the standards, rights, and obligations of employers and employees with regard to gender equality and non-discrimination in the work place and labor relations. Perhaps these issues can also be regulated in the individual or collective contracts. Given that contracts are drafted pursuant to the Labor Code, the provisions of this Code envisage

specific regulations on the rights of employees, including non discrimination or special protection issues for women;

- Strengthening of gender equality and monitoring mechanisms. Strengthening and building capacities of the relevant authorities. Establishment and functioning of the institution of gender liaison persons in the line ministries and local government authorities throughout country, pursuant to the Law on Gender Equality. Building and further strengthening of the human, physical and financial resources of the State Labor Inspectorate, with the aim of guaranteeing an ongoing inspection and oversight of all economic activity, which is also the object of the implementation of this law;
- The training of administrative staff should aim to increase capacities by conducting training in the areas of gender equality and gender mainstreaming to specialists and consultants, hired to teach the courses offered by the Centre for Professional Training, etc. This would help reorient women towards jobs and professions which are more demanded on by moving away from gender stereotypes in various professions.

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## **COUNTRY REPORT ON LEGAL PERSPECTIVES OF GENDER EQUALITY IN BOSNIA AND HERZEGOVINA**

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### **Introduction**

The main aim of this paper is to provide an overview on gender equality in the legal environment in Bosnia and Herzegovina based on several questions, as following:

- I. National legal framework and compliance with EU Gender Equality Law
- II. National policy framework on gender equality (strategies; programs and similar)
- III. National institutional framework on gender equality (relevant bodies and competencies)
- IV. Gender equality in legal education
  - a. Gender distribution at the Law Faculties (the women/male proportion on a position of deans and vice deans, professors and assistant professors for the last 10 years; students in the last five years)
  - b. Gender studies offered at higher educational institutions
  - c. Curricula Gender mainstreamed (addressing gender and other diversity-related concerns while developing curricula and courses)
- V. Gender equality in legal professions
  - a. Gender distribution in legal professions (attorneys; notaries; enforcement agents; judges divided per courts in charge; public prosecutors)
  - b. Addressing gender bias in judiciary training programs
- VI. National achievements, challenges and recommendations for gender equality
  - a. Advocate gender equality mechanisms and better enforcement of legislation
  - b. Support for networking among gender institutional mechanisms
    1. Promotion of legal education with gender perspectives.

All the information presented in the report rely on existing statistical data bases, published scientific articles, gender based research, present strategies and action plans and legislation in BiH.

## I. National legal framework and compliance with EU Gender Equality Law

### 1. Basic information on the legal system of Bosnia and Herzegovina

The General Framework Agreement for Peace in Bosnia and Herzegovina (hereafter the GFAP), or Dayton Peace Agreement, was agreed on in Dayton on November 21, 1995, and signed in Paris on 14 December 1995. The GFAP comprises 11 Annexes, of which Annex 4 is the Constitution of Bosnia and Herzegovina. The next Annex important to the issue is Annex 6, Agreement of Human Rights. The Constitution of Bosnia and Herzegovina, among others 16 international human rights instruments, includes the Convention on the nationality of married women, the International Convention on the elimination of all forms of discrimination against women, the Convention on the rights of the child, the International Convention on the protection of the rights of all migrant workers and members of their families. The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols applies directly in Bosnia and Herzegovina and is above all others laws.

According to Constitution, Bosnia and Herzegovina (BiH) consists of two entities, Republic of Srpska (RS) and Federation of Bosnia and Herzegovina (FBiH). Each entity has its own political structure and administration, with an overarching but relatively weak central government. The Central (BiH State) Government consists of a Parliamentary Assembly, which is divided into a House of Representatives and a House of Peoples, a rotating tripartite Presidency, and a Council of Ministers.

The political structure of the Federation is divided into three levels:

- The entity level, with a two-house Parliament, a President, a Vice President, and a Government under a Prime Minister.
- The canton level, with each of the ten cantons having its own assembly with the power to adopt cantonal laws.
- The municipal level, with each municipality similarly having its own assembly / municipal council.

Republic of Srpska (RS) has no cantons but only municipalities. At the RS level there is a National Assembly, a President, a Vice President, and a Government under a Prime Minister. As with the Federation, the municipalities all have their own assemblies and administrative structures. There are three constitutional Courts, one at the BiH level and one in each entity.

The extremely complex state structure has impact on legislation (state level, entities level, cantonal level) as well as on gender institutional mechanisms.

### 2. Legal Framework for Gender Mainstreaming in Bosnia and Herzegovina

The implementation and application of the principle of gender equality in Bosnia and Herzegovina have achieved a significant level of compliance with international instruments regarding the human rights and elementary freedoms in the last twenty years. The principle of non-discrimination was a priority introduced in the state and entity constitutions and by ratification of numerous conventions adopted by UN, International Labour Organization (ILO) and Council of Europe concerning the issue, afterwards implemented as the basic principle in the laws regulating the areas recognized as those of a greater significance for the promotion of equity between women and men. The notable achievement was attained by introducing the Law on Gender Equality in Bosnia and Herzegovina in 2003, later followed by the Law against Discrimination in Bosnia and Herzegovina in 2009, thus providing a legal framework for successful application of gender equality as an indicator of the quality of life of the individual.

The present challenge for the legal system of Bosnia and Herzegovina is the harmonization with the achieved level of gender equality and non-discrimination provisions of the EU Law and its appliance in different areas of everyday life, towards acquiring membership in the EU. By signing the Stabilization and Accession Agreement in 2008, as a contract party Bosnia and Herzegovina committed itself to gradually harmonizing its present legal system with the Union law<sup>1</sup>, and to respect the democratic principles and human rights proclaimed in the Universal Convention of Human Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms among others<sup>2</sup>, which provide gender equality as one of the basic principles.

In this respect, Bosnia and Herzegovina has a dual objective: to implement present provisions of the Treaty of EU and the Treaty of functioning of the EU and directives on the gender issue, considering the caselaw of the Court of EU in the last forty years, on one hand, and to take into account the potential developments of the EU gender law trends<sup>3</sup>, on the other.

Hereafter the international legal framework adopted and practiced in BiH as the part of the legal system of BiH and the national legal framework concerning the gender equality issue will be presented.

## **1) International legal framework**

### **a) UN legislation**

#### **1. Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)**

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) adopted by the General Assembly Resolution, No. 34/180 of December 1979, has come into force on September 3, 1981 and has been ratified by BiH in 1993 and integrated into the state's constitution. This Convention applies directly and has the priority over domestic legislation.

#### **2. Beijing Declaration and Platform for Action**

Having signed and ratified the Beijing Declaration at the Fourth World Conference on Women held in Beijing in September 1995, along with 189 other governments worldwide, the Government has committed itself, inter alia, to establish the central coordinating unit within the Government for the advancement of women.

#### **3. Other relevant UN legislation adopted by the BiH**

- UN Security Council Resolution 1325 ("Women, Peace and Security")
- Millennium Development Goals and UN Millennium Declaration
- Universal Declaration of Human Rights, 1948.
- International Covenant on Civil and Political Rights, 1966, with the Optional Protocols of 1966 and 1989.

<sup>1</sup> Article 70., Stabilisation and association agreement between Bosnia and Herzegovina, of the one part, and the European Communities and their Member States, on the other part. Luxembourg, 16 June 2008.

<sup>2</sup> Article 2. op.cit.

<sup>3</sup> European Commission. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Strategy for Equality between Women and Men 2010-2015. Brussels 21.09.2010., COM (2010) 491 Final.

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- Convention for the Suppression of the Traffic in Persons and of the Exploitation or the Prostitution of Others, 1949.
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- Convention on Consent to Marriage, Minimum Age for Marriage and the Registration of Marriages, 1962.
- Convention on the Rights of the Child, 1989.

#### **b) International Documents at the Council of Europe level**

The Council of Europe members must also ensure that their institutions are capable of enforcing the equality legislation. Furthermore, the state shall ensure to all persons subject to its jurisdiction the free and full exercise of their rights, without any obstruction. The government also has the obligation to adopt affirmative action style measures to promote and protect those rights and meet the requirements in compliance with international and regional instruments recognized as the human rights standards. The Council of Europe defined the Strategy on Gender Equality as the reform, development and evolution of political processes in a way that the gender concept is mainstreamed into the policies at all levels and in all phases in terms of planning, drafting and adopting the political recommendations. Besides the European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted in 1950) and European Social Charter (adopted in 1961), of great importance are the following recommendations from the Council of Europe:

- Recommendation R(85) No.4 of the Committee of Ministers to member states on violence in the family;
- Recommendation R(98) No.14 of the Committee of Ministers to member states on gender mainstreaming
- Recommendation R(2003) No.3 of the Committee of Ministers to member states on the balanced participation of women and men in political and public decision making;
- Recommendation R(2007) No.13 of the Committee of Ministers to member states on gender mainstreaming in education;
- Declaration on Equality between Women and Men as a Fundamental Criterion of Democracy<sup>4</sup>.

#### **c) EU Community Framework Strategy on Gender Equality**

Its purpose is to establish a framework for action within which all Community activities will be devoted to "...combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child", as set out in Article 3 (3) of the Treaty on European Union, and, pursuant the Article 8 of the Treaty on functioning of European Union, "In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women".

Therefore, the directives concerning the gender equality principle, which are currently in the process of the implementation in the national legislation of BiH, are as follows:

<sup>4</sup> For a detailed list of the recommendations of the Council of Europe adopted in the BiH see: Babić-Svetlin, Kika. Situation Analysis Report on the Status of Gender Equality in Bosnia and Herzegovina. Sarajevo: 2009. [http://www.unicef.org/bih/Gender\\_SitAn\\_BiH\(1\).pdf](http://www.unicef.org/bih/Gender_SitAn_BiH(1).pdf) (13.05.2012.).

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## 2) National legal framework

Concerning the national legislative framework, the principle of gender equality is implemented in the constitutions in BiH as well as in the laws concerning the gender issue.

### a) Constitutional framework

The Constitution of BiH, entities' constitutions of FBiH and RS and the constitutions of the cantons guarantee equal right to participate in political parties, public services, to elect and to be elected on any of the positions concerned. However, neither one of the aforementioned constitutions provide on obligation of the distinct level of equal gender representation in public life, authorities or services. Therefore, the Constitution of BiH provide as a common right of all the citizens of BiH "the freedom from discrimination based on race, color, sex, language, religion or creed, political or other opinions, and national or social origin"<sup>6</sup>. Also, as set in the Annex to the Constitution, BiH guarantees for all the human rights numbered in the conventions set in the Annex I. Moreover, the Constitution of the FBiH also provides prohibition of gender based discrimination, by including the Convention on the Elimination of all Forms of Discrimination against Women as an integral part of the text of the Constitution. The Constitution of RS also provides prohibition of discrimination against women, under the Chapter II, Article 10.

### b) Relevant laws on the gender issue

#### 1. The Law on Gender Equality of Bosnia and Herzegovina<sup>7</sup>

The fundamental intention of the Law on Gender Equality is to set a general framework of the gender equality principle in the all spheres of life, emphasizing in particular those spheres in which women traditionally lag behind men: education, economy, work and

<sup>5</sup> It must be mentioned that by adopting the Recast Directive, several directives came out of force:

1. Council Directive 75/117/EEC on the Approximation of the Laws of the Member States relating to the Application of the Principle of Equal Pay for Men and Women (OJ L 45).
2. Council Directive 76/207/EEC on the implementation of the Principle of Equal Treatment for Men and Women as regards access to Employment, Vocational training and Promotion, and working conditions (OJ L 39) and amending Directive 2002/73/EC on equal treatment for men and women as regards access to Employment (OJ L 269).
3. Directive 86/378/EC on Occupational Social Security (OJ L 225) and its amending Directive 96/97/EEC.
4. Directive 97/80/EC on the burden of proof in cases of discrimination based on gender (OJ L 14).

<sup>6</sup> Chapter II of the Constitution, article 2 (2).

<sup>7</sup> "Official Gazette of BiH", No. 16/03, 102/09.

employment, social protection and healthcare, sports, culture, public life and the media. The law defines the concept of direct and indirect discrimination pursuant to the Article 4 as:

“(1) direct discrimination on grounds of gender shall exist when one person or group of persons has been treated, is treated or shall be treated less favorably in comparison with other person or group of persons in the same or similar situation;

(2) indirect discrimination on grounds of gender shall exist when there is an apparently neutral legal norm, criteria or practice equal for everyone, that has put, puts or could put a persons or group of persons of one gender in comparison with a person or group of persons of another gender into less favorable position.”

The concepts set above, together with the concepts of the harassment, sexual harassment, violence on the grounds of sex and the victimization are harmonized with the concepts laid down in the Article 2 of the Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

However, a significant improvement in the implementation of the gender equality principle happened after passing the law on changes and amendments to the Law on Gender Equality in Bosnia and Herzegovina<sup>8</sup>. There has been a precise definition of the term “equal gender representation” implemented, specifying the 40 % participation of both genders as an indicator of a present equal gender representation in the structure of the legislative, executive and judicial authorities. The positive consequences are anticipated in the near future (and in some areas have already been introduced, as in the case of remuneration of the judges<sup>9</sup>).

The law also contains the provision on the obligation of the authorities, as set in the Article 21: “The relevant authorities at all levels shall undertake all appropriate and necessary steps to enforce the provisions set forth in this law by area, including but not restricted to:

- the adoption of planned measures designed to achieve gender equality in all fields and at all levels of governance;
- the enactment of new or the amendment of existing legislation to bring it into conformity with the provisions of this law;
- ensuring the protection by the civil and criminal courts in all cases of breaches of the provisions of this law;
- ensuring that statistical data is gender disaggregated in all commercial entities, private and state corporations, state and public organizations and institutions, and that such data is accessible to the general public.”

## 2. Law against Discrimination in Bosnia and Herzegovina<sup>10</sup>

The law against discrimination is a single legal act which provides mechanisms for prevention of all kinds of discrimination<sup>11</sup>, and, on the other hand, it provides a general framework for the protection of human rights<sup>12</sup>. It also defines the terms of direct and

<sup>8</sup> Official Gazette of BiH, No. 102/09.

<sup>9</sup> See Part V of the Report.

<sup>10</sup> Official Gazette of BiH, 59/09.

<sup>11</sup> On the issue of direct and indirect discrimination in the context of society in BiH, see: Gradašević-Sijerčić, Jasminka, “Pravo na nediskriminaciju s posebnim osvrtom na radnu diskriminaciju u Bosni i Hercegovini” (paper presented at scientific conference “Država Bosna i Hercegovina i ljudska prava”, Sarajevo, June 29 1998).

<sup>12</sup> Babić-Svetlin, Kika. op. cit. p. 13.

indirect discrimination, but its importance lies in the presenting of the legal mechanisms for the protection from discrimination, by addressing the authorities obliged to protect citizens from the acts of discrimination. The law also contains the provisions on the matter of the burden of proof in the process before the courts in the case of the damages caused by the discrimination, which is also compatible to the Article 19 of the Directive 2006/54/EC.

### 3. Laws relevant to the gender representation in the Public Authorities:

**a) The Election Law of Bosnia and Herzegovina**<sup>13</sup> – its importance is consisted in the provision that determines responsibility of the parties or coalitions to ensure that when formulating their candidate list they include at least one-third of members from the least represented gender (Article 4.19.)<sup>14</sup>.

**b) The Law on Political Party Financing**<sup>15</sup> – the law does not contain any of the discriminatory provisions, but on the other hand, nor does provide special financing allocations to the parties which have the most female representatives in the legislative bodies (it was one of the proposal of the Gender Equality Agency<sup>16</sup>).

### 4. Laws relevant to the Gender Equality principle in education

Because of the complex structure of the BiH, there are four framework laws at the state level in the area of education:

- The Framework Law on Primary and Secondary Education in Bosnia and Herzegovina<sup>17</sup>
- The Framework Law on Pre-School Care and Education in Bosnia and Herzegovina<sup>18</sup>
- The Framework Law on Vocational Education and Training in Bosnia and Herzegovina<sup>19</sup>
- The Framework Law on Higher Education in Bosnia and Herzegovina<sup>20</sup>

All of the above guarantee equal opportunities for education and freedom of choice at all levels of education, regardless of gender, but not the provisions concerning equal gender representation among the teaching staff or the gender representation in the decision making bodies of the educational institutions. Also, the aforementioned laws do not contain gender sensitive language or curricula, programs and methodologies that promote gender equality.

### 5. Laws relevant to Gender Equality in the labor and social protection relations

**a) The Law on Employment within Institutions of Bosnia and Herzegovina**<sup>21</sup> – although the law defines the prohibition of any sort of discrimination of persons seeking the employment, and the discrimination of the employees (Article 6), there are no provisions providing the equal ratio among men and women in the institutions (as opposed, there is a provision providing the equal ratio among the employees on their ethnicity). The law also contains provisions on the rights of pregnant women, parental leave and other associated rights, in accordance with the provisions

<sup>13</sup> Official Gazette of BiH No. 7/02, 9/02 and 20/02.

<sup>14</sup> Details on the de facto situations in the particular political parties, see: Committee on the Elimination of Discrimination against Women. Consideration of reports submitted by States parties underarticle 18 of the Convention on the Elimination of All Forms of Discrimination against Women - Combined initial, second and third periodic reports of Bosnia and Herzegovina. 18.04.2005.

<sup>15</sup> Official Gazette of BiH No. 49/00.

<sup>16</sup> Babić – Svetlin, Kika. Op. cit. p. 16.

<sup>17</sup> Official Gazette of BiH, No. 18/03.

<sup>18</sup> Official Gazette of BiH, No. 88/07.

<sup>19</sup> Official Gazette of BiH, No. 63/08.

<sup>20</sup> Official Gazette of BiH, No. 59/07.

<sup>21</sup> Official Gazette of Bosnia and Herzegovina, No. 26/04.

of the Directive 96/34/EC on parental leave, Directive 92/85/EEC on pregnant workers and Recast Directive 2006/54/EC.

**b) Law on Labor**<sup>22</sup> at the entity level provides the prohibition of all kinds of discrimination of the persons who seek the employment as well as the employees (Article 5 of the Law on Labor). The significance of the law in the matter of gender protection can be seen in the determination of the special protection of pregnant women at the workplace and during maternity leave, and in providing secure work status of women when returning to the workplace after the maternity leave, as it was determined by the Recast Directive 2006/54/EC<sup>23</sup> too.

**c) Laws on Social Security**<sup>24</sup> at the entity level do not contain any gender discriminatory provisions, but provide special protection of pregnant women. On the other hand, the laws do not contain provisions on fostering the participation of women in the creation of the social policy, as a consequence of the traditional role of women in the family and men in the power structures. The other problem concerning the entity laws is their present differences, and also the existing differences among the canton laws on social protection<sup>25</sup>.

d) Other relevant laws concerning the labor and social protection rights:

- Law on Health Care Protection in FBiH<sup>26</sup> and the Law on Health Care Protection in RS<sup>27</sup>,
- Law on Health Care Insurance in FBiH<sup>28</sup> and Law on Health Care Insurance<sup>29</sup>
- Law on Pension and Disability Insurance<sup>30</sup>
- Law on Pension and Disability Insurance<sup>31</sup>
- Law on Voluntary Pension Funds and Pension Schemes<sup>32</sup>

## 6. Laws relevant for the prohibition of gender based violence

a) The laws on protection against family violence<sup>33</sup> have a significant place in the legislation on gender issues, primarily because of the determining of the definition of family violence and concrete acts consisting the term of domestic violence (Article 6 of the both entities laws). The laws also provide concrete measures for immediate protection of the victim in the case of violence in progress. Since the financial support for the implementation of the law in practice is provided not just by the national budget but also by the international organizations, recently positive results from

<sup>22</sup> Law on Labor in FBiH, „Official Gazette of FBiH“ No. 43/99, 32/00, 29/03), Law on labor in RS – Consolidated version, „Official Gazette of RS“ No. 55/07.

<sup>23</sup> For the details on the issue of the number of men and women employed and the average salaries, see: Committee on the Elimination of Discrimination against Women. Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women - Combined fourth and fifth periodic report of States parties Bosnia and Herzegovina. 22.06.2011.

<sup>24</sup> Law on Social Security, Security of Civil Victims of War, and Security of the Family with Children, „Official Gazette of FBiH“ No. 36/99, 54/04, 39/06, 14/09, Law on Social Security in RS, „Official gazette of RS“ No. 5/93, 15/96, 110/03, Law on Protection of Family in RS, „Official gazette of RS“, No. 54/02.

<sup>25</sup> For more detailed argumentation on the matter of centralized social policy, see: Hunčak-Pita, Aida. „Socijalna zaštita na državnom nivou: pravni osnov i potreba dopune (BiH)“ in „Sistem socijalne zaštite – BiH i regija“, edited by Edin Šrčević, 7 – 26. Sarajevo: Poundation Public Law3 Center.

<sup>26</sup> Official Gazette of FBiH“ no. 30/09, 7/02, 70/08, 47/11.

<sup>27</sup> Official Gazette of RS“, no. 18/99, 58/01.

<sup>28</sup> Official Gazette of FBiH, no. 30/97, 7/02.

<sup>29</sup> Official Gazette of RS“, no. 18/99, 51/01, 70/01.

<sup>30</sup> Official Gazette of FBiH“ No. 29/98, 32/01.

<sup>31</sup> Official Gazette of RS“ No. 134/11.

<sup>32</sup> Official Gazette of RS“ No. 85/05, 31/11).

<sup>33</sup> Law on Protection against Family Violence in FBiH, „Official Gazette of FBiH“ No. 22/05, 51/06, Law on protection against family violence in RS, „Official Gazette of RS“ No. 118/05, 17/08.

its implementation could be seen. Nine safe houses have been established in BiH<sup>34</sup>, and SOS lines for reporting violence cases have been introduced.

b) Entities criminal laws – the relevant provisions concerning the gender issue in the Criminal Law: violation of the equality of man and citizen (sanction: six months to five years of prison - Article 145 of the Criminal law of BiH<sup>35</sup>), domestic violence (sanction: fine or imprisonment for a few years up to long term imprisonment, depending of the act of domestic violence – Article 222 of the Criminal law in FBiH<sup>36</sup>).

## 7. Laws relevant to the gender sensitive budgeting

The process of gender sensitization of budgets in BiH is just at its beginning. The adoption of the state, entities, cantons and municipal budgets is coordinated by the law on budget at every level of the state organization for each year. Until today, budgets are not prepared according to the specific needs of the gender, thus implementing the gender equality principle. The adoption of the Strategy for implementing gender sensitive budgets is just the first step towards the application of equal gender participation in the decision making bodies when creating the budgets and implementation of the analyses of the allotted funds according to the gender. Relevant laws are:

- Law on the Budget of the Institutions in BiH and of the International Obligations in BiH for 2010<sup>37</sup>;
- Law on the Budget of FBiH for the 2012<sup>38</sup>;
- Law on the Enforcement of the Budget of FBiH for the 2012<sup>39</sup>;
- Law on the Budget System of RS<sup>40</sup>;
- Law on the Enforcement of the Budget of RS for the 2012<sup>41</sup>.

## 8. Laws relevant to the gender mainstreaming in media<sup>42</sup>

As one of the relevant elements of the empowerment of women, gender mainstreaming in the media for the past few years has been the subject of discussion and activity of the gender centers. Study on the present regulation and situation in the media, showed that media legislation does not provide for equal gender representation in the personnel structure and decision making bodies, gender sensitive language is not used in writing the functional titles, there are no provisions on statistical data disaggregated by sex, the laws do not enclose provisions on prohibition of gender based discrimination nor the provisions for sanctioning gender based discrimination<sup>43</sup>. Recently, relevant laws on media are being harmonized with the Law on gender equality, and numerous public debates and round tables have been provided in order to educate the public and mainstream gender equality.

<sup>34</sup> By adopting amendments of the Law on protection against domestic violence in RS, an obligation was implemented for the entity budget to finance 70 % of the expenses of the safe houses, and 30 % by the municipal budgets. Therefore, the safe houses are equally financed because they are not depending on the financially varied municipal budgets (Article 4 of the "Law on the changes and amendments of the Law on protection against domestic violence in RS, Official Gazette of RS No. 17/08).

<sup>35</sup> Criminal Law of BiH, Official Gazette of BiH No. 03/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10.

<sup>36</sup> Criminal Law of FBiH, "Official Gazette of FBiH" No. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11.

<sup>37</sup> Official Gazette of BiH" No. 103/09.

<sup>38</sup> Official gazette of FBiH" No. 3/12.

<sup>39</sup> Official gazette of FBiH" No. 3/12.

<sup>40</sup> Official Gazette of RS No. 54/08, 126/08, 92/09.

<sup>41</sup> Official gazette of RS" No. 3/12.

<sup>42</sup> Law on public radio and TV service in BiH, Official Gazette of BiH No. 92/05, 32/10, Law on Communications, Official Gazette of BiH" No. 31/03, 75/06, 32/10, and the Law on radio-TV system in BiH, Official Gazette of BiH No. 78/05, 35/09.

<sup>43</sup> "Implementation of the Beijing Declaration and Platform for Action (1995) in Bosnia and Herzegovina" [http://www.unecp.org/fileadmin/DAM/Gender/documents/Beijing+15/Bosnia\\_and\\_Herzegovina.pdf](http://www.unecp.org/fileadmin/DAM/Gender/documents/Beijing+15/Bosnia_and_Herzegovina.pdf) (13.05.2012).

## II. National policy framework on Gender Equality

By signing the CEDAW, as a contract party, Bosnia and Herzegovina has obliged to pursue by all the appropriate means and without delay a policy of eliminating discrimination of women, by adopting appropriate legislation and modifying and abolishing laws that discriminate, in order to achieve a successful implementation of the principle of gender equality in the legal system of BiH as a whole, and to incorporate it in all the spheres of private and social life of women. Therefore, the first step was to adopt basic plans, strategies and projects at the state level with the aim of unified implementation of the gender equality principle in both entities. In this part of the report, basic plans, strategies and projects from the implementation of the gender equality principle will be presented, as well as the level of their successful implementation.

### a) GEEP Project

The pioneer project on the implementation of the gender equality principle was the international project of BiH and Finland, known as GEEP BiH (Gender equality and equity project in Bosnia and Herzegovina). The project was coordinated and implemented by the entities' gender centers and by the Independent Bureau for Humanitarian Issues of BiH, and it lasted for five years, 2000 – 2005. The main goal of the project was to develop strategies, methods and means for achieving the conditions necessary for further implementation of the gender equality principle. A more efficient use of the present human resources in implementing strategies was stressed.

During the first phase of the project 2000 – 2001, the main partners and actors, governmental and non governmental, necessary for the gender mainstreaming process were identified and educated, gathering basic skills for the use of the instruments for gender analysis. Remunerated persons for gender issues, government officials and representatives from the civil society were encouraged to cooperate and to identify other partners and strategic spheres to focus when mainstreaming gender issues.

After the successful realization of the first phase, the second phase of the project lasted for four years 2001 – 2005. The main goal of the second phase was developing the gender mainstreaming as a strategy by implementing it in the existing policies on gender equality and other programs and politics, in order to implement the concept of gender equality in the political processes. Thus the gender equality policy and the gender mainstreaming represent complementary strategies with the same goal – gender equality.

The accomplished results of the GEEP Project are as follows<sup>44</sup>:

- a) gender-integrated legal and political frameworks (creation of the state gender plan for BiH, developing of the mechanisms for monitoring the de facto situation in relation to CEDAW, analyzing gender equality principle in budgets),
- b) increased awareness of the gender equality and equity (exchanging information on the "best practices" and the "lessons learned" among partners involved in gender mainstreaming, organizing of seminars, round tables, workshops, raising awareness in the educational organizations etc.),
- c) increased number of analyses and statistic data on gender issues (supporting of the statistic agencies on drafting the information on gender participation, research on the status of the violence against women etc.),
- d) enhancing the capacities of the media on the gender issue (support of the organizations for the education of the medias on gender issues, request to the media of implementing

<sup>44</sup> For more details on the results of the GEEP project, see: "Project GEEP". <http://www.fgenderc.com.ba/bh/geep.html> (28.05.2012).

the gender issue in their every day work, involvement of the media in the monitoring of the implementation of the gender equality principle etc.),

- e) enhancing the capacities of the entities' gender centers and canton and municipal commissions on gender issues (training of the members of centers and commissions, development of the canton gender plans, establishment of the canton and municipal commissions etc.).

## **b) State Action Plan according to the Beijing Declaration**

By the time the State Action Plan of BiH was adopted as late as 2006, major accomplishments could have been seen. A Gender Equality Agency together with the two entities' gender centers were established, law on gender equality was adopted and initial report on the implementation of CEDAW in BiH was presented to the UN Committee in 2004. All the previous aims were accomplished pursuant to the goals of the Beijing Declaration, but without former national plan. By adopting the State Action Plan in 2006, all the means and actions were systematized according to the areas concerned in the Beijing Declaration, by determining the specific aims of the each area, as follows<sup>45</sup>:

- a) women and poverty – enhancing the status and rights of women by providing the equal opportunities and treatments in relation to the employment, creating of the appropriate social policy, enhancing the status of women in decision making process in the workplace,
- b) education and training of women – monitoring of the plans and programs of the educational organizations, creation of the study on the participation of Roma population in education, elimination of gender stereotypes in preschool education, extermination of illiteracy among women, education on gender sensibility of teachers,
- c) women and health – improvement of the health protection of women, ensuring of the gathering of data on women's health,
- d) women and violence – providing the integral means concerning the elimination of the violence against women, elimination of the trafficking and prostitution of women,
- e) women and war – informing women on international conventions on human rights, ensuring appropriate support to the women refugees, rising of the participation of women in the Ministry of Defense and Ministry of Internal Affairs,
- f) women and economy – implementation of law on gender equality in the process of remunerating women as members of supervisory boards, creation of appropriate economic policy, equal access to loans, education of women entrepreneurs, protection of women during maternity leave,
- g) women and power and decision making – equal participation of women in creation of politics, enhancing the ability of women to participate in decision making structures of executive / legislative / judicial / administrative power,
- h) international mechanisms for enhancing the status of women – enhancing the knowledge and awareness of women on the issue of international mechanisms, harmonization of the legislation to the international mechanisms,
- i) human rights of women – education of women on the best practices, standards which BiH must introduce in order to fulfill the obligations in the process of joining the EU, further development of mechanisms for monitoring the implementation of law on gender equality,
- j) women and media – active involvement of media in the campaign against discrimination of women, education of women in media, fostering women in wider use of media,

<sup>45</sup> For more details on the process and partners providing the aims of the State Action Plan see: Ministry for human rights and refugees / Gender Equality Agency. Državni plan akcije za gender po Pekinškoj Deklaraciji. Sarajevo, 2005. [http://www.fgenderc.com.ba/bh/dokumenti/DPA\\_zagender.pdf](http://www.fgenderc.com.ba/bh/dokumenti/DPA_zagender.pdf) (18.05.2012).

- k) women and environment – inclusion of women in the decision making process on environment issues,
- l) female child – elimination of all kinds of discrimination of female children, elimination of the thinking of the traditional role of women in society.

**c) Gender Action Plan for Bosnia and Herzegovina**

According to the regulation of the Article 23 of the Law on Gender Equality, there is an obligation of the competent authorities specified to enact a gender action plan for Bosnia and Herzegovina. The State Action Plan, adopted in 2005, and the continuous cooperation of leading institutional mechanisms were a foundation of the later Gender Action Plan of BiH. It is important to note that the GAP was created in accordance with the recommendations of the relevant national and international legal instruments in force in BiH<sup>46</sup>.

The general goal of the GAP BiH is to “define strategies and realise programme objectives for realisation of equality between women and men in Bosnia and Herzegovina”, and thus will be provided by enhancing these strategic goals of the GAP:

1. harmonisation of legislation in each field with domestic and international legal standards for gender equity and equality;
2. advancement of databases, research and socio-economic analysis of the gender equality situation in each area:
3. education and raising awareness of the public on the need to introduce gender equality in all fields of life and work;
4. building capacities and encouraging active cooperation and participatory approach of all institutional and out institutional participants in Bosnia and Herzegovina.

In order to achieve the strategic goals, there have been determined fifteen areas of the major interest for implementing the gender equality principle: European integrations, cooperation and capacity building, macroeconomic and development strategies, the budget, political life and decision-making, employment and labour market, social inclusion, gender sensitive media, lifelong education, health, prevention and protection, violence and human trafficking, the role of men, reconciliation of professional and family life, gender and sustainable environment, information and communication technologies. It’s important to emphasize that the aforementioned strategic goals are to be implemented in all of the above areas of interest.

The GAP BiH contains three parts:

1. activities in 15 areas,

<sup>46</sup> According to the GAP, relevant national and international instruments are as follows: 1. Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966), 2. International Covenant on Economic, Social and Cultural Rights (1966), 3. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979), 4. Beijing Declaration and the Platform for Action (1995), 5. European Convention on Human Rights and Fundamental Freedoms (1950), 6. Council of Europe Declaration on Equality Between Women and Men (1988), 7. Millennium Development Goals (1990-2015) / UN Millennium Declaration (2000), 8. Council of Europe Recommendations from the field of equality between women and men, 9. EU Gender Roadmap 2006-2010, 10. Constitutions of Bosnia and Herzegovina, Republic of Srpska, the Federation of Bosnia and Herzegovina and Cantons within the Federation of BiH, 11. Annex I of the General Framework Agreement for Peace in Bosnia and Herzegovina – additional Agreement on Human Rights, 12. 2005 Regional Declaration on Cooperation of Institutional Mechanisms for Gender Equality of BiH, Serbia, Monte Negro and Macedonia (Gender Action Plan of Bosnia and Herzegovina, “Official Gazette of BiH” 41/09).

2. operational plan,
3. annexes.

**d) Strategy for Prevention and Combat against Domestic Violence in BiH and Strategic Plan for Prevention and Combat against Domestic Violence in FBiH**

Specified by the Gender Action Plan for BiH in the Chapter XI – “Domestic violence, violence on the grounds of sex, harassment, sexual harassment and trafficking in human beings”, an obligation of the competent authorities to adopt a strategy for prevention and curbing domestic violence at the state and entity levels, had not been accomplished before 2009. A certain preliminary steps were taken in the Republic of Srpska in 2007, when an Action Plan for Combating against Domestic Violence in 2007 and 2008 in the Republic of Srpska was adopted as a transitional step towards adopting a strategic plan for the entity<sup>47</sup>. In the FBiH there the entities’ “Strategic Plan for Prevention and Combating against Domestic Violence in FBiH” in 2009 was also adopted, and, shortly after that, the Strategy for Prevention and Combating against Domestic Violence in BiH, as the umbrella of strategic activities to be performed at the state level.

The long term goal of the Strategy is to ensure harmonized and adequate prevention of domestic violence in Bosnia and Herzegovina by authorities at all levels and NGOs, and, on the other hand, several objectives have been determined:

1. place victims of domestic violence in the center of attention and protection,
2. raise awareness about domestic violence being a society’s problem, as well as violation of human rights and that each institution and an individual must confront it,
3. oblige the community to priorities this problem, to show political will and provide resources, multisectoral and coordinated approach for reaching concrete results in its resolution.

In order to ensure the accomplishment of the aforementioned objectives, the Strategy presents strategic goals and its related activities to be realized both at the state and entity level<sup>48</sup>, as it follows:

1. analysis and harmonization of the legal framework in Bosnia and Herzegovina regulating domestic violence issues,
2. realization of greater protection for victims of domestic violence and raising the quality of practices through continuous education and sensitization of professionals and a greater degree of coordination of all subjects in the process of protection of victims and prevention of domestic violence,
3. sensitization of the public about the problem of domestic violence and promotion of prevention,
4. systematic collection, merging and processing of data regarding domestic violence, and creation of follow up strategies based on this data in regards to combat domestic violence.

<sup>47</sup> Strategy for prevention and combat against domestic violence in Bosnia and Herzegovina for period of 2009 – 2011, “Official Gazette of BiH” No. 70/09., p. 3.

<sup>48</sup> These goals are a combination of the goals set in the Action Plan of Republic of Srpska, the Strategy Plan of FBiH, and the forthcoming strategy for combating domestic violence of the Republic of Srpska.

Concerning the Strategy plan for Federation of Bosnia and Herzegovina, there have been specified six goals to be realized in the period of two years 2009 – 2010<sup>49</sup>. During the realization of the stipulated goals of the Strategy Plan, the lack of the financial means was identified as the main hindrance, especially for the education of the professionals assigned to work with the victims of violence. In spite of the financial problems, there have been noticeable activities on the implementation of the state and entities strategies in the specified areas<sup>50</sup>.

**e) Action Plan for Implementing Gender Sensitive Budgets in FBiH 2010 – 2012 in the pilot area “Work and Employment” (AP GSB FBiH 2010 – 2012)**

By adopting the AP GSB FBiH, the Government of the FBiH showed a remarkable willingness to truly implement the gender equality principle in the one of the most problematic areas of the gender issue – budget allocation. Therefore, it became the first step towards the creation of the specific model of gender sensitive budget allocations concerning the present budget system in FBiH.

The long term goal of the project is “Gender sensitive budgets at all levels of government in FBiH during the entire budget process of preparing, considering, adopting and executing it, according to the provisions containing the demands for the gender sensitive budgets, under the frameworks of the program budgets based on the results<sup>51</sup>”.

The primary objectives of the Action plan are the following<sup>52</sup>:

1. establishment of the structure for the implementation and monitoring of the AP GSB FBiH 2010 – 2012,
2. harmonization of the process of strategic planning in the specified ministries and the bureau pursuant to the demands of the gender sensitive budgeting,

<sup>49</sup> The Strategic goals of the Strategy Plan for FBiH are as follows:

1. Harmonization of the present legislation and adoption of the new legislation concerning the domestic violence and establishment of the system for financing the preventive actions, needs of the victims of the violence and the activities with the violent persons – from the local community to the level of FBiH,
2. Establishment of an effective network of the competent services inside the education organizations for the protection of children - victims of domestic violence,
3. Continuous education and sensibilization of the professionals on the domestic violence issue from the legal, educational, health, psychological, sociological viewpoints
4. The development of the unique multidisciplinary model of the procedure of prevention and protection from domestic violence and accomplishment of the cooperation with all the partners in the prevention from domestic violence and the process of protection of the victims of the violence,
5. Sensibilization and education of the public on the issue of the domestic violence from the legal, educational, health, psychological, sociological viewpoints,
6. Establishment of the unitary database of the victims and the violent persons and the unitary SOS line for reporting the cases of domestic violence.. For detailed activities see: Strateški plan za prevenciju nasilja u porodici za FBiH – 2009 – 2010, “Official gazette of FBiH” No. 75/08.

<sup>50</sup> For detailed accomplishments of the entity’s gender centers on the implementation of the strategies, see: „Izvjestaj o provođenju strateškog plana za prevenciju nasilja u porodici za Federaciju Bosne i Hercegovine – 2009 - 2010 za period 01.07.-31.12.2009.godine” adopted by the Government of the FBiH 24.03.2010. ([http://www.fgenderc.com.ba/bh/strateski\\_plan/drugi\\_izvjestaj/IZVJESTAJ\\_SP\\_2\\_bos.pdf](http://www.fgenderc.com.ba/bh/strateski_plan/drugi_izvjestaj/IZVJESTAJ_SP_2_bos.pdf)).

<sup>51</sup> Gender Center of FBiH. Akcioni plan za uvođenje gender odgovornih budžeta u Federaciji BiH 2010-2012 u pilot oblasti „Rad i zapošljavanje” ( AP GOB F BiH 2010-2012 ). Sarajevo, 2010. <http://www.fgenderc.com.ba/bh/apgob/apgobbos.pdf> (18.05.2012.), p. 27.

<sup>52</sup> For more details on the activities for providing the presented goals, see: *ibid.* For detailed analyse of the gender sensitivity of the budget, see the sample case of the Sarajevo Canton Budget: Gender Equality Agency of BiH / Gender Center of FBiH / Gender Center of RS. Gender osjetljivi budžeti - Mogucnost za smanjenje siromaštva u Bosni i Hercegovini. [http://www.fgenderc.com.ba/bh/dokumenti/budg/Gender\\_osjetljivi\\_budžeti.pdf](http://www.fgenderc.com.ba/bh/dokumenti/budg/Gender_osjetljivi_budžeti.pdf) (13.05.2012.), p. 26 - 33.

3. adjustment of the process of planning and drafting of the budgets “in ten steps” in the specified ministries and bureau in the selected programs / transfers / grants, to the demands of the gender sensitive budgeting,
4. adjustment of the procedures of implementation of the selected programs / transfers / grants to the demands of the Action Plan,
5. enhancing the capacities of the selected ministries, bureaus and Gender Centers of FBiH in order to implementing the Action Plan,
6. creation of a strategic plan for the coming period.

The Action Plan will be enforced in the area of work and employment, since the participation of women among the unemployed is almost 60% in FBiH<sup>53</sup> and it is necessary to take specific steps in adjusting the budgets towards gender equality needs.

#### **f) Action Plan for the Implementation UNSCR 1325 in Bosnia and Herzegovina 2010 – 2013**

The importance of Resolution 1325, adopted by the Security Council at its 4213th meeting, on 31 October 2000, lies in that it invokes the increase in the participation of women in decision making processes, conflict prevention, post-conflict processes, peace negotiations and peace support operations. The Resolution is particularly important for BiH because the women were specifically affected by the war and were war-time sexual violence victims, in significant numbers. Today, the position of women is a far cry from the position equal to men in the process of decision making and power participation. Therefore, the adoption of the Action Plan for implementing the UNSCR 1325 in Bosnia and Herzegovina 2010 – 2013 provides a requisite basic structure for enhancing the position of women as active actors in the conflict resolving process and „the international initiative aiming primarily to achieve and sustain peace“<sup>54</sup>.

UNSCR 1325 contains eighteen items, and it focuses on the areas of participation of women at all levels of decision making, perspective trainings for peace building, protection and observance of human rights of women and female children and introducing gender perspective in UN reports and implementation of their programs. Therefore, when drafting the structure of Action Plan for BiH, a multisectoral working group determined eight goals to be achieved in order to implement the UN Resolution<sup>55</sup>:

1. increased participation of women in decision making places,
2. increased number of women in military and police forces and recognition of women as holders of managerial posts within military and police forces,
3. participation of women in peace missions and introduction of gender perspective in the trainings for members of peace keeping missions,
4. fight against trafficking in human beings,
5. launching a campaign for support to women and girls - wartime victims,
6. training of civil servants (authorised employees, civil servants, police officials, judges and prosecutors) and promotion of the Resolution internationally,
7. cooperation with non governmental and international organisations during the implementation of UNSCR 1325 in BiH.

<sup>53</sup> Ibid., p. 33.

<sup>54</sup> Action Plan for the Implementation UNSCR 1325 in Bosnia and Herzegovina 2010 – 2013, adopted by the Council of Ministries 27.07.2010, published in “Official Gazette of BiH” no. 92/10, p. 3.

<sup>55</sup> Ibid. p. 23 – 44.

### III. National institutional framework on Gender Equality

Pursuant to the General Recommendation No. 6 of the UN CEDAW Committee, the network of institutional mechanisms for gender issues in BiH entails all levels of legislative and executive powers. The committees on gender equality have been established within legislative powers at all levels of government (state – entity – canton – municipality).

#### 1. Institutional framework in legislative power

Within the legislative power, there are commissions established at all the levels of the state organization:

- a) **State level** – at the state level there is a Commission for Gender Equality of House of Representatives of the Parliamentary Assembly of BiH. The Commission has been established in 2006, and is responsible for the questions on promotion of the status of women in BiH, in particular: encouraging activities in the BiH institutions with regards to the implementation of the action platform of the Beijing Declaration, encouraging and coordinating activities with the Entity Parliaments and their Commissions for gender equality to promote the status of women, considering draft laws and other regulations from a perspective of gender equality and preventing discrimination against women, considering proposed documents and reports of those BiH Institutions dealing with gender equality and implementation of the action plan of the Beijing Declaration in general, considering and preparing the participation of the delegations of BiH at international meetings when deliberating on the implementation of the Beijing Declaration (UN, Stability Pact).<sup>56</sup>
- b) **Entity level** – there are four commissions on the entity level of BiH – three in FBiH and RS and one in Brcko District: Commissions for Gender Equality of the House of Peoples and the House of Representatives of the Parliament of the Federation of BiH, the Equal Opportunities Committee of the National Assembly of Republic of Srpska and Commission on gender issues of the Assembly of Brčko District. Their main competencies include considering draft laws and propositions of the other documents of the Parliament / Assembly and providing propositions and initiatives considering the compliance with the international instruments on gender equality, gathering the information necessary for the incorporation of gender analysis in the politics and programs of the parliament / assembly, cooperating with the other commissions of the entity parliaments, syndicates and NGO's, considering proposed documents and reports of the institutions on the implementations of the Action Platform of the Beijing Declaration<sup>57</sup>.
- c) **Canton level (only in FBiH)** – at the canton level in FBiH, there are nine committees for gender equality established<sup>58</sup> in ten cantons. Their mission is to consider the draft laws and propositions of documents regarding the level of implementation of the gender equality principle, to impose the opinions, propositions and initiatives in regards of the compliance with the international instruments on gender equality, analyze the status of women rights and provide measures for the elimination of the possible discrimination in the matter of economics, employment, social and labor rights, family issues etc. The Commissions have the duty to cooperate with the other canton and entity commissions, syndicates and NGO's.

<sup>56</sup> Article 46. of the Rules of the procedure of the House of representatives of the Parliamentary Assembly of BiH, "Official Gazette of BiH", No. 33/06.

<sup>57</sup> Article 66 of the Rules of the procedure of the House of representatives of the Parliament of the FBiH, "Official Gazette of FBiH", no. 69/07, 2/08; Article 87 of the Rules of the procedure of the National Assembly of RS, official refined text, „Official Gazette of RS“, no. 79/07.

<sup>58</sup> The only canton that doesn't have an established committee for gender equality is Canton 10, as a result of the present political problems concerning the establishment of the canton assembly itself (see: Centers of civil initiatives. Monitoring rada skupštine Kantona 10 za razdoblje od 01.01. – 31.03. 2012. godine. <http://www.cci.ba/monitoring/1/9/3.html> .

**d) Local / municipal level** – the provision of the article 24 of the Law on Gender Equality emphasizes the importance of the local selfgovernance units “to take all appropriate and needed measures in order to implement provisions prescribed by this law”. It is one of the major activities necessary to enforce in order to facilitate the complete institutional mechanisms for implementing gender equality principle, hence specific issues may be the most effectively provided at the local level by the local authorities. Therefore, there have been about twenty municipal commissions established at the local level<sup>59</sup> in FBiH and about twenty five commissions in RS<sup>60</sup>, mostly in the status of permanent municipal commissions in the executive authorities of the municipality. Their task is to identify and analyze the local problems on the issue of gender equality, specify the presence of direct and indirect discrimination based on gender, create and propose gender equality programs, plans and other acts to the institutions of legislative, executive and administrative power etc. Unfortunately, owing to the absence of the minimum budget resources, and inadequate members of the Commissions, without any basic knowledge on the gender issues “they risk becoming a purely cosmetic body, producing no real impact on the municipality”<sup>61</sup>. Remuneration of members with relevant education and experience for the Gender Equality Commissions would certainly contribute to the seriousness of the Commissions themselves, in order to create a proper municipal gender action plans as a base for the appropriate budget allocations for their activities.

## 2. Institutional framework in executive power

In the executive power, there are organized appropriate institutional mechanisms for implementing Gender Action Plan of Bosnia and Herzegovina at all levels. Within the Ministry of Human Rights and Refugees of BiH there is the Gender Equality Agency of Bosnia and Herzegovina, and at the entity level there are the Gender Centre of the Federation of Bosnia and Herzegovina and the Gender Centre – Gender Equality Centre of the Government of Republic of Srpska (hereinafter: Gender Centre of Republic of Srpska). At the canton level there are cantonal committees for gender equality established in the Federation of BiH. There are committees for gender equality also established at the municipal mayor’s offices. Unfortunately, not all established committees work properly and continuously.

All institutional mechanisms have precisely defined mandate, which shows the governments’ commitment to achieve gender equality and inclusion of gender issue in all segments of social life. So far, the Agency and the entity Gender Centers represent the real drivers of the initiatives and measures, and the key implementers and monitors of the gender mainstreaming in BiH. These three institutional mechanisms for gender equality are crucial instruments in initiating and implementing activities in the area of gender equality. They have the prominent place considering their activities, projects and measures which they have undertaken to strengthen and ensure sustainability of institutional mechanisms for gender equality, as well as to initiate establishment of such mechanisms at the local level.

<sup>59</sup> OSCE. The status and activities of municipal gender equality commissions in Bosnia and Herzegovina. Sarajevo: 2009.

<sup>60</sup> On the issue of local commissions in Republic of Srpska, see: Krunić, Spomenka, editor. Analiza rada lokalnih zajednica na uvođenju principa ravnopravnosti polova u Republici Srpskoj. Banja Luka: Gender Centar – Gender Equality Center of Republic of Srpska, 2011.

<sup>61</sup> OSCE, p. 15.

The executive power instrumental mechanisms system with its jurisdiction looks as follows:

**1) State level** - The Gender Equality Agency of Bosnia and Herzegovina was established with the decision of the Council of Ministers of BiH in 2004, in order to supervise the implementation of the Law on Gender Equality. Within its jurisdiction, the Agency performs the following tasks<sup>62</sup>:

- a) Monitors and analyses the state of gender equality in Bosnia and Herzegovina on the basis of reports produced by the Agency and entity Gender Centers and submits annual reports to the Council of Ministers of Bosnia and Herzegovina. Based on the results of the analysis and monitoring, it drafts special reports, opinions, suggestions, and recommendations for referral to the competent authorities at the state level;
- b) Determines the methodology of drafting the report on Gender Equality in Bosnia and Herzegovina;
- c) Initiates and coordinates drafting of the Gender Action Plan of Bosnia and Herzegovina, in cooperation with entity Gender Centers, which is adopted by the Council of Ministers of Bosnia and Herzegovina;
- d) Monitors the implementation and coordinates the activities with all relevant actors in the process of implementing the Gender Action Plan of Bosnia and Herzegovina pursuant to Article 24(2) of this law;
- e) Cooperates with the institutional mechanisms for gender equality in institutions at the state level;
- f) In the process of preparing the draft and propose laws, by laws, and other normative documents, strategies, plans and programs, and prior to submission to the Council of Ministers of Bosnia and Herzegovina, it issues the Position paper on the harmonization of these acts with this Law and international standards on gender equality;
- g) Initiates and participates in drafting laws, by laws and other legislation, strategies, plans and programs, which pertain to the state level, in order to identify measures to achieve gender equality in all spheres of social life;
- h) Initiates the proceedings for the amendment of regulations in case of non compliance with the provisions of this law, domestic and international standards on gender equality;
- i) Receives and processes applications, complaints and petitions of persons and groups of individuals which indicate a violation of any right under this law;
- j) Gender Equality Agency of Bosnia and Herzegovina adopts the Uniform Rules for receiving and processing requests, complaints and petitions of persons and groups of individuals under the item i) of this article;
- k) Represents and coordinates activities within its jurisdiction, at the international and regional level;
- l) Supervises the implementation of this law and in cooperation with the Gender Centre of the Federation of Bosnia and Herzegovina and the Gender Centre of the Republika Srpska and prepares reports on the compliance with the international commitments in the field of gender equality;
- m) Cooperates, within its competence, with non governmental organizations working on the protection of human rights and freedoms;
- n) Carries out activities to promote gender equality;
- o) Performs other tasks with the aim of implementing this law.

<sup>62</sup> Article 26 of the Law on Gender Equality – consolidated version, „Official Gazette of BiH”, no. 32/10.

**2) Entity level** – As noted above, there are two gender centers established at the entity level, in order to facilitate the implementation of the international and national instruments on gender equality principle set in the GAP BiH. Gender Centre of the Federation of Bosnia and Herzegovina and the Gender Centre – Centre for Gender Equality of the Government of Republika Srpska monitor the implementation in the entities and for this purpose specifically perform the following tasks<sup>63</sup>:

- a) Monitor the compliance of laws and other regulations, policies, strategies, plans and programs that are adopted at the entity level, with national and international standards for gender equality;
- b) Provide an opinion on the compliance of laws and other regulations, policies, strategies, plans and programs that are adopted in the entities with the provisions of this law and other national and international standards for gender equality and initiate harmonization;
- c) Monitor and analyze the gender equality situation in entities;
- d) Prepare and draft regular and special reports on the situation regarding gender equality in certain areas, prepare the information, opinions and recommendations which they submit to the entity governments and other competent authorities and bodies;
- e) Receive and process requests, complaints and petitions of persons and groups of individuals which indicate the violation of a right under this law in accordance with the Uniform Rules pursuant to Article 26, paragraph 1, item i);
- f) Cooperate with institutional mechanisms under Article 24(2) of this law;
- g) Represent and coordinate activities within their jurisdiction, at the regional level;
- h) Cooperate with NGOs working on the protection of human rights and freedoms;
- i) Provide expert and advisory support and assistance to all institutions in the system and to other partners.

**3) Canton level** – there are several coordination committees on gender issues at the canton level in FBiH. Their main activities focus on the issues of coordination with the ministries in order to eliminate discrimination in all the areas of concern, monitoring of adoption and implementation of the relevant laws and other acts, coordination with the canton, municipal commissions, the Gender Center of FBiH and other relevant canton commissions and NGOs<sup>64</sup>.

**4) Municipal level** – much effort has been devoted to the establishment of the committees in the municipal mayors offices (in about 95 % of them<sup>65</sup>), as drivers of the executive power at local level. However, equal problems arise as in the case of commission at municipal assemblies – poor budget allocation, remuneration of the persons without relevant experience on the gender issues, but suitable for their political views etc.

<sup>63</sup> Article 27 of the Law on Gender Equality.

<sup>64</sup> See: Decision on remuneration of Coordination committee of gender equality of Una-Sana Canton, „Official Gazette of Unsko-Sanski Canton“, No. 1/12.

<sup>65</sup> Babić-Svetlin, Kika, Situation Analysis Report on the Status of Gender Equality in Bosnia and Herzegovina. Sarajevo: 2009. [http://www.unicef.org/bih/Gender\\_SitAn\\_BiH\(1\).pdf](http://www.unicef.org/bih/Gender_SitAn_BiH(1).pdf), p. 8.

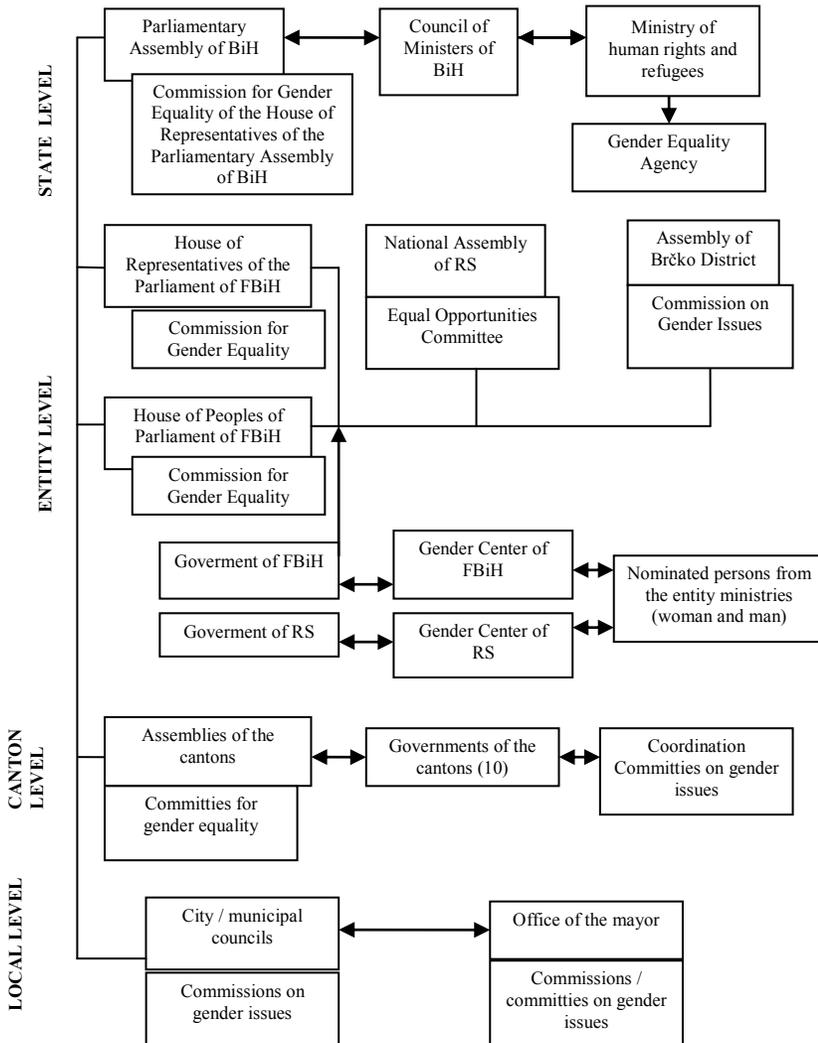
## IV. Gender equality in legal education

### 1. Gender distribution at the Law Faculties

**Table 1 - The participation of female students on the faculties of law in the Federation of Bosnia and Herzegovina<sup>66</sup>**

Institution		2007 / 2008	2008 / 2009	2009 / 2010	2010 / 2011
Faculty of Law, University of Sarajevo	Total	5143	4154	3704	3414
	Female	3129	2553	2328	2183
Faculty of Law, University of Zenica	Total	708	842	921	984
	Female	449	527	564	596
Faculty of Law, University of Bihać	Total	737	688	651	604
	Female	443	409	391	377
Faculty of Law, University of Tuzla	Total	1362	1513	1616	1604
	Female	837	937	1028	1013
Faculty of Law, University "Džemal Bijedić" Mostar	Total	663	530	507	462
	Female	407	333	323	290
Faculty of Law, University of Mostar	Total	1155	1253	1242	1315
	Female	693	757	753	809
Faculty for Public Administration	Total	208	315	261	246
	Female	120	192	162	142
Faculty for Law, University of Travnik	Total	42	93	143	686
	Female	26	59	78	325
Total	Total	10018	9370	9045	9315
	Female	6104 60,93 %	5767 61,54 %	5627 62,21 %	5735 61,56 %

<sup>66</sup> Data presented in the table are gathered from the: Statistical Bulletin – higher education for the academic years 2007/2008, 2008 / 2009, 2009 / 2010, 2010 / 2011, published by the Federal Office of statistic, Sarajevo. The data includes all the students, regardless of their status (full-time or part-time). The data for the academic year 2011 / 2012 are not available yet. In the research both public and private education institutions are included.



**Table 2 - The participation of female professors and assistants on the faculties of law in FBiH<sup>67</sup>**

Institution		2007 / 2008	2008 / 2009	2009 / 2010	2010 / 2011	2011 / 2012
Faculty of law, University of Sarajevo	Total	42	41	43	42	39
	Female	18	18	18	19	20
Faculty of law, University of Zenica	Total	17	17	17	16	19
	Female	7	7	7	5	5
Faculty of law, University of Bihać	Total	13	15	15	15	22
	Female	7	7	8	8	7
Faculty of Law, University of Tuzla	Total	11	11	11	11	11
	Female	4	4	4	4	4
Faculty of law, University "Džemal Bijedić" Mostar	Total	18	18	17	15	18
	Female	13	14	13	13	15
Faculty of law, University of Mostar	Total	23	14	24	24	16
	Female	14	6	14	14	14
Faculty for public administration	Total	5	6	5	9	15
	Female	2	3	3	3	4
Faculty for law, University of Travnik	Total	3	7	9	18	36
	Female	0	0	3	8	11
Total	Total	132	129	141	150	180
	Female	65 49,24 %	59 45,73 %	70 49,64 %	74 49,33 %	80 50 %

**Table 3 - The participation of female students on the faculties of social sciences in the last five years in Republic of Srpska<sup>68</sup>**

	2006 / 2007	2007 / 2008	2008 / 2009	2009 / 2010	2010 / 2011
Total	22 822	24269	28264	29400	19638
Female	13282 58,19 %	14100 58,09 %	16949 59,96 %	17522 59,59 %	11330 57,69 %

<sup>67</sup> Data presented in the table are gathered from the: Statistical Bulletin – higher education for the academic years 2007/2008, 2008 / 2009, 2009 / 2010, 2010 / 2011, published by the Federal Office of Statistic, Sarajevo. Unfortunately, the statistical bulletins do not contain data based on the teachers titles of the professors and assistants, only the summary data on all of the employed faculty staff, regardless of their status (part-time or full-time). The data for the academic year 2011 / 2012 are not available yet in the statistical bulletin, thus these are gathered from the web-sites of the faculties above. The data on the participation of female professors and assistants on the faculties of law in the previous years is also not available to the public.

<sup>68</sup> The data presented in the table are gathered from the Statistical Bulletin – Higher education for the academic years 2006 / 2007, 2007 / 2008, 2008 / 2009, 2009 / 2010, 2010 / 2011, published by the Republic of Srpska Institute of statistics. The data are not sorted by the individual faculties, thus by the field of study. Also, the data for the academic year 2011 / 2012 is not available yet. The data includes all the students, regardless of their status (full-time or part-time). In the research both public and private education institutions were included.

**Table 4 - The participation of female professors and assistants on the universities in Republic of Srpska<sup>69</sup>**

		2010 / 2011	2009 / 2010	2008 / 2009
Teachers	Total	1383	1302	1257
	Female	351	299	299
Assistants	Total	1158	1138	1073
	Female	619	586	567

**Table 5 – The participation of females in the organizational structures of the law faculties in Bosnia and Herzegovina – current situation<sup>70</sup>**

		Faculty of law, University of Sarajevo	Faculty of law, University of Zenica	Faculty of law, University of Bihać	Faculty of Law, University of Tuzla	Faculty of law, University "Dž. B." Mostar	Faculty of law, University of Mostar	Faculty for public administration	Faculty for law, University of Travnik	Faculty of law, University of Banjaluka	Faculty of law, University East Sarajevo	Faculty of law, Slobomir P. University	Faculty of law, Paneuropean University "Apeiron"	TOTAL
Deans	M	1	1	1	1	0	1	1	1	1	1	1	1	11
	F	0	0	0	0	1	0	0	0	0	0	0	0	1
Vice-deans	M	0	2	1	1	0	0	0	-	0	1	-	0	5
	F	1	0	1	0	2	2	1	-	2	1	-	0	10

At first sight, one can conclude that the participation of female professors and assistants is balanced with that of their male counterparts. However, in order to present the de facto participation of women in education and their position towards the center of power of decision making, two case studies will be presented – Faculty of Law in Sarajevo and Faculty of Law in Zenica.

The total number of full-time students, both male and female in the academic year 2010 / 2011 (Bologna program) was 967, whereof 276 male students (28, 85%) and female students 681 (71.15%). At the same time, a total amount of 3.951.664 KM (gross) was allocated for the full-time studying from the cantonal budget – meaning 5.94 % of the total budget. If the allocated budget amount attended for the full-time studying is divided by the total number of the full-time students, than the amount provided for the female students is 2.811 999 KM or 71.15%, and for the male stu-

<sup>69</sup> The data presented in the table are also gathered from the Statistical Bulletin – Higher education for the academic years 2006 / 2007, 2007 / 2008, 2008 / 2009, 2009 / 2010, 2010 / 2011, published by the Republic of Srpska Institute of Statistics. The statistical bulletins do not contain information of number of female professors and assistants by the individual faculties, only the total number is available. Also, the data for the previous years is not available.

<sup>70</sup> The data presented in the table is gathered from the web-sites of the individual faculties of law, both from public and private education institutions from FBiH and RS. Unfortunately, the statistical bulletins used as a source of data, do not contain the information on the participation of female deans and vice-deans of the faculties. Therefore, all the information are presentation of the current situation on the faculties of law in BiH, according to the informations on their web-sites.

dents is 1.139.665 KM or 28,5%. Therefore, on the Faculty of Law in Sarajevo, at which the research of the perception of the gender sensibility of the budget was conducted, 71.15% of the budget means provided for the education is allocated for the education of the female students, and 28.5% for the male students<sup>71</sup>.

Of the total number of the examinees, whose responses were used for examining perception, 60% of them consider that both male and female students use equal budget means, 2% of them (1 examinee) consider that the budget allocations are more in favor of male students, 38% of them consider that budget means are more in favor of female students. In this case one can conclude that the examinees considered more the situation in the University as a whole than the situation on the faculty on which they are enrolled, although their perception is more approximate to the de facto situation at the University of Sarajevo.

The data (taken from the web site of the Faculty) shows that the participation of the women in the structure of the faculty staff is 41.02 % (16 women) and the men is 58.98 % (23 are men) of the total number of 39. According to the teaching titles there are nine full professors (23.07 % of the total number), among them eight are men (88.99 %) and only one is a woman (11.11 %), there are five associate professors, among which there are three men (60 %) and two women (40 %), four persons are assistant professors, among which two are male (50 %) and two female (50 %). There are 14 persons in the status of senior assistants (35.89 %), and among them there are two men (14.28 %) and 12 of them are women (85.72 %) and five persons in the status of assistants, and among them there are four men (80%) and one woman (20%).

Therefore, 18 persons hold a teaching position (46.18 % of the total number of faculty staff), among them 13 are men (72.22%) and five are women (27.78%), and 21 person is in the status of an assistant, among them six are men (28.57 %) and 13 are women (71.43 %).

If one analyzes the situation on the Faculty of Zenica, the results are quite similar. The total number of registered students at the Faculty of Law in Zenica in 2011 / 2012 is 990, and among them there are 643 female students (64.55 %) and 347 male students (35.44 %). Therefore, just as with the case of Faculty of Law in Sarajevo, most of the budgetary means will be spent on the education of female students.

On the other hand, if one analyzes the situation of equal gender participation among the faculty staff, the results would be quite disappointing. There is one person in the status of the full professor, and it is male (there are no female professors), there are four associate professors, among them four are men (100 %) and none are women (0 %), five are assistant professors, and all are men (100 %). On the other hand, the situation among the assistants is much different. There are six senior assistants, and among them there are four women (66.66 %) and two men (33.33 %), and there are two assistants, one is male (50 %) and one female (50 %).

Ten persons have the status of assistant professors, and all of them are men (100%). Eight persons have the status of assistants, five of them are women (62.5%) and three are men (37.5%).

To sum up, one might say that among the faculty staff, men are using more of the budgetary means allocated for the financing of the faculty staff (also taking into account the total number of men and their teachers titles in the faculty to which certain budget means are attached) than women. However, feminization of the faculty staff is quite noticeable, because the gender ratio is completely changing, while on the positions of professors men are dominant in the proportion of 72.22 % on the Faculty of Sarajevo, and 100% in the Faculty of Zenica. On the other hand, in the status of assistants, women are dominant in the ratio of 71.43% (Sarajevo) and 62.5% (Zenica).

<sup>71</sup> All the data are gathered from the study on the budget transfers of the faculties of the University of Sarajevo for the years 2010 and 2011 (data provided by the Ministry on Education, Science and Young people) and statistical bulletins published by the Federal Office of Statistic, Sarajevo.

This data indicates the absence of the gender sensitive policy, which is also discerned from the facts concerning the ratio of male and female students, faculty staff and the perception of the situation itself. These facts are also important for the creation of the gender sensitive policies and budget allocations because they indicate to the future trend of the enhancing importance of women as the key factor in the faculty staff (as the natural consequence of the generation shift) and the university as a crucial place for the development of science and education.

To gain more complete insight into the participation of women in the decision making process in the educational system, it is not enough to analyze the structure of the faculty staff within the faculties, but to explore the structure of the decision making bodies inside the universities and public competent authorities involved in the process of creation of education policy and budget allocations concerned.

If one takes a look at the government structure of the University of Sarajevo, the University Dean is male and one of the three Vice-Deans of the University is female (33.33%) and two are male (66.66 %). If one should consider the gender structure of the university senate, as the main decision making body of the University, of the 35 members in it, there are 27 male (77.14%) and eight female members (22.85%)<sup>72</sup>.

In the case of University of Zenica, the Dean of the University is male, and among four Vice-Deans of the University, one is female (25%) and three are male (75%). If one considers the gender structure of the senate of the university as the main decision-making organ, of the 22 members, only three are female members (13.63%), and 19 are male members (86.37 %)<sup>73</sup>.

In the wider picture, if one takes into account the ministries of education in the Sarajevo Canton and Zenica – Doboj Canton, the Minister in Zenica – Doboj Canton, the one who supervises University of Zenica is female, and in the case of Sarajevo Canton, the one who supervises University of Sarajevo, is male. If one takes a look at the executive power, which is important for its role in creation of canton education policy (the aforementioned universities are public, established by the government of the cantons and supervised by them) the structures of the governments in the aforementioned cantons are as follows:

- In the case of Sarajevo Canton, there are 13 members of canton government, two of which are women (15.38 %), and 11 are men (84.61 %),
- In the case of Zenica – Doboj Canton, there are 11 members of the canton government, three of which are women (27.27 %), and eight are men (72.72 %).

If one considers the gender structure of the legislative power in the both cantons, the situation is as follows:

- In the case of Sarajevo Canton Assembly, there are 35 members; seven of which are women (20 %) and 28 are men (80 %),
- In the case of Zenica – Doboj Canton Assembly, there are 35 members; five of which are women (14.28 %) and 30 are men (85.71 %)<sup>74</sup>.

In spite of the prevailing number of female students on male, and the advantage in number of female assistants over the male ones, it is obvious that the feminization of the education is

<sup>72</sup> Data gathered from the web-site of the University of Sarajevo: „Members of the Senate“, [http://unsa.ba/s/index.php?option=com\\_content&task=blogcategory&id=34&Itemid=86](http://unsa.ba/s/index.php?option=com_content&task=blogcategory&id=34&Itemid=86).

<sup>73</sup> Data gathered from the web-site of the University of Zenica: „Members of the Universitie’s Senate“, <http://www.unze.ba/ba/menadzment.htm>.

<sup>74</sup> Data on the executive and legislative power are gathered from the official web/pages of the governments of the cantons: “Members of the canton government”, <http://www.zdk.ba/vlada/clanovi-vlade>; “Assembly of the Zenica – Doboj Canton”, <http://www.zdk.ba/skupstina/skupstina>; “Members of the Government of Sarajevo Canton in the mandate 2011 – 2014”, [http://vlada.ks.gov.ba/sastav\\_2010\\_2014?saziv=2009](http://vlada.ks.gov.ba/sastav_2010_2014?saziv=2009); “Members of the Assembly of Sarajevo Canton”, <http://skupstina.ks.gov.ba/sastav>.

just apparent, as the consequence of the unequal distribution of the real decision making power in the issues concerning the education policy. All the institutions in the decision making process are consisted prevalently of males, as the consequence of the relocation of the true centers of power into the political institutions. Therefore, by introducing measures that will provide equal gender representation in all the decision making bodies, a more gender sensitive approach to the creation of the appropriate education policy will be enabled, pursuant to the demands of the Gender Equality Law.

## 2. Gender studies offered at higher educational institutions

Research of the Law Faculties in BiH regarding curricula shows that the curricula have not yet been harmonized with the Law on Gender Equality. Law Faculties usually offer studies on Human rights and Democracy as the obligatory subject on the re-graduate study, like in the Faculty of Law at the University of Tuzla (third semester), the University of Bihać, the University of Mostar (second semester), the “Džemal Bijedić” University (seventh semester).

A study on the gender equality on re-graduate study is offered only at the Faculty of Law in Sarajevo, as the optional subject during the sixth semester. Approximately 80 students choose this subject every year. Recent results show that there is an interest among students in this subject, there is a high exam passing rate, a wide interest in the gender issues, especially the discrimination issues, and the number of master works on the gender equality issue is increasing.

Neither of the Law Faculties offers postgraduate studies on the subject of gender equality issues, except the University of Sarajevo. The Agency has initiated the establishment and, in 2006 signed a Memorandum of Understanding to begin the master studies in “Gender Studies” at the Center for Interdisciplinary Postgraduate Studies in Sarajevo. It is a biennial, regional, interdisciplinary master’s program with the aim of educating students about the methods, theories and concepts necessary for the study of gender in general and its specific contexts, as well as about conducting research within this interdisciplinary field.

The study teaches the following modules: Gender Theory, Gender and Human Rights, Gender and Politics, Gender and Development, Gender Strategy and Policy, Gender and the Balkans (socio-economic aspects), Gender and the Balkans (the political-cultural aspects), Gender and Cultural Studies, Domestic Violence, Religion and Gender (monotheistic traditions of Judaism, Christianity and Islam), Gender and Economy, Gender and Everyday Life in Transition, Gender and Nationalism, Gender and Integration within the European Union, Research: Gender Strategy and Policies, Research Methodology in the Field of Gender, Gender and Peace Building and Gender, Civil Society and Media<sup>75</sup>.

So far, two generations have completed the studies, and currently the third generation of students has been enrolled, and 18 master works have been defended<sup>76</sup>.

Recently the Center for Interdisciplinary Postgraduate Studies at the Sarajevo University has organized a regional conference on “Gender and Science”. The conference was attended by academics as well as expert practitioners from BiH, Croatia, Serbia and Montenegro in order to discuss approaches related to gender issues from an academic standpoint, the importance of knowledge of theories and concepts for the study of gender and gender research.

<sup>75</sup> Details on the Curricula of the „Gender Studies” available on: <http://www.cps.edu.ba/?q=bs/node/73>.

<sup>76</sup> Details on the themes of the master works see: „Themes and abstracts of the master works – first generation”. <http://cps.edu.ba/sites/default/files/RS%2020062008%20Teme%20i%20sazeci%20magistarskih%20radova.pdf>.

### 3. Curricula gender mainstreamed

As one can conclude, present curricula of Law Faculties do not have developed courses on gender equality study as a part of the education of future lawyers, on re-graduate nor on postgraduate studies. However, as apparent from the text above, there have been organized courses on human rights in curricula of the majority of the Law Faculties. Also, Gender Equality Law is studied in the other courses, like Constitutional Law (gender equality as one of the essential human rights), Family Law (rights of women when entering into marriage, right to participation in marriage assets), Criminal Law (studying the domestic violence as a criminal offence), Labor and Social Security Law (special protection of women in the work place, social protection of women during the maternity leave) etc.

Another problem recognized when analyzing curricula is the application of the gender insensitive language, when describing functions, positions, statuses, since only male gender is used when describing the aforementioned.

Therefore, one of the future goals for the Law Faculties should be harmonizing the relevant provisions by including the gender sensitive language, introducing the gender quotas in decision making bodies in order to ensure the gender equality principle when creating the educational policy and, to introduce courses on the gender equality law on re-graduate and postgraduate studies. Thus, the necessary conditions will be provided for gender mainstreaming on the Law Faculties as the part of the mandatory education.

## IV. Gender equality in legal professions

### a) Gender distributions in legal professions

After signing the CEDAW convention, Bosnia and Herzegovina accepted an obligation, presupposed in the Article 2 of the aforementioned Convention, to “establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination”. Implementing the adequate legislation on the gender equality issue remains insufficient without competent tribunals to follow and construe the provisions in the sense of the true meaning of the principle of gender equality. Thus, a dual assignment is being undertaken by the authorities concerned to attain gender equality within the judicial branch (and within legal branch as a whole in the wider sense) on the one hand, and to educate the professionals in the matter of regulation, its interpretation and full implementation of the issue of gender equality principle, on the other.

Originally, the Law on Gender Equality passed in 2003 contained a general obligation for legislative, executive and judicial authorities to promote equal gender representation in their organizational structures. The implementation of the aforementioned provision resulted in a slightly varied number of women participation in the judicial power compared to the previous years<sup>77</sup>. It must be stressed that the number of female judges was traditionally high in the courts on the local level, but was decreasing on the level of entity and state level courts, especially in the prosecutor’s offices. Even more noticeable disproportion was evident among the number of participants, men and women, in decision making, highly powered and well paid positions. For example, in 2004 there were no women elected as the presidents of courts at entity and state levels, and there were only

77 For more details, see: High Judicial and Prosecutorial Council of Bosnia and Herzegovina. “Annual report for the year 2008”. <http://www.hjpc.ba/intro/gizvjestaj/pdf/2diolmenovanja.pdf> (May 19, 2012), p. 39-40.

17,2 % of women presidents of the courts at the local level, and the number of women prosecutors was less than 40 % in the whole country<sup>78</sup>.

However, significant improvement in the implementation of the gender equality principle in the issue of election of judges and prosecutors happened after passing the changes and amendments to the Law on Gender Equality in Bosnia and Herzegovina<sup>79</sup>, when introducing the gender quote of 40 %. Noticeable changes have been introduced in the Law on High Judicial and Prosecutorial Council of BiH by implementing broader commitment to the gender equality principle too. Pursuant to the provision of the Article 4 of the Law, the gender composition of the Council must be representative for both genders (pursuant to the Article 20 of the Law on Gender Equality). Moreover, while remunerating judges and prosecutors at all the levels of the judicial organization, equal gender representation must be one of the goals of the Council to be practiced<sup>80</sup>.

Since then, positive results could be noticed not only in the matter of equal gender representation<sup>81</sup> at the different levels of the judicial organization<sup>82</sup>, but in the matter of the participation of women on the position of the President of the court too (although 42.10 % of the presidents of the courts are women, thus hitting the bottom limit of the specified level of the representation, it is a positive improvement of the aforementioned 17%<sup>83</sup>).

On the other hand, a partial success is noticed concerning the issue of remuneration of the chiefs of the prosecutor's offices. Although the number of women remunerated as prosecutors is reconciled to the provision of the Article 20 of the Law on Gender Equality, hence there are 48.25 % women prosecutors in BiH, there is an evident discrepancy from the presupposed equal gender representation among the chiefs of the prosecutorial offices. Only a 20% of chiefs of prosecutorial offices are women (four of twenty of them), three in the Federation of BiH (canton level) and one in the Republic of Srpska (district level). As noted, women are only remunerated as chiefs of prosecutorial offices at lower level of prosecutorial system.

If we are considering the independent professional legal activities – attorneys and notaries – there is more noticeable disproportion among gender representation. There are only 21.60 % women attorneys in BiH, but on the other hand, the number of women in the notary profession is much higher, up to 48.82 %. The Law on Attorneys determines equal requirements to be fulfilled if becoming an attorney, as well as the Law on Notaries<sup>84</sup>. However, the influence of the state is significant in the case of the status of the notaries, hence the canton governance determines the number of notaries for the canton (depending on the number of the residents of the concerned canton), and organizes the competition for the remuneration of the notaries. Therefore it is not as “independent” profession as is in the case of the attorneys. Nevertheless, the Law on Notaries does not contain any provisions concerning the gender issue. In spite of that, the number of women in notary profession is at a satisfying level.

<sup>78</sup> Global Rights, NVO organizations, consultant Jasna Bakšić – Muftić. Izvještaj u sjeni o implementaciji CEDAW konvencije i ženskim ljudskim pravima u Bosni i Hercegovini. 2004., [http://www.rightsforall.ba/bos/dw/BiH\\_izvjestaj\\_u\\_sjeni\\_CEDAW\\_2004.pdf](http://www.rightsforall.ba/bos/dw/BiH_izvjestaj_u_sjeni_CEDAW_2004.pdf) (May 3, 2012), p 22 – 23. “Combined initial, second and third periodic report of state partie Bosnia and Herzegovina”, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/315/63/PDF/N0531563.pdf?OpenElement>, (May 7, 2012), p. 33.

<sup>79</sup> Official Gazette of BiH, No. 102/09.

<sup>80</sup> Article 43 of the Law on High Judicial and Prosecutorial Council of BiH – Consolidated version, “Official Journal of BiH”, No. 48/07.

<sup>81</sup> All the information in the following tables is available on: [www.pravosudje.ba](http://www.pravosudje.ba), and: Muhamed Tulumović and Amra Jašarević, chief editors. Godišnji izvještaj 2011., adopted 25.04.2012. Publisher: High Judicial and Prosecutorial Council of BiH.

<sup>82</sup> Except the Constitutional Court of the Republic of Srpska, where there are no women remunerated, all the other levels of judicial organization represent gender equality principle in their composition.

<sup>83</sup> However, it must be noted that the improvement of the equal gender representation among the Presidents of the courts is present only in Federation of Bosnia and Herzegovina. In the Republic of Srpska, there are 23 men presidents of the courts and only 9 women (mostly in the basic courts, not in those on the higher level of judicial organization).

<sup>84</sup> Law on Notaries, „Official Gazette of FBiH”, No. 45/02.

**Table 6 – The participation of female judges in courts<sup>85</sup>**

Level	Court	Judges		Presidents of the courts	
		Male	Female	Male	Female
State level	Court of Bosnia and Herzegovina	31 56,36 %	24 43,63 %	0	1
	Constitutional Court of Bosnia and Herzegovina	5 55,55 %	4 44,44 %	0	1
Federation of Bosnia and Herzegovina	Supreme Court of Federation of Bosnia and Herzegovina	13 38,23 %	21 61,76 %	1	0
	Constitutional Court of Bosnia and Herzegovina	3 50 %	3 50 %	0	1
	Canton courts (10)	71 46,40 %	82 53,59 %	3	7
	Municipal courts (28)	138 31,57 %	299 68,42 %	14	14
Republic of Srpska	Supreme Court of Republic of Srpska	9 45 %	11 55 %	1	0
	Constitutional Court of Republic of Srpska	9 100 %	0 0 %	1	0
	District counts (5)	31 46,26 %	36 53,73 %	5	0
	Commercial district courts (6)	13 33,33 %	26 66,66 %	3	3
	Basic courts (19)	80 37,91 %	131 62,08 %	13	6
Brčko District	Appellate Court of Brčko District BiH	4 50 %	4 50 %	1	0
	Basic Court of Brčko District	11 52,38 %	10 47,61 %	1	0
	<b>Total</b>	<b>418 39,10 %</b>	<b>651 60,89 %</b>	<b>43 56,57 %</b>	<b>33 43,42 %</b>

<sup>85</sup> All the data presented in the table is gathered from the web-site: [www.pravosudje.ba](http://www.pravosudje.ba).

**Table 7 - Participation of women in prosecutorial offices<sup>86</sup>**

Level	Prosecutor's office	Prosecutors		Chiefs of prosecutor's office	
		Male	Female	Male	Female
State level	The Prosecutor's Office of Bosnia and Herzegovina	17 45,94 %	20 54,05 %	1	0
Federation of Bosnia and Herzegovina	The Prosecutor's Office of Federation of Bosnia and Herzegovina	5 50 %	5 50 %	1	0
	Canton Prosecutor's offices (10)	86 51,49 %	81 48,50 %	7	3
Republic of Srpska	The Prosecutor's Office of Republic of Srpska	4 66,66 %	2 33,33 %	1	0
	District Prosecutor's offices (6)	46 54,11 %	39 45,88 %	5	1
Brčko District	Brčko District Prosecutor's Office	5 50 %	5 50 %	1	0
	<b>Total</b>	<b>163 51,74 %</b>	<b>152 48,25 %</b>	<b>16 80 %</b>	<b>4 20 %</b>

**Table 8 - Participation of women among attorneys<sup>87</sup>**

Entity	Male	Female	Total
Federation of Bosnia and Herzegovina	645 72,55 %	244 27,44 %	889
Republic of Srpska	302 72,07 %	117 27,92 %	419
<b>Total</b>	<b>947 78,39 %</b>	<b>361 21,60 %</b>	

**Table 9 - Participation of women among notaries<sup>88</sup>**

Entity	Male	Female	Total
Federation of Bosnia and Herzegovina	62 53,91 %	53 46,08 %	115
Republic of Srpska	25 45,45 %	30 54,54 %	55
<b>Total</b>	<b>87 51,17 %</b>	<b>83 48,82 %</b>	

## 2. Addressing gender bias in judicial training programs

Towards the fulfillment of the obligation set down in the provision of the Article 20 of the Law on Gender Equality, judicial power has to ensure and promote the gender equality principle during decision making process in gender based cases. To this end, one of the main tasks of the

<sup>86</sup> All the data presented in the table is available at: [www.pravosudje.ba](http://www.pravosudje.ba).

<sup>87</sup> All the data presented in the table is gathered from: „Regional associations of attorneys in FBiH“. <http://www.advokombih.ba/index.php?option=content&task=category&sectionid=4&id=84&Itemid=38>, and “The list of the attorneys in Republic of Srpska“. <http://www.okruznisud-bl.com/download/ostali-dokumenti/spisak-advokata-rs.pdf>.

<sup>88</sup> All the data presented in the table is gathered from: „The list of notaries in FBiH“. <http://www.notaribih.ba/notari>, and “The list of notaries in RS“. <http://www.notarrs.org/imenik-l.php>.

Gender Action Plan for Bosnia and Herzegovina, adopted in 2007 by the Ministry for Human Rights and Refugees of BiH, is to „ensure an adequate programs for judges, prosecutors, ombudspersons and attorneys in order to secure de facto judicial applicability of the rights from the Convention before all courts and other institutions in accordance with the recommendations of the UN CEDAW Committee“<sup>89</sup>.

Two public institution centers for the judicial and prosecutorial training in FBiH and in RS play a key role in training judicial branch officers. The centers were established in 2003, and their main domain is continuous education and improving of the judicial branch, thus striving to improve professionalism of the judiciary<sup>90</sup>.

Since the founding of the centers, every year the issue of gender equality occupies a significant place in the curriculum. The crucial problems judges and prosecutors face in the process of decision making are the method of application of the CEDAW, the interpretations of the judgments of the European Courts of Human Rights on gender equality issues, interpretation of the aforementioned national laws, and recently introduction in the European gender equality law and its present implementation in the national regulation.

The trainings are mainly focused on the judges and prosecutors in the field of family, criminal, labor and civil law. In the ongoing training plan for the 2012, there are two main issues on gender equality to educate on: a) gender equality and the protection from family violence and b) law on prohibition of discrimination.

The main focus of the trainings is on several issues regarding gender equality, as follows:

- overview of the relevant international and national sources of gender equality law and gender based violence,
- direct applicability of the international documents on the gender equality issue before the national courts,
- application of the Law on Gender Equality, Law on Prohibition of Discrimination and Law on Protection from Violence in the Family,
- jurisdiction of the prosecutors ad courts in criminal procedure in the case of gender based violence, harassment and sexual harassment,
- indemnification of the damage in the cases concerned with the violation of the provision of the Law on Gender Equality,
- civil actions and burden to proof in the case of discrimination.

According to their obligations, the centers will provide mandatory training with the duration of four days for every judge and prosecutor each year, but not more<sup>91</sup>. As a consequence, not all the judges and prosecutors interested in the issue of gender equality will be able to attend the gender equality training, hence they already attended mandatory four days of training in the other issues of interest. Therefore, a certain level of training on gender equality issues should be introduced on general basis, not just as a mandatory training for the judges and prosecutors mostly concerned by that on the daily basis<sup>92</sup>. Thus the application of the gender equality principle will be more effective,

<sup>89</sup> Gender Action Plan of Bosnia and Herzegovina, p. 21.

<sup>90</sup> See: Law on Center for judicial and prosecutorial training in FBiH, „Official Gazette of FBiH“, no. 22/02, 42/02, 60/02, Law on center for judicial and prosecutorial training in RS, no. 34/02, 49/02, 30/07.

<sup>91</sup> Public Institution Centre for Judicial and Prosecutorial training in FBiH. Program osnovne obuke i program stručnog usavršavanja za 2012. godinu. Sarajevo, 2011. p. 73.

<sup>92</sup> The provision on the mandatory four days of training will probably be reconsidered, in order to be accommodated to the needs of the judges and prosecutors and their institutions in general (see more: Public Institution Centre for Judicial and Prosecutorial training in FBiH. Početna obuka i stručno usavršavanje sudija i tužilaca – srednjoročna strategija 2012 – 2015. Sarajevo 2012. p. 15.

hence its main goal is not just restricted to the mere interpretation of the provisions concerned, but also, and even more importantly, it is to intensify awareness of gender equality in general.

Pursuant to the Gender Action Plan (GAP) of BiH, training programs for the attorneys are one of the activities directed at providing the adequate capacities for enforcement of the gender equality regulation. One of the present obstacles in professional protection of the party who has sustained the damage caused by the gender discrimination, is the lack of knowledge on recently passed legal regulation and possible arguments to be used before the courts in gender equality cases. Although there is an obligation set in the GAP to organize training for attorneys on the issue of gender equality, there are no institutional mechanisms provided by the public authorities to be used. Trainings of the attorneys involved in gender based cases are in most cases organized by the international organizations and NGO`s. In spite of the experience acquired by the international experts on gender issues and best practices shared, it should be suitable for the attorneys to be trained continuously by the national institutions competent in the field.

## **V. National achievements, challenges and recommendations for gender equality**

During the last ten years, Bosnia and Herzegovina has accomplished major improvements concerning the implementation of the gender equality principle. The basic legislative framework has been achieved – adoption of the Law on Gender Equality and the Law against Discrimination, together with the amendments of the relevant laws concerning the gender equality issue, as it was previously stated in the Report. In addition, as the supplement to the implementation of the Gender Law, multiple strategies and plans were adopted, with the aim of structured and organized implementation of the gender equality principles in all the spheres of society. Moreover, the adequate institutional framework has been established – Gender Equality Agency, entities' Gender Centers, cantonal and municipal commissions on gender issues, all interconnected with the NGO sector, both international and national. The support of the international NGO has a significant role in implementation on the Gender Equality Law, through financing the campaign on raising the awareness on gender issues, on the one hand, and through education of those who are supposed to actively implement Gender Equality Law in practice, on the other. A positive outcome of the amendments of the relevant legislation can be seen in the area of the judicial system, where an equal gender representation has been implemented. Also, in the matter of education, a certain level of interest has been showed by the students on the gender issue.

A big challenge for the implementation of gender equality principle is its implementation at the municipal level. Although numerous municipal committees on gender equality have been established in previous years, it is necessary to intensify the training of the members of such committees in order to realize the importance of the implementation of gender equality in all the decision making processes in the legislative, executive and administrative power. The other major challenge will be adjusting the budget regulation towards the gender sensitive budget allocations. The strategy on providing these is already in the process of realization, but it will take a great effort to adjust the regulations on budgets at all the levels of state organization in order to implement the gender equality principle.

The basic recommendations include the following:

- implementation of the equal gender participation in the regulations concerning the institutions comprising the decision making process relevant for creation of important policies at all the levels of the state organization, and training those who represent the institutions and others concerned on the issue of gender equality,

- education of the gender experts in all the commissions of gender equality in order to provide the full exploitation of the consigned competencies,
- accelerate the process of gender sensitivity in the budgets in order to financially support the strategies and plan on gender mainstreaming,
- introducing the courses on Gender Equality Law at all Law Faculties, both at re-graduate and post-graduate studies,
- intensifying the campaigns on the gender equality principle in the elementary and high education, through adjusting the relevant literature, organization of classes on the importance of gender equality,
- intensifying the plans and programs of employing the increased number of women, especially of those in socially excluded groups,
- harmonization of the entity and canton legislative on labor and social protection rights, in order to prevent the discrimination of women according to their residence.

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## COUNTRY REPORT ON LEGAL PERSPECTIVES OF GENDER EQUALITY IN CROATIA

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### I. National legal framework and compliance with EU Gender Equality Law

According to the Constitution of the Republic of Croatia, gender equality is one of the highest values of the constitutional order of the Republic of Croatia (Art. 3). Gender Equality is guaranteed in several acts: Gender Equality Act, Anti-discrimination Act, Labour Act and Act on Maternity and Parental Leave.

- **Gender Equality Act** (Official Gazette, No. 82/2008) prohibits direct as well as indirect discrimination based on gender. Furthermore, it prohibits harassment, sexual harassment and victimisation in accordance with *acquis*. According to Art. 6 (2) there shall be no discrimination on the grounds of marital or family status. Less favourable treatment of women for reasons of pregnancy and maternity shall be deemed to be discrimination. The Gender Equality Act provides for affirmative measures (Articles 9-12). It contains provisions aimed at combating discrimination in the area of employment, education, political life (female quotas as an obligation of political parties in submitting election lists) and public presentation of women and men in media. Article 4 is worth mentioning in the context of compliance with EU Gender Equality Law. It reads as it follows: "The provisions of this Act shall not be interpreted or implemented so as to restrict or diminish the purpose of warranties on gender equality enshrined in the universal rules of international law, the *acquis*, the CEDAW, the UN Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and the ECHR."
- **Anti-discrimination Act** (Official Gazette, No. 85/2008) is *lex generalis* in the area of non-discrimination in Croatia. It prohibits direct as well as indirect discrimination based on gender and other 16 grounds (such as race, religion, political or other belief, trade union membership, marital or family status, age, health, disability, sexual orientation etc.). Furthermore, it prohibits harassment, sexual harassment and encouragement to discrimination. Failure to make reasonable accommodation is deemed to be discrimination as well as segregation. Multiple discrimination, repeated discrimination and continued discrimination are more serious forms of discrimination (Art. 6). It means that the court has to take into consideration those forms of discrimination when determining the amount of the compensation for moral damage and when deciding about the fine for misdemeanours. One can expect an Amendment to the Anti-discrimination Act, since there are some provisions which are not in accordance with *acquis*. Namely, some exceptions and justifications of differences of treatment are prescribed in an inappropriate manner. Furthermore, encouragement to discrimination is deemed to be discrimination only if it is conducted intentionally, which is not in accordance with *acquis*.
- **Labour Act** (Official Gazette, No. 149/2009 and 61/2011) prohibits direct and indirect discrimination in the area of labour and labour conditions, including selection criteria and employment requirements, promotion requirements and vocational training (Art. 5(4)). It guarantees protection of pregnant employees, parents and adoptive parents (Articles 67-73). The employer must not refuse to employ a woman because she is pregnant, nor he/she is allowed to terminate an employment contract on account of pregnancy of an employee or make an offer to such employee to conclude a modified employment contract, except in

case it is necessary to protect her or her child. More precisely, if a pregnant employee or an employee who is breastfeeding performs tasks that pose a risk to her life or health, or the life or health of her child, she can request the conclusion of agreement assigning her to the performance of other appropriate tasks, which shall replace the relevant provisions of her employment contract for a specific period of time. If the employer is not able to proceed in the above described manner, the employee has the right to take a leave with salary compensation at the expense of the employer. Furthermore, the Labour Act provides for a protection of dignity of employees against harassment or sexual harassment (Art. 130).

- **Act on Maternity and Parental Benefits** (Official Gazette, Nos. 85/2008, 110/2998 and 34/2011) regulates, among others, maternity leave and parental leave. Since parental leave in Croatia is provided on transferable basis, there are, according to statistics<sup>1</sup>, a small number of fathers using their right to parental leave. A slight rise has been recorded in the number of men who take care of their children, from 1.14% who used parental leave in 2008 to 1.86% in 2010. Such low number of men who use parental leave is the result of the fact that the right on parental leave is provided on transferable basis. It contributes to the unfavourable position of women in the labour market. The regulation of parental leave in Croatia is not in accordance with Parental Leave Directive 2010/18/EU which provides for at least one month of parental leave on non-transferable basis (Clause 2 (2)).

Although, there are discrepancies between Croatian anti-discrimination legislation and *acquis* (see the above mentioned criticism of Croatian anti-discrimination legislation), the major problem is not the inappropriate legislation but the lack of case law in the area of non-discrimination. One can speculate on the reasons for the lack of case law. It could be the lack of knowledge of non-discrimination legislation and of the concept of non-discrimination. The length of litigation is also discouraging. "This opinion has also been confirmed by the results of the survey "Perception, experiences and attitudes about gender discrimination in the Republic of Croatia" conducted in 2009 on a national representative sample of 1,363 respondents, according to which as many as 63% do not know or do not believe that gender discrimination is punishable by law, and only 12% of those who said that they knew that discrimination was prohibited stated that they knew which laws contained such prohibitions and sanctions."<sup>2</sup>

## II. National policy framework on Gender Equality (strategies, programs and similar)

**The National policy on gender equality 2011-2015** (Official Gazette, No. 88/2011)<sup>3</sup> contains key activities and measures according to the priority thematic activity areas:

- **promoting the human rights of women and gender equality** (the measures and activities are as follows: 1. raise the level of knowledge and awareness of anti-discrimination legislation, gender equality and the human rights of women; 2. improve the social status of women- members of national minorities; 3. improve the social status of women with disabilities; 4. improve the knowledge and raise awareness of the status of rural women; 5. improve the quality and accessibility of health care for women and girls),
- **equal opportunities on the labour market** (the measures and activities are as follows: 1. reduce the unemployment and eliminate all forms of discrimination of women in the labour

<sup>1</sup> See Annual Reports of the Ombudsperson for Gender Equality, <http://www.prs.hr/index.php/english/annual-reports>

<sup>2</sup> National Policy on Gender Equality 2011-2015, p.21

<sup>3</sup> It is available at the following web site: <http://www.uredravnopravnost.hr/site/images/pdf/kb%20strategija%20za%20ravnopravnost%20spolova%20knjizica%20eng.pdf>.

- market; 2. strengthen women entrepreneurship; 43. promote measures that facilitate achieving a work-life balance),
- **gender-sensitive education** (the measures and activities are as follows: 1. introduce gender-sensitive education in the entire education system, while eliminating gender stereotypes from textbooks and teaching curricula; 2. conduct systematic gender-equality training or education providers; 3. achieve gender balance in selecting the field of education in secondary schools and in higher education),
  - **equality in political and public decision-making** (the measures and activities are as follows: 1. achieve a balanced representation of men and women in representative and executive bodies of power at all levels; 2. improve the status of women in sports),
  - **elimination of violence against women** (the measures and activities are as follows: 1. eliminate all forms of violence against women and improve the status and protection of the rights of women victims of all forms of violence; 2. improve the system of keeping statistical data, intersectoral cooperation and the coordination of competent state bodies, institutions and civil society organisations in resolving the problem of violence against women at national and local levels and ensue continuous education for the competent bodies; 3. raise the awareness of the general public about the phenomenon, problems and methods of suppressing gender motivated violence),<sup>5</sup>
  - **international policy and cooperation** (the measure is as follows: 1. the public will be acquainted with the gender equality policies of the EU and other international organisations), and
  - **institutional mechanisms and implementation arrangements** (the measures and activities are as follows: 1. strengthen mechanisms for the implementation of gender equality at national and local levels and improve their coordinated actions; 2. combat gender stereotypes and introduce gender-sensitive policies in the media; 3. introduce gender budgeting and support the implementation of gender surveys and analyses).

### III. National institutional framework on gender equality (relevant bodies and competencies)

Relevant bodies are as follows:

- **Ombudsperson for Gender Equality**, an independent body for fighting discrimination in the area of gender equality. The responsibilities of the ombudsman/woman for gender equality include:
  - receiving complaints from any natural persons or legal entities regarding discrimination in the area of gender equality,
  - providing assistance to natural and legal persons who lodged a complaint of sexual discrimination when instituting legal proceedings,
  - taking steps to investigate individual complaints prior to the legal proceedings,
  - conducting, with the consent of the parties involved, a mediation process with a possibility to reach an out-of-court settlement,
  - collecting and analysing statistical data on cases of sexual discrimination,

<sup>4</sup> In that context, it is worth mentioning, there is a Strategy on development of female entrepreneurship in the Republic of Croatia for the period 2010-2013 adopted by the Ministry of Labour.

<sup>5</sup> There is a National strategy on Protection against Family Violence for the period 2011-2016 (Official Gazette, No 20/2011).

- conducting independent surveys concerning discrimination, publishing independent reports and exchanging available information with corresponding European bodies.
- **Government Office for Gender Equality** - technical service for the implementation of activities related to the enforcement of gender equality;
- **Gender Equality Coordinators in Public Bodies** - appointed officials or civil servants in a managing position of public bodies responsible for coordination of Gender Equality Act and the National Policy for the Promotion of Gender Equality. They prepare reports on the implementation of the National Policy for the Promotion of Gender Equality submitted by public bodies to the Office for Gender Equality;
- **Commissions for Gender Equality** - established at the units of local and regional self-government with a view to promoting gender equality at a local level and enforcing Gender Equality Act and the National Policy for the Promotion of Gender Equality;
- **Gender Equality Committee of the Croatian Parliament** - its role is to promote the signing of international documents on gender equality and monitors the application of these documents; participate in the drafting, implementation and analysis of the implementation of the National Gender Equality Policy in the Republic of Croatia; promote equal gender representation in the composition of parliamentary working bodies and delegations; prepare draft legislation and other regulations on gender equality; undertake efforts to introduce the principles of gender equality in education, health care, public information, social policy, employment, decision-making processes, family relations, etc.
- **Ombudsman** - central body responsible for the suppression of discrimination. He/she:
  - receives reports of all state bodies, bodies of local and regional self-government units, legal persons vested with public authorities (reports of reasonable suspicion of discrimination with the consent of the person who is allegedly a victim of discrimination);
  - provides necessary information to natural and legal persons that have filed a complaint on account of discrimination with regards to their rights and obligations and to possibilities of court and other protection;
  - if the court proceedings have not yet been initiated, examines individual reports and take actions falling within his/her competence required for elimination of discrimination and protection of rights of discriminated persons;
  - warns the public about the occurrence of discrimination;
  - with the parties' consent, conducts mediation with a possibility of reaching an out-of-court settlement;
  - files criminal charges related to discrimination cases to the competent state attorney's office;
  - collects and analyses statistical data on discrimination cases;
  - informs the Croatian Parliament on the occurrence of discrimination in his/her annual and, when required, extraordinary reports;
  - conducts surveys concerning discrimination, gives opinions and recommendations, and suggests appropriate legal and strategic solutions to the Government of the Republic of Croatia.

Certain activities (above stated items 1 to 6) are performed by special ombudsperson such as the Ombudsperson for Gender Equality (see above the responsibilities of the Ombudsperson for Gender Equality) when this is regulated by a special law (such as Gender Equality Act).

#### IV. Gender equality in legal education

- Gender distribution at the Law Faculties

No women on the position of Dean and only 3 women on the position of Vice Dean at the Faculty of Law, University of Zagreb in last 10 years (see table 1.) is a cause for concern, bearing in mind the number of female university teachers (see table 2.) and the number of female students (see table 3.). The underrepresentation of women in managing bodies in educational institutions is not in accordance with the Art. 14 (4) of the Gender Equality Act.

**Table 1**

Gender distribution on the position of deans and vice deans, Faculty of Law, University of Zagreb 2001-2012				
Year	Deans		Vice deans	
	M	F	M	F
2011/2012	1	0	3	0
2009-2011	1	0	2	1
2007-2009	1	0	2	0
2005-2007	1	0	2	1
2003-2005	1	0	1	1
2001-2003	1	0	2	0

The number of male professors at the Faculty of Law, University of Zagreb is still twice as large as the number of female professors but one can expect that will change in next few years. The women/male proportion among professors will be equal since the number of female assistant professors is three times larger than the number of male assistant professors (see table 2.). Still, there are huge discrepancies between the gender distribution of university teachers at the Faculty of Law, University of Zagreb and the women/male proportion among students (see table 3.).

**Table 2**

Number of university professors/assistant professors (gender distribution), Faculty of Law, University of Zagreb 2001-2011				
Year	Professors		Assistant Professors	
	M	F	M	F
2011	37	18	6	20
2010	38	17	6	13
2009	36	16	6	11
2008	36	15	8	10
2007	36	13	13	9
2006	36	9	12	11
2005	39	9	10	9
2004	41	8	11	9
2003	41	8	8	10
2002	38	8	12	5
2001	35	9	14	5

**Table 3 - The women/male proportion – students in the last five years:**

Year	M	F
2011/2012	1757	3958
2010/2011	1691	3901
2009/2010	1515	3538
2008/2009	1341	3161
2007/2008	1178	2759

- Gender studies offered at higher educational institutions: The National Council for Higher Education in September 2008 adopted the Recommendation on the introduction of a women's studies course in undergraduate, graduate and post-graduate studies, and the National Science Council adopted the Ordinance on scientific and artistic areas, fields and branches (Official Gazette, No. 118/09) which includes the field of gender studies in the interdisciplinary areas of science. In 2010, the Government of the Republic of Croatia established the National Committee for Education for Human Rights and Democratic Citizenship with the aim of promoting education for human rights and democratic citizenship at all levels of education. There is a Centre for female studies established in 1995 but it is not part of any university. It is an independent educational institution.
- Curricula Gender mainstreamed (addressing gender and other diversity-related concerns while developing curricula and courses): At the Faculty of Law, University of Zagreb, there are several courses addressing gender and other diversity-related concerns such as: Anti-discrimination Employment Law and Social Security Law (elective course for fourth year's students of Law), Discrimination and Anti-discrimination Policies (elective course for third year's students of Social Work). On the other hand, several mandatory courses (General History of Law and State, Sociology, Constitutional Law, European Public Law, Labour Law and Social Security Law and Social Policy) in their curricula address gender and other diversity – related concerns.

## VI. Gender equality in legal professions

- Gender distribution in legal professions (attorneys; notaries; enforcement agents; judges divided per courts in charge; public prosecutors):
- In 2010, in most first-instance courts in the Republic of Croatia, women made up 70% of municipal court judges, 67% of commercial court judges, and 73% of misdemeanour court judges. Women are also in the majority in the Administrative Court of the Republic of Croatia (76%), and in the High Misdemeanour Court (63%). They are present in the Supreme Court of the Republic of Croatia at a percentage of 50%, and in the Constitutional Court at 39%. In the State Attorney's Office, women take 65% of the positions of public prosecutors and deputies.
- Addressing gender bias in judiciary training programs – In last few years, there were few seminars in the area on non-discrimination addressed to judges organised by Croatian Legal Centre (NGO, National Focal Point of FRA) with the financial support of the European Commission. The Judicial Academy, a public institution that organises the training of judges and public prosecutors' deputies, cooperates with ERA (Academy of European Law) and allows the judges to attend the seminars on the EU Antidiscrimination Law organised by ERA. Since there are a small number of judges involved in the above mentioned seminars, the advancement of anti-discrimination and gender-sensitive judiciary training programs is still necessary.

## VII. National achievements, challenges and recommendations for gender equality

- Advocate gender equality mechanisms and better enforcement of legislation:
- A slight progress has been made through several awareness raising seminars. Much more needs to be done by organising systematic campaigns aimed at raising public awareness of gender discrimination and familiarisation with the anti-discrimination legislation. The training for members of judiciary is still necessary.
- Support for networking among gender institutional mechanisms:
- Institutional mechanisms exist but are concentrated in Zagreb. According to the Annual Report of Gender Equality Ombudsperson 2011, same as previous years, 47% of complaints on account of discrimination are filed by persons from Zagreb, 6,8% by persons from Dalmatia, 5% by persons from Istria etc. Since there is a small number of complaints on account of discrimination filed in other parts of Croatia, one can conclude that the inhabitants of many counties are not familiar with their rights which means that the institutional mechanisms do not function properly outside the capital city. Support for networking among gender institutional mechanisms needs to be done in all parts of Croatia (in all counties), not only in the capital city.
- Promotion of legal education with gender perspectives – encourage professors of all courses to address gender and other anti-discrimination issues in their curricula and courses.
- In my opinion, Faculties of Law should include, in their policies and in their regulations/by-laws, the encouragements for professors of all courses to address gender and other anti-discrimination issues in their curricula and courses as a way of gender mainstreaming.

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# COUNTRY REPORT ON LEGAL PERSPECTIVES OF GENDER EQUALITY IN MACEDONIA

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## I. National legal framework and compliance with EU Gender Equality Law

The Republic of Macedonia has a solid legal framework in the area of gender equality which has considerably evolved ever since its declaration of independence from Yugoslavia in 1991. The gender equality legal framework is composed of key international and EU legal standards on gender equality (some incorporated in the legal system by way of succession from the former Yugoslavian federal state, some by ratification after gaining the state's independence, and some in the process of approximation with the EU law), as well as national laws and by-laws<sup>1</sup>.

### 1. The Constitutional Framework of gender-based freedoms and rights

The Constitution of 1991 declares all the basic freedoms and rights of the individual and the citizen that are recognized in the international law and provided in the Constitution as "basic values of the constitutional order of the Republic of Macedonia" (Article 8 of the Constitution). Other declared constitutional values that are of more direct relevance for the legal framework and environment for gender equality include the rule of law, division of power between the legislature, executive and the judiciary, political pluralism and free, direct and democratic elections, humanism, social justice and solidarity, and respect for the general principles and norms of international law. The Constitution explicitly declares that everything that is not prohibited with the constitution and the laws is free.

In part two of the Constitution there is an elaborated list of "basic freedoms and rights of the individual and the citizen" that make up approximately one third of the whole text of the Constitution. The freedoms and rights are divided in two groups i.e. as "individual, civic and political freedoms and rights" and as "economic, social and cultural rights". The forefront of this part of the Constitution is the article that declares the equality of the citizens in their freedoms and rights notwithstanding sex, race, color of skin, ethnic and social belonging, political and religious conviction and economic and social standing (Article 9 of the Constitution). In other words, in Article 9 the Constitution provides for an explicit gender equality clause in enjoying the constitutionally guaranteed freedoms and rights.

Unlike the area of individual, civic and political freedoms and rights where the Constitution does not use any gender specific language nor provides for gender-based freedoms and rights, in the area of economic, social and cultural rights, the Constitution includes several articles that have specific relevance for the gender relations, or are gender specific. In Article 40 it is declared that the Republic provides for special care and protection of the family, and that the legal relations concerning marriage, family and "extramarital community" are regulated by law. In Article 41 it is guaranteed that every individual has the right to freely decide on the procreation of his/her children, and that the Republic conducts a humane population policy in order to achieve sustainable economic and social development. Article 42 declares that the Republic provides for special protection of mother-

<sup>1</sup> As a successor state to the Socialist Federal Republic of Yugoslavia, Macedonia has succeeded its obligations as a ratifying state party to the CEDAW on 17 September 1991, and on 24 June 2003 has ratified the Facultative Protocol of this Convention, recognizes the competences of CEDAW commission, and submits regular reports under the CEDAW regime. In addition, the country is also a ratifying party to all the other key UN and Council of Europe human rights conventions and instruments that are relevant to the gender equality. For more, see: Fourth and Fifth Report under CEDAW, Republic of Macedonia, 2011, available at the official web site of the Ministry of Labor and Social Policy at <http://www.mtsp.gov.mk> (last visited on 4 May 2012).

hood (together with the special protection of children and minors) and that mothers enjoy the right of special protection at work.

Apart from the right of life, prohibition of torture, inhuman and degrading treatment or punishment, the imperative of legality and legal certainty of illegal behavior, crimes and sanctions, the freedom of conviction, freedom of consciousness, freedom of thought and public expression of thought and religious conviction, all the other constitutionally guaranteed rights and freedoms may be curtailed in cases explicitly provided in the Constitution, as well as in state of war and state of emergency. However, the Constitution also stipulates that any limitations i.e. curtails on the freedoms and rights may not be discriminatory on the basis of sex, race, color of skin, religious conviction, ethnic and social belonging, economic or social standing (Article 54). So, in addition to the gender equality clause, the Constitution also includes an explicit prohibition of gender discrimination clause, both in the general enjoyment of constitutional rights and freedoms as well as in the situations of constitutionally based cases of limitations of those rights and freedoms.

The protection of the basic constitutional rights and freedoms provided in the Constitution consists of network of four basic institutional forms and ways: first, the regular court system; second, the Constitutional court; third, the Permanent Inquiry Commission for the protection of the rights and freedoms of the citizens of the Assembly of the Republic of Macedonia; and, fourth, the People's Attorney (Ombudsman). The regular court system decides on individual cases of violations of the rights and freedoms, including against the state and other entities and individuals of public authority, and judges are bound to adjudicate on the basis of the Constitution, the laws of the country and the international agreements ratified in accordance to the Constitution (98). The right of appeal to the first-instance court decision is constitutionally guaranteed (Article 15). The Constitutional court is an organ of the Republic for the protection of the principle of constitutionality and legality in the legal system (Article 108). It protects the basic constitutional rights and freedoms in two-folds: first, in abstract cases against unconstitutional laws and by-laws; and second, in individual initiatives against violations of an enlisted constitutional rights and freedoms, including freedom of conviction, freedom of consciousness, freedom of thought and public expression of thought, political assembly and activity, and cases of discrimination of the citizens on the basis of sex, race, religious conviction, ethnic, social and political belonging – cases of violation of the antidiscrimination clause of the constitution (Article 110). The Permanent Inquiry Commission of the Assembly of the Republic of Macedonia looks at petitions of the citizens conducts inquiries and public hearings on cases of violation of citizen's rights and freedoms. Its findings are basis for initiating parliamentary procedures for political responsibility of elected and other public officials (Article 76). People's Attorney (Ombudsman) protects the constitutional and legal rights of the citizens against acts of violation of rights and freedoms of the citizens by the state administration and other organs and organizations with public authority, including and especially cases of violation of the constitutional antidiscrimination clause (Article 77). In cases where it is concluded that there is a violation, the People's Attorney can act by way of giving opinions and recommendation to remedy the situation, by ways of initiating disciplinary procedures or by way of requesting criminal investigation from the Office of the Public Prosecutor.

The legal procedures for the protection of the rights and freedoms are based on the principles of priority and emergency (Article 50). Court sessions and judgments are open to the public, and can be closed to the public only in cases provided by law (Article 102).

## 2. Key national laws on gender equality and their compliance with the EU Gender Equality Law

In general, the laws of the Republic of Macedonia are solidly in accordance with the constitutional clauses on gender equality and prohibition of gender discrimination, as well as the international legal standards on gender equality in international conventions and agreements that Republic of Macedonia has ratified.<sup>2</sup> In addition, ever since the Stabilization and Association Agreement with the EU (hereafter: SAA) had come into force 01 April 2004, and especially after Macedonia had gained status of a candidate country for EU Membership in December 2005, the process of adoption of the EU Law, including in the area of gender equality has become a priority in the legislative process through the implementation of the National Programme for the Adoption of the *Acquis Communautaire*, first adopted in 2006 and revised each year.<sup>3</sup> In this direction, Macedonia has adopted a *lex specialis* concerning the area of gender equality - The Law on Equal Opportunities for Women and Men.

### 2.1 *The Law on Equal Opportunities for Women and Men of 2012*<sup>4</sup>

Following the example of many EU countries and countries in the region, Macedonia first adopted this law in May 2006<sup>5</sup>, and soon after amended it in 2008<sup>6</sup> in order to reflect the definitions and the forms of gender discrimination in the EU Directives concerning equal treatment of men and women. After five years of experience in the application of the law, in June 2011 the Ministry of Labor and Social Policy had conducted and issued a comprehensive Analysis on the Level of Implementation of the Law on Equal Opportunities for Women and Men<sup>7</sup> in which both the advancement and the weaknesses of the implementation of the law were identified. It was concluded that some of the legal definitions of the gender equality and the gender discrimination, the competences of the implementing institutions and mechanisms as well as the sanctions provided in the law were not in compliance with the EU standards, and consequently had caused limited positive results and efficiency in the practical advancement of the equal gender opportunities. In addition, the criticism, the opinions and the recommendations of the NGO sector, the EU/European Commission and OSCE/ODIHR<sup>8</sup> pointed out in the direction of the necessity to change almost one third of the text of the law. For that reason, the Ministry of Labor and Social Policy opted out to prepare and submit to the Assembly of the Republic of Macedonia a complete new text of the law in September 2011. The new Law on Equal Opportunities was adopted on 11 January 2012 and entered in force on 21 January 2012. In the statement for compliance of the law with the EU law, accompanied with corresponding compliance tables that the government is obliged to submit with each new (draft) law, it was stated that the law is a transposition of and complies with three EU Directives<sup>9</sup>:

- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;
- Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal

<sup>2</sup> See, Opinion on the Draft Law on Equal Opportunities for Women and Men of the Republic of Macedonia, OSCE/ODIHR from 16 September 2011, at: [www.legislationonline.org](http://www.legislationonline.org) (last visited on 29 April 2012).

<sup>3</sup> The document is available on the official web site of the Secretariat for European Affairs of the Government of the Republic of Macedonia at: <http://www.sep.gov.mk/Default.aspx?ControllID=Npaalzvestai.ascx>.

<sup>4</sup> See, Official Gazette of the Republic of Macedonia 6/2012.

<sup>5</sup> See, Official Gazette of the Republic of Macedonia 66/2006.

<sup>6</sup> See, Official Gazette of the Republic of Macedonia 117/2008.

<sup>7</sup> This analysis was prepared as part of the project "Changes and amendments to the Law on Equal Opportunity for Women and Men" conducted by the Ministry with the support of OSCE. See at: [http://www.mtsp.gov.mk/WBStorage/Files/analiza\\_zem.pdf](http://www.mtsp.gov.mk/WBStorage/Files/analiza_zem.pdf) (last visited on 29 April 2012).

<sup>8</sup> See, Opinion on the Draft Law on Equal Opportunities for Women and Men., Id.

<sup>9</sup> See, <http://www.sobranie.mk/ext/materialdetails.aspx?Id=a194e9f4-68e6-46d9-beaf-301c6321de14> (last visited on 30 April 2012).

treatment for men and women as regards access to employment, vocational training and promotion, and working conditions;

- Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

The elaboration of the law before the Assembly also states that the text of the law reflects:

- Council Recommendation of 13 December 1984 on the promotion of positive action for women (Council Recommendation 84/636/EEC);
- Council Resolution from 3 June 1985 containing an action programme on equal opportunities for girls and boys in education ( Council Resolution 85/C 166/01);
- Council Resolution on the image of women and men portrayed in advertising and the media from 5 October 1995 (Council Resolution 95/C 296/06); and,

Council Recommendation from 2 December 1996 on balanced participation of women and men in the decision-making process (Recommendation 96/694/EC). As it is stated in the Article 1 of the law, the subject matter of the law is establishing equal treatment and equal opportunities of women and men in Macedonia, regulating the basic and special measures for achieving that goal, the rights and duties of all responsible subjects for ensuring equal opportunities for women and men, the procedure for establishing unequal treatment of women and men, and the rights and duties of the Representative for Equal Opportunities for Women and Men as a designated subject to conduct the procedure for establishing unequal treatment of women and men. Although the law has a character of *lex specialis*, it clearly states that the subject matter of equal opportunities for women and men is legislated not only with this law, but with the other laws concerning gender equality (employment laws, health care and social security laws, property laws, education, culture, media, judiciary, state and public administration, public services, etc.). The law gives precise definitions of equal treatment, equal opportunities, discrimination based on sex and its forms as direct and indirect discrimination, harassment and sexual harassment based on sex, full gender equality and gender mainstreaming in accordance with the CEDAW and EU legal standards and definitions. It is noteworthy to mention that the concept of gender mainstreaming is a novel legal concept introduced by this law in the Macedonian legal system and provides for the inclusion of the gender perspectives in each phase of formulation, adoption, implementation, follow-up and evaluation of the policies in each sphere of life, always with the aim of promotion and advancement of gender equality. The quality of novelty applies also to the concept of indirect discrimination that refers to seemingly neutral regulation, criterion or customary rule that puts a person of one sex in a highly disadvantaged position compared to a person from the opposite sex, unless such a regulation criterion or customary rule is objectively justified and with a legitimate goal, and that the means for achieving such goal are appropriate and necessary.

The law clearly stipulates that it applies to both public and private sector. As Article 3(2) stipulates, subjects that establish and enable gender equal opportunities include the legislative, executive and judiciary branches of state power, the units of local self-governments, other organs and organizations of the public and private sector, public companies and entities, political parties, media, civil sector of non-governmental organizations, and all other persons providing goods and services that are available to the public and that are offered outside of the area of the private and family life, and the transactions that are

made in that context, regardless whether the respective person belongs to the public or the private sector.

Parts two, three and four of the law deal with the measures for establishing equal gender opportunities and subjects responsible for adoption and implementation of those measures in a much more elaborate, precise and efficient manner than the previous law of 2006. The law makes a differentiation between “basic measures” and “special measures” for providing gender equal opportunities. The first category of basic measures refers to all continuous and systematic policies and legislative acts based on the principles of gender equality and gender equal opportunities in both public and private sector and all spheres of life. The second category of special measures refers to temporary measures that aim to eliminate gender disadvantage in certain area of life that is rooted in systematic gender discrimination or structural gender inequality caused by historic and socio-cultural factors or circumstances. The special measures include three types of measures: a) positive measures (measures of giving priority to individuals belonging to the less represented sex in situations when both male and female candidates meet the required criteria equally, until gender balance is achieved; these measures would be applied in all branches of power, local self-government, public entities or organs and organizations with public authority, political parties and state representatives in international organizations and bodies). Curiously, in the context of these measures, the law of 2012 (Article 7 (3) (1) does not include anymore the precise criterion of 40 % representation as targeted threshold of gender representation that was previously introduced in the law of 2006 (Article 6 (3) (1)); b) encouragement measures (policies of giving special stimulations or advantages aimed to eliminate circumstances that lead to unequal gender representation or unequal gender status or unequal distribution of social resources and goods); and c) program activities (action plans and activities aimed at raising the awareness and positive attitudes toward the gender equality and equal opportunities). Adoption and the follow-up of these special measures is responsibility for all the subjects previously mentioned for which they have an obligation to inform the Ministry of Labor and Social Policy and submit annual reports (Article 8(4)). The law especially focuses on the concrete responsibility and competences for introducing and implementing measures for equal gender opportunities of the Assembly, the Government, bodies of the state Administration, Ministry of Labor and Social Policy, the Ombudsman, the units of local self-government, the political parties and the media (more on this, see at no. 3 of the Report). In addition, the law obliges all the above mentioned responsible subjects from the public and private sector when providing statistical data to the State Statistical Office to include the sex/gender criterion i.e. that in collecting, recording and handling their data they must disaggregate the data by gender (Article 18). The law also obliges the Assembly every eight years to adopt a Strategy for Gender Equality prepared by the Government, followed by four years National Plan for Action for Gender equality and annual operative plans (Article 19).

Following one of the main criticisms by the EU, OSCE and the NGO sector of the text and the implementation of the previous law concerning the lack of strong, efficient and effective legal protection of the equal gender opportunities, Part six of the Law of 2012 is aimed to overcome exactly that weakness. The law names four avenues of legal protection, namely, by submitting a petition to: a) Legal Representative pursuant to the Law on Equal Opportunities of Women and Men; b) the Ombudsman, in accordance with the Law on Ombudsman; c) Commission for Protection from Discrimination, pursuant to the Law for Prevention and Protection against Discrimination; and d) competent court. The law

regulates only the procedure for complaint before the Legal Representative in the Ministry of Labor and Social Policy (see in detail at no. 3 of the Report) whilst the procedures before the other competent bodies are referred to the laws regulating the competences and the procedures of/before those bodies (see in detail at Part III of the Report). The overall supervision of the implementation of the Law is a responsibility of the Ministry of Labor and Social Policy, whilst the inspection of its enforcement is a competence of the State Inspectorate for Labor. In part eight the enforcement of the law is strengthened by including an elaborate list of various acts of violation of the gender equality and equal gender opportunities as defined and provided by the law. These acts of violation are legally sanctioned as acts of misdemeanors and punishable with monetary sanctions ranging 400-1000 Euros, adjudicated by the competent courts for misdemeanors.

The compliance of the law with the EU will be subject of official evaluation by the Progress Reports of the European Commission in the late 2012.

## **2.2 Other major laws relevant for the gender equality and equal gender opportunities:**

**a) Law on Prevention and Protection against Discrimination of 2011<sup>10</sup>** On 8 April 2010, the Assembly of Republic of Macedonia has adopted the Law on Prevention and Protection against Discrimination, which entered into force on 1 January 2011. In the statement for compliance with the EU law together with the corresponding compliance tables, it was stated that the law is a transposition of and complies with the following EU Directives<sup>11</sup>:

- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;
- Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions;
- Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex.

The law is aimed at prevention and protection of the citizens (as individuals and as legal entities) against discrimination in the enjoyment in their rights as guaranteed by the Constitution, the laws and the international agreements ratified by the Republic of Macedonia. The law prohibits all forms of discrimination i.e. direct and indirect discrimination in compliance with the definitions in the EU directives, as well as inciting, encouraging and helping discriminatory behavior, including based on gender (but, excluding sexual orientation as a specific ground of discrimination), harassment, sexual harassment, victimization (as a revenge on initiating procedures against discrimination), discrimination in the access or using goods and services based on one of the discrimination grounds, as well as it defines the harder forms of discrimination (repeated discrimination, multi-ground discrimination, discrimination in continuum, discrimination with especially harsh consequences). From the aspect of gender equality, it is relevant to point out that the law does not treat as discrimination, in sum: a) gender based differential treatment in occupations and activities when such differentiation is substantially defined or determined by their nature or the conditions in which they are conducted, the goal is justified and the condition does not exceed the necessary level for the realization of the occupation or the activity; b) gender based differential treatment in religious

<sup>10</sup> Official Gazette of Republic of Macedonia 50/2010.

<sup>11</sup> See, <http://www.sobranie.mk/ext/materialdetails.aspx?id=3bbeadbb-0005-4315-982a-adb550867724> (last visited on 30 April 2012).

organizations and institutions when the nature of the religious activity or occupation is determined by such differentiation, the goal is legitimate and that the differentiation does not exceed the level that is necessary for the realization of the activity or the occupation; c) gender based differentiation in education or training for occupation or activities of certain religion as stated under b; d) defining marriage, extramarital community and the family as a community only of a man and woman; e) protective measures of pregnant women and mothers provided by law, unless the pregnant woman or the mother does not want to enjoy those protective measures and informs the employer in writing about her decision; f) measures aimed at balanced participation of men and women as long as they are necessary; and g) affirmative or special measures in the benefit of individual or groups that have been in unfavorable position in order to achieve equal opportunities or factual equality for them as long as they are necessary for achieving such goal. The law stipulates that its application refers to all state bodies, the units of local self-government, legal entities with public authority, and individuals and legal entities in the area of: work environment and employment relations, education, science and sports, social security, including social protection, retirement and handicap security, health insurance and health services, judiciary and the administration, housing, information of the public and media, access to goods and services, membership and activity in unions, political parties, citizen's associations, foundations and other organizations based on membership, culture and other areas as stipulated by the law. For the protection against discrimination the law establishes the Commission for protection from discrimination as an independent body and it regulates in detail its establishment, composition and competences (for more detail see at Part III of this Report). It also enlists acts of discriminatory behavior that are considered misdemeanors and sanctioned with monetary sanctions ranging between 400-1000 Euros, as well as it provides for judicial protection against certain acts of discrimination in a competent civil court (for more detail see at Part III of this Report).

**b) Gender equal opportunity and/or gender anti-discrimination clauses in other systemic or major laws** - An analysis by the Ministry of Labor and Social Policy from September 2008 (prepared in the course of the preparations for the Law on Prevention and Protection against Discrimination) concluded that most of the other systemic laws in Macedonia contain an explicit antidiscrimination clause i.e. referral to the constitutional (gender) antidiscrimination clause and/or gender equal treatment/equal opportunity clause.<sup>12</sup> In addition, our analysis for the purposes of this report has shown the following with respect of the gender equality and equal gender opportunity in the systemic or major laws of the country affecting gender equality:

1.) The Laws on Legal Professions - The Law on the Courts<sup>13</sup> both in the referral to court protection of the citizen's rights and in the nomination and election of judges and lay judges includes the above mentioned clauses. However, on the other hand, our analysis has shown that the Law on the Judicial Council of the Republic of Macedonia<sup>14</sup> i.e. the law regulating the body that elects the judges does not explicitly mention the gender equality/opportunities in the procedure for electing the judges, whilst in the same time it mentions the principle of adequate and equitable representation of the ethnic communities in Macedonia.<sup>15</sup> The same conclusion applies to the Law on the Academy for Training of Judges and Prosecutors with respect both to the selection of the training

<sup>12</sup> See, Information on the prepared Analysis of the legal regulation in the sphere of anti-discrimination of the Republic of Macedonia, available at the official web site of the Ministry of Labor and Social Policy at <http://www.mtsp.gov.mk> (last visited on 1 May 2012).

<sup>13</sup> See, Official Gazette of the Republic of Macedonia 58/2006.

<sup>14</sup> See, Official Gazette of the Republic of Macedonia 60/2006.

<sup>15</sup> "The adequate and equitable representation of the citizens belonging to all communities in the organs of state power and all public institutions on all levels" was introduced in the Constitution as part of the basic values of the constitutional order (Article 8 of the Constitution) and in several other constitutional articles with the package of amendments to the Constitution adopted by the Assembly of the Republic of Macedonia on 16 November 2001. The amendments followed in the aftermath of the civil/ethnic conflict of 2001 and the so-called Framework agreement that ended the conflict, as part of its implementation package. See, Official Gazette of the Republic of Macedonia 91/2001.

candidates and to the bodies, mentors, lecturers and exams commissions of the Academy.<sup>16</sup> The Law on the Public Prosecutor<sup>17</sup> stipulates gender equality in conducting its competences as well as it stipulates supervision over the work and the proceeding upon specific cases precisely for the purposes of the establishment of violation of the non-discrimination principle on any ground (including gender), and wherein in the event of the establishing of a violation it shall be considered a serious disciplinary violation. The law prohibits discrimination upon the election of a public prosecutor, but explicitly only mentions the principle of adequate and equitable representation for the ethnic communities. In addition, The Law on the Council of Prosecutors of the Republic of Macedonia<sup>18</sup> which is the body that gives opinion to the Government on the nomination for a Public Prosecutor of the Republic of Macedonia and elects all the other public prosecutors does not contain an explicit gender equality/opportunity clause and contains but again it contains an explicit clause on the adequate and equitable representation of the ethnic communities; The Law on State Attorneys<sup>19</sup> which regulates the legal profession of the state attorneys who are appointed by the Government for the protection of the material rights and interests of the state, again explicitly only mention the adequate and equitable representation of the ethnic communities as a criterion for appointment, apart from the general criteria for being eligible for this appointment/legal profession. All the other laws in the area of the legal professions (Law on Advocacy, Law on the Notaries, Law on Executions and Law on Mediation also have no specific gender equality clauses when stipulating the criteria for eligibility to the profession, which are framed only in general terms for all individuals/citizens).

2) On the other side, interestingly, The Law on Police,<sup>20</sup> regulating the employment relations and opportunities in the police service explicitly stipulates not only the adequate and equitable representation of the citizen belonging to different ethnic communities as a guiding principle, but also the principle of gender equality (Article 96). The same approach is included also in the Law on Service in the Army of the Republic of Macedonia<sup>21</sup>(Article 30 (5) and (6);

3) The Law on State Servants<sup>22</sup> and the Law Public Servants<sup>23</sup> stipulate the general principles of equal access and equal conditions for the candidates to the public service placement, as well as the equal payment. Only special provision in terms of representation is the principle of adequate and equitable representation of the ethnic communities. Similarly, the Law on Local Self-Government<sup>24</sup> which regulates the administration of the units of local self-government stipulates the adequate and equitable representation of the ethnic communities in the employment of the administration of the local self-government (Article 59), but there is no explicit referral to the gender equality and gender opportunities, apart to the referral of the equality clauses of the Law on State Servants which applies to the administration of the local self-government as *lex generalis*;

4) The Law on Political Parties<sup>25</sup> in Article 4 explicitly stipulates that the political parties are obliged in their activities to promote the principle of gender equality and gender equal access to the party functions;

5) The Criminal Code<sup>26</sup> in part 15 (crimes against the rights and freedoms of the individual and the citizen) in Article 137 incriminates the violation of the gender equality of the citizens in enjoying the rights and freedoms provided in the Constitution, the laws and the ratified international

<sup>16</sup> See, Official Gazette of the Republic of Macedonia, 88/2010.

<sup>17</sup> See, Official Gazette of the Republic of Macedonia 38/2004 and 150/2007.

<sup>18</sup> See, Official Gazette of the Republic of Macedonia 150/2007.

<sup>19</sup> See, Official Gazette of the Republic of Macedonia 87/2007.

<sup>20</sup> See, Official Gazette of the Republic of Macedonia 114/2006.

<sup>21</sup> See, Official Gazette of the Republic of Macedonia 36/2010.

<sup>22</sup> See, Official Gazette of the Republic of Macedonia, no. 59/2000.

<sup>23</sup> See, Official Gazette of the Republic of Macedonia, no. 52/2010.

<sup>24</sup> See, Official Gazette of the Republic of Macedonia, no. 5/2002.

<sup>25</sup> See, Official Gazette of the Republic of Macedonia 76/2004.

<sup>26</sup> See, Official Gazette of the Republic of Macedonia 37/1996.

agreements. This violation is punishable with a prison sentence from three months to three years. Also, in part 17 (crimes against labour relations), Article 166 incriminates the violation of the rights in connection to the employment and the labour relations given by law, other regulation or collective agreements, including those referring to the special protection of women. The crime is punishable with monetary sanction or prison sentence up to one year. In addition, The Law on Execution of Sanctions<sup>27</sup> explicitly prohibits discrimination on the basis of sex of the person to which the sanction is executed. In addition, the Law has established an obligation for the officials to perform their duties without discrimination;

6.) The Labour Law<sup>28</sup> has been harmonized with Directive 76/207/EEC implementing the principle of equal treatment between men and women as regards access to employment, vocational training and promotion, and working conditions, Directive 2002/3/EC amending Directive 76/207/EEC which comprises a definition of the term indirect discrimination, harassment as form of discrimination, Directive 97/80/EC on the burden of proof in cases of discrimination based on sex, Directive 75/117/EEC which refers to the principle of equal salaries for women and men, Directive 92/85/EEC on the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC on parental leave. The subsequent changes in the law until 2010 also have transposed the Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation;

7) Laws on Education - All the laws regulating the system of education (elementary, secondary and university education) contain gender equal access/opportunity clause, whilst the law on elementary education and the law on secondary education contain explicit gender anti-discrimination clause. These laws are also in compliance with the above mentioned EU directives and resolutions as they apply to the area of education<sup>29</sup>;

8) The Law on Family<sup>30</sup> and the Law on Inheritance<sup>31</sup> both explicitly stipulate that women and men are equal in their rights and obligations arising from the family relations, marriage and parenthood. According to the Law on Inheritance, women and men have the same inheritance rights;

9) The Law on Health Protection,<sup>32</sup> the Law on Health Insurance<sup>33</sup> and the Law on Social Security<sup>34</sup> contain general equal access and equal treatment clause. The Law on Social Security explicitly prohibits direct or indirect discrimination based on sex and the prohibition refers both to the public institutions for social protection established by the Government of the Republic of Macedonia, the municipalities and the city of Skopje as well as the private institutions for social protection established by legal or physical persons, civil associations and physical persons who perform work in the sphere of social protection (Article 7-c);

10) The Law on Broadcasting<sup>35</sup> in stipulating the program principles in broadcasting includes, among others, the principles of respect of the human dignity, right of privacy and gender equality in rights and freedoms and it explicitly prohibits in the area of advertising and teleshopping using "overusing of the gender differences" as well as it obliges the public media to include programs that promote gender equality. The area of broadcasting and the media with respect to the gender

<sup>27</sup> See, Official Gazette of the Republic of Macedonia 2/2006.

<sup>28</sup> See, Official Gazette of the Republic of Macedonia 60/2005.

<sup>29</sup> See, Article 2(2) of the Law on Elementary Education (Official Gazette no.103/2008) and Article 3(2) of the Law on Secondary Education (Official Gazette no. 44/1995).

<sup>30</sup> See, Official Gazette of the Republic of Macedonia 80/1992).

<sup>31</sup> See, Official Gazette of the Republic of Macedonia 47/1996.

<sup>32</sup> See, Official Gazette of the Republic of Macedonia 17/1997.

<sup>33</sup> See, Official Gazette of the Republic of Macedonia.25/2000.

<sup>34</sup> See, Official Gazette of the Republic of Macedonia.50/1997.

<sup>35</sup> See, Official Gazette of the Republic of Macedonia 100/2005, 19/2007, 103/2008, 152/2008 and 06/2010.

equality and gender opportunities is additionally regulated with the Law on Equal Opportunities for women and men of 2012 as stated above under 2.1;

**c) Laws with incorporated positive measures that advance equal gender opportunities (gender quota)** - The Electoral Code<sup>36</sup> guarantees the quota of minimum 30% of representation in all the electoral bodies of the less represented sex (Article 21(3)). It is also stipulated that in making the MP candidates list, as well as the lists of candidates for members of the municipal councils and the council of the City of Skopje, from amongst three positions from the list, at least one position belongs to the less represented gender (Article 64(5)). However, there are no gender quotas or any other positive measures or policies provided for the candidates for mayors and for the composition of the government.

## II. National policy framework on Gender Equality (strategies, programs, action plans)

As it was pointed out earlier, the new law on equal opportunities for women and men has entered into force on 21 January 2012. The key policy documents on gender equality as an obligation stemming from this law are still being prepared and should be adopted in the second half of the 2012. For that reason, we are going to present here the situation with the national policy framework as it was established and implemented until 2012 and then move on the national policy framework that is in preparation.

**1. National policy framework on gender equality 2007-2012 (National Plan for Action on Gender Equality 2007-2012)** - The Law on Equal Opportunities of Women and Men of 2006 stipulated obligation for the Assembly of the Republic of Macedonia to adopt a National Plan of Action for Equal Opportunities for Women and Men, prepared and proposed by the Government of the Republic of Macedonia (Article 11, 21 and 22). However, such plan was never adopted and both the Assembly and the Government had failed to fulfil their legal obligations in this respect as it is openly admitted in the earlier mentioned Analysis on the Level of Implementation of the Law on Equal Opportunities for Women and Men issued by the Ministry of Labor and Social Policy in June 2011. However, one year after the law had entered into force (on 6 June 2006), in June 2007, independently from the Assembly of the Republic of Macedonia, the Government of the Republic of Macedonia had adopted its own National Plan of Action on Gender Equality 2007-2012, with subsequent annual operative plans. These documents still represent the basic national policy framework on gender equality<sup>37</sup>. In fact, this plan replaced the previous government plan with the same title from 1999 that had been adopted in the aftermath of Macedonia's participation at the UN Fourth World Conference on Women held in Beijing 1995, and stemming from its obligations by signing the Conference's Beijing Declaration and Platform for Action. As it is stated in the introductory resume of the National Plan for Action on Gender Equality 2007-2012: "This document represents a national response to the international obligations of the Republic of Macedonia and an effort to unite all views, activities and resources in a coherent framework and unified approach to achieving gender equality. Although the Law of 2006 is mentioned, as an explicit bases of this plan are named the Beijing Declaration and Plan of Action, CEDAW, UN Millennium Development Goals, the obligations of the Republic of Macedonia in the process of integration to the EU, and the other international obligations (such as those stemming from the Council of Europe human rights regime that are explicitly mentioned in parts of the plan). In the context of the EU obligations with respect to gender equality, the plan states that it relies on the National Programme of the Adoption of the Acquis Communautaire for achieving its goals, especially in terms of its legislation goals. In addition, it specifically mentions that

<sup>36</sup> See, Official Gazette of the Republic of Macedonia 40/2006.

<sup>37</sup> These policy documents are available on the official web site of the Ministry of Labor and Social Policy/Documents at: <http://www.mtsp.gov.mk> (last visited on 8 May 2012).

it reflects the European Commission's Roadmap for Equality between women and men (2006-2010) from 2006, EU Lisbon Agenda and European Parliament Resolution on gender budgeting from 2003. On the other side, the annual operative plans for implementation of this national plan for 2011 and for 2012 explicitly state that "the main goal of this document is the implementation of the Law on Equal Opportunities for Women and Men, advancement of gender equality and equal opportunities for men and women, and securing continuous advancement of the status of women in the Republic of Macedonia". As responsible subject for the implementation of the National Plan and its annual operative plans, the Ministry of Labor and Social Policy and its Sector for equal opportunities, the other ministries in the Government of the Republic of Macedonia and the responsible subjects in the units of the local self-government are named.

The National Plan for Action on Gender Equality 2007-2012 was prepared by the Ministry of Labor in cooperation with the other government ministries, institutions and agencies, the NGO sector, OSCE, UNIFEM and other UN agencies present in Macedonia. The declared main goal of the plan is advancement of the gender equality and inclusion of the gender perspectives in the policies, programmes and projects in different areas of society, both on national and local level. In this context, the plan enables defining of concrete priorities, policies and activities in ten areas of social activity: 1) respect and promotion of the rights of women as part of the universal human rights; 2) promotion of gender equality between women and men in the process of decision-making, including by introducing legislative and administrative special measures aimed at achieving greater female political representation; 3) advancement of the gender perspective in producing and publishing the statistical data in all areas of social activity; 4) introduction of gender sensitive education through the education programmes and teaching curriculums, as well as removing of gender stereotypes and prejudices from the teaching materials and training the teachers at all levels of education in this direction; 5) support and implementation of programmes for strengthening the economic position of women by introducing concrete policy measures for decreasing female unemployment, increasing the number of women entrepreneurs and by removing all forms of discrimination of women in the employment and working environment; 6) removal of all forms of violence against women, including the family violence; 7) advancement of male and female health by strengthening the current disease prevention programmes and introduction of new ones; 8) decreasing poverty and introduction of an adequate system of social protection; 9) increasing the media responsibility in promotion of gender equality and removal of gender stereotypes; and 10) inclusion of the gender perspective in the protection and promotion of healthy living environment. For each of the ten areas, the plan includes overview and evaluation of the current situation, marks more concrete strategic goals and priorities which are accompanied with more or less defined measures that need to be taken, and identifies the responsible implementing subjects. Furthermore, the plan declares that it accepts the so-called dual track approach which means that it aims at achieving substantial gender equality and equal opportunity by tackling not only the equal opportunities but also just results, as well as not only focusing on equal treatment but also on equal access and equal benefits. More concretely, that means that the focus is on: first, gender policies, programmes and activities would be based on previous analysis of the problems and experiences of men and women as a routine part of their planning process; and second, formulation and support of policies and programmes specially designed and targeted separately for women or men, depending on the specific situation or aspects of gender inequality aiming at achieving equality. Finally, the plan emphasises the need for accepting gender budgeting concept in Macedonia's budgeting process and procedure as well as relying on the participative democracy in meeting the goals of the plan, including all branches of national and local government, but also the private and civic sector.

In the subsequent years of the adoption of the National Plan for Action on Gender Equality 2007-2012, other more focused and more specialized sub-programmes or implementation programmes were adopted in different areas, most notably: Programme for Training of Judges and Attorneys on the CEDAW and its Facultative Protocol (2008); Programme for Gender Sensitive Education (2008), Programme of the Ministry of Labor and Social Policy and the Ministry for Education and Science for training teachers in elementary education in gender sensitive education and gender equality); Project " Building the capacity for inclusion of the gender perspective in the formulation of policies" (2008); Project of the Ministry of Labor and Social Policy and OSCE aimed at analysing the situation and establishing the institutional framework for gender equality in policy formulation as projected by the Law on Equal Opportunities for women and men from 2006); Programme for Equal Opportunities for Women and Men in the Ministry of Defence and the Army of the Republic of Macedonia (adopted in 2009 – currently women make up around 30% of the Ministry of Defence and the Army's administrative personal, 8% of officers, 11 % of under-officers, and 2,6% professional soldiers ); Gender Sensitive Methodology in Evaluation of the Teaching Materials (as part of the annual Work Programme of the Bureau for Development of Education, beginning 2010 and on); Programme for training of women entrepreneurs (as part of the annual Work Programme of the Agency for Support of entrepreneurship in the Republic of Macedonia, beginning 2011 and on - however, the key government policy documents such as the National Strategy for Employment and National Action Plan for Employment as well as the work programmes of the Agency for Employment are based on the principle of equal gender opportunity, but with no special positive measures targeting only female unemployment which is statistically higher, especially in the higher paid jobs and in business ownership and in addition, there is a lack of statistical data based on gender with respect to the access and the benefits of the active measures of employment<sup>38</sup>); National Plan of Action for the Advancement of the Status of the Roma Women (adopted March 2008, with subsequent operative plans 2008-2010, and followed with an updated National Plan adopted in 2010); The government's Program for financial support of the agriculture and The Programme for Rural Development include the gender equal opportunity perspective and provides for several special positive measures aimed at stimulating economic activity of the rural women (special financial grants, trainings and free advice) as well as there are several programs and special action plan of the government's Agency for stimulating and developing the agriculture aimed at women.<sup>39</sup> Currently, as of 2012, there are also the following on-going projects: Support for the Commissions for Equality for Women and Men in the Units of Local Self-Government (cooperation between the Ministry of Labor and Social Policy, the units of local self-government and UNDP and aimed to strengthen the capacity of the commissions for gender equality in the local self-government), Gender Sensitive Budgeting (Project of cooperation between the Ministry of Labor and Social Policy with UNIFEM and Austrian Development Agency aimed at the fighting poverty and unemployment through gender sensitive budgeting) and Trainings for Inclusion of the Gender Concept in the Work of the Social Workers, the Police and the Health Workers.<sup>40</sup>

In addition, compared with the previous years, this period is also marked with:

First, increased activities of the Government/Ministry of Labor and Social Policy in form of campaigns, trainings, seminars, conferences, publishing brochures and other informative or educational materials concerning different aspects of the gender equality, equal gender opportunities and raising gender equality awareness;

<sup>38</sup> For more detail, see: Amalija Jovanovic, Vesna Jovanova, Neda Maleska –Sacmaroska, Slobodanka Markovska, Gender-Budget Analysis of the Social Protection Measures and Active Policies for Employment in the Republic of Macedonia, Ministry of Labour and Social Policy, Skopje, 2010.

<sup>39</sup> Data and other information taken from: Fourth and Fifth Periodical CEDAW Report of the Republic of Macedonia 2011, available at official site of the Ministry of Labor and Social Policy <http://www.mtsp.gov.mk>.

<sup>40</sup> Data taken from the Brochure "Sector for Equal Opportunities", Ministry of Labour and Social Policy 2011, available at: [http://www.mtsp.gov.mk/WBStorage/Files/Sektor\\_za\\_Ednakvi\\_moznosti\\_MKD\[1\].pdf](http://www.mtsp.gov.mk/WBStorage/Files/Sektor_za_Ednakvi_moznosti_MKD[1].pdf) (last visited on 11 May 2012).

Second, projects of study and analysis of the real ground situation with gender equality in different areas of social life that was almost non-existent in the previous period, mostly initiated and supported by the Ministry of Labor and Social Policy (for example, Analysis of the state of representation of girls and boys in the elementary and secondary level of education, and representation of women and men as teaching staff in the academic year of 2007/2008, Gender analysis of the total number of female and male students and graduates at the state and private universities (August 2009), Gender-Budget Analysis of the Social Protection Measures and Active Policies for Employment in the Republic of Macedonia (2010), Analysis of the level of implementation of the Law on Equal Opportunities for women and men (June 2011), Analysis of the qualitative participation of women in the public and the political life in the local self-government (November 2011);

Third, establishing the institutional framework for the advancement and protection of gender equality as it will be presented in Part III.

## **2. National policy framework on gender equality 2012-2020<sup>41</sup>**

### **2.1 Strategy for Gender Equality 2012-2020 (in initial phase of preparation)**

The Law on Equal Opportunities for Women and Men of 2012 obliges the Assembly of the Republic of Macedonia, on the proposal of the Government of the Republic of Macedonia, (Article 9(3) and Article 10(2)) to adopt a Strategy for Gender Equality, and follow its implementation through sectorial policies and programmes, in cooperation with the social partners, non-governmental organizations and other public institutions in the areas concerned. According to Article 19 of the Law, this strategy is to be prepared in periods of eight years, and the first strategy of this kind has to be adopted by 31 December 2012 (Article 45(1)). The Strategy must be consisted of: 1) analysis of the situation prior to the adoption of the strategy; 2) directions and measures for achieving the gender equality goals in different areas of social life, especially in the areas of employment, social security, health protection, education, family relations, and representation of women and men in the public life; 3) allocation of the responsibility for the implementation of the measures and achieving the goals; 4) the content, responsible institutions and subjects for the preparation and implementation of National Plan of Action for Gender Equality and annual operative plans for implementation of the strategy; 5) data that must be collected and processed concerning the gender structure by the State Statistical Office; 6) defining of the method for following and informing on the implementation of the strategy; and 7) financial and other means that are required for implementation of the strategy and the ways and the sources for their provision. For the purposes of this report, we had been informed by the Ministry of Labor and Social Policy, which is charged by the Government of the Republic of Macedonia to prepare the Strategy according to the law, that, as of end of May 2012, the preparation of the strategy is still in the first phase i.e. the Ministry has formed a working group composed of governmental representatives, independent experts and representatives of the NGO sector in order to prepare the initial analysis of the situation in the country prior to the preparation of the text of the strategy, as required by the law. The strategy is expected to be adopted by the 31 of December 2012 as stipulated by the law.

Although the national strategy for gender equality is still in preparation, the City of Skopje, the capital of the Republic of Macedonia, in September 2011 has adopted the City's strategy for gender equality: **Strategy for Gender Equality of the City of Skopje – Skopje as a City of Gender**

<sup>41</sup> All the strategies and actions plans that are presented in this part are in draft forms, not published yet, and were made available to us by the Government of the Republic of Macedonia for the purposes of preparation of this report. The only exception is the Strategy for Gender Equality of the City of Skopje that is duly referred to in the next footnote no. 41.

**Equality**<sup>42</sup>. The strategy includes analysis of the gender equality picture of the City, done for the first time in an elaborate way, as well as its platform for actions aimed at achieving six areas of gender equality activities: 1) clear policies and policy documents on gender equality (the adoption of the strategy and its plan of action, providing for budget resources for their implementation and for the work of the Gender Equality Commission of the City, generating gender based city statistics for further raising of the awareness of the gender situation in the City as well for analysis and planning of activities); 2) inclusion of the gender approach in decision-making and creation of the City's policies (creating gender sensitive rules in the procedures of decision-making, including templates for tender documentation for all City's procurements, templates for documents for projects that the City is financing, and templates for reports on different City's activities, all involving questions about the gender aspect i.e. gender effect and about the benefits on the advancement of the gender equality); 3) inclusion of the gender perspective in all City's citizen services (all city's authorities, agencies and public utilities companies are obliged in the work programs to include the gender aspect in providing their services, generate gender statistics, plan and promote their services with calculation how the planned activity or service would affect men and women citizens, etc.); 4) building capacity for gender integration (by activities of education and training of the City's administration on gender equality and gender integration, in cooperation with the NGO sector); 5) promotion and information activities for informing the public on the City's activities for the advancement of gender equality; and 6) projects for strengthening the status of women in four strategic areas (women and human rights, women and health, women and education, and women and violence)

## **2.2 Draft Strategy on Gender Sensitive Budgeting 2012-2017**

The concept of gender sensitive budgeting is a relatively new concept in Macedonia that started to be promoted by the Ministry of Labor and Social Affairs through of several pilot activities since 2008 and incorporated in the currently valid National Plan for Action on Gender Equality 2007-2012. As it was mentioned earlier, it is a fully introduced and concretely elaborated concept in the Law on Equal Opportunities of Women and Men of 2012 as an important new tool to achieve gender equality and opportunities. This Strategy on Gender Sensitive Budgeting (hereafter: SGB) is in its draft version and currently under review in the Government. It was prepared by the Ministry of Labor and Social Policy with cooperation with UN Women. The institutional framework for its implementation is the one as provided by the Law on Equal Opportunities of Women and Men, but with a central role of the Ministry of Labor and Social Policy and the governmental inter-ministerial group on gender equality and its subgroup on gender sensitive budgeting. As the introduction of the strategy declares, it represents a national document based on the gender budgeting experiences in the EU and its member states and it is based on the premise that for achieving gender equality it is not enough to introduce and finance only special programmes, but include the gender perspective in the mainstream of the previously "neutral" budgeting both on national and local level (budget gender mainstreaming). The declared main goal of the budget is "gender responsible policies aimed at elimination of gender inequality and promotion of gender equal opportunities, by taking into consideration the different needs of women and men, and by way of transparent and coordinated process of gender responsible budgeting". The SGB is for the period of five years i.e. for 2012-2017, and it will be followed by annual operative plans. It focuses on three strategic areas, followed by tables of strategic goals, activities, responsible subjects, indicators and timetables for each of the strategic area:

<sup>42</sup> The Strategy is available at the official web site of the City of Skopje at: [http://www.skopje.gov.mk/images/Image/Makedoncka\\_e\\_verzija\(1\).pdf](http://www.skopje.gov.mk/images/Image/Makedoncka_e_verzija(1).pdf) (last visited at 11 May 2012).

a) The first strategic area is the introduction of the gender perspective in the programmes and the budgets of the ministries, the City of Skopje and the other units of local self-government – It includes activities such as preparation of a single methodology of gender budget analysis, its promotion and manual with instruction for its application (2012), conducting gender budget analysis with following recommendations and indicators for possible changes in the programmes of the ministries, the City of Skopje and the other units of local self-government (2013- 2017), preparing reports on the gender budget analysis of the above mentioned programmes and submitting them together with the materials for the preparation of the budget for each next year (2013-2017), promotional activities and follow-up on the implementation of the recommendations for the gender sensitive budgeting (2014-2017);

b) The second strategic area is the advancement of the legal framework for the gender sensitive budgeting, especially the legal rules for the preparation of the budget and the law on the budget (2013);

c) The third strategic area is the strengthening of the institutional mechanisms and building the capacity of the concerned subject for incorporation of the gender issues in the budget policies and processes ( promotional activities, trainings and coordination in-between institutions involved in the budgeting process both on national and local level, 2013).

### **2.3 Draft National Strategy on Equality and Non-Discrimination based on ethnical belonging, age, mental and physical disability and gender 2012 – 2015**

This strategy is currently under review and it is expected to be adopted by the Government at latest by the end of May 2012. Its aim is to provide for more effective implementation of the anti-discrimination legislation of the Republic of Macedonia as presented in Part I. The draft strategy was prepared by the Ministry of Labor and Social Policy in cooperation with all the other government ministries and institutions, the units of the local self-government, OSCE and the NGO sector. The budgeting for the strategy will be provided for from the budget resources of the Government, the units of the local self-government, EU financial aid and programmes and donations. As it is emphasized in the title and in the introductory elaboration of the strategy, the strategy does not aim at all forms of discrimination, but focuses on four bases of discrimination (ethnic belonging, age, mental and physical disability and gender). The key reason is that these grounds of discrimination are detected as most common in the Republic of Macedonia according to the researches on the terrain and the complaints of the citizens, including and especially as a form of cross-cutting discrimination (combination of the several of these grounds). Considering the latter, although the gender discrimination is covered with a special law (Law on Equal Opportunities for Women and Men of 2012), it is also covered with the Strategy, but not targeted as a separate ground per se, but more as “horizontal issue” and with more specific regard to the cross-cutting discrimination, especially in combination with ethnic belonging and age. For example, in the area of discrimination based on ethnic belonging, the strategy provides, among other activities for elimination of discrimination based on ethnic belonging, also for activities such as gathering and analyzing data on adequate and equitable representation of all ethnic communities in Macedonia on national and local level based on gender, preparation of reports detecting unequal access to state services for women belonging to different ethnic communities, especially with respect to the discriminatory behavior of state servants, and formulation of recommendations and policies for eliminating such discrimination in vulnerable areas, gathering and analyzing statistical data on treatment of the complaints and petitions of women to different state institutions and services based on their ethnic belonging, easement of access to guaranteed health care to Roma women, easement of access to the active measures of employment to the women from different ethnic groups, especially belonging to ethnic groups that are

detected as least represented as beneficiaries of those measures, awareness raising activities about the compulsory elementary and secondary educations for boys and girls in ethnic groups that show decreasing numbers of enrolled children in the schools, etc. In the area of discrimination based on age, among other activities for elimination of age discrimination, the strategy provides for activities that are aimed at formulation of better active measures of employment and non-discrimination for the young or older unemployed women in areas where it is detected that they are more victims of age discrimination both in the public and the private sectors.

#### **2.4 Draft Action Plan of the Republic of Macedonia on the implementation of the UN Resolution 1325 on Women, Peace and Security for the period of 2012-2015**

This action plan is currently under review in the Government. It is targeting the gender perspective in the process of policy-making and decision-making on the issues of peace and security in the Republic of Macedonia as well as their implementation. It specifically aims to implement the UN Resolution 1325, but also it calls upon the Law on Equal Opportunities for Women and Men of 2012 and its provisions on the equal gender opportunities in the area of peace and security. The declared goals of the action plan are: 1) strengthening the gender perspectives in the policies of peace, security and defense, with an emphasis on the preventive instruments and increased participation of women in the prevention activities, risk estimates and early warning mechanisms; 2) strengthening the participation and contribution of women in civil and military missions in preventive and post-conflict activities; and, 3) prevention of violence from women in pre-conflict and post-conflict situations. The implementation of the action plan is planned to be a responsibility of all institutions and subject identified in the Law on Equal Opportunities for Women and Men of 2012, but with a key role of the Government of the Republic of Macedonia, the Ministry of Labor and Social Policy, the Ministry of Foreign Affairs, the Ministry of Defense, the Ministry of Interior and the Agency for Crisis Management. The Assembly of the Republic of Macedonia will be informed on a regular basis on the implemented activities. The action plan focuses on activities of raising awareness by ways of information, education and training on the issues of gender equality and sensitivity in the peace, defense and security sectors, including in view of the UN Resolution 1325 and the Law on Equal Opportunities for Women and Men of 2012, generating statistics of the representation of women in these sectors and in the civil and military missions abroad, measures for increasing the number of women in these sectors as provided by the law, and for inclusion of a gender equality and sensitivity expert in each civil or military mission abroad, as well as in the institutions, agencies and other organs functioning in the peace, security and defense sectors.

### **III. National institutional framework on gender equality (Under the framework of the Law on Equal Opportunities for Women and Men of 2012)**

#### **1. The Assembly of the Republic of Macedonia**

The Macedonian national Parliament as the holder of the constitutional and the legislative branch of power, in the sphere of its competences, has the responsibility: a) for eliminating all forms of gender discrimination and for advancement of the social standing and status of women in the country; b) for inclusion of the principle of equal opportunities for women and men in all legislative initiatives, parliamentary policies and programmes; c) for organizing parliamentary debates on gender equality in the country; d) for analyses and giving opinions on the influences of the legislative norms on the status of women and men; e) for asking reports from the other competent institutions and issues its own reports on the gender equality in the country; f) for adoption of the Strategy for Gender Equality and follows its implementation. The Law obliges the Assembly in forming its

parliamentary commissions and delegations for cooperation with other parliaments and for parliamentary representation in international parliamentary organization to respect the principle of equal gender representation.

For each mandate, The Assembly sets up a **Parliamentary Commission for Equal Opportunities for Women and Men** as a permanent standing parliamentary working body. Its competences include: reviews and gives opinions on all legislative initiatives and acts concerning gender equality and gender perspective in the areas of health care and health insurance, social protection, access to goods and services, economy, employment and employment relations, education and vocational trainings, economic and property relations, use of public goods and services (consumer rights), culture, sports, information and communication technologies, defence and security, administration of justice, state and public administration, housing, information of the public and media and in other areas of social life. As well as the Law on the budget of the Republic of Macedonia reviews and gives opinion on the Strategy for Gender Equality, follows the adoption and the implementation of the basic and the special measures for establishing equal opportunities for women and men in the public and the private sector, follows the implementation of the Law on Equal Opportunities for Women and Men and all the other laws concerning gender equality and non-discrimination, fosters cooperation for all the competent institutions and subjects relevant for the gender equality, including the units of local self-government and the NGO sector (including the workers unions and associations of employers), initiates activities against gender stereotyping and prejudices in the public life, regularly informs the parliamentary plenary on the issues of gender equality and equal gender opportunities. The parliamentary Commission on Equal Opportunity for Women and Men was first set up in September 2006<sup>43</sup>, after the Law on Equal Opportunities of Women and Men of 2006 entered into force. For the parliamentary mandate 2011-2015, it is composed of 11 members and their substitutes. Its president is a female MP from the parliamentary majority and its composition is dominated by female MPs (from the other ten members, eight are female MPs and only two male MPs).

## 2. Government of the Republic of Macedonia

The Government as the main body of the executive branch of power has the responsibility in the framework of its competences for: a) implements the law and take measures to achieve its goals, especially with respect to the basic and the special measures provided in the law, b) prepares the Strategy for Gender Equality and submits it for adoption to the Assembly, c) it is obliged to publish gender statistical data on all the government appointments and for all the government bodies for decision-making and management, d) it is obliged to provide for equal gender representation in the composition of its working bodies and delegations, consultative and coordinative bodies, and in appointments of its representatives in management boards of public companies and agencies, e) it appoints a Government coordinator and deputy coordinator for gender equal opportunities and for each government ministry to follow the implementation of the principle of equal gender opportunities in the strategic plans of the ministries and their budgets, and who cooperate in this respect with the Ministry of Labour and Social Policy, f) it forms an inter-sectorial consultative and advisory group for equal gender opportunities composed of government functionaries, representatives of the employers, representatives of the unions, representatives of the units of the local self-government, experts and other relevant subjects. Its task is to promote the inclusion of the gender perspectives in the policies of all the public institutions, to follow the implementation of the concept in all the sectorial policies in cooperation with the social partners and the institutions from the sectors concerned, to follow the progress in the adoption of the EU law and EU standards on the gender issues, to participate in the preparation of the Strategy for Gender Equality, and to follow the periodical reports from the institutions. The work of the group is regulated by rules of procedure adopted

<sup>43</sup> See, Official Gazette of the Republic of Macedonia 97/2006.

by the Government and it is coordinated by the Ministry of Labor and Social Policy. The government coordinators and deputy coordinators for equal gender opportunities were provided for in the Law on Equal Opportunities for Women and Men of 2006. In the aftermath of the entry into force of the law, such coordinators had been appointed in each ministry of the Government. However, in the period 2006-2011 there have been many weaknesses in their functioning and work, most notably lack of understanding of the gender perspectives and lack of initiatives on the gender issues, non-coordination with the Ministry of Labor and Social Policy and failure to meet their obligation to submit reports for their work as provided by the law.<sup>44</sup> Currently, as of May 2012, the coordinators and deputy coordinators are all female, except one male coordinator (Ministry for Environment) and one male deputy coordinator (Ministry for Information Society and Public Administration).

### **3. Bodies of state administration**

Each of the bodies of state administration are obliged by the law to promote the equal gender opportunities by implementation of the basic and the special measures provided by the law. Furthermore, they are obliged to incorporate the principle of equal opportunity for women and men in their strategic plans and budgets, follow the effects of their programmes on women and men, and report about the findings in their annual reports. Each organ of the state administration must appoint a coordinator and deputy coordinator for equal opportunity for women and men, and inform the Ministry of Labor and Social Policy about the appointment. The coordinator is responsible for the follow-up of the implementation of the law in the state organ, take initiatives and give opinions and recommendations for the advancement of the equality between women and men in the organ and its work for which he/she cooperates and coordinates with the Ministry of Labor and Social Policy, and he/she is obliged to prepare annual report for its work and submit it to the Ministry at latest by 31 March each year and publish it on the official web site of the organ of the state administration. Non-appointment of a coordinator or non-submittal of an annual report by the coordinator is sanctioned as misdemeanours punishable by the law with monetary sanctions ranging between 400-600 Euros.

### **4. Ministry of Labor and Social Policy**

The Ministry is in charge of the overall coordination of the implementation of the Law on Equal Opportunities for Women and Men. More concretely: a) it gives opinions on all the proposed basic and special measures for introduction of equal opportunities for women and men and follows their implementation, b) cooperates with the Assembly's Commission for Equal Opportunities for Women and Men in preparations of the laws, strategic documents and reports, c) gives initiatives and proposals to the Government or the ministries for changes in the laws or other legal acts for advancement of the equal gender opportunities, as well for introduction of basic or special measures for that purpose, d) prepares the Strategy for Gender Equality, the operative plans for its implementation and the annual reports on its implementation and results, f) coordinates and supports the work of the inter-sectorial group on equal gender opportunities, g) in cooperation with the Ministry for Foreign Affairs follows the implementation of the international agreements concerning gender equality and advancement of status of women, h) prepares reports, analysis and other documents concerning equal gender opportunities and publishes them on the web site of the Ministry; i) cooperates and coordinates the work of the coordinators for equal gender opportunities in the organs of state administration and of the coordinators and the commissions for equal gender opportunities in the units of local self-government, j) cooperates with the organizations of the employers, the unions and other organizations of workers, and the NGOs active on the issue of equal gender opportuni-

<sup>44</sup> See, Analysis on the Level of Implementation of the Law on Equal Opportunities for Women and Men, pp. 17-19, Ibidem.

ties, and k) prepares an annual report on the advancement of the gender equal opportunities and submits it to the Government at latest by the end of June each year;

All these competences of the Ministry are conducted by the Ministry through its Sector for Equal Opportunities and State Adviser for Equal Opportunities. The Sector for Equal Opportunities was formed in 2007 by way of administrative upgrading of its previous department for gender equality formed in 1997. Currently it is composed of a Department for gender equality and a Department for prevention and protection against all forms of violence and discrimination.

## **5. Units of Local Self-Government (municipalities and the City of Skopje)**

The units of local self-government, in the framework of their competence are also obliged to promote the principle of equal opportunities between women and men, especially through: a) adoption of basic and special measures incorporated in an annual plan, b) to include the principle of gender equality in their strategic plans and budgets, and to make evaluation of their gender impact that would be included in the annual reports for their realization, c) participation in the preparation of the national strategy on gender equality in the part concerning the local self-government, d) cooperate with the NGO sector, associations of employers and unions of workers, e) in preparations of their development plans, and other acts, they are obliged to take into consideration the proposals coming from their commissions on equality between women and men, and the coordinator for equality between women and men of their unit of local self-government. The Commission is formed by the Council of the unit of local self-government and the coordinator is appointed from among the administrative officials of the unit of the local self-government that have a status of state servants. Both the commission and the coordinator have identical responsibilities as their counterparts on the governmental level, including an obligation for the coordinator to submit an annual report to the Ministry of Labor at latest by the 31 March each year. Failure for formation of the commission is punishable with sanctions ranging 400-600 Euros for the person that is in charge (president of the council of the unit of local self-government), and 800-1000 Euros for not appointing a coordinator. Failure of the coordinator to submit annual report is also punishable with sanctions ranging 400-600 Euros. These monetary sanctions are included in the law mostly due to the experience with the implementation of the Law on Equal Opportunities between women and men of 2006, when many of the units of local self-government had failed to meet their obligation to submit reports, and some were slow in establishing commissions and appointing coordinators, although by 2011, 81 out of 84 units of local self-government had both commissions and coordinators for gender equality<sup>45</sup>. According to the Law of 2011, all units of local self-government are obliged to establish the commissions and the coordinators in three months period from the day of entry into force of the law, and according to the information we have received from the Ministry of Labor and Social Policy, these legal obligations have been duly met.

## **6. Political parties**

The political parties are obliged to regulate the ways and measures for advancement of the equal participation of women and men in the party bodies and organs in their internal party acts. Interestingly, the law does not stipulate any obligations similar to those for the state institutions and organs and the units of local self-government, including no obligation to report on the measures taken for achieving their obligation under the law, neither any sanction for the parties for not meeting the obligations by the law, apart from the obligation to submit gender derived statistics (see below under 8). From the parliamentary political parties, only two have gender quota of 30% of the less represented sex in their party statutes, namely, the Social Democratic Union of Macedonia

<sup>45</sup> Ibidem.

(since 1998), and New Social Democratic Party (since 2008). In party practices the quotas are solidly implemented.

### **7. Media for information of the public and the Broadcasting Council**

The law obliges all information services (mass media): a) to contribute through their programme concepts for the development of public awareness about the issue of gender equality, as well as for the equal participation of women and men in the creation of contents of the programmes, b) public presentation of persons should not be in offensive and depreciating manner based on gender, c) the Broadcasting Council has the obligation to monitor these obligations by the media and to submit an annual report to the Assembly of the Republic of Macedonia on the presentation of women and men in the programme contents of the media. In addition, the Broadcasting Council is obliged to prepare an annual analysis on the presentation of the gender issues in the programme contents of the media and submit it to the Assembly, as well as publish it on its official website. Failure of the Broadcasting Council to prepare the annual analysis and reports to the Assembly is sanctioned with 600-800 Euros. According to the Macedonia's CEDAW Report 2011, on the basis of the Law for Equal Opportunities for Women and Men of 2006, the Broadcasting Council in the past years has resorted only to issuing warnings and recommendations to the media who violate the law's provisions regarding degrading gender stereotyping or presentation of persons in an offensive and depreciating manner (mostly with respect to female politicians). The new law includes monetary sanctions for noncompliance with media' responsibilities stipulated by the law. In addition, according to a research "Attitudes and Programme Needs of the TV Public in Macedonia" from 2007, conducted by the Broadcasting Council, with respect to the TV commercials, on the statement that the TV commercials do a traditional gender stereotyping, especially in respect to male and female roles in the division of labour, 13 % of the surveyed regular TV watchers completely agreed, 31% agreed, 25% partially agreed, and 22% completely disagreed. In 2009, the percentage of those who completely agreed has risen to 15%.<sup>46</sup> In December 2007, the Broadcasting Council has also formed a special Coordinative Body on Advertising, Teleshopping and Sponsorships, with special task to stimulate a focused debate on the implementation of the Law on Equal Opportunities for Women and Men, and on the gender issues in these areas of media activity. According to a report submitted by the Broadcasting Council to the Ministry of Labor and Social Policy based on the obligation under the law of 2006, as of May 2011, the Broadcasting Council had not established violation of the law by presenting persons in a degrading manner based on gender in the media.<sup>47</sup>

### **8. Subjects under obligation to collect gender based statistical data**

According to the law, the Assembly, the Government, the bodies of state administration, the judiciary and other state authorities, the units of local self-government, legal entities who are accorded by law to administer activities of public interest, citizens' associations, foundations, public companies, educational institutions, institutions in the area of social protection, health care institutions, political parties, media, private commercial companies and other subjects who are obliged by law to collect, record and process statistical data, are obliged to show these statistical data also according to gender, and submit them to the State Statistical Office. Failure to meet this legal obligation is ranging 400-600 euro for the responsible person in the above mentioned subjects.

<sup>46</sup> Data taken from: Fourth and Fifth Periodical CEDAW Report of the Republic of Macedonia 2011, available at official site of the Ministry of Labor and Social Policy <http://www.mtsp.gov.mk>, pp. 13-14.

<sup>47</sup> See, Analysis on the Level of Implementation of the Law on Equal Opportunities for Women and Men, pp. 19, Ibidem.

## 9. Institutional framework for legal protection of Gender Equality

According to the law (Article 20), the legal protection of the right for equal treatment can be obtained by petitioning the Legal Representative as provided by this law, the Ombudsman, the Commission for Protection from Discrimination, and the competent court.

### a) Petition against unequal gender treatment before the Legal Representative of the Ministry of Labor and Social Policy (LR)

The LR is a state administrative servant that is employed in the Ministry of Labor and Social Policy. The petition can be submitted to the LR by any concrete individual or legal entity in person or, on their behalf, by a person empowered by power of attorney. Anonymous petitions are not permissible. The petition can be submitted orally, in writing, on the record in the Ministry, by fax or by electronic mail, and it's free of paying an administrative tax or any other financial duties. The petition must contain the personal data of the petitioner, data about the person or the legal entity against which the petition is submitted, the circumstances and the facts on which the petition is based upon and the legal remedies that have already been used earlier, if any. The petition can be submitted at latest six months from the day of the discovery of the act of gender discrimination or at latest one year of the day when the act was actually committed. The law regulates in detail the conduct of the procedure for dealing with the petition, the contacts with the petitioner and the person against whom the petition is submitted and for the establishment of the factual situation in the timeframe of 90 days, after which the LR is obliged to issue an opinion with a recommendation how to remedy the unequal treatment, if such treatment is established. The opinion is signed by the Minister, and the person to whom it is addressed is obliged to implement the recommendation and remedy the unequal treatment in 30 days and inform the LR. If that is not the case, the LR may initiate a procedure for legal responsibility in front of the competent organ. The function and the competences of the LR were firstly introduced in the law of 2006, but the Ministry of Labor and Social Policy has employed such person as of December 2009. For 2010-2011, only 6 petitions had been submitted, out of which 4 were established not to be cases of violation of gender equality, but other forms of discrimination and duly forwarded to the Ombudsman or the Commission for Protection Against Discrimination, and in the two other cases, the LP had concluded that there had been no violation.<sup>48</sup>

### b) Petition against gender discrimination before the Ombudsman

The Ombudsman deals with the petitions against violations or limitations of gender equality and gender discrimination committed by organs of state administration, and other organs, legal entities and physical persons with public authority as subscribed with the competences and the procedures in the Law on the Ombudsman. In general, the Ombudsman is an organ of the Republic that protects the rights of the citizens and other persons as set in the constitution and the laws against acts or omissions by the bodies of state administration or any other organizations that have public authority, as well as he/she acts against cases of violation of the principle of nondiscrimination or the principle of adequate and equitable representation of the ethnic communities in the organs of the state, the units of the local self-government and other organs and organizations with public authority. In effect, what the Law on Equal Opportunities for Women and Men does is giving additional legal strength and focus to the Ombudsman's competences with regard to the gender (in) equalities and events of gender discrimination. Petitioning the Ombudsman and the procedure for establishing the legal and the factual merits of a concrete case by her/him are regulated similarly as for the Legal Representative in the Ministry of Labor and Social Policy, as described under a) in addition to the individual petitions, the Ombudsman can also act on his/her initiative. According to the law, in performing his/her duties, the Ombudsman, on a basis of urgency, has access to the high-

<sup>48</sup> See, Analysis on the Level of Implementation of the Law on Equal Opportunities for Women and Men, pp. 20, Ibidem.

est bodies of the state (the President of the Republic, the President of the Assembly, the President of the Government) as well as he/she can legally use the media as a way of “mobilization of shame” in certain cases or class of cases that show a phenomenon of certain form of discrimination. The Ombudsman, if founded that the petition has merits, can take the following steps: a) give recommendations, opinions and proposals how the identified violation can be remedied by the state body, b) to request certain procedures to be repeated in accordance to the law, c) to initiate disciplinary procedure against the responsible person in the administrative organ, d) to request from the public prosecutor initiations of a procedure for establishing a criminal liability, e) he/she may request temporary suspension of the implementation of an administrative act until a decision on an appeal is made by an administrative organ in second instance or in a court of law, in cases when the Ombudsman establishes violation of the constitutional or other legal rights of an individual and if he/she estimates that the implementation of the act would cause irreparable damage to the concerned individual. In each of these competences, the state authority or the organization to which it is addressed is obliged to act upon the requests of the Ombudsman in precise deadlines and inform him/her about the measures that have been taken. If that is not the case, or if there are only partial measures taken not satisfactory to remedy the violation, the Ombudsman can address the administrative bodies in the higher instances, the Government or, eventually, the Assembly of the Republic and inform the media. In addition to acting in individual cases, the Ombudsman can also challenge the constitutionality of certain laws or by-laws before the Constitutional Court. However, the practice of the Ombudsman since 2006, when the Law on Equal Opportunities of Women and Men had entered into force, there have been no petitions to the Ombudsman on the grounds of violations of gender equality or gender discrimination. In addition, in 2010 the Ombudsman had conducted an in-depth survey on the gender structure of the state administration and the whole executive branch of state power, the courts, and the public health care and educational institutions. The analysis of the data had showed that women are not given equal opportunities in the higher positions of power and decision-making, and one of his main conclusions was that despite of all the normative and practical measures taken, indeed there is still significant gender inequality in this respect.<sup>49</sup>

### **c) Petition against gender discrimination before the Commission for Protection against Discrimination**

The Commission is an independent body and legal subject which is established and conducts its competences in accordance with the Law on Prevention and Protection against Discrimination of 2011. It is composed of seven members, elected by the Assembly of the Republic of Macedonia for a five years term, with a right of two consecutive terms of each member. The members have to have a university education and experience in the field of human rights or in humanity sciences. Curiously, Article 19(3) stipulates that in electing the members of the Commission, the principle of adequate and equitable representation of the ethnic communities must be observed, but again, as it was mentioned for many of the other laws, there is no mentioning of the principle of gender equal opportunities. It is financed by the Budget of the Republic of Macedonia and other resources. In the prevention and protection against forms of discrimination as defined in the law, and presented in this report earlier, the Commission has the following competences: a) to deal with petitions, and to give opinions and recommendations in concrete cases of discrimination, b) it informs petitioners of their rights, including their rights for judicial remedy against acts of discrimination, c) initiates procedures before competent organs for the violation of the Law on Prevention and Protection against Discrimination, d) submits annual reports to the Assembly of the Republic of Macedonia, e) informs the public of cases of discrimination, and conducts activities of information and education of the public on the issues of equality, human rights and nondiscrimination, f) follows the implementation of the law and gives proposals for legal changes that would improve the fight against discrimination,

<sup>49</sup> Ibidem, pp. 18.

including opinions on any draft law that concerns protection against discrimination, and g) creates a statistical database on the discrimination issues, conducts research and analysis reports on the state of different forms of discrimination in the country.

Petition to the Commission on grounds of discrimination can be submitted at latest three months from the date of the alleged act of discrimination or at latest one year of finding out of the act of discrimination. In certain cases, the Commission is allowed to accept a case even after these legal deadlines have passed, if it deems that it is case of such an importance that conducting a procedure is necessary and serves the purpose of the law. The petition can be submitted both in writing and in oral form on a record in the Commission, and is free of any administrative tax. It has to contain all the relevant facts and proofs of the alleged act of discrimination. In establishing the factual situation, the Commission is obliged to contact the alleged perpetrator of the discrimination and all the other relevant institutions and subjects. The procedure must be concluded in 90 days from the day the petition has been submitted, after which the Commission is obliged to issue its findings and opinion whether there has been an act of discrimination, and if that is the case, how it recommends for the violation to be removed and remedied. The Commission does not deal with petitions for cases where already a lawsuit has been initiated. The Commission's recommendation must be implemented by the responsible subject who is also obliged to inform the Commission in 30 days about what has been done to meet the recommendation. If that is not the case, the Commission will initiate a procedure for establishing the responsibility of the subject concerned before the competent organ.

The Commission was established in December 2010, and out of seven members, three are women (42, 9 %). As of 17 October 2011 (the last published data), it has dealt with 42 petitions: for two, no procedure was initiated as ungrounded, 27 are currently processed and 13 are resolved (in seven cases no discrimination was established, in three cases a direct discrimination was established, and in three cases indirect discrimination was established).<sup>50</sup> However, curiously, the Commission does not publish its petition statistics sorted on the grounds of discrimination, including the gender discrimination, only by the forms of direct and indirect discrimination. In addition, although the Commission declares on its official web site that it will renew its petition statistics on a monthly basis, that has not been observed since October 2011.

#### **d) Judicial (court) protection of the right for equal gender treatment/against gender discrimination**

Both the Law on Equal Opportunities between Women and Men and the Law on Prevention and Protection against Discrimination give avenues for judicial i.e. court protection of the gender equality and against gender discrimination: lawsuit for violation of the right for equal treatment based on sex, and lawsuit against discrimination, respectively. In both cases, it is a civil type of lawsuit, before civil courts and in civil law procedure. The lawsuit is treated as urgent. With the court petition, a petitioner may from the court ask: a) to establish that the sued party has violated the petitioner's right for equal treatment based on sex, or that the sued party by commission or by omission may directly lead to the violation of the petitioner's right, b) to prohibit undertaking of actions that violate or may lead to violation of the petitioner's right for equal treatment based on sex/ discrimination, or to order the sued party to take action to remove the violation or the consequences of the violation, c) to decide on material and nonmaterial damages that the sued party has to pay for the violation of the right in accordance to the Law on Obligations, d) to order publishing of the court judgment in the media on the expense of the sued party. According to Article 36 (Burden of proof) from the Law "When a person who considers herself/himself as a victim of discrimination offers fact on basis of which it may be assumed that such discrimination indeed happened, then the person

<sup>50</sup> Data taken from the official web site of the Commission at: <http://www.kzd.mk/mk/prestavki> (last visited on 27 May 2012).

that is sued has to prove that he/she did not violate the right for equal treatment". This does not account for criminal law procedures or misdemeanor procedures. Similar wording to the same effect is used in Article 38 of the Law on Prevention and Protection against Discrimination. Therefore, the burden of proof as it is regulated in these two laws is in compliance with the EU Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex. In addition, the Law on Prevention and Protection against discrimination allows for interference of a third party in the lawsuit on the side of the petitioner who claims to be a victim of discrimination. The third party may be an organ, organizations, association or other subject that in its activities deals with the equal treatment in the area which is the subject of the lawsuit, and only if the person on which side the third party gets involved (the petitioner) assent to the involvement. The third party has right to participate in the court proceedings with full procedural capacity and rights as the petitioner. The law also introduces the possibility of a collective lawsuit submitted by NGO who deal with issues of equal treatment and (non)discrimination as co-petitioners, if they make it probably to the court, that it is a case when the action or the non-action of the sued party has contributed to the discrimination of many individuals, and if the individual petitioner(s) assent to it.

#### **IV. Gender equality in legal education**

##### **1. Gender distribution at the Faculty of Law "Justinianus Primus", University "St. Cyril and Methodius" in Skopje (m-male; f-female)**

For the purposes of showing gender distribution trends in the area of legal education in the Republic of Macedonia, the oldest (state) law school "Justinianus Primus" can be used as the best indicator, because, notwithstanding the newly opened private law schools, it is still the law school that attracts most of prospective candidates for future lawyers, and that has most prestige in the legal professions in the country.

When it comes to law students (Table 3 and 4), the numbers represent a long-term situation with the legal education as "dominantly female". The numbers that are shown are only for the last five years, but the trend goes back at least three decades back and directly correlates to the gender distribution in most of the legal professions, as it is presented in Part V. Table 3 shows the total number of students (both in Skopje, and dispersed legal studies in other Macedonian towns; students that are studying according to the legal education programme before and after the introduction of the European Credit Transfer System; regular students and distance-learning students).

What is said about students, however, could not be said about the law teachers i.e. law professors. In 60 years of the existence of the law school, there has not been one female dean, and for a very long time, very rarely a female law professor. This started changing drastically in the mid-1990. As it can be seen from Table 2, as of the academic year 2003/2004, the percentage of female teachers was in the 30% range. But in the aftermath years, in less than a decade, the number has been growing and has reached 46.1% as of 2012. This was a direct consequence not of a recruitment of female teachers outside the law school, but due to the fact that many (male!) professors in the late 1980 and early 1990 had recruited female students as their teaching assistants, primarily because female law students tended to monopolize the top five placements of students who graduated with the highest grade point average. Moreover, in the coming academic 2012/2013, the number of female teachers will increase to 52% because of the expected election of two current teaching assistants into the status of assistant professors. So, this year, for the first time in the law school's history, the number of female law professors will outnumber the one of male law professors. Furthermore, the proportion of female professors is very likely to keep growing in the coming years because in the gender distribution among the current teaching assistants, the ratio female/male is around 60:40 on the side of

the female. But, as it can be seen from Table 1, the real challenge remains in the gender distribution of positions of deanship, vice deanship, and generally participation in the decision-making bodies and management functions of the law school. In this year's contest for election of a new dean, for the first time, the challenger of the current dean was a female professor, but she had lost, and the current (male) dean was reappointed. The only exception are the senatorial positions in the University Senate, where starting the mandate 2008-2012, as well as the current mandate 2012-2016, the two senatorial positions of the law school are held by female professors.

**Table 1: Gender distribution in positions of deans and vice deans (2000-2012)**

	2000-2004	2004-2008	2008-2012
Deans (m-male; f-female)	1 m	1m	1 m
Vice Deans	2/1f 50% female	3/1f 33.3% female	3/1f 33.3% female

**Table 2: Gender distribution among professors and assistant professors (2002-2012)**

Academic year	Professorial status (m-male; f-female)				
	Full-time professors	Associate professors	Assistant professors	Total number of professors/number of female professors	% of female professors
2002/2003	18m/5f	10m/7f	7m/1f	35/13f	37.1%
2003/2004	19m/6f	9m/4f	7m/1 f	35/11f	31,4%
2004/2005	20m/7f	13m/6f	15m/8f	48/21f	43,7%
2005/2006	22m/9f	13m/4f	13m/8f	48/21f	43,7%
2006/2007	25m/11f	12m/3f	11m/7f	48/21f	43.7%
2007/2008	25m/11f	12m/3f	12m/7f	49/21f	42.8%
2008/2009	27m/12f	12m/5f	10m/5f	49/22f	44,9%
2009/2010	27m/12f	13m/5f	10m/5f	50/22f	44%
2010/2011	27m/11f	12m/6f	11m/5f	50/22f	44%
2011/2012	27m/10f	12m/8f	13m/6f	52/24f	46,1%

**Table 3: Gender distribution among law students (2007-2012)**

Academic year	Total number of law students	Female law students	% of female law students
2007/2008	3877	2398	61.8%
2008/2009	3043	1919	63,1%
2009/2010	2388	1438	60,2
2010/2011	2373	1472	62,03
2011/2012	2157	1357	62,9

**Table 4: Gender distribution among law students graduated through the European Credit Transfer System (2008-2011)**

Academic year	Total number of law students	Female law students	% of female law students
2008	382	248	64,9%
2009	518	349	67,4%
2010	430	285	66,3%
2011	414	269	64,9%

## 2. Gender studies offered at higher educational institutions and gender mainstreamed curricula

In Macedonia, (undergraduate) gender studies are offered only at the Institute for Gender Studies of the Faculty of Philosophy, University St. Cyril and Methodius<sup>51</sup>, which started functioning i.e. enrolling students in the academic 2008/2009. From the academic 2012/2013, the first generation of master students will be accepted. The studies are interdisciplinary and involve teachers from the whole university (philosophy, history, law, political science, culture studies, sociology, etc.). However, apart from these studies, gender mainstreamed curricula is non-existent at the higher education as a whole, and the dogma of “gender-neutral science” and “gender neutral education” is still dominant. This also counts for the Faculty of Law “Justinianus Primus” which does not offer a course even in “Gender and Law”, although such course is taught by professors from the law school at the Institute for Gender Studies. Only in the framework of the course in philosophy of law, the feminist theories on law are included in the curriculum and in a separate chapter of the study textbook. Finally, within the newly introduced doctoral studies in political sciences offered by the Department for political sciences, which are still not operational, an optional course in “Feminist Theories of Politics” is included in the curriculum. However, it is worth to point out to a significant new trend on the level of master studies in the legal education. Namely, more and more students (and their mentors!) choose research thesis which have to do with gender realities and issues in all areas of law (criminal law, civil law, constitutional law, labour law etc.). This can partly be explained with the whole context of relatively recent adoption of new legal concepts (criminalization of family violence, introduction of sexual harassment in the labour laws, as two most pointed examples), and especially with the context of adoption of the key laws on gender equality that have been mentioned and extensively elaborated earlier in the report. It seems that the academic community gradually becomes aware about the need for gender mainstreaming, at least for now, only in the research area.

## V. Gender distribution in legal professions and addressing gender bias in judiciary training programmes

From what is presented in Table 1, 2 and 3 as gender distribution in the legal professions in the Republic of Macedonia, several general conclusions can be drawn.

Firstly, the overall impression is that, for the most part, both genders are well represented in the legal professions, despite there is no specific gender equality and/or gender opportunity clause in the laws regulating these professions, as was pointed out earlier.

Second, women are, in average, concentrated in the positions of judges, state attorneys and notaries, where they make 50% or above of the profession and somewhat less as executive agents. In recent years, more and more women are becoming attorneys at law and where now they make up to 37, 5%. That is, however, not the case with the Public Prosecutor’s office where women only make 19, 2% of the prosecutors, although they are much more represented among the deputies of the prose-

<sup>51</sup> Official web site of the studies at: [www.fzf.ukim.edu.mk](http://www.fzf.ukim.edu.mk).

cutor, as can be seen from Table 2. It seems that women tend to concentrate in legal professions with more predictable working hours, more secure (tenured) positions, and that are comparatively well paid (although not as much as potentially the attorney at law profession can be). The stark absence of women as holders of the function of public prosecutor most likely has to do with the traditional cultural perception that women are not “tough enough” for the prosecutorial work, although there is no research on that how men and women deal with it in the practice. In fact, there is no research at all on the topic of the gender dimension of the legal professions so far in Macedonia.

Third, when it comes to the courts, what is most remarkable is how many of the Macedonian courts are dominated by female judges, but now little they are represented in the positions of presidents of courts: there are only two female presidents of appellate courts and four female presidents of courts of first instance in the regular court system. Even as vice presidents they are under-represented: currently, there are only 8 women vice-presidents. There has never been a female president of the Supreme Court. In addition, the current situation with 45% of women judges in the highest judicial institution (Table 1) is a recent phenomenon, i.e. most women-supreme court judges have been elected after 2000. In the period 1945-2009, 85% of the Supreme Court’s composition had been male<sup>52</sup>. Overall, it is quite clear that more has to be done in order to create gender equal opportunities when it comes to the leading positions in the judiciary. Part of the problem is also that the body that elects the judge, which is the Judicial Council, is also starkly non-representative of the judiciary in terms of gender distribution: only 20% of the Council members are female, while in most courts female judges are well over 30%, in many cases even more than 50-60%. This does not affect that much the election of female judges, but it reinforces the lack of equal gender opportunities in the leading positions of the judiciary and it is very likely that it discourages applications for leading positions by female judges. Hopefully, the example of the newly established highest administrative court (Higher Administrative Court), which is preside by a female judge, will be followed more in the future.

When it comes to addressing gender bias in judiciary training program, so far there has not been a systematic approach by the Academy for Training of Judges and Prosecutors, apart from the one-time project for training on CEDAW and its Protocol (in 2008). The Academy has been also conducting promotional campaigns for the professions of judges and prosecutors among the young lawyers belonging to the smaller ethnic communities in Macedonia, especially targeting young female lawyers as underrepresented in both the judiciary and in prosecution.<sup>53</sup>

<sup>52</sup> Data taken from: Judge Arnaudovska, Aneta. Role of women judges and public prosecutors as a guarantors of human rights and freedoms in court processes, in Conference, „The role of women in the process of legal and economic reform in Macedonia, (proceedings), GTZ Macedonia, 2010, p. 35.

<sup>53</sup> Id. ctp. 50

**Table 1: Gender distribution in the Judicial Council, the system of regular courts (courts with general jurisdiction) of the Republic of Macedonia, in the Constitutional court and in the system of administrative courts**

Judicial Council of the Republic of Macedonia	President of the Council: Female	Deputy President: /	Total number of members: 15	Total number of female members: 3	Percentage of female members: 20%
Court	President of the court	Deputy of the president of the court	Total number of judges	Female judges	% of female judges
The Supreme Court	Male	Male	20	9	45%
Court of Appeals in Skopje	Female	/	48	34	70,8%
Court of First Instance (CFI) – Skopje 1	Male	Male	68	44	64,7%
CFI – Skopje 2	Male	/	82	69	84,1%
CFI– Veles	Male	/	21	12	57,1%
CFI – Gevgelija	Male	Female	14	9	64,3%
CFI– Kavadarci	Male	Male	16	10	62,5%
CFI – Kriva Palanka	Female	/	8	6	75%
CFI – Kratovo	Male	/	5	2	40%
CFI–Kumanovo	Male	Female	38	26	68,4%
CFI– Negotino	Male	Female	7	5	71,4%
Court of Appeals in Bitola	Female	Male	23	12	52,2%
CFI–Bitola	Male	Male	27	12	44,7%
CFI–Kruisevo	Male	/	4	2	50%
CFI–Ohrid	Male	Female	20	10	50%
CFI–Prilep	Male	Male	22	13	59,1%
CFI–Resen	Female	Female	5	4	80%
CFI – Struga	Male	Male	18	5	27,7%
Court of Appeals in Stip	Male	/	18	7	38,8%
CFI – Stip	Male	/	23	13	56,5%
CFI – Berovo	Female	Female	5	4	80%
CFI– Vinica	Male	/	4	1	25%
CFI – Delcevo	Male	/	4	0	0%
CFI – Kocani	Male	Male	13	6	46,1%
CFI–Radovis	Male	Male	12	5	41,6%
CFI – Sveti Nikole	Male	Female	4	1	25%
CFI – Strumica	Female	Male	24	17	70,8%
Court of Appeals in Gostivar	Male	Male	16	2	12,5%
CFI–Gostivar	Male	Male	23	9	39,1%
CFI –Tetovo	Male	Female	30	13	43,3%
CFI–Kicevo	Male	Male	14	5	35,7%
CFI –Debar	Male	/	6	1	16,6%
The Constitutional Court	Male	/	9	4	44,4%
Higher Administrative Court of the Republic of Macedonia	Female	/	11	10	90,9%
Administrative Court of the Republic of Macedonia	Male	Female	29	23	79,3%

**Table 2: Gender distribution in the Public Prosecutor’s Office**

Public Prosecutor’s Office	Prosecutor	Deputies of the Prosecutor	Total number of female prosecutors	% of female deputies prosecutors
Public Prosecutor of R M	Male	10	2	20%
Higher Prosecutor’s Office – Skopje	Male	14	7	50%
First Instance Prosecutor (FIP) –Skopje	Male	44	26	59,1%
FIP- Gevgelija	Female	3	3	100%
FIP-Gostivar	Male	7	3	42,8%
FIP –Debar	Male	1	0	0
FIP- Kavadarci	Male	4	2	50%
FIP – Kriva Palanka	Male	1	1	100%
FIP – Kumanovo	Male	11	4	36,4%
FIP-Tetovo	Female	7	2	28,6%
FIP- Veles	Female	8	6	75%
Higher Prosecutor’s Office- Bitola	Male	7	5	71,4%
FIP-Bitola	Male	7	3	42,8%
FIP-Kicevo	Female	3	1	33,3%
FIP-Ohrid	Male	6	2	33,3%
FIP-Prilep	Male	7	4	57, 1%
FIP-Resen	Male	1	0	0%
FIP-Struga	Male			
Higher Prosecutor’s Office –Stip	Male	4	2	50%
FIP-Stip	Male	5	3	60%
FIP-Delcevo	Male	1	0	0%
FIP-Kocani	Male	5	1	20%
FIP-Radovis	Female	/	/	/
FIP-Sveti Nikole	Male	1	1	100%
FIP –Strumica	Male	8	5	62,5%
FIP-Berovo	Male	1	0	0%
Total number of prosecutors/ female prosecutors	26/5 (19,2% female prosecutors)			

**Table 3: Gender Distribution among state attorneys, attorneys, executive agents and notaries**

Legal profession	Total number	Number of women	% of Women
State attorneys	35	19	54,3%
Attorneys at Law	1703	638	37,5%
Executive agents	90	41	45,5%
Notaries	171	97	56,7%

## **VI. National achievements, challenges and recommendations for gender equality**

### **1. National (legal) achievements in gender equality:**

- Overall, developing a solid legal framework on gender equality and gender opportunity, including by adopting a *lex specialis* on equal gender opportunities between women and men;
- The legal framework is in compliance with the key EU legal standards on gender equality;
- Introduction of new (legal) concepts, such as direct and indirect discrimination, positive measures for achieving gender equality, family violence, sexual harassment and harassment at the workplace, special petitions and judicial remedies on grounds of gender inequality and gender discrimination, gender sensitive budgeting and gender mainstreaming (especially important and needed in the fields of statistics, education and media);
- Inclusion of an explicit equal gender opportunities clause in certain laws (Law on the Police and Law on the Service in the Army of the Republic of Macedonia) in addition to the more general clauses of equality of citizens and non-discrimination;
- Introduction of gender quota of 30% in the Electoral code for the elections of members of parliament and members of the councils of units of local self-government and legal obligation for the political parties to enable the gender equality in their internal organization;
- Strengthening the legal obligations not only for the public sector, but also for the private sector in terms of advancement of gender equality and non-discrimination, especially by introductions of new obligations, new forms of oversight, control and sanctions for the implementation of the relevant legislature;
- Solid framework of national and local strategies, programs and action plans targeted at achieving gender equality;
- Solid network of institutional mechanisms for political and legal protection of the gender equality and opportunities, follow-up of the implementation of the legislature and the policy documents and sanction mechanisms for failing to do so;
- Initiation of a national debate and awareness on the issues and the problems in connection to the gender equality and equal gender opportunities.

### **2. National (implementation) challenges in achieving gender equality and equal gender opportunities:**

- Unsatisfactory level of compliance with the legal obligations to establish the institutional mechanisms for gender issues (especially with respect to the commission and the coordinators on equal gender opportunities on the level of local self-government and in certain bodies of state administration and other subjects with public authority);
- Lack of activities and of systematic and continuous approach of the concerned subjects on the issues of gender equality as provided by the law and the policy instruments, including on the level of the Assembly and the Government, as well as the judiciary. Most of the presented activities are occasional and random;
- Non-compliance with the report system towards the Ministry of Labor and Social Policy as stipulated by the law;
- Poor statistics on the gender issues and problems, even on the gender distribution, including in the state institutions on national level (for example, the statistics that are presented in the tables in this report had to be processed, extracted and analysed for a first time; the

law school nor the judiciary or any of the associations of the analysed legal professions keep statistical records of the gender distribution!!!);

- Despite it is free of any administrative fee and charges, and stipulated as urgent procedures, the (petition) mechanisms for political and legal/judicial protection of gender equality and equal gender opportunities, as well as against gender discrimination have hardly been used, if not at all, not even before the Ombudsman or the newly established Legal Representative in the Ministry of Labor and Social Policy and Commission for Prevention of Discrimination. There is no record of criminal or civil lawsuits for gender discrimination. There is a dire need for informing and educating the citizens of their rights based on gender and about the protection mechanisms;
- Under-representation of women in leading and decision-making positions in the legal education and in the legal professions, especially in the courts and the prosecutor's office;
- There is no gender mainstreaming in the legal education at the law schools, and in the training of judges and prosecutors.

### **3. Recommendations for achieving gender equality (in the legal environment):**

- On the model of the Law on Police, introduce an explicit gender equal opportunity clause along with the quota of adequate and equitable representation of the ethnic communities in each of the relevant and mentioned laws in this report (in fact, in each law where the latter clause is mentioned). This especially is urgent with respect to the laws regulating the Judicial Council, the Law on Courts and the Law on the Public Prosecutor's Office. As the clause on adequate and equitable ethnic representation shows to be very effective as a reminder of the ethnic distribution and representation in certain organs and functions of the state, we believe it will have similar, if not the same effect, when it comes to more equitable gender representation and opportunity;
- In the Law on Equal Opportunities for Women and Men, return the precise and descriptive standard of what is considered equitable gender representation (in the version of the law of 2006 it was 40%, but it is acceptable to be "at least" 30% , as it is in the Electoral Code);
- Introduction of a quota of 30% for the less represented gender in the composition of the Government of the Republic of Macedonia, as it is effectively for the Assembly of the Republic of Macedonia through the provisions of the Electoral Code - it is inconsistent to have a gender quota for the parliament that elects and politically controls the government, and not to have a gender quota for the government;
- Opening of a serious debate on the gender correctness and gender sensitivity of the legal language used in the laws and in the other legal documents. In most cases the male form (nouns, pronouns) dominates;
- There should be more political pressure and effective sanctioning as provided by the law to all institutions and other legal subjects that fail to collect process and provide gender-based statistics. This is a serious and urgent problem in Macedonia. With no statistics, there can be no clear picture of the real situation, no adequately targeted policies, and most importantly, a lot of room for prejudices and misconceptions;
- Further development of the concept of gender sensitive budgeting, including with all the necessary changes and interventions in the legal framework. Without the gender sensitive budgeting, all the legal reforms and policy instruments will reduce to paper tigers;

- The Ministry of Labor and Social Policy should develop special registry/record of the special measures provided in the Law on Equal Opportunities between Women and Men as an implementation tool, and on whose basis, would periodically issue recommendations and pressure the institutions and other subjects to introduce such measures if necessary to achieve equal gender opportunities;
- EU Commission Progress Reports on Macedonia's candidate status should be more focused on the gender issues that it has been the case so far on the (in its evaluation and recommendations) with special priority when it comes to eliminating gender bias in elementary and secondary schools teaching curriculums, gender distribution in the three branches of (political) power, and education of the judiciary on the gender bias. In addition, EU should also focus more on supporting projects of public and media information and education campaigns on the gender equality. In sum, as part of the Progress reports, EU Commission should monitor more closely the implementation of the Law on the Equal Opportunities for Women and Men;
- Develop curriculums in "Gender and law" for the law schools and for the Academy for training of judges and prosecutors that would include teaching on the legal concepts, the positive EU law and cases of court interpretations on both EU level and national level. This should be included as a top priority in the existent EU programmes on the Macedonia's reforms in the area of home and justice affairs;
- EU and governmental financial stimulus for conducting more research projects and publishing literature on the issues of gender equality in Macedonia (research on the empirical situation, the positive law, the jurisprudence of the courts, etc.). For the most part, so far, the focus has been mostly on ethnic issues, it is time to balance it with the gender issues.

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## COUNTRY REPORT ON LEGAL PERSPECTIVES OF GENDER EQUALITY IN MONTENEGRO

*Prof. Dr. Vesna SIMOVIĆ*

### I. National legal framework and compliance with EU Gender Equality Law

The Constitution of Montenegro (adopted on 22 October 2007), as the most important legal act, namely as the act with the highest legal force, guarantees equal respect for human rights and freedoms for all citizens of Montenegro. Although it is not written in gender-sensitive language, it can be said that the Constitution legally proclaims the equality of men and women. Thus, it is expressed in the Preamble of the Constitution, among other things, the commitment of the citizens of Montenegro to live in a country where fundamental values are: freedom, peace, tolerance, respect for human rights and freedoms, democracy and the rule of law. Although this formulation is quite broad, it could be interpreted that it includes also gender equality, since it arises from other provisions of the Constitution, which inter alia provides obligation of the state to guarantee equality of women and men and develop equal opportunities policy. In this way the base is provided that other principles contained in the Constitution, as well as their implementation, must be considered in the context of gender equality. Furthermore, the Constitution stipulates the prohibition of inciting hatred or intolerance of any kind (Article 7), and in particular the prohibition of direct and indirect discrimination on any ground (Article 8). In connection with the prohibition of discrimination, it is important to note that the Constitution provides that measures aimed at achieving gender equality are not considered as discrimination (Article 8). In addition, the Constitution provides special protection to women – regarding the role of mother.

Of particular importance is the provision contained in Article 9 of the Constitution, according to which ratified and published international treaties and generally accepted rules of international law are an integral part of the internal legal order, have primacy over national legislation and are directly applicable in situations where they regulate the relations otherwise regarding the internal legislation. In this way the option of referring to international law sources is given which provides higher level of protection in relation to the internal regulations, which ultimately includes the obligation of courts to be informed, in proceedings in which they make decisions on infringement, about international legal regulations in the respective area, as well as to apply norms of international legal acts in all cases where they provide greater protection than the one prescribed by national legislation.

The basic principles enshrined in the Constitution of Montenegro are developed by series of laws governing the exercise of the right to work, right to education, family relations, health and social care and others.

#### 1. Prohibition of discrimination based on sex

A constitutional principle on prohibition of direct and indirect discrimination is elaborated by the Anti-Discrimination Law, Law on Gender Equality and Labour Law.

The Anti-Discrimination Law contains a general definition of discrimination, with explanation what direct and indirect discrimination mean. In addition, special forms of discrimination are regulated, such as mobbing, segregation, discrimination based on health status, political discrimination, discrimination in the provision of public services, discrimination based on age, discrimination in labor - especially in terms of exercising the right to salaries, discrimination based on religion or

belief, discrimination against persons with disabilities, discrimination based on gender identity and sexual orientation. It is important to note that as discrimination is not considered a distinction, exclusion or giving preference due to peculiarities of a particular job where personal characteristics of persons are the real and decisive conditions of executing the work, if the purpose, which is to be achieved, is justified, as well as taking protection measures to individual criteria of persons.<sup>1</sup>

With the Law on Gender Equality of Montenegro it is, for the first time in our legal system, regulated the issue of prohibition of discrimination based on the gender. In that sense, discrimination based on gender considers sexual harassment, inciting other persons to discrimination, as well as usage of words in the masculine gender as generically neutral form for masculine and feminine gender. The measures for elimination of gender discrimination and creation of equal opportunities for women and men in all spheres of social life are regulated, too. One such measure is the obligation of the authorities, both at state and local levels, and all other entities that exercise public authorities, for achieving gender equality in all phases of planning, making and implementing decisions, as well as undertaking activities within their authorities, to assess and evaluate the impact of those decisions and actions on the status of women and men. This obligation implies that, during the preparation and adoption of regulations, plans and individual decisions on the rights and obligations of certain entities, must be taken into account how the specific provisions of laws and regulations, including the general rules of the local government, can affect the application to the men and women - if any standard in a regulation to be adopted, whether it provides an obligation, restriction or prohibition, may have elements of discrimination based on gender and the like. In addition, the obligation of state authorities and other government bodies to use gender-sensitive language in their documents is predicted, namely to use gender-neutral forms and words in the masculine gender when referring to men and in the feminine gender when referring to women.

The Law on Gender Equality, consequently to constitutional arrangements, provides that measures adopted or taken in order to eliminate and prevent unequal treatment of women and men, i.e. to eliminate the effects of unequal treatment of women and men and to promote gender equality will not be considered as discrimination.

This law also includes solutions which order to state authorities, local governments, political parties, NGOs and the media in certain circumstances, behaviors that should contribute to gender equality. These behaviors include the following obligations for the:

- Parliament of Montenegro and the Government of Montenegro to apply the principles of gender equality, especially the principle of equal gender representation in the selection and appointment of certain functions, establishment of the working bodies and determination of the official delegations;
- Municipalities, Capital City and Old Royal Capital to promote and realize gender equality, namely undertake measures and activities relevant to achieving gender equality;
- Political parties to determine with their acts the methods and measures to ensure equal gender representation of women and men in their authorities, in the candidate lists for the election of members of Parliament and aldermen in the elected political clubs of members of Parliament and aldermen and for the election to public functions at all levels;
- media to promote gender equality through the program concept and
- authorities, companies and other legal entities and entrepreneurs, who collect, record and process statistical data and information, to present those data and information according to gender.

<sup>1</sup> Anti-discrimination Law, Official Gazette of Montenegro, No. 39/2011.

Sanctions foreseen in the case of violation of regulated prohibitions or orders should contribute to the efficient implementation of decisions contained in the Law on Gender Equality. In addition, prediction of duties of collecting, recording, processing and presentation of statistical data and information according to gender is one of the measures that will help in creating policies which aim to create equal opportunities for exercising of constitutionally guaranteed rights for both genders.

Some of the important instruments for the prevention of discrimination based on gender are provided by the Law on Protection against Domestic Violence. Under this law, domestic violence is defined as any act or omission of a family member endangering the physical, mental, sexual or economic integrity, mental health and tranquility of another family member, regardless of place where it was committed. Family members, under this law are: spouses or former spouses, their children and the children of each of them, common-law spouses or former common-law spouses, regardless of the duration of the common-law, their children and the children of each of them, relatives to the blood lineage and relatives of the full adoption in a direct line without limitation, and in the lateral line to the fourth degree, relatives of the partial adoption, in-law relatives to the second degree in or out of marriage, persons living in a same household, regardless of relationship, persons who have common child or the child is conceived.<sup>2</sup>

Endangering the physical, mental, sexual or economic integrity, mental health and tranquility of another family member is considered especially if a family member: use physical force, regardless of the results in physical injury of another family member, threatens with an attack or causes a danger that can result in a sense of personal uncertainty or psychological pain of another family member, verbally attacks, swears, calls with names and otherwise offends another family member, restricts another family member the freedom of communication with third parties, exhausts with work, derives sleep and other types of brake, threatens with eviction from the apartment and with withdrawal of children, sexually harasses another family member, stalks or otherwise cruelly disturbs other family member, damages or destroys the common property or property of another family member, or tries to do so, forbids the basic means of existence to another family member and withinsolent behavior endangers family peace of a family member with whom does not live in the community.

In addition, this law provides that it is considered that there is a threat to the physical, mental, sexual or economic integrity, mental health and tranquility of another family member even if the family member does not take enough care about: nutrition, hygiene, clothing, medical care or school attendance or does not forbid the child's harmful association, wander, begging or stealing, or otherwise largely ignores the child's upbringing and education, nutrition, hygiene, clothing or medical care of another family member for whom it is his or her obligation to take care, and who needs special assistance due to illness, disability, age or other personal characteristics for which a person is not capable of taking care personally. In this way various forms of physical injury, sexual and psychological harm to members of the family are included. In particular, it relates to the protection of women, given that the victims of domestic violence are mostly women. That is why the majority of international documents, binding the states to provide protection against domestic violence, mainly relate to violence against women, so called gender-based violence. Violence against women is a form of discrimination based on gender, so that the Law on Protection Against Domestic Violence carries the gender dimension and presents an instrument for protection from discrimination based on gender.

The law provides the obligation for public disclosure of domestic violence, as for the responsible person in a state agency, another authority or service, medical, educational and other

<sup>2</sup> Articles 2 and 3 of the Law on Protection against Domestic Violence.

institution, and for health and social worker, teacher, educator and other person, when he/she finds out about executed violence during the performance of his duty or tasks. The law also prescribes the obligation of the Police, misdemeanor authorities, state prosecutors, centers for social work or other social and child protection institutes, health facilities, as well as other agencies and institutions dealing with protection, to provide complete and coordinated protection of victims of domestic violence. In this respect, the law regulates many aspects of protection of victims of violence, of which the most important are protective measures as kind of misdemeanor sanctions and social protection implemented in accordance with the Law on Social and Child Protection.

Protective measures are imposed to prevent and combat domestic violence, eliminate the consequences of committed violence and take effective measures for correctional education of a perpetrator of the violence and elimination of conditions that serve or encourage the execution of new violence. The law provides the following protection measures that may be imposed on a perpetrator of violence:

1) Removal from the apartment or other living space - this measure can be imposed on a perpetrator of violence who lives with the victim in an apartment or other living space, regardless of the ownership or tenancy. The perpetrator of violence, who was imposed to leave the apartment, is obliged to immediately vacate the apartment or other living space;

2) Restraining - by imposing this protective measure the authority for misdemeanors is obliged to designate, in the decision for restraining, a place or area in which a perpetrator of violence may not approach the victim;

3) The prohibition of harassment and stalking of victim is imposed for a period which shall not be less than thirty days or more than one year;

4) Mandatory treatment of addiction - this measure can be imposed on a perpetrator of violence who commits violence under the decisive influence of alcohol, narcotics or psychotropic substances; and

5) Mandatory psychosocial treatment - this measure can be imposed on a perpetrator of violence to eliminate violent behavior and re-education, and it is enforced in accordance with the law governing the treatment, care and rehabilitation of alcoholics and drug addicts and people with other behavioral disorders.

This law also regulates the procedure for the determination of protective measures. Protective measure may be imposed with a penalty or as an independent sanction. The authority for misdemeanor may impose on a perpetrator of violence one or more protective measures when there are conditions for imposing them by this law. The authority for misdemeanors may decide to extend the duration of the protective measures if there are still reasons why they are imposed, but not longer than two years. Request for determination of protective measures can be submitted by a victim of domestic violence or its representative, the social worker, police and state prosecutor. Also, the authority for misdemeanors can impose a protection measure *ex officio*. A police officer may, in order to eliminate threats to the physical integrity of the victim, order the perpetrator of violence a removal or prohibition of returning to the apartment or other living space, which may not last longer than three days. When leaving the apartment or other living space the perpetrator of violence has the right to take his personal things necessary for everyday life and is obliged to hand over the keys of an apartment or other living space to a police officer. The authority for misdemeanors decides within three days whether to impose a protective measure. The deadline is estimated from the day when the police officer ordered the removal of the perpetrator of violence or prohibition on returning to the apartment or other living space.

This law provided the imposition of so-called temporary protective measure. This measure may be imposed by an authority for misdemeanors prior to initiation and during the procedure, and within 48 hours from the day of receipt of the request. The provisional protection measure may last until the vanishing of reasons for its imposing, but no later than completion of the procedure. It is important to note that prior to completion of the procedure an authority for misdemeanors can replace this measure with another protective measure.

A complaint against the decision on the determination of protective measure may be appealed within three days of receipt of the decision on determination of protective measure. The appellate body shall decide on a complaint within three days of receipt of the same. It is anticipated that a complaint shall not postpone the execution of the decision on determination of protective measure. In order to ensure that the perpetrator of violence act in accordance with the imposed protective measure, an obligation is provided for every person to find out, within the scope of his/her work, if the perpetrator of violence does not comply with a protective measure and inform the competent institution to start with the proceedings.

For the execution of the imposed protective measures, a decision on imposed protective measure for removal from apartment or other living space, a protective measure for restraining and protective measure “prohibition for harassment and stalking” is delivered to the police, and a decision on imposed protective measure for mandatory treatment from addiction and the protective measure for required psychosocial treatment shall be submitted to the competent authority for execution of these measures in accordance with the law governing the treatment, care and rehabilitation of alcoholics and drug addicts and people with other behavioral disorders.

The law on Protection Against Domestic Violence provides that the Centers for social work are obliged to keep records of imposed protection measures. If some questions regarding the determination of protective measures are not regulated by this law, the provisions of the Law on Minor Offences, Criminal Code, Criminal Procedure Code and Law on Execution of Criminal Sanctions will be applied.

The measures of affirmative action aimed at encouraging women’s participation in political life are envisaged by amendments to the Law on Election of Councilors and Members of the Parliament (Article 39a), which provides that, in order to achieve gender equality principles, all political parties commit themselves to have at least 30% of the less represented gender in their electoral lists. This provision has already shown the first results on the lists for local elections in Herceg Novi and Tivat, where women make at least 30%.

The Labour Law contains provisions guaranteeing equality in terms of exercising the right to work, as the basic social right. Explicit prohibition of discrimination at work was first envisaged by the Labour Law in 2008, in a manner that it was prohibited direct and indirect discrimination against persons seeking employment or employees, with regard to gender, birth, language, race, faith, skin color, age, pregnancy, medical condition or disability, nationality, marital status, family responsibilities, sexual orientation, political or other belief, social origin, property, membership in political and trade unions or other personal characteristic. The prohibition of discrimination applies to persons seeking employment, and employees and concerns: conditions of employment and selection of candidates for certain job; working conditions and all rights in employment; education, training and professional development; promotion at work and termination of working contract. The legal consequences of these prohibitions are that the law stipulates that provisions of working contracts, which establish discrimination on any grounds and on the basis of gender are invalid.

The Labour Law of Montenegro envisages two situations in which it is allowed to make a difference based on gender in the employment, as follows:

- 1) when the nature of the work is such or the work is performed under such conditions that the characteristics associated with some of the anticipated bases (including gender as a basis) are real and decisive condition of executing work and that the purpose, aiming to be achieved by that, justified;
- 2) provisions of the law, collective agreements and working contracts relating to special protection and assistance to certain categories of employees, especially those on the protection of persons with disabilities, women during the pregnancy and maternity leave and the leave for child care, or special child care, as well as provisions relating to the special rights of parents, adoptive parents, guardians and foster parents, are not considered as discrimination.

Regarding the first case we can say that our law does not follow the comparative experiences and practices of the European Court of Justice in this area, because it does not specify what are the jobs that would allow making distinctions based on the gender (e.g. female character in a play, film, opera, ballet, etc). Thus, for example the European Court of Justice has, in the case of Sabine von Colson and Elizabeth Kamann v. Land Nordrhein Westfalen (C-14/83, rec 1891), determined that the exclusion of employment opportunities for women in jobs of social workers in institutions for the enforcement of criminal sanctions in which only men serve their sentence was unjustified.<sup>3</sup>

In another case, it was given the basis for taking measures of “affirmative action”, which as such presents allowed manner of discrimination and implies distinction, exclusion or preference which aims mitigation of consequences of gender discrimination against women and increase of their employment rates. Taking measures of affirmative action is particularly characteristic for the jobs in which women are less represented than men. However, in the comparative practice and according to our legislation, positive discrimination of women is only permitted as a temporary measure, until ensuring the full realization of the equality of opportunities and treatments in relation to men and women<sup>4</sup>.

In addition to discrimination, the Labor Law prohibits other undesirable behaviors in the workplace that may be based on gender. In that way, harassment, as well as harassment via audio and video surveillance, which has the purpose or presents the violation of the dignity of persons seeking employment and employees, and which causes fear or creates a hostile, humiliating or offensive environment, were prohibited.

The Labour Law specifically prohibits harassment based on the gender - sexual harassment. In the terms of the law, sexual harassment is any unwanted verbal, nonverbal or physical behavior which has the purpose or presents the violation of the dignity of persons seeking employment, and employees, in the sphere of sexual life, and which causes fear or creates a hostile, humiliating, embarrassing, aggressive or offensive environment. It should be noted that our Labour Law, in the spirit of European standards, treats the problem of sexual harassment in terms of gender (in) equality and discrimination, as these provisions are transferred from the Directive 2002/73/EC which amended Directive 76/207/EEC on the implementation of the principles of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

The amendments to the Labour Law introduced another form of protection in the workplace, and that is the protection against psychological harassment (mobbing). Mobbing is defined as a specific form of behavior in the workplace in which one or more persons systematically and psychologically abuse and humiliate another person, endangering his reputation, human dignity and integrity, with a goal of his eliminating from the workplace. However, the Labor Law does not address closely to regulating the protection from mobbing, but gives its own definition and includes

<sup>3</sup> Lubarda, Branko, *European Labor Law*, CID, Podgorica, 2004, p. 235.

<sup>4</sup> Such solution derives from the Constitution of Montenegro, which in the Article 8, paragraph 3 provides that special measures may be applied only until the achievement of the aims for which they were undertaken.

the informative norm that the issues related to mobbing, measures for its prevention, care proceedings and other issues of importance for the prevention and protection from abuse at work and in relation to work, will be more closely regulated by a special law<sup>5</sup>.

## 2. Special protection of employed women

The basis for the special protection of employed women is included in the Constitution of Montenegro (Article 64, paragraph 3), and it is elaborating further through the legislation governing the labour rights and rights based on labour. Special protection of women at work means protection with regard to execution of works which, either because of their heaviness or the time interval in which they are performed, may negatively affect the physical characteristics of woman or the development of pregnancy, if it is a protective provision which includes the protection of maternity. The justification of such protection comes from two reasons: the physical characteristics of women and pregnancy, namely from maternity role.

Special protection of women at work involves legal provisions relating to:

- 1) adjusting of the working conditions to the physical characteristics of woman;
- 2) reconciliation of professional and family obligations;

### 2.1 Protection of women regarding the physical characteristics

Women, along with young people (employees aged 15 to 18 years) and persons with disabilities, enjoy special protection at work. This protection relates to the night work, as well as to performing of heavy and strenuous jobs and underground works. Thus, the Labor Law in Article 104 provides that the female employee and an employee under the age of 18 cannot work at the workplace where hard physical works prevail, works under ground or under water, or in jobs that could harmfully and with an increased risk influence to their health and life.

Prohibition of night work for women does not have an absolute character, but only applies to night work in industry and construction. In addition, the prohibition of night work does not apply to women working in managerial positions or, in the field of industry and construction, carrying out jobs in health, social and other protection.

The law provides another exception to the prohibition of night work for women in industry and construction. That is a situation where it is necessary to continue the work interrupted by natural disasters or to prevent damage to raw materials or other materials (Article 105, Labor Law). Such decisions prohibiting night work for women in industry and construction are the results of the ILO Convention No. 89 – about the night work for women in industry and construction. However, it should be noted that in the documents of the European Union concerning this issue there is another tendency. Namely, the relevant EU directives provide special protection to women only in relation to pregnancy and motherhood, but not the protection of night work in industry and construction. We can say that these tendencies in the European (communitarian) right<sup>6</sup> in the spirit of the principle of equal opportunities and treatments, which are the bases of European standards of labor.

The amendments to the Labor Law provide another novelty regarding the equalization of the position of men and women in terms of exercising the right to salaries in a manner which provides that the employed man and woman are guaranteed equal salaries for the same work or work of equal value realized at the employer. In that sense, the work of equal value means the work which requires the same level of professional education, i.e. qualification of education level or professional

<sup>5</sup> Law on Prohibition of Abuse at Work is in parliamentary procedure.

<sup>6</sup> More to see: Lubarda, Branko, European Labor Law, CID, Podgorica, 2004.

qualification, responsibility, skills, conditions and work results. Therefore, the employer's decision or agreement with the employee, which is contrary to the above principle, is worthless and has no legal effect. The justification of this solution is confirmed by statistical data. In fact, employed women in Montenegro earn less than men, which is confirmed with data from the Statistical Office-Monstat<sup>7</sup> according to which their average wages in almost all fields in 2010 were less for about 23% in relation to men. Women have higher salaries in the departments of agriculture, hunting and forestry, mining and quarrying, traffic, as well as in the real estate and rental business.

## **2.2 Protection of women with regard to the duties of motherhood**

Special protection of woman with regard to the duties of motherhood derives from the need to reconcile professional and family obligations and it includes: the protection in the employment procedure; protection in duration of employment; and protection in respect of termination of employment.

### *2.2.1 Protection of women in the recruitment process*

The main reason for discrimination against women in the recruitment process is the intent of the employer to avoid possible costs due to pregnancy (in the case of pregnancy maintenance), difficulties in finding temporary replacements for the absence of an employee due to pregnancy and childbirth, as well as the obligation to provide an additional group of rights that are foreseen for a woman in the case of pregnancy and the special care of the child.

The Labour Law provides special protection to woman in the recruitment process, in the way that it stipulates that the employer may not require information about family, marital status and family planning from the person who is a candidate for the job, as well as submitting of documents or other evidences which are not of direct importance to the work execution for which she will be employed or conclude an employment contract. These issues fall within the privacy of candidates in the recruitment process, so the employer may not require the candidate to declare them before or after employment. However, an employee may bring up data on marital and family status if having an interest for the team during the employment (e.g. to achieve a right after the employment, such as the right of flat award). In addition, an employer may not condition the recruitment process, i.e. concluding of the contract of employment with a proof of pregnancy (Article 18 of the Labour Law), nor may refuse to conclude an employment contract with a pregnant woman. The exception to this rule is provided in case of jobs where there is a substantial risk to the health of the women and the child, which is determined by a competent medical authority. However, this solution in our law is not acceptable in terms of protecting women from discrimination, especially if the employment of indefinite duration is an issue. This is because in these cases the harm of the working conditions to women's and children's health would be limited in time – during the pregnancy, while, by the expiration of that period, a woman could freely continue her work in that job.

### *2.2.2 Protection of women during the employment*

The Labor Law in the Article 11 provides that the female employee is entitled to special protection during pregnancy and childbirth. This protection includes a separate group of laws: during the pregnancy, the right to maternity leave, leave for the child care, the prohibition of night work and overtime, prohibition of deployment to a different workplace, as well as the prohibition of dismissal from the work.

Employed women enjoy additional protection at work during pregnancy, to exercise their rights to maternity or parental leave. This protection applies to the possibility of a temporary assign-

<sup>7</sup> See the web site: [www.monstat.org](http://www.monstat.org).

ment to other jobs, if it is in the interest of protecting her health or the health of her child, with the right to the salary at the same rate as before the deployment. If the employer is unable to provide her such a deployment, a woman is entitled to a paid leave, where the remuneration can not be less than the salary the employee would receive in her workplace. Thus, the remuneration for the time of pregnancy maintenance is provided in the amount of 100% of the remuneration base. This remuneration is payable from the first day from the Fund resources allocated for compulsory health insurance. Also, overtime or night work can not be determined to the woman during pregnancy.

The amendments to the Labour Law provide significant innovations in the area of maternity leave. Specifically, the Labour Law deals with the protection of employees who take care of children. In that way, according to the principle of reconciliation of professional and family obligations, protection of the rights of both parents are ensured, and beside the institute of the maternity leave, the parental leave is also an issue. Maternity leave, as in previous solutions, is realized by an employed mother - 45 days before delivery, or mandatory 28 days before delivery. Thus, maternity leave lasts till the day of delivery, after which a parental leave is achieved. We can conclude that this solution is more acceptable in terms of language, and also in terms of protecting the interests of both parents.

Parental leave can be used for a period of 365 days from the date of child's birth, and this right can be used equally by both parents<sup>8</sup>. We can say that this is a significant improvement over the previous solutions according which this right could be used by father only in the case when the mother leaves the child, dies or is for other justified reasons prevented from using that right (serving a sentence of imprisonment, serious illness etc.). However, the Labour Law, unlike some comparable solutions, does not provide in this section an "exclusive right" to a parental leave for woman in the first 45 days after delivery, what would be logical, considering that this is the period essential for woman to rehabilitate after delivery. Instead, the law says that the parent can begin its work before the expiration of parental leave, but not earlier than 45 days after delivery. This solution is acceptable if the parental leave is used by the mother, but not if the father of a child has already used this right. In any case, in the case of the termination of the use of parental leave, the parent has no right to continue the use of parental leave, but the other parent can continue using the remaining part of parental leave. (For example: if the mother used five months of parental leave, the father of the child can continue using the remaining seven months.)

The amendments to the Labour Law provide better solutions in comparison to the previous decisions when it comes to protecting the rights of woman, in the event that she has ended the use of parental leave. Namely, if the mother of a child stops using the parental leave, she has the right, besides the daily rest, in agreement with the employer, to use another 90 minutes (it was 60 minutes until now) of the absence from work because of breast-feeding of the child. So, the employer cannot deny this right to her, and time of the absence from work can be determined in agreement with the employer.

The Labour Law provides also the right to leave in the case of adoption of the child. This right shall be exercised for a period of one year continuously from the day of adoption of a child and can be exercised by one of the adoptive parents of a child younger than eight years, based on a written notice that the employee is required to submit to the employer one month before using this right.

In the event of interruption of the use or expiration of maternity or parental leave and leave for adoption of a child, the employer is obliged to provide the return of the employee to the same or equivalent workplace, with at least the same salary. In addition, an employee who used the right to

<sup>8</sup> Of course, this right is exercised only by parents who are employed.

parental leave or leave for adoption of a child is entitled to additional professional training, if there is a technological, economic or other change in the way of execution of works at the employer.

A woman is entitled to be absent in the case of a stillborn child, or if the child dies before the expiration of parental leave. In this case she is entitled to an extension of maternity (parental) leave for as long as she is estimated by a specialized physician to be needed to recover from childbirth and mental state caused by the loss of a child, a minimum of 45 days, during which time she is entitled to all rights from maternity leave. However, the Labor Law does not provide the same opportunity if the father has already used the parental leave, although it is not in the spirit of the previous norms of equalization of rights of both parents. On the other hand, it is provided that father is entitled to be absent from work in the case of a child birth. This solution represents an improvement over the previous solutions, where this right was provided only in case of wife's delivery. However, since the legitimate and illegitimate children have equal rights, the Labour Law has equated the right of father to be absent from work in the case of the birth of a child - whether it is born in or out of legal marriage.

During parental leave and leave for adoption of a child, the employee is entitled to remuneration in the amount of the salary that would achieve in compliance with the law and collective agreement. In addition, the Law on Social and Child Protection stipulates that the right to remuneration for the full amount is realized by the parent or adoptive parent who was, before exercising this right, employed for at least six months continuously, and if he was employed less he will exercise the right of 70 % of the amount of remuneration. The employee exercises the right to remuneration at the employer, who executes estimation and payment at least once a month. This right is exercised also by a person engaged in entrepreneurial activity, if that is a person who is engaged in entrepreneurial activity as the only employee. In addition, a person engaged in entrepreneurial activity the right to remuneration exercises at the Center for Social Work, and the base for payment is determined by the amount of the base on which taxes and contributions are paid.

One of the rights that are exercised in connection with the birth of a child is the equipment for a newborn child. This right belongs to the group of rights from the child protection and it is exercised by the parents for every newborn child. In accordance with the Law on Social and Child Protection, monetary remuneration on this basis is 100 Euros and parents can exercise it by submitting the application before the child complete one year.

According to the current Labour Law, a woman exercises the right to protection under motherhood and after maternity or parental leave, and in some cases a special care is exercised by the father of a child. In this regard, three situations should be distinguished as follows:

- protection of a single parent;
- protection of the parent of a child under the age of three;
- protection of parents who have a child with disabilities.

The Labor Law in the Article 11, paragraph 3 provides that an employee is entitled to a special protection for child care in accordance with this law. From this formulation stems that the right to special protection in this case both mother and father have. This provision is discussed in detail within the law, making a distinction between regular child care and care for a child with disabilities.

In the first case, a distinction is made between the safety at work that is designated for single-parent and situation when a child has both parents. Protection of employment status is designed for a single parent that has a child under the age of seven and it is reflected in the form of prohibitions, including:

- prohibition of deployment to work in another place outside the place of residence or temporary residence;
- prohibition of overtime and night work (unless there is consent from the employee, given in writing);
- prohibition of termination of an employment contract by the employer (unless one is hired on fixed-term), and the declaration to the persons who have been made redundant because of technological, economic and restructuring changes (Article 108, paragraph 2).

In addition, the law provides an additional group of rights for one parent who has children under the age of three. It includes the following:

- the right of absence from work until the child completes three years. In this case it is an unpaid leave, as one parent has the right to health and pension - disability insurance, while other rights and obligations shall be suspended;
- one of the employed parents has the right to work half time until the child completes three years, if the child needs additional care.

A woman who has a child under the age of five can not be assigned to work in another place outside the place of residence or temporary residence. This situation should be distinguished from the protection of a woman as single mother (having in mind that the law provides the prohibition of the deployment in a different location of single parent of a child under age of seven). Additionally, it is prohibited the overtime and night work for woman who have a child under age of three. Nevertheless, the law makes an exception in respect to night work - in a way which allows night work for a woman who has a child older than two years, but only on the basis of her written statement.

A parent that has a child with severe disabilities can work longer hours than full time, or at night, only upon written consent. In addition, prohibition of deployment to the other location outside permanent or temporary residence is foreseen.

Special protection of parents in this case is foreseen through the right of part-time work. The essence of this protection is the fact that parents, who have a child with disabilities and, accordingly exercise the right to work part-time, exercise all rights arising from employment and based on the full extent work.

Protection of women with regard to the duties of motherhood implies the prohibition of employment contract termination for a woman during the pregnancy and maternity leave. The same prohibition exists in regard to the declaration of "redundant" or persons whose work is no longer required due to economic, technological and restructuring changes. The Labour Law foresees this kind of protection for both parents, and therefore for the father who uses paternity leave. Of course, this prohibition is foreseen only for parents who are employed for an indefinite period of time, given that employment for a definite period terminates upon the day of assigned employment contract. However, the Labour Law in this case provides two exceptions, such as:

- with trainees, having in mind that internship is prolonged in the case of absence from work due to: temporary inability to work according to regulations on health care and health insurance and maternity leave;
- an employed woman having the employment contract for a definite period terminates in the period of using rights to maternity leave, deadline for which she made, by the employment contract, an employment for a definite period, is extended until the end of use of the right to maternity leave.

### 3. Protection against discrimination

The Anti-discrimination Law governs also the procedure of protection of persons exposed to discrimination. Protection can be achieved in the court proceedings, by labour inspections and with the Protector of Human Rights and Freedoms. In addition, if it is about discrimination against the exercise of the right to work, according to a specific law, the protection can be achieved before the Agency for the Peaceful Settlement of Labor Disputes. It is important to note that in proceedings for the protection from discrimination, beside the provisions of the Anti-discrimination Law, other provisions of laws are applicable governing the protection and prohibition of discrimination on various grounds or in connection with the exercise of certain rights, unless it is contrary to the Anti-discrimination Law. Besides that, the Law on Gender Equality stipulates that the protection of rights in case of discrimination can be provided by submitting complaint to the Ministry for Human and Minority Rights, which indicates the existence of discrimination (for example, that some provision, criterion or practice leads a woman at a disadvantage in comparison to the man in the same or similar circumstances). After that, the Ministry has an obligation to upon the arrival of the complaint, notify the state agency or local government authority, employer, political party or other legal or natural person to whom the complaint is addressed, about its contents and proceedings, as well as to request them to give statement about the complaint within a specified time. If they do not submit the statement, the Ministry holds the opinion of the complaint on the basis of available data, and makes a report or an official note, in which warns about the existence of discrimination based on gender, recommends a way to eliminate the causes of discrimination and sets a deadline for the applicant and the opposing party about which it will inform the Ministry about the measures. It is important to note that there is no possibility of submitting an anonymous report, if it concerns a direct discrimination, because in this case the complaint may be submitted by a woman who is discriminated or by other legal or natural person on her behalf and with her approval. Acting upon an anonymous complaint is allowed if it points to indirect discrimination based on gender, if it contains sufficient information for determination of the existence of discrimination based on gender. According to the Law on Gender Equality, the Ministry responsible for the field of human and minority rights may recommend the authorities the introduction of positive measures in the areas of social life, in which there is an obvious unequal representation of women or men, or specific disadvantage of one gender<sup>9</sup>.

Procedure for protection from discrimination can be preceded before the Court by the lawsuit, and disputes are resolved before the Basic Court. The prosecutor in his request may ask from the Court the following:

- 1) to establish that the defendant acted in a discriminatory way towards the plaintiff;
- 2) to prohibit the performance of activity that leads to discrimination, i.e. to prohibit the repetition of actions of discrimination;
- 3) to determine the remuneration, in accordance with the law;
- 4) to pronounce a verdict of determined discrimination at the expense of the defendant in the media, if the discrimination is carried out through the media.

According to the law, a lawsuit that seeks prohibition on carrying out actions that lead to discrimination, i.e. prohibition of repeated actions of discrimination, may be filed within 90 days after becoming aware of the caused discrimination.

Before or during the proceedings the Court may, upon request of a party order provisional measures. The proposal for provisional measures must contain the probability that the measure is required to prevent a risk of irreparable harm, particularly severe violations of the right to equal treatment or prevention of violence. The court is obliged to make a decision about the proposal for

<sup>9</sup> Article 17, paragraph 3 Law on Gender Equality („Official Gazette of RoM”, No. 46/07).

a provisional measure, without delay. The provisions of the Law on Enforcement Procedure apply to this procedure accordingly. In other cases, the provisions of the Law on Civil Procedure apply, with an exception made to the rule regarding the burden of proof. Namely, the Anti-discrimination Law provides that the burden of proof in discrimination proceedings is left to the defendant, who must prove that his treatment didn't include elements of discrimination. On the other hand, the prosecutor is obliged only to make probable that the defendant did carry out the action of discrimination.

In some cases the law foresees the possibility of filing the complaint by the organizations or individuals involved in the protection of human rights. To initiate the procedure, a consent of a person or a discriminated group is necessary, and it may be submitted in the following cases: if the complaint implies determination, if the defendant behaved discriminatory to the plaintiff, or if the prosecutor requires the prohibition of actions that lead to the discrimination, i.e. prohibition of repetition of discriminatory actions or proclamation of the judgment which determines a discrimination at the expense of the defendant in the media.

Due to effective protection against discrimination, the provision from the Article 6 of the Law on Gender Equality is very important, according to which no one may suffer adverse consequences because of declaration made as a witness or a victim of discrimination based on gender before the competent authority or if alerted the public about the case of discrimination based on gender. This provision is particularly important because the practice has shown that victims of discrimination based on gender and witnesses of that discrimination, by initiating proceedings and testifying before the competent authorities, as well as by public disclosure of the case thus became victims and suffered adverse effects. The prescribed warranty is an obligation for the courts, state prosecutors and other state authorities, state administration or local government authorities and other competent authorities, which decide in court, offense and administrative procedure and the procedure for determination of responsibility for violation of labor discipline, that during the procedure and making of decision take care that a person appearing in the procedure as a witness or a victim of discrimination based on gender, on account of testimony given before any of these authorities or warning the public to the case of gender discrimination should not suffer adverse consequences. This obligation stems from the Article 159 of the Criminal Code, which punishes the violation of equality in the proceeding. Namely, it is foreseen punishing of all entities that result in an unequal position of a person, who has as a witness or a victim of discrimination based on gender given a testimony before the competent authority or warn the public about the case of discrimination based on gender. This provision affirms the role of public prosecutor regarding the protection from discrimination, since it is an offense for which offenders are prosecuted *ex officio*<sup>10</sup>.

For resolving disputes that arise because of discrimination at work, the Basic Court in a civil council is competent. Under the Labour Law, the employer is obliged to execute a final decision of the court within 15 days from the day of receiving the decision, if not determined otherwise by a court. In the case of disputes relating to the unlawful termination of employment, an employee has the right to damages (actual and lost profits) and to require the return to a workplace that suits his level of qualification and skills. In this section, the Labour Law provides additional protection for the employee, introducing an exception from the rules in the process of proving. Namely, in the case of a dispute regarding the termination of employment, the burden of proving justification of the reasons for termination of employment is an obligation of the employer. The burden of proving in proceedings for the protection of the rights is an obligation of the employer as well in cases where the subject is discrimination, harassment, sexual harassment and abuse at work. In addition, in the case of work termination resulted by violation of personal rights, honor, reputation and dignity, the

<sup>10</sup> The State Prosecutor is unique and independent state authority that performs the prosecution of offenders who are prosecuted *ex officio*. (Article 134 of the Constitution of Montenegro).

employee shall, in addition to remuneration for material damage, be entitled to remuneration for consequential damage.

An important role in the protection of labor rights has the labour inspection, which supervises the implementation of regulations on labor, particularly those concerning the rights of employees. In the case of a perceived violation of the laws and other regulations by the employer, misdemeanor liability is forfeited. The labour inspector is obliged to, in addition to administrative measures and actions prescribed by the law, a temporary prohibition of work to the supervision, if during the inspection finds that:

- 1) he has not concluded a labour contract with a person who is employed before the start of work;
- 2) he hasn't reported a person with whom he has concluded a labour contract or special types of labour contracts for health insurance or pension and disability insurance and unemployment insurance;
- 3) has not paid contributions for health insurance, pension and disability insurance and unemployment insurance for the person with whom he concluded a labour contract or a special type of labour contract.

Woman can achieve protection of labor rights also in alternative procedures for settling of labour disputes. The process of peaceful settlement of labour disputes is regulated by the Law on peaceful settlement of labour disputes<sup>11</sup>. The law provides engaging of arbitrator in case of individual labour disputes<sup>12</sup>. According to the principle of voluntariness, the parties in the dispute decide themselves on the engagement of an arbitrator, with a rule that the deadlines for proceedings before the competent court does not run during the proceedings before the arbitrator. Also, the parties may agree to, during the legal proceeding, launch the arbitration procedure. The procedure for resolving the dispute before an arbitrator is voluntary, and ends by making the decision, which becomes legally binding and enforceable from the day of delivery to the parties. If the decision specifies that the action that is the subject of execution may be performed within the given deadline, the decision becomes effective upon the expiry of that period. The law provides that the arbitration decision cannot be appealed, but the complaint for annulment may be submitted before the competent court<sup>13</sup>.

## II. National Policy framework on Gender Equality (strategies; programs and similar)

With the Law on Gender Equality, for the first time, the obligation of determining the Action Plan as a strategic document for achieving the gender equality in Montenegro was established. The Action Plan is established by the Government of Montenegro and its implementation is part of the overall activities of the Ministry responsible for human and minority rights and other entities established by the law. The Government of Montenegro adopted the Action Plan for Gender Equality in Montenegro in July 2008, for the period 2008-2012. The Action Plan is a development document for the implementation of gender equality, and it is based on international standards and domestic

<sup>11</sup> "Official Gazette of Montenegro", No. 16/07.

<sup>12</sup> Individual labor dispute, within the meaning of this Law, shall be a dispute arising from labor-based work, and a party in an individual dispute, within the meaning of this Law, is an employee and an employer, while the collective labor dispute is a dispute regarding the conclusion, amendment or application of collective agreement, exercising of the rights to organize trade unions and strike.

<sup>13</sup> The annulment of the arbitrator decision may be achieved if it is proved: that the agreement on the appointment of the arbitrator has not been concluded or was not valid; or if the parties of the dispute were not able to conclude an agreement on the appointment of the arbitrator; if there were conditions for exemption of the arbitrator; if the party of a dispute was not properly noticed of the initiation of proceedings before an arbitrator or was unlawfully prevented from discussing it before the arbitrator; and in the event that a decision of arbitrator relates to a dispute that was not contemplated by agreement on appointment of the arbitrator.

regulations that deal with issues relating to gender equality. In addition to the assessment of the status of gender equality in Montenegro, the Action Plan has, from 12 critical areas in which gender inequality is most pronounced in the Beijing Declaration, identified eight areas for action within the specified period, in order to achieve gender equality, which are: 1) integration of principles of gender equality into all the processes of European integration; 2) equality between women and men at all levels of education; 3) gender equality in the access and use of quality health services; 4) elimination of all forms of violence against women and girls; 5) equal access of women and men to economic resources and the creation of equal opportunities in their use; 6) equal participation of women and men at all levels of decision making; 7) achievement of gender equality in media and culture - elimination of prejudice, stereotypes and misogyny, and affirmation of women's creativity; 8) creation of sustainable mechanisms for achieving gender equality.

In each of the stated areas strategic goals are determined, such as:

- integration of the principles of gender equality into all processes of European integration (in the field of European integration);
- equality between women and men at all levels of education (for education);
- gender equality in the access and use of quality health services;
- elimination of all forms of violence against women and girls;
- equal access for women and men to economic resources and the creation of equal opportunities in their use;
- equal participation of women and men at all levels of decision making;
- achievement of gender equality in media and culture, the elimination of prejudice, stereotypes and misogyny and promotion of women's creativity;
- creation of sustainable mechanisms for achievement of gender equality.

In addition to the strategic objectives sub-goals are determined, as well as the measures to be taken. Carriers of responsibilities, partners and the period of implementation are specified, too. For each of these areas, undertaking of four kinds of measures is planned which are necessary for the accomplishment of the objectives in the Action Plan, as follows:

- 1) harmonization of the legislation in every area of national and international legal standards for gender equality;
- 2) improvement of databases, research and socio-economic analysis of gender equality status in every area;
- 3) education and public awareness of the need for implementation of gender equality in all spheres of life and work;
- 4) capacity building and encouraging of active cooperation and participatory approach of all institutional actors in Montenegro.

The Action Plan provides the obligation of submitting reports to the holders of responsibility for the implementation of planned measures. This obligation includes semi-annual reports to be submitted to the Ministry for Human and Minority Rights. The reports should include assessment of the situation of gender equality in the field they observe, the results of the measures implemented, data on funding expenditure and recommendations for improvement of the introduction of the gender equality trend in order to achieve equality between women and men in that area. Also, the report should have a chapter in which the progress in the process will be shown through adopted indicators. In addition, the reports should include statements of non-governmental organizations involved in the enforcement of measures.

The Ministry for Human and Minority Rights submits to the Government an annual report on the implementation of the Action Plan.

The Action Plan includes guidelines for the program development in certain areas of social life, as well as the obligations and program holders. These programs are also determined by the Government, for a period of two years, and they define measurable, achievable, realistic and time bound objectives, activities and measures to achieve these goals, as well as government bodies and other organizations that will be responsible for the implementation of activities and measures. An example of undertaking incentives, which is related to the chapter Economy and Sustainable Development Action Plan for Gender Equality in Montenegro for the period 2008-2012 (PAPRR), in the field of Women's Entrepreneurship and development goal, for encouraging entrepreneurship among women, is the project "Job for You" which was implemented in the second half of 2008 in Montenegro. This project was implemented by government bodies whose responsibilities are related to the labor market. The project involved the granting of loans on favorable terms, with a subsidized interest rate for those who decide to start a business and/or hire new people. An incentive measure in the form of lower interest rate than those already subsidized with this project has been designed for women who decide to start a business by raising of loans and/or hiring new people.

Program activities include measures to educate and encourage the establishment of gender equality. An example of introducing this measure is the activity of the Health Center in Danilovgrad. Conducting a general measure of performance of preventive examinations of women in order to protect their reproductive health, as stipulated by legislation on the scope of rights and standards of health care from the compulsory health insurance, Health Center has printed and distributed a brochure on early detection of breast cancer.

Among the programs aimed at fostering of gender equality very important are the activities of the Human Resources Management Authority. One such program is the professional training program for civil servants and state employees that has been conducted since 2007, and its aim is to introduce the basic principles of gender equality, with the implementation of the Law on Gender Equality, as well as providing guidelines for introduction of gender equality principles in practice.

### **III. National institutional framework on Gender Equality (relevant bodies and competencies)**

The most important institutional mechanism for achieving gender equality in Montenegro is the Ministry for Human and Minority Rights, which in addition to protecting and promoting the rights, points out also gender equality. This Ministry has a key role in proposing policy and law, has the ability to act effectively in the process of upgrading the entire legislation of Montenegro, in terms of introducing the principles and demands of gender equality in all areas, as well as to influence the taking of positive measures in certain areas through the adoption of action plans. Also, the Ministry for Human and Minority Rights has an important role and significant activities in the area of achieving gender equality in the European integration process. According to the Law on Gender Equality, the state authorities, local authorities and legal entities with public authorities are obliged to offer an adequate assistance at the request of this Ministry, or provide information within its jurisdiction, thus ensuring the achievement of gender equality at various levels. The Ministry, among other things, acts upon complaints of citizens that suggest direct or indirect discrimination based on gender, makes its opinions and provides suggestions and recommendations.

Besides the Ministry for Human and Minority Rights, the institutional mechanisms for gender equality in Montenegro are: Committee for Gender Equality in the Parliament of Montenegro, the Department for Gender Equality at the Ministry for Human and Minority Rights and the Ombudsman institution.

The Committee for Gender Equality in the Parliament of Montenegro is a parliamentary working body established in 2001, which monitors the implementation of laws and international documents regulating the area of gender equality. In accordance with the Rules of Procedure of the Parliament of Montenegro, this Committee has jurisdiction to: review draft laws, other regulations and general acts relating to the achievement of gender equality; monitor the implementation of these rights by law enforcement and the promotion of gender equality principles, particularly in the area of child's rights, family relationships, employment, entrepreneurship, decision-making process, education, health, social policy and information; participate in preparation, development and synchronization of laws and other documents with the standards of European legislation and EU programs related to gender equality; affirm the signing of international documents dealing with this issue and monitors their implementation; cooperate with relevant working bodies of other parliaments and nongovernmental organizations in this area.<sup>14</sup>

The Department for Gender Equality at the Ministry for Human and Minority Rights (former Office for Gender Equality) performs tasks related to the implementation of the principles of equality and gender equality and implementation of international conventions and treaties, regional cooperation and cooperation with NGOs. According to the rules on internal organization and systematization of the Ministry for Human and Minority Rights, in the Department for Gender Equality seven employees are foreseen to work. Currently, there are two permanently employed persons in the Department. Pursuant to the Law on Gender Equality all ministries and administrative authorities have determined officials that perform activities of coordination related to the gender equality issues within their competence and participate in the preparation and implementation of the Action plans, to whom the Department for Gender Equality has a regular cooperation. In addition, coordinators participate in all training sessions on gender equality organized by the Department for Gender Equality.

Protector of Human Rights and Freedoms - the Ombudsman is an independent and autonomous institution, which has the task to protect and improve human rights and freedoms when they are violated by an act of public authority. In addition to this role, the Ombudsman has a much broader mission. Its role is also to create awareness for the need of the rule of law, complete protection of freedom of citizens and to create their legal security. He is designated as the national mechanism for prevention of torture in accordance with the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Ombudsman is also the mechanism for protection from discrimination in accordance with the Anti-discrimination Law. The institution of the Protector of Human Rights and Freedoms in Montenegro has been established by a special law adopted by the Parliament of the Republic of Montenegro, on 10th July, 2003. It executes its role based on the Constitution and laws and adheres to the principles of justice and fairness<sup>15</sup>.

In addition to the gender equality mechanisms established at the state level, it is working on establishment of local mechanisms for gender equality in the ten municipalities to which a Memorandum of Understanding is signed (Niksic, Bijelo Polje, Pljevlja, Berane, Cetinje, Kotor, Budva, Bar, Herceg Novi and Ulcinj). In these municipalities work persons trained to implement the principles of gender equality in the local community, as well as commissions/councils for gender equality within the municipal assemblies. In the municipalities of Bar, Budva, Herceg-Novi, Pljevlja, Niksic, Bijelo Polje, Local Action Plans for achieving gender equality are developed and adopted. Moreover, Councils for gender equality operate in eight municipalities.

<sup>14</sup> Rules of the Assembly of Montenegro ("Official Gazette of RM" No. 51/06 and 66/06 and "Official Gazette" No. 88/09).

<sup>15</sup> See: [www.ombudsman.co.me](http://www.ombudsman.co.me).

#### IV. Gender equality in legal education

The issue of gender equality in the educational system of Montenegro is treated within the course of Civic Education, which is by the reform of primary education introduced as a compulsory course for VI and VII grade, with a fund of 35 lessons per year. Civic Education is a mandatory elective course in high school, which can be chosen from the first to the fourth grade in high school, with a fund of 35 lessons in the first and the second grade, or with a fund of 70 lessons in the third and 64 lessons in the fourth grade. However, a lack of educational system of Montenegro in this segment is that there are no studies on gender at the University of Montenegro, although it was provided by the Action Plan for achieving gender equality of the Government of Montenegro, starting from international and domestic legal sources that deal with issues of gender equality (which is valid for period 2008-2012<sup>16</sup>) in the field of education, to promote the development of gender studies at the university level and create a critical mass of professionals. The accomplishment of this goal is planned through the promotion of interest in professional training at the postgraduate studies on gender equality conducted in the region, by promoting programs and opportunities, as well as through the provision of scholarships. Holders of responsibility in this segment are: the Ministry of Education, the Ministry for Human and Minority Rights and the Gender Equality Office.

According to the data from the National Statistical Office of Montenegro (MONSTAT)<sup>17</sup>, in the winter semester of the academic year 2010/2011, a total of 25.169 students enrolled in the institutions of higher education in Montenegro, which is about 6% more than in the winter semester of the last academic year. The share of female students was 54%.

A total of 22.163 or 88% of students enrolled at undergraduate studies. The highest enrollment is at the University of Montenegro, 80%. About 2.941 students enrolled at postgraduate (specialization and master) and 65 students enrolled at doctoral studies.

In the academic years 2011/2012, 2995 students enrolled in postgraduate studies: 2.215 students in specialization studies, 780 students in master studies, and the participation of female students was 62%. The increase of the number of students enrolled in specialization studies in relation to the previous academic year is 18%. Of the total number of students, most of them enrolled at the University of Montenegro (75%), at the University of Donja Gorica 11%, and at the University of the Mediterranean 9%. In 2011, 1.739 students completed postgraduate studies, as follows: 1.482 students completed specialization studies, 257 completed master studies, and the participation of female students was 61%.

In 2011, a total number of 1.739 students completed postgraduate studies, which is an increase of about 18% in relation to 2010. From the total number of students who have completed postgraduate studies, 1.482 students or 85% are specialists, and 257 students or 15% are masters, i.e. Masters of Science. Postgraduate studies are completed by 61% of female and 39% of male students.

The most of students have completed postgraduate studies at the University of Montenegro (85%), 7% at the University 'Mediterranean', 3% at the University of Donja Gorica and 5% at the other higher education institutions.

A number of 780 students enrolled master studies, which is 27% less than in the period of the previous 2010/2011 academic year. Of that number, 72% are the students who enrolled master studies at the University of Montenegro. There are 64% female and 36% male students at master studies. A number of 91 students enrolled doctoral studies of which 53% are female students.

<sup>16</sup> A new Plan should be adopted by the end of 2012, for the period 2012 - 2016.

<sup>17</sup> Available at the website: [www.monstat.me](http://www.monstat.me).

When it comes to gender representation at the Faculties of Law, there is no statistical data, because this kind of records were not kept.

**Table No.1 Teaching staff at the Faculty of Law, University of Montenegro**

	Total	Men	Women
Professors	27	16	11
Associates	11	5	7
Dean	1	1	0
Vice-Dean	2	0	1

The Table No.1 gives an overview of the teaching staff at the University of Montenegro. Of the total number of professors, 40.7% of them are women, while the percentage of women among teaching associates is 63.3%. The Faculty is managed by the Dean, while the vice deans are women. It is interesting to note that at the Faculty of Law, from its founding until today, there was no woman at the position of the Dean.

## V. Gender equality in legal professions

### Statistical data on the participation of women and men in the legislative, executive and judicial authorities<sup>18</sup>

In the last parliamentary elections, there were 250.165, i.e. 50,15% women of a total number of 498.825 registered voters (80,44% of the total population).

**Table No.2 (Composition of the Parliament of Montenegro)**

Parliament of Montenegro	Total	Women	Men	Women %	Men %
President of the Parliament	1	0	1	0.0	100.0
Vice presidents of the Parliament	2	0	2	0.0	100.0
Members of the Parliament	81	11	70	13.5	86.41
Secretary General	1	0	1	0.0	100.0
Deputy Secretary General	1	0	1	0.0	100.0

The table No.2 shows that women are underrepresented in the legislature in Montenegro. These data clearly indicate under-representation of women among the members of the Parliament (from total number of 81 MPs, 11 are women or 13.5%). Also, the President and Vice President of the Parliament are men.

<sup>18</sup> Statistical data collected by the Department for Gender Equality in collaboration with relevant institutions

**Table No.3 (Working bodies of the Parliament):**

Working bodies in the Parliament of Montenegro	Number of members	Number of women	Percentages of women	Percentages of men
Constitutional Issues and Legislative Committee	13	2	15.38	84.62
Committee on Political System, Justice and Administration	13	2	15.38	84.62
Security and Defence Committee	13	0	0.0	100.0
Committee on International Relations and European Integration	15	2	13.3	86.67
Committee on Economy, Finance and Budget	13	0	0.0	100.0
Committee on Human Rights and Freedoms	11	2	18.18	81.82
Gender Equality Committee	11	7	63.64	36.36
Committee on Tourism, Agriculture, Ecology and Spatial Planning	13	2	15.38	84.62
Committee on Education, Science, Culture and Sports	10	2	20.00	80.0
Committee on Health, Labor and Social Welfare	10	2	20.00	80.0
Administrative Committee of the Parliament	13	0	0.0	100.0
Commission for Monitoring and Control of the Privatization Procedure	8	1	12.5	87.5

The structure of working bodies of the Parliament which is shown in Table No.3 reflects the unequal representation of women and men in both the presidency and in terms of membership.

Of the 12 working bodies in the Parliament of Montenegro two are lead by women, the Gender Equality Committee and the Committee on Health, Labor and Social Welfare. In the Committee on Political System, Justice and Administration, a woman is at the position of the Deputy Chairman.

**Table No.4 (The representation of women in the executive authority)**

	Total	Women	Men	Women %	Men%
Prime Minister	1	0	1	0.0	100.0
Deputy Prime Ministers	2	0	2	0.0	100.0
Ministers	17	2	15	11.7	88.2

Secretariat- General of the Government	Total	Women	Men	Women %	Men%
Secretary General to the Government	1	0	1	0.0	100.0
Deputy Secretary General	1	1	0	100.0	0.0
Assistant Secretary-General	2	1	1	50.0	50.0
Advisers to the Prime Minister	8	5	3	62.5	37.5
Advisers to the Deputy Prime Minister	4	1	3	25	75

	Total	Women	Men	Women %	Men%
Deputy Ministers	77	31	46	40.25	59.74
Secretaries of Ministries	16	4	12	25.0	75.0
Directors (secretariats, directorates, bureaus, departments and agencies)	34	9	25	26.4	73.5
Assistant Directors (secretariats, directorates, bureaus, departments and agencies)	58	26	32	44.8	55.1

Table No.4 shows the representation of women in the executive authority in Montenegro. The stated data also shows uneven representation of women in leading positions. The gender structure of the highest executive authorities is in favor of males. The Prime Minister and the Deputy Prime Ministers of the Government are men, while of the total number of 17 ministers, only two are women or 11.7%. However, when it comes to the gender structure of employees in the public administration, it is shown that women are more numerous among employees (of the total number of employees in public administration of Montenegro, 54% are women while 46% are men)<sup>19</sup> but their number reduces when it comes to managerial positions.

The Human Resources Management Authority, in accordance with Article 14 of the Law on Gender Equality<sup>20</sup> shows collected and processed statistical data and information according to the gender affiliation. According to the data of February 2012, the total number of employees in the Human Resources Management Authority is 31, of which 27 or 85% are women and 4 or 15% are men.

**Table No.5 (Public Announcements of the Human Resources Management Authority)**

Type of announcement/competition	Women recorded	Men recorded
Internal announcements	53	34
Public competitions	14	33
Public announcements	1.299	821
<b>TOTAL</b>	<b>1.366</b>	<b>888</b>

Table No.5 shows the announcements/competitions and internal announcements published during June 2011. The table also shows that from a total number of 2.254 of recorded persons, 1.366 were women, and 888 were men.

The total number of candidates selected by the public announcements / competitions and internal announcements, published in 2011, is shown in Table 6, where you can see that from **664** selected candidates, 373 were women and 291 were men.

**Table No. 6**

Type of announcement/competition	Women selected	Men selected
Internal announcements	34	19
Public competitions	10	18
Public announcements	329	254
<b>TOTAL</b>	<b>373</b>	<b>291</b>

The total number of participants in trainings, which were implemented by the Human Resources Management Authority in June 2011, is 6.010, out of which 3.470 were men and 2.540 were women, as seen from the Table No.7.

**Table No.7**

NUMBER OF TRAININGS	Number of participants	MEN	WOMEN
383	6.010	3.470	2.540

<sup>19</sup> Data from the Human Resources Management Authority, available on: [http://www.uzk.co.me/index.php?option=com\\_content&view=article&id=769&Itemid=225&lang=sr](http://www.uzk.co.me/index.php?option=com_content&view=article&id=769&Itemid=225&lang=sr)

<sup>20</sup> "Official Gazette of RM", No. 46/07

When it comes to the diplomatic-consular representative bodies of Montenegro, data shows that of 64 employees, 31 are women or 47.05%. From a total number of 23 ambassadors, 4 are women or 17.39%, while of the total number of 4 advisers to the ministers, 2 are women, or 50%.

**Table No.8**

Diplomatic and Consular representative body	TOTAL	MEN	WOMEN
Ambassador	23	19	4
Minister Counsellor	4	2	2
Adviser	6	2	4
I Secretary	14	3	11
II Secretary	3	2	1
III Secretary	8	1	7
Consul General	2	2	-
Consul	2	2	-
Vice-Consul	2	-	2
<b>TOTAL</b>	<b>64</b>	<b>33</b>	<b>31</b>

**Table No.9 (Data on women judges in the courts of Montenegro)<sup>21</sup>**

No.	COURT	Number of female judges	Total number of judges	Court President	Percentage of female judges
1	Supreme Court	9	18	Woman	50.00%
2	Administrative Court	5	10	Man	50%
3	Court of Appeal	6	11	Man	54.54%
4	Commercial Court of Bijelo Polje	1	5	Man	20.00%
5	Commercial Court of Podgorica	12	17	Man	70.50%
6	High Court of Bijelo Polje	5	18	Man	27.70%
7	High Court of Podgorica	23	35	Man	65.7%
8	Basic Court of Bar	5	10	Man	50.00%
9	Basic Court of Berane	5	10	Man	50.00%
10	Basic Court of Bijelo Polje	9	13	Man	69.25%
11	Basic Court of Cetinje	3	5	Man	60%
12	Basic Court of Danilovgrad	2	4	Woman	50.00%
13	Basic Court of Herceg Novi	5	8	Woman	62.50%
14	Basic Court of Kolašin	3	4	Man	75%
15	Basic Court of Kotor	7	14	Man	50.00%
16	Basic Court of Nikšić	10	17	Man	58.80%
17	Basic Court of Plav	2	3	Man	66.6%
18	Basic Court of Pljevlja	6	7	Woman	85.70%
19	Basic Court of Podgorica	26	38	Man	68.40%
20	Basic Court of Rožaje	1	4	Man	25.00%
21	Basic Court of Ulcinj	2	7	Woman	28.5%
22	Basic Court of Žabljak	0	3	Man	0%
<b>TOTAL:</b>		<b>147</b>	<b>261</b>		<b>56.32%</b>

<sup>21</sup> Source: Judicial Training Center of Montenegro. Available on: [http://www.coscg.org/test/sud\\_opis.php?sud\\_id=6](http://www.coscg.org/test/sud_opis.php?sud_id=6)

**Table No. 10 (Data on women prosecutors in Montenegro)**

No.	PROSECUTOR'S OFFICE	Number of female prosecutors	Total number of prosecutors	Prosecutors	Percentage of women
1	Supreme State Prosecutor's Office	2	9	woman	22.22%
2	OSOKTK- Special Prosecutor	4	8	woman	50%
3	Higher state prosecution of Podgorica	8	11	woman	72.72%
4	Higher state prosecution of Bijelo Polje	2	6	man	33.33%
5	Basic state prosecutor of Podgorica	12	20	woman	60.00%
6	Basic state prosecutor of Nikšić	5	9	man	55.55%
7	Basic state prosecutor of Bijelo Polje	5	8	man	62.5%
8	Basic state prosecutor of Kotor	4	6	man	66.66%
9	Basic state prosecutor of Herceg Novi	2	4	woman	50.00%
10	Basic state prosecutor of Ulcinj	1	3	man	33.33%
11	Basic state prosecutor of Bar	4	5	man	80%
12	Basic state prosecutor of Kolašin	1	2	man	50.00%
13	Basic state prosecutor of Cetinje	2	4	man	50.00%
14	Basic state prosecutor of Pljevlja	2	5	man	40%
15	Basic state prosecutor of Berane	3	5	woman	60.00%
16	Basic state prosecutor of Rožaje	0	3	man	0.00%
17	Basic state prosecutor of Plav	1	2	man	50%
<b>TOTAL:</b>		<b>58</b>	<b>110</b>		<b>53%</b>

Tables 9 and 10 show that a significant number of women are present in the judiciary. The positions of the Supreme State Prosecutor and the President of the Supreme Court are represented by women. At the head of the Judicial Council there is a woman, while of nine members three are women. At the head of the Prosecutor's Council there is a woman, while of ten members five are women. However, the positions of Presidents of courts are represented by women in amount of about 20%.

## **VI. National achievements, challenges and recommendations for gender equality**

Gender equality means equal participation of women and men in all spheres of public and private sectors, equal status and equal opportunities to exercise all rights and freedoms and to use personal knowledge and skills for the development of society, as well as achievement of equal benefit from the performance results. Women constitute the majority of the Montenegrin population (according to the latest census from 2011 women constitute 50.6% of the total population) and more successfully complete universities (undergraduate studies were completed by 3.086 students in 2010, out of which 61% were females).

Positive and legal rules in Montenegro do not distinguish between men and women in exercising their basic human rights. However, although beside the prohibition of discrimination, affirmative action measures were provided, aimed at creating equal conditions for realization of basic human rights for women, positive and legal rules do not provide substantially equal treatment and equal opportunities for women and men. Namely, in practice, the cases of indirect discrimination are not uncommon, what is best confirmed by the presence of women in key decision making positions. In other words, women are still underrepresented in leadership positions in the executive and legislative authorities. Different treatment of women is particularly manifested in the field of labor relations, both in employment and in terms of achieving some of the employment rights (such as the right to salary and the right to vocational training and job promotion). Such a situation has negative consequences, especially in the field of economic and social rights.

When it comes to political and public life in Montenegro, there are numerous obstacles that hinder women to enter the area of public life, and these are primarily the traditional models of gender division of roles in society, that among other things, creates a great burden on women because of work in the house, with family, children, the sick and elderly family members, that significantly affects their greater involvement in the public sphere. Therefore, in addition to the application of international and domestic legislation, it is necessary to provide adequate social and cultural environment to fulfill the principle of gender equality.

For all these reasons, in addition to the institutional framework that aims to prevent and eliminate discrimination based on gender, it is necessary that in the future additional measures aimed at ensuring and promoting gender equality in certain areas of social life, where unequal representation of women and men is determined and unequal treatment of persons of the same gender exists, are provided. In this regard, emphasis should be put on measures ensuring the equality of women in relation to men in the employment procedure and at work, as well as their adequate representation in decision making, both in government agencies, and with private employers.

In order to ensure substantive equality of women in relation to men in Montenegro, it is necessary in the future to promote gender-sensitive policies, and to constantly educate members of both genders, especially those involved in governance. In that sense, the focus should be put on implementation of the campaign at all levels of the government about the importance of the Law on Gender Equality implementation for the next steps in the process of European integration, which includes full implementation of the principle of nondiscrimination. This further implies the necessity of establishing a comprehensive and strategic approach to solving the problem of discrimination

against women, which assumes a continuous cooperation of representatives from the state, universities and NGOs, as well as the other entities that can contribute to establishing the rules of law in this area. In addition, it is important to work on improving the programs aimed at educating and raising awareness about the importance of implementing the principle of gender equality. One of the measures certainly is the introduction of gender studies in universities, either through expansion of existing curricula, or by introducing new subjects in faculties. Thus, the introduction of the gender approach in the curricula and all textbooks and the implementation of gender sensitive language in education will provide for the full integration of women in the mainstreams of civilization in the longer term, i.e. the change of their position and role in the society.

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- 5) *Law on Prohibition of Abuse at Work* (in parliamentary procedure).
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# COUNTRY REPORT ON LEGAL PERSPECTIVES OF GENDER EQUALITY IN SERBIA

*Prof. Dr. Dragica VUJADINOVIĆ*

## I. National legal framework and compliance with EU Gender Equality Law

The **Constitution of the Republic of Serbia** was accepted in a constitutional referendum, held on 28–29 October 2006. The National Assembly of Serbia officially proclaimed it on 8 November 2006.

The **Constitution of the Republic of Serbia** has not fully complied with the EU Gender Equality Law. According to Prof. Dr Marijana Pajvancic, the University Professor of Constitutional Law, the following Constitutional provisions have been contestable from the point of gender equality:

- Article 15 of the Constitution of the Republic of Serbia does not specify the provision about equal opportunities for all from the gender perspective;
- Article 16 does not offer an integrative clause related to the relation between domestic law and international contracts and to the conscience of international contracts with the Constitution and domestic laws;
- Article 18 does not secure a direct implementation of an international law even when Serbia had already ratified international conventions for protection of human rights;
- Article 48 related to basic rights and recognition of differences does not mention gender differences, but only recognition of differences based on ethnic, religious, linguistic and cultural identity;
- Article 49 speaks about forbidding religious, racial and ethnical hatred, but not the one based on gender identity;
- Article 60 considers equal rights of women related to work, but does not specify necessity of equal pay for equal work, and does not offer any solution for an unpaid domestic labor;
- Article 62 speaks in a contradictory way about the right to marriage and family establishing;
- Article 63 speaks in an unclear way about the right to giving birth, in contrast to the Family Law that refers directly to women as possessors of this right.

The Law on Gender Equality adopted in December 2009, and came into force in December 2009. It was written in compliance with the EU Gender Equality legislation. In this law, the clauses from the Serbian Constitution, which have not been articulated clearly, enough are now better articulated and, as already mentioned, written in accordance with the EU gender Equality Law. When contrasted to the Constitution, the following Articles can be stressed as examples:

- Article 3 of The Gender Equality Law specifies what equal opportunities mean specifically in the case of female individuals;
- Articles 4, 5 and 6 specify indirect and direct discrimination based on gender;
- Article 7 articulates special measures for combating discrimination;
- Articles 11 and 17 specify female rights to work, and equal pay to equal work;
- Articles 30, 31, 32, 33 and 36 explicate equal opportunities in education, sports, culture, political and public life;

- Article 47 states extreme urgency for proceedings initiated for protection from gender-based discrimination;
- Articles 48 and 49 offer further precisions for criminal procedures related to the gender based discrimination.

The Law on Gender Equality provides for special measures and programmes for victims of domestic violence that envision the provision of shelters, social, legal and other assistance and a compensation to the victims of violence. Government agencies are responsible for planning, organizing, implementing and financing the measures aimed at raising public awareness concerning the need to prevent domestic violence.

According to the commentary of the Law on Gender Equality<sup>1</sup>, of special importance is the fact that this law secures the judicial protection from the gender-based discrimination, as well as sanctions in that respect.

The revolutionary change concerning the quota system<sup>2</sup> happened in the recently amended Law on Electing the Members of Parliament, which proposes that each third MP must be female. However, the amendment according to which a female people's representative should replace each resigning female MP did not pass the Parliamentary procedure of adopting the amendments on this law again. Of course, this opens a space for manipulations and escaping the rule, that one third of MPs shall be female ones.

## II. National policy framework on gender equality (strategies, programs and similar)

**Introduction:** Concerning state policies, legal and political documents, and institutional mechanisms and political bodies, some advances have been made between 2000 and 2007, in an attempt to cope with the EU legal and institutional standards. Here is the overview of most relevant state provisions for gender equality: in 2001, a new Labor Law was adopted regulating equal pay, protection of personal integrity and childcare leave (introduced as complementary to maternity leave) including also articles against discrimination and sexual harassment.

The Criminal Code was amended in 2003 to sanction domestic violence, as well as the failure to pay alimony to single mothers. Marital rape becomes a crime in the new Code as well. It includes new criminal acts such: sexual harassment and trafficking of human beings.

The Legal changes in Family Law, announced in 2005, introduced civic law protection from the violence in family. This change has been complementary with the above-mentioned changes in the new Criminal Code, which introduced the crime called 'violence in family'. By adopting the Family Law in 2005, Serbia has undertaken to lay the systemic foundations to address violence against women.<sup>3</sup>

In 2007, the final draft of the Law on Gender Equality was prepared, but adopted in 2009 in the Serbian Parliament.

In October 2003, the Serbian Government adopted the Poverty Reduction Strategy, which was sensitive to the gender aspects of poverty. In 2004, an inter-ministerial body, the Council for Gender Equality, was established. Finally, the Parliamentary Committee for Gender Equality and the Council for Gender Equality were constituted in the Serbian Parliament and created the National Action Plan for improving the position of women and promoting gender equality in 2005.

<sup>1</sup> Pajvancic, M., Petrusic, N., Jasarevic, S. Commentary on the Law on Gender Equality (Komentar Zakona o ravnopravnosti polova), Beograd, 2010. pp. 103-123.

<sup>2</sup> Mrsevic, Z. Towards Democratic Society – Gender Equality (Ka demokratskom društvu – Rodna ravnopravnost), Beograd 2011.

<sup>3</sup> See: Blagojević, M. Regional Cooperation in the Field of Gender Equality. Altera – Research Centre on Gender and Ethnicity (website), 2007; Draškić, M. Family Law and Rights of Children, 2007, 61.

A **National Action Plan** for improving the position of women and promoting gender equality was initially introduced in 2005. As mentioned above, the Governmental body called Council for Gender Equality created the document.

**The National Strategy for the Advancement of Women and the Promotion of Gender Equality** and the **Action Plan** for its implementation were adopted in February 2009 and August 2010 respectively. The Strategy is harmonized with other strategic documents, in particular with the Strategy for the Reduction of Poverty in Serbia and the United Nations Millennium Development Goals. Proceeding from the Beijing Declaration and Platform for Action, the Strategy encompasses six key areas for the advancement of women and the promotion of gender equality in Serbia:

- rights of women to participate on an equal footing with men in decision-making;
- eradication of economic inequality between men and women;
- gender equality in education;
- better health care for women and gender equality in health policy;
- prevention and suppression of all forms of violence against women and the establishment of a comprehensive system of protection for women victims of violence;
- promotion of gender equality in the media and the elimination of gender stereotypes and hate speech.<sup>4</sup>

### III. National institutional framework on gender equality (current relevant bodies and competencies)

#### III.1. Government

**The Department for Gender Equality** has been established in 2007 (changed name in 2008), as the main executive mechanism of the Government of Republic of Serbia. It belongs to the Ministry of Labor and Social Policy<sup>5</sup>.

**The Council for Gender Equality** has been established in 2004 (changed name in 2009). It represents the working body of the Government, consisting of the representatives of the Government and of the gender equality experts<sup>6</sup>.

#### III.2. Parliament

**Parliamentary Committee for Gender Equality** - section for gender equality of the Parliament of Republic of Serbia representing the constant working body established in 2003. This section considers legislative drafts and other legal documents from the point of gender equality and monitors the implementation of laws and other legal documents related to gender equality. ([www.parlament.gov.rs](http://www.parlament.gov.rs))

#### III.3. Ombudsperson

**The Ombudsperson** protects citizens' rights in accordance with the principle of gender equality and non-discrimination, conceived as a basic human right. Deputy Ombudsperson for gender equality and rights of disabled persons has had special competence in the field of gender equality<sup>7</sup>.

<sup>4</sup> Marina Ivanovic, Counselor, Permanent Mission of the Republic of Serbia to the United Nations 14 October 2010.

<sup>5</sup> Please see [www.srbija.gov.rs](http://www.srbija.gov.rs).

<sup>6</sup> Please see [www.srbija.gov.rs](http://www.srbija.gov.rs).

<sup>7</sup> Please see [www.ombudsman.rs](http://www.ombudsman.rs).

### III.4. Commissioner for Equality

In 2010, an independent body for protecting equality, including gender equality was established. The Commissioner has competence to act in favor of protecting gender equality whenever discrimination is based on gender identity<sup>8</sup>.

In addition, as relevant information related to the autonomous province Vojvodina, in 2002 the Vojvodina Provincial Secretariat for Labor, Employment and Gender Equality was established as the first institutional gender equality mechanism in Serbia. The Vojvodina Provincial Parliament passed an act on the Provincial Ombudsperson (one of the five Deputy-Ombudspersons is the Deputy for Gender Equality).

### IV. Gender equality in legal education

The female/male proportion in legal education will be presented concerning the situation at the Faculty of Law at the University of Belgrade only. Gender sensitive statistics will be offered, firstly, for the case of the Faculty governments, then for the case of the academic staff, thirdly, for the undergraduate students, and finally, for the MA and PhD students.

#### IV.1.1. Female/Male Proportion of Deans and Vice Deans for the Last Ten Years

Mandate	From - to	Dean	Vice-Dean for education	Vice-Dean for scientific work	Vice-Dean for finances
2002	2004	Prof. Dr. Vladimir Milić	Prof. Dr. Branko Lubarda	Prof. Dr. Slobodan Marković	Prof. Dr. Slobodan Panov
2002	2004	Prof. Dr. Vladimir Milić	Prof. Dr. Milan Škulić	Prof. Dr. Branko Lubarda	Prof. Dr. Slobodan Panov
2004	2006	Prof. Dr. Mirko Vasiljević	Doc. Dr. Olivera Vučić	Doc. Dr. Miodrag Jovanović	Prof. Dr. Aleksandra Jovanović
2006	2009	Prof. Dr. Mirko Vasiljević	Prof. Dr. Ljiljana Radulović	Prof. Dr. Miodrag Jovanović	Prof. Dr. Aleksandra Jovanović
2009	2012	Prof. Dr. Mirko Vasiljević	Prof. Dr. Žika Bujuklić	Prof. Milan Škulić	Doc. Dr. Marko Đurđević

Conclusion/Analysis: The female/male proportion on the position of Deans and Vice-Deans at the Faculty of Law at the University of Belgrade has been totally in favor of male academic staff since the beginning (more than 200 year ago) until nowadays. In the long history of existence of the Faculty of Law only once, in the late 80s, the Dean had been a woman, Prof. Dr. Ljubica Kandić. The female/male proportion among Vice-Deans has also been significantly male dominant and unsatisfactory from the point of gender equality. During the last ten academic years, only three women/professors took the position of Vice-Dean.

<sup>8</sup> Please see [www.ravnopravnost.gov.rs](http://www.ravnopravnost.gov.rs).

#### IV.1.2. Gender Distribution at the Law Faculty of the University of Belgrade - Professors and Assistant Professors for the last 10 years

Academic year	Title/ac. Rank	In total	Male	Female
2002/2003	Full Professors	29	23	6
2002/2003	Professors/Assoc.Pr.	18	8	10
2002/2003	Docents/Senior Lect	15	10	5
2002/2003	Lecturers	3	0	3
2002/2003	Assistants	12	10	2
2002/2003	Assistant professors	16	12	4
31.12.2002	In total - academic staff	93	63	30
2003/2004	Full Professors	32	25	7
2003/2004	Professors/Assoc.Pr	16	7	9
2003/2004	Docents/Senior Lect	19	13	6
2003/2004	Lecturers	3	0	3
2003/2004	Assistants	8	7	1
2003/2004	Assistant Professors	23	16	7
17.06.2003	In total - academic staff	101	68	33
2004/2005	Full Professors	28	22	6
2004/2005	Professors/Assoc.Pr	16	8	8
2004/2005	Docents/Senior Lect	17	12	5
2004/2005	Lecturers	3	0	3
2004/2005	Assistants	10	8	2
2004/2005	Assistant professors	24	16	8
25.02.2005	In total - academic staff	98	66	32
2005/2006	Full Professors	31	25	6
2005/2006	Professors/Assoc.Pr	17	9	8
2005/2006	Docents/Senior Lect	15	11	4
2005/2006	Lecturers	4	0	4
2005/2006	Assistants	18	11	7
2005/2006	Assistant professors	19	12	7
09.04.2006	In total - academic staff	104	68	36
2006/2007	Full Professors	31	25	6
2006/2007	Professors/Assoc.Pr	17	9	8
2006/2007	Docents	16	11	5
2006/2007	Lecturers	4	0	4
2006/2007	Assistants	19	13	6
2006/2007	Assistant Professors	18	11	7
08.01.2007	In total - academic staff	105	69	36

2007/2008	Full Professors	29	23	6
2007/2008	Professors/Assoc.Pr	17	9	8
2007/2008	Docents	16	12	4
2007/2008	Lecturers	4	0	4
2007/2008	Assistants	18	11	7
2007/2008	Assistant Professors	20	13	7
15.01.2008	In total - academic staff	104	68	36
2008/2009	Full Professors	35	26	9
2008/2009	Professors/Assoc.Pr	17	10	7
2008/2009	Docents	16	14	2
2008/2009	Lecturers	3	0	3
2008/2009	Assistants	22	15	7
2008/2009	Assistant Professors	7	3	4
2008/2009	Demonstrators	5	3	2
08.07.2009	In total - academic staff	105	71	34
2009/2010	Full Professors	33	23	10
2009/2010	Professors/Assoc.Pr	19	13	6
2009/2010	Docents	18	14	4
2009/2010	Lecturers	4	0	4
2009/2010	Assistants	29	18	11
2009/2010	Assistant Professors	1	0	1
2009/2010	Demonstrators	8	2	6
15.06.2010	In total - academic staff	112	70	42
2010/2011	Full Professors	36	24	12
2010/2011	Professors/Assoc.Pr	18	14	4
2010/2011	Docents	20	15	5
2010/2011	Lecturers	4	0	4
2010/2011	Assistants	30	16	14
2010/2011	Assistant Professors	1	0	1
2010/2011	Demonstrators	6	2	4
14.07.2011	In total - academic staff	115	71	44
2011/2012	Full Professors	36	24	12
2011/2012	Professors/Assoc.Pr	18	14	4
2011/2012	Docents	21	15	6
2011/2012	Lecturers	4	0	4
2011/2012	Assistants	35	19	16
2011/2012	Demonstrators	6	2	4
26.04.2012	In total - academic staff	120	74	46

### Analysis of the above given statistics:

**In the academic year 2002/03**, the total number of academic staff was 93, with 63 male (two thirds) and 30 female members. Among the 29 with the highest rank of full professors, 23 (three quarters) were male and six female. Among the 16 with the lowest rank of assistant professors and demonstrators, 12 (three thirds) were male and only four were female members. This means that the election of new members of the academic staff was done in favor of young male academics. The only exception existed in the case of Associate Professors, in a sense that among 18 of them, eight were male and 10 were female Associate Professors.

**In the academic year 2003/04**, the total number of academic staff was 101, with 68 male (two thirds) and 33 female members. Among those 32 with the highest rank of full professors, 25 (around three quarters) were male and seven female. Among those 23 with the lowest rank of assistant professors and demonstrators, 16 (around three thirds) were male and only seven female members. It means that the election of new members of the academic staff was done in favor of young male academics. The only exception existed in the case of Associate Professors, in a sense that among 16 of them, eight were male and 10 were female Associate Professors.

**In the academic year 2004/05**, the total number of academic staff was 98, with 66 male (two thirds) and 32 female members. Among those 28 with the highest rank of full professors, 22 (more than two thirds) were male and six female. Among those 24 with the lowest rank of assistant professors and demonstrators, 16 (three thirds) were male and only eight female members. It means that the election of new members of the academic staff was done in favor of young male academics. The only exception existed in the case of Associate Professors, in a sense that among 16 of them, eight were male and 10 were female Associate Professors.

**In the academic year 2005/6**, the total number of academic staff was 104, with 68 male (two thirds) and 36 female members. Among those 31 with the highest rank of full professors, 25 (around three quarters) were male and six female. Among those 19 with the lowest rank of assistant professors, 12 (around three thirds) were male and only seven female members. It means that the election of new members of the academic staff was done in favor of young male academics. The only exception existed in the case of Associate Professors, in a sense that among 17 of them, nine were male and eight female Associate Professors.

**In the academic years 2006/07 and 2007/08**, similar trends and data existed like as in the academic year 2005/06. The difference happened in 2006/07 in the total number of academic staff, which was 105.

**In the academic year 2008/09**, the total number of academic staff was 104, with 68 male and 36 female members. The number of full professors was higher than earlier, 35 in total, with 26 male and nine female (three male and three female full professors, e.g. proportionally equally more). Among the 12 with the lowest rank – derived by adding together assistant professors and demonstrators, there were six male and six female persons. It means that the previous trend of proportionally engaging two times more male than female young academics stopped, and more balanced proportion of young academics started to be at agenda. Another change is that the previously existent higher proportion of female in relation to male associate professors stopped and a new trend of having more male than female associate professors had started.

**In the academic year 2009/10**, the total number of academic staff was 104, with 68 male and 36 female members. The number of full professors was higher than earlier, 35 in total, with 26 male and nine female (three male and three female full professors, e.g. proportionally more equal). Among the lowest rank of 12 – with taken together assistant professors and demonstrators, there were six male and six female persons.

**In the academic year 2010/11**, the total number of academic staff was 115, with 70 male and 42 female members. The number of full professors was 36 in total, with 24 male and 12 female. Among 30 assistants, there were 16 male and 14 female. Among the lowest rank of seven demonstrators, there were two male and five female persons.

**In the academic year 2011/12**, the total number of academic staff is 120, with 74 male and 46 female members. The number of full professors is unchanged - 36 in total, with 24 male and 12 female. The Number of assistants is higher than in the previous academic year, and among 35 assistants, there are 19 male and 16 female. Among the lowest rank of six demonstrators, there are two male and four female persons.

**Conclusion:** The trend of rising number of academic staff is obvious since ten years ago, and the trend of equalizing the number of male and female young academics has been vivid. Even more, from 2009/09 to 2011/12, among the new demonstrators, two thirds are female and one third are male. It means that in the forthcoming years the gender structure of the academic staff will be gradually but significantly better balanced and improved from the point of gender equality.

The summing up conclusion could be that during the last ten academic years the gender structure of the academic staff at the Faculty of Law at the University of Belgrade, has been male dominant, e.g. two thirds of the staff have been male academics. However, from the school year 2008/09 and until the school year 2011/12 the process of gradual better-balanced gender structuring has been happening.

It should be noticed that the gender sensitive statistics of this kind did not exist at the Faculty of Law, and this statistics was made for the first time only for the purposes of this project.

It should also be noticed that the empirical data (See below) about students' population shows that not only bigger portion of female students enroll the Faculty of Law each academic year, but even higher number of female students - proportionally conceived - graduate in both regular four-year period and in an average period of studying (6.72 years). When this data is crossed with the above-mentioned data about the structure of academic staff and the Faculty management, then the long-lasting trend of male dominance at this Faculty becomes even more clearly vivid.

A better-balanced proportion of female and male members of academic staff should be established, not only because of the principle of gender equality but also because of the fact that female students have shown better results in studying.

IV.1.3. Female/Male Proportion of the Undergraduate Students for the Last Five Years

Enrolled and graduated students – female/male proportion for the last five academic years (2005/2006 – 2011/2012)																	
Academic year	Registered for the first year in the given academic year				Graduated in the given academic year				Graduated from the given generation				Graduated from the given generation in the regular period of four academic years				
	total	Male	Female	Female %	In Total	Male	Female	Female %	In Total	Male	Female	Female %	In Total	Male	Female	Female %	
1	2005/2006	1779	715	1064	59.80	821	321	500	60.90	426	156	270	63.38	22	9	13	59.09
2	2006/2007	1812	714	1098	60.59	836	324	512	61.24	324	107	217	66.97	109	35	74	67.88
3	2007/2008	1661	662	999	60.14	870	302	568	65.28	158 until 14.05.2012	45	113	71.51	88	27	61	69.31
4	2008/2009	1512	593	919	60.78	955	372	583	61.04	-							
5	2009/2010	1525	592	933	61.18	1103	406	697	63.19	-							
6	2010/2011	1527	611	916	59.98	966	317	649	65.16	-							
7	2011/2012	1515	606	909	60.00	611 until 14.05.2012	207	404 until 14.05.2012	66.12	-							

Average period of studying : 6.72  
Academic year 2011/2012 has not being finished yet

**Analysis:** This empirical data related to the students` population of the Faculty of Law at University of Belgrade shows the following trends:

- firstly, female students by rule have been dominant, e.g. in each academic year around 60% of each new generation consists of female students;
- secondly, even more interesting indicator is that from the higher percentage of female students than male students – more than 60%, almost 70% of the total number of students in each particular generation - finishes studies.

Proportionally, more female students graduate in both the average frame of 6,72 years of the studying period and in the officially proposed period of four years. In short, female students have been more successful and more efficient in conducting legal studies. This trend of more successful female students has been significantly intensified in the academic years 2006/7 and 2007/8 in comparison with the academic year 2005/2006. An analogous statistics will be possible for the later academic years with a time passing.

It should be noted that the above given statistics does exist in the Faculty of Law's electronic database. However, it exists not because of the official regular protocol but only because of the individual affinities and capacities of the responsible administrator.

IV.1.4.1. Female/male proportion of the awarded best students of their generation

Each academic year the Faculty of Law awards the student who finishes his studies in the optimal period of four academic years with the highest average grade. According to the statistics for the last 11 academic years (for the academic year 2011/12 we still do not have the result), seven female and four male students were awarded. Among these 11 awarded students, five female-awarded students and two male-awarded students became the members of the Faculty academic staff.

The Best Student of the Generation			
	Academic Year	Surname and Name	Average Grade
1	2000/2001	Vuletic Vladimir	9.77
2	2001/2002	Bodiroga Nikola	10.00
3	2002/2003	Petrovic Natasa	9.87
4	2003/2004	Jovicic Jelena	9.67
5	2004/2005	Adamovic Jelena	10.00
6	2005/2006	Jovanovic Marko	9.71
7	2006/2007	Djurovic Mateja	10.00
8	2007/2008	Krsljanin Nina	10.00
9	2008/2009	Obradovic Jelena	10.00
10	2009/2010	Dabic Snezana	9.86
11	2010/2011	Visekruna Aleksandra	10.00
12	2011/2012	/	

**Conclusive analysis for IV.1.2 and IV.1.3:** There is an evident discrepancy between the total number of enrolled, graduated and awarded female students and the number of female members of the academic staff at the Faculty of Law, University of Belgrade.

#### IV.1.4. Female/male proportion of the Master and PhD Students for the last five years

Firstly, female/male proportion of the Master and PhD students did not exist before this project. There is no regular electronic database of Master and PhD students in general at the Faculty of Law, and that represents the worst part, a black spot, in the official registers and statistics of the Faculty. The intensive process of introducing electronic database for MA, master and PhD students has been initiated at the Faculty of Law and that job will be finalized recently. This project will greatly contribute to conducting the above-mentioned necessary administrative task; it will especially contribute to introducing the female/male statistics into the MA and PhD students' documentation.

ENROLLED STUDENTS													
	Academic year	MASTER – New Regime				PhD – New Regime				MA – Old Regime			
		In total	Male	Female	Female %	In Total	Male	Female	Female %	In Total	Male	Female	Female %
1	2005/2006									119	59	60	
2	2006/2007	123	51	72	58.53								
3	2007/2008	158	86	72	45.56								
4	2008/2009	230	98	132	57.39	44	18	26	59.09				
5	2009/2010	331	140	191	57.70	37	26	11	29.73				
6	2010/2011	419	180	239	57.04	36	19	17	47.22				
7	2011/2012	490	185	305	62.24	35	16	19	54.28				
	In Total	1751	740	1011	57.75	152	79	73	48.00				

STUDENTS WITH ACHIEVED DIPLOMA																	
	Academic year	MASTER diploma – New Regime				PhD STUDIES – New Regime				MA diploma – Old Regime				PhD diploma – Old Regime			
		In total	Male	Female	Female %	In Total	Male	Female	Female %	In Total	Male	Female	Female %	In Total	Male	Female	Female %
1	2005/2006									24	18	6	25.00	11	5	6	54.54
2	2006/2007									23	16	7	30.43	11	6	5	45.45
3	2007/2008	59	27	32	54.24					23	10	13	56.52	17	12	5	29.41
4	2008/2009	60	30	30	50.00					21	10	11	52.38	17	10	7	41.17
5	2009/2010	74	29	45	60.81					34	14	20	58.82	16	12	4	25.00
6	2010/2011	99	46	53	53.53					11	5	6	54.54	13	7	6	46.15
7	2011/2012	136	55	81	59.56	1		1		5	2	3	60.00	8	3	5	62.50
	In Total	428	187	241	56.29					141	75	66	46.71	93	55	38	40.86

### Conclusive analysis:

Concerning the Master studies, there is a progressive trend of a growing number of master students, especially in the last three academic years. There is also a growing proportional number of enrolled female students. When looking at each generation of enrolled master students and of achieved MA diplomas from those enrolled in the previous academic one or two years (proposed period for finishing master studies), there is a slightly bigger number of female students both enrolled and with achieved master diplomas. When looking in total, among 1751 master students in the last six academic years, around 57.75% are female. However, when considering the 428 achieved master diplomas, the female students have obtained 241 diplomas (56.29%). It means that proportionally smaller number of female students finish master studies when compared with the total number of enrolled female students. It also means that male students, proportionally looking, have been a little bit more efficient in finishing master studies.

Concerning Postgraduate studies, which existed until the academic year 2005/06, there were 119 enrolled, among whom 59 male and 60 female students. Among those who defended MA thesis during the last seven academic years, within the total of 141 obtained MA diplomas, there were 75 male and 66 female students (46.71%). This indicates a little bit better efficiency of the male MA students.

Concerning PhD studies in the studying regime that used to exist until the academic year 2007/08, evidence about the total number of enrolled candidates in the previous academic years, from which come those who have finished PhD studies during the last seven years is not available to the author of this Report. However, the evidence about those who managed to finish these studies during the last seven academic years does exist. According to the evidence, among the 93 of those who achieved PhD diploma in the framework of the "old" regime of PhD studies, during the last seven academic years, there are 55 male PhD students and 38 female PhD students (40.86%). Again, male students have been, proportionally looking, more efficient and in bigger numbers among those who managed to finish PhD studies.

Concerning PhD studies that have been existent since the academic year 2008/09, among the total number of 152 enrolled PhD students, there are 79 male and 73 female students. There are fluctuations from one academic year to another in a sense that sometimes male and sometimes more female students have enrolled. Proportionally looking, from the total number of enrolled PhD students, slightly smaller number of female students has been on agenda (58%). From those 152 students, only one student - a female one - managed to finish these new-regime PhD studies in 2011/12.

#### ***IV.2. Gender studies offered at higher educational institutions***

Gender studies are offered at the following University institutions in Serbia:

- a) Faculty of Political Sciences, University of Belgrade – Master program, called Theories of Culture and Gender Studies and the course Theories and Politics of Gender, at the first year of Doctoral program called Studies of Culture and Media;
- b) Faculty of Law, University of Nis – the optional course Legal Gender Studies has been introduced in the undergraduate Curriculum since 2006. In addition, the Legal Clinic for the protection of the women rights has been continually working since 2006;
- c) Faculty of Law, University of Belgrade, optional course at the third year of undergraduate studies called Gender Studies;
- d) Faculty of Philosophy/Department for Sociology has introduced the following studies: Gender Studies I – an optional course within the undergraduate studies and Gender Studies II – an optional course within the master studies.
- e) University Center for Gender Studies – which belongs to the Association of Centers for Inter-Disciplinary and Multi-Disciplinary Studies at the University of Novi Sad – has been conducting a three-year PhD program called Doctoral Gender Studies, since 2005/06 ;
- f) Faculty for European Legal and Political Studies in Novi Sad, FEPPS, and University Singidunum had Gender Studies as a regular course in the undergraduate Curriculum.

#### ***IV.3. Curricula Gender mainstreamed (addressing gender and other diversity-related concerns while developing curricula and courses)***

Usually, curricula and courses are being developed without any concern for gender issues. Gender sensitive perspective has been by rule ignored in the academic syllabi and curricula. Until now, the courses and programs related to Gender studies have been the only windows of opportunity for introducing the gender perspective into the university education. However, these kinds of courses – either at an undergraduate or postgraduate level are still very rarely found in the university education of Serbia

### **V. Gender equality in legal professions (Gender distribution in legal professions: attorneys; notaries, enforcement agents, judges divided per courts in charge and public prosecutors)**

#### ***V.1. Attorneys***

The total number of attorneys in Serbia is 8000, encompassing 6301 attorneys in Serbia and 1699 attorneys in Vojvodina. Regional attorneys' associations have been established in Belgrade, Čačak, Šabac, Kragujevac, Požarevac and Zaječar, as well as in Vojvodina.

The statistical report for Vojvodina has to be considered separately because the computer program which has been used by the Bar Association of Vojvodina does not offer the possibility for presenting the gender distribution in the profession attorney in Vojvodina.

The statistical report for Serbia (without Vojvodina) indicates the following: Gender distribution according to the age shows that the younger generations of attorneys – especially the age below 30, and also the age from 30 to 40, have been better balanced. Namely, the proportion of male attorneys has been significantly smaller in relation to female ones among younger generations of attorneys:

- up to the age of 30 there are 54% male and 46% female attorneys;
- from the age of 30 to the age of 40, there are 56,8% male and 43,2% of female attorneys;
- from the age of 40 to the age of 50, there are 60% male and 40% of female attorneys;
- from the age of 50 to the age of 60, there are 69% male attorneys and 31% female attorneys;
- in the age over 60, there are 81% male and only 19% female attorneys.

<b>STATISTICAL REVIEW GENDER DISTRIBUTION AND AGE STRUCTURE OF THE ATTORNEYS IN SERBIA (WITHOUT VOJVODINA)</b>			
<b>AGE</b>	<b>IN TOTAL</b>	<b>MALE</b>	<b>FEMALE</b>
<b>Up to 30</b>	<b>418</b>	<b>225</b>	<b>193</b>
<b>from 30 to 40</b>	<b>1328</b>	<b>745</b>	<b>583</b>
<b>From 40 to 50</b>	<b>1340</b>	<b>815</b>	<b>525</b>
<b>From 50 to 60</b>	<b>2091</b>	<b>1412</b>	<b>676</b>
<b>Over 60</b>	<b>1124</b>	<b>911</b>	<b>198</b>
<b>In Total</b>	<b>6301</b>	<b>4108</b>	<b>2193</b>
<b>PROFESSIONAL AND ACADEMIC STATUS OF ATTORNEYS</b>			
<b>GRADUATED, LAW SCHOOL</b>	<b>MASTER DEGREE</b>	<b>PhD</b>	
<b>6195</b>	<b>29</b>	<b>77</b>	

## **V.2. Public Notaries**

The institution of Public Notaries has not yet been introduced into the legal system in Serbia. However, after 70 years, Public Notaries will soon be established again in Serbia. Public Notaries Law was adopted on May 5, 2011 and came into force on May 17, 2011. Serbian Ministry of Justice issued a Call for the Public Notary exam at the beginning of April 2012 and all interested candidates should respond until April 12, 2012. The first 100 Public Notaries will be registered until September 2012, and the full capacity of the institution of Public Notaries will be conducted in 2013. Enrolment conditions are: diploma from the Law School and two years of working experience in the notary job, judiciary or in attorneys' practice.

Public Notaries will help to relieve some of the burden of the courts and increase their efficiency, as well as improve citizens' legal security. It will facilitate the achievement of certain goals from the Judicial Reform Strategy and Serbia's policy of EU accession. The introduction of Public Notaries will create possibilities for courts to operate more efficiently and provide better legal protection for citizens, all of which are imperatives of the European Convention on Human Rights and Fundamental Freedoms, which Serbia is trying to respect and implement consistently.

### V.3. Judges divided per Courts in Charge – Male/Female Proportion

This statistical overview starts with the warning that the gender sensitive statistics related to the court system of Serbia does not exist. No institution, including the High Council of Judiciary, could offer any evidence about the number of male and female judges per courts in charge. The undifferentiated list of judges is given at the website of the High Council of the Judiciary. In order to get the statistical record of male and female judges the author of this Report was forced to literally count the female and male judges in each court and later on to calculate and analyse numbers and further trends. Once again, this author had to count male and female judges for each court and for the whole map of courts, and then to make summarising quantifications and analysis<sup>9</sup>.

The network of Courts consists of: **Supreme Court of Cassation**, then Courts of General Competences (**Appellate Courts** - Belgrade, Nis, Novi Sad and Kragujevac, **Higher Courts**, and **Basic Courts/Courts of Original Jurisdiction**), and Courts of Special Jurisdiction (**Administrative Court, Economic Appellate Court, Economic Courts, Higher Misdemeanor Courts, Misdemeanor Courts**).

STATISTICAL REVIEW GENDER DISTRIBUTION OF THE JUDGES IN SERBIA			
COURTS	JUDGES IN TOTAL	MALE	FEMALE
Supreme Court of Cassation	24	7	17, President
APPELLATE COURTS			
Appellate Court in Belgrade	79	18	61
Appellate Court in Kragujevac	52	18	34
Appellate Court in Nis	37	14, President	23
Appellate Court in Novi Sad	48	16, President	32
APPELLATE COURTS In Total	216	66	150
COURTS OF GENERAL JURISDICTION			
Higher Courts – District of Belgrade			
Belgrade	63	28	35
Valjevo	8	2	6, President
Zajecar	7	2	5, President
Negotin	8	3, President	5
Pozarevac	8	3, President	5
Smederevo	8	4	4, President
Sabac	8	3	5, President
Higher Courts – District of Belgrade In Total	110	45	65
Higher Courts - District of Kragujevac			
Jagodina	9	3, President	6
Kragujevac	11	1	10, President
Kraljevo	8	1, President	7
Krusevac	8	2, President	6
Novi Pazar	7	5	2

<sup>9</sup> Please see [www.vss.sud.rs/Spisak-sudija.htm](http://www.vss.sud.rs/Spisak-sudija.htm)

Uzice	7	2	5, President
Cacak	7	3, President	4
<b>Higher Courts - District of Kragujevac In Total</b>	<b>57</b>	<b>17</b>	<b>40</b>
Higher Courts - District of Nis			
Vranje	8	2, President	6
K.Mitrovica	8	7, President	1
Leskovac	8	6, President	2
Nis	17	8, President	7
Pirot	8	4, President	4
Prokuplje	7	3, President	4
<b>Higher Courts - District of Nis In Total</b>	<b>54</b>	<b>30</b>	<b>24</b>
Higher Courts - District of Novi Sad			
Zrenjanin	9	4	5, President
Novi Sad	22	6	16, President
Pancevo	9	3	6, President
Sombor	8	1	7, President
S.Mitrovica	9	4, President	5
Subotica	8	2, President	6
<b>Higher Courts - District of Novi Sad In Total</b>	<b>63</b>	<b>20</b>	<b>43</b>
<b>Higher Courts - In Total</b>	<b>284</b>	<b>112</b>	<b>172</b>
<b>Courts of Original Jurisdiction</b>			
Belgrade 1	196	30	166
Belgrade 2	29	6	23, President
Valjevo	33	13	20, President
Bor	9	2	7, President
Zajecar	24	5, President	19
Negotin	12	1	11, President
Pozarevac	33	14, President	19
Smederevo	25	10	15, President
Loznica	18	6, President	12
Sabac	26	8	18
Jagodina	17	8, President	9
Paraćin	22	6	16, President
Kragujevac	59	17	42
Kraljevo	28	6, President	22
Krusevac	31	12, President	19
N.Pazar	22	14, President	8
Pozega	14	6, President	8
Prijepolje	8	4	4
Uzice	18	5	13, President
Cacak	30	10	20, President

Vranje	41	18, President	23
K.Mitrovica	14	7	7, President
Leskovac	33	16, President	17
Nis	75	19	56
Pirot	12	4	8, President
Prokuplje	23	5, President	18
Zrenjanin	22	4	18, President
Kikinda	12	1	11, President
Novi Sad	103	22	81
Vrsac	12	4	8, President
Pancevo	37	6, President	31
Sombor	25	7	18, President
Sr.Mitrovica	38	10	28
Subotica	33	8	25
<b>Courts of Original Jurisdiction in Total</b>	<b>1138</b>	<b>314</b>	<b>824</b>
<b>COURTS OF SPECIAL JURISDICTION</b>			
<b>ADMINISTRATIVE COURT</b>	<b>31</b>	<b>8</b>	<b>23, President</b>
<b>ECONOMIC COURTS</b>			
Economic Appellate Court	26	9, President	17
Economic Court Belgrade	39	3	36
Valjevo	7	2	5, President
Zajecar	5	3	2, President
Zrenjanin	3	1	2
Kraljevo	8	2	6, President
Kragujevac	9	3, President	6
Leskovac	8	6, President	2
Nis	13	4	9, President
Novi Sad	12	6, President	6
Pancevo	5	2	3, President
Pozarevac	5	2, President	3
Sombor	5	1	4, President
S. Mitrovica	5	0	5, President
Subotica	4	0	4, President
Uzice	6	3	3, President
Cacak	5	1	4, President
<b>Economic Courts in Total</b>	<b>165</b>	<b>48</b>	<b>117</b>
<b>Higher Misdemeanor Court</b>	<b>61</b>	<b>11, President</b>	<b>50</b>
<b>Misdemeanor Courts</b>			
Arandelovac	5	0	5, President
Backa Planka	6	2, President	4

Beograd	104	13, President	91
Becej	5	2	3, President
Valjevo	21	6, President	15
Vranje	8	4, President	4
Vrsac	5	2, President	3
G. Milanovac	5	1	4, President
Zajecar	11	3	8, President
Zrenjanin	14	4	10, President
Jagodina	10	1	9, President
Kikinda	6	4	2, President
K. Mitrovica	10	0	10, President
Kragujevac	17	2	15, President
Kraljevo	12	4, President	8
Krusevac	13	4	9, President
Lazarevac	8	4	4, President
Leskovac	13	8, President	5
Loznica	11	4	7, President
Mladenovac	5	1	4, President
Negotin	4	1	3, President
Nis	27	4	23, President
Novi Pazar	13	5	8, President
Novi Sad	30	6	24, President
Obrenovac	5	1	4, President
Pančevo	15	2	13, President
Paraćin	4	1, President	4
Pirot	6	2	4, President
Pozarevac	15	6	11, President
Pozega	10	4, President	6
Presevo	2	1	1, President
Prijepolje	6	5	1, President
Prokuplje	7	1	6, President
Rum	15	6	9, President
Raska	3	0	3, President
Senta	6	2	4, President
Sjenica	2	0	2, President
Smederevo	13	2	11, President
Sombor	8	2	6, President
Subotica	10	3, President	7
Sr.Mitrovica	6	1	5, President
Trstenik	3	0	3, President
Uzice	8	3, President	5
Cacak	14	2	12, President

Sabac	16	6, President	10
Misdemeanor Courts in Total	539	133	406
<b>ALL COURTS IN TOTAL</b>	<b>2434</b>	<b>692</b>	<b>1742</b>

### Summing-up Overview of Gender Distribution in the Serbian Courts:

MAP OF COURTS IN TOTAL	JUDGES IN TOTAL	MALE	FEMALE
Supreme Court of Cassation	24	7	17, President
<b>APPELATE COURTS in total</b>	<b>216</b>	<b>66</b>	<b>150</b>
Higher Courts - In Total	284	112	172
<b>Courts of Original Jurisdiction - In Total</b>	<b>1138</b>	<b>314</b>	<b>824</b>
Administrative Court	31	8	23
<b>Economic Courts in total</b>	<b>165</b>	<b>48</b>	<b>117</b>
Higher Misdemeanor Court	61	11	50
Misdemeanor Courts in Total	539	133	406
<b>TOTAL No of Judges</b>	<b>2434</b>	<b>692 male</b>	<b>1742 female</b>

**Summing up analysis:** The total number of judges in Serbia is 2434, among whom there are 692 male judges and 1742 female judges, which means that less than 30% are male judges.

The Supreme Court of Cassation has 24 judges, among whom 7 are male and 17 female judges. The President is a female judge.

There are 4 appellate courts, with 216 judges, among whom 66 male and 150 female judges. Male judges are in the presidential function of 2 of these courts.

Total number of Higher Courts in Serbia is 26, they encompass 284 judges, among whom 112 are male and 172 female judges, and there are 12 male and 14 female judges in the function of the President of Higher Courts.

There are 34 Courts of Original Jurisdiction, with 1138 judges in total, among whom 314 male and 824 female judges. A little bit more than 25% are male judges in these courts. In the framework of these 34 courts, the presidents are male judges in 12 cases, meaning in almost in one third of these courts.

There are 17 Economic courts, with 165 judges, among whom 48 male judges and 117 female judges, and with well proportioned distribution of the function of the President, e.g. 5 male and 10 female Presidents of Economic Courts.

Misdemeanor courts in total number (including the higher Court) are 600 judges, among whom 144 male and 456 female judges, which means that less than 25% are male judges. In these courts, the function of the President belongs to 12 male judges, e.g. around 25% again.

#### V.4. Enforcement Agents

According to the webpage<sup>10</sup> of the Agency for licensing enforcement procedures, there are 279 licensed enforcement agents in the Republic of Serbia, among whom 222 male and only 57 female enforcement agents.

<sup>10</sup> Please see <http://alsu.gov.rs/>

### V.5. Gender Distribution among Prosecutors and Deputy Prosecutors:

According to the Article 12 of the Law on Public Prosecution, a public prosecution consists of a public prosecutor, deputy public prosecutors and public prosecution staff. Types of Public Prosecutions - according to the Article 13 of the Law on Public Prosecution, Public Prosecution of the Republic of Serbia consists of the Republican Public Prosecution, the Appellate Public Prosecutions, the Higher Public Prosecutions, the Basic Public Prosecutions and the Public Prosecutions with special jurisdiction. Public prosecutions with special jurisdiction are the Public Prosecution for Organized Crime and the Public Prosecution for War Crimes. The Republican Public Prosecution, the Public Prosecution for Organized Crime and the Public Prosecution for War Crimes are established for the territory of the Republic of Serbia. Appellate public prosecutions have been formed for the territories of appellate courts. Higher public prosecutors have been formed for the territory of high courts, and basic public prosecutions have been formed for the territories of basic courts.

#### Analysis of the Gender

The Republican Public Prosecutor, the Public Prosecutor for Organized Crime and the Public Prosecutor for War Crimes are all male persons.

STATISTICAL REVIEW GENDER DISTRIBUTION OF THE DEPUTY PUBLIC PROSECUTORS IN SERBIA			
<i>Public Prosecutions</i>	<i>DEPUTY PROSECUTORS IN TOTAL</i>	<i>MALE</i>	<i>FEMALE</i>
Republican Public Prosecution	12	6	6
Public Prosecution for Organized Crime	5	5	0
Public Prosecution for War Crimes	7	7	0
<b>In Total</b>	<b>24</b>	<b>18</b>	<b>6</b>
<b>Appellate Public Prosecutions</b>			
APPELATE Public Prosecution Belgrade	22	11	11
APPELATE Public Prosecution Kragujevac	8	7	1
APPELATE Public Prosecution Niš	10	8	2
APPELATE Public Prosecution Novi Sad	12	7	5
<b>In Total</b>	<b>52</b>	<b>33</b>	<b>19</b>
<b>Deputy Prosecutors in Higher Public Prosecution</b>			
Belgrade	33	10	22
25 other cities in common	85	42	43
<b>In Total</b>	<b>118</b>	<b>52</b>	<b>65</b>
<b>Deputy Prosecutors in Basic Public Prosecutions</b>			
First Basic Public Prosecution Belgrade	41	13	28
Second Basic Public Prosecution Belgrade	7	4	3
30 other cities	161	70	91
<b>In Total</b>	<b>209</b>	<b>87</b>	<b>122</b>
<b>TOTAL NUMBER OF DEPUTY PUBLIC PROSECUTORS</b>	<b>402</b>	<b>190</b>	<b>212</b>

**Conclusion:** The number of female Deputy Prosecutors has been a little bit higher than the male ones, but the number of female Deputy Prosecutors is proportionally the biggest in the case of Basic Prosecutions, but significantly smaller in the case of the Republic and Appellate Public Prosecution.

**Prosecution Association of Serbia** - When speaking about Prosecutor Association of Serbia, President of Association is Zorin Zogović. District prosecutor in Zaječar and Vice-Presidents of Association is Zlatko Šulović. District prosecutor in Valjevo is Ljubiša Dragašević, Municipal prosecutor in Nova Varoš, and Branislava Vučković, Municipal prosecutor in Pančevo. Managing Board of the Prosecutor Association of Serbia consists of 24 members, among who 13 are male (including the President of the Managing Board), and 11 female prosecutors. Executive Board of the Prosecutor Association of Serbia consists of three members, among which one male and two female (including the Vice president). Significant support to the Association of Prosecutors in efforts to prepare a better legal framework and to ensure the implementation of new laws and raising expertise and training of public prosecutors and deputy public prosecutors, has been provided by international and regional organizations: OSCE, EU Commission, EU, CIDA, USAID, Open Society Fund, Embassies (Netherlands, Spain, Germany and the United State)<sup>11</sup>. Among conducted projects (more than 50), only a few were indirectly related to the gender sensitive issues. For example, a project from 2008 called "Ethical Council", a project from 2008, called "Improving relations between the prosecutor and victim", a project from 2009, called "Increasing the prosecutors sensitivity for the problems of family violence", and projects from 2010 called: "The fight against human trafficking, strengthening the role of prosecutors and the promotion of human rights of trafficked persons", and "The introduction of anti-discrimination issues in the area of social protection in Serbia".

## V.6. Addressing Gender Bias in Judiciary Training Programs

Education of judges in accordance with European standards started firstly through the Judges Association of Serbia (JAS), and then later on was accompanied or, better to say, contrasted by the establishment of the state official centre for initial and permanent education of judges, named National Judicial Academy (NJA). Over the time, the need for establishing an official institutional model for legal training came on agenda. The OSCE Mission to Serbia, supported by dedicated partners from the Government and the judiciary, managed to shape the model for institutionalized judicial training in Serbia. As a matter of fact, a portion of the judiciary, who formed the Judges' Association of Serbia in 1997, eventually initiated/started the Judicial Training Centre (JTC), with the support and under the competence of the Ministry of Justice. The Judicial Training Center (JTC) was further on transformed into National Judicial Academy (NJA). The first generation of attendants at NJA was in 2010/11.

### V.6.1. Education in the Judges' Association of Serbia

Judges Association of Serbia (JAS) was founded on April 7, 1997 in Belgrade. JAS is a professional, non-governmental, non-profit organization with the aim of establishing an independent, impartial, professional, efficient and responsible judiciary, through affirmation of law as a profession, advancement of regulations, strengthening of respect, professional ethics and the dignity of judges with a goal of building a legal state and rule of law. After the democratic changes in 2001, JAS continued its work. Finally, it was registered in 13th July 2001, as a civic association<sup>12</sup>.

<sup>11</sup> Please see <http://www.uts.org.rs/>

<sup>12</sup> Please see [http://www.sudije.org.yu/static\\_content/english/history](http://www.sudije.org.yu/static_content/english/history).

JAS organizes many seminars, round tables and public debates. JAS publishes the Bulletin, 4 times per year, and the Monthly Newsletter.

One of the aims of JAS is proposed to be the permanent education of judges in accordance with the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights. It should be reasonably expected that the issues of gender equality sensitive, equality sensitive in general, and human rights` sensitive education of judges took a significant part in the educational activities of JAS.

However, there are just a few projects of JAS related to the gender issues. One of them is the seminar in the frame of the project, called Initiative against Trafficking of Women and Girls in South-Eastern Europe, and the seminar in the frame of the project called Mediation in the case of Divorces. There is no clear evidence about how much gender sensitive perspective took part in these seminars.

The most directly linked seminar to gender sensitive education and to stimulating an interest in gender equality, equality issues and human rights issues was the seminar held in April 2010 in JAS, which aimed to inform the judges, lawyers and academics about the project "Equality Programme Internship for Women's Human Rights Lawyers". That international program started being conducted in 2006, giving an opportunity to legal scholars, during three months of paid internship, to achieve the following special legal skills: a) legal research on international and comparative human rights law and practice with respect to the protection of women's human rights; b) preparation of materials for legal training on the application and development of equality standards; c) programme administration and development.

It seems, however, that JAS only informed legal professionals about this internship and did nothing more in that respect. The conclusion is that JAS does very far from enough in respect of gender sensitive education.

#### *V.6.2. Education in Judicial Training Center*

According to the official announcement<sup>13</sup> of December 31 2009, the Judicial Training Centre delivered **1,043** specialized training sessions to **27,101** beneficiaries (with an investment of 6 million EUR). Among these sessions, there were: **599** sessions for **16,543** judges; **352** sessions for **5,002** prosecutors; **59** sessions for **4,367** lawyers and **33** sessions for **989** judiciary related personnel. Four sections were established: the Civil Law Section, the Criminal Law Section, the Commercial Law Section and the Human Rights Section.

It could be noticed that there are no clear indicators about the concrete contents and results of these educational activities, especially there is no evidence available of gender sensitive approach in these activities.

#### *V.6.3. Education in the National Judicial Academy*

According to the Statute of the National Judicial Academy (NJA), NJA aims at securing the professional, independent, unbiased and efficient conducting of the judicial and prosecutor's function and an efficient fulfilment of the jobs of the judicial and prosecutor's administration. These aims have been in accordance with the international documents of the United Nations and the Council of Europe.

NJA of Serbia has represented the main source of judges` and prosecutors` education, which has been established as the state academic institution in January 2010, and enrolled the first generation of attendants in 2010/2011. This academic year the second generation started attending NJA.

<sup>13</sup> Please see <http://europeanandcis.undp.org>.

The Curriculum of the NJA, the systemic educational programs related to the basic education of the attendants – judges and prosecutors, does include issues of protection from gender based discrimination, violence in the family and also the affirmation of women and child human rights.

Two seminars – one in the previous and one in the current academic year – related to the issues of discrimination, including the one based on gender roles, have been organized as mandatory ones. The aims of these seminars and their topics were to offer new insights, then, to present international and domestic legal solutions about gender equality, gender based discrimination and family violence, and last but not least important, to stimulate gender sensitive way of thinking of judges and prosecutors. Lectures, seminars and analysis of the concrete legal cases have been the methodological tools in that respect<sup>14</sup>.

The first mentioned seminar was held in June 2011, and was devoted to the protection of the socio-economic rights of women. The aim of that seminar was to stimulate judges to introduce the gender sensitive perspective into their decision-making and judicial practice as a whole. The topics of the education were – the meaning of gender equality, multiply marginalized women, property rights and personal rights of women (marriage, extra-marriage community, family), labour relations and mobbing, protection from gender discrimination in the field of labour.

The above mentioned second seminar has been currently held at Zlatibor (from May 27 to 31, 2012). Introductory lectures have been devoted to the essence of gender equality, to pointing to the difference between *de facto* and *de jure* position of women and to the social context and needs for enacting anti-discrimination laws. The issues of the anti-discrimination international and domestic legal framework, international and domestic judicial practice, issues of social rights of women and protection against mobbing, competences of the institution of the Commissioner for Equality and the cases which this Institution has already dealt with were also considered.

NJA has been the official bearer of an obligatory specialization of the judges, prosecutors, attorneys and policemen in the field of the rights of children and protection of juvenile population. NJA has been collecting data and creating database about the jurisprudential professionals who have achieved this specialization and to whom the referential cases have been delivered.

Concerning ex-curriculum alternative programs and projects for the continual education of judges and prosecutors (and other referential institutional and legal actors), NJA organized a few hundred seminars, lectures and symposiums, related to the human rights issues (including those which had been organized by the preceding Judicial Training Centre in 2002).

NJA organized a few one-day or few-days lasting seminars devoted either to the Criminal Code or to the Civic Law protection from the violence based on sex and gender. NJA also organized a more extensive seminar, which combined International legislation, Criminal Code and Civil Law domestic legislation related to the sex and gender based violence.

Together with the Department for Gender Equality of the Government (Ministry of Labour and Social Policy), NJA published handbooks concerning the Civic Law and Criminal Code protection from the gender based discrimination. These publications have been used in the NJA process of the above mentioned gender sensitive basic and continual education of judges and prosecutors. NJA also held a few seminars on sex-trafficking for judges and lawyers. Together with the Department for Gender Equality of the Government and the City Centers for Social Policy, NJA has been currently working on the education of the prosecutors from Belgrade and Nis, concerning the topic of institutionally enacted psycho-social treatment for those who committed family violence. Four seminars/presentations of the documentary films about women, who - from the victims of violence

<sup>14</sup> Please see [www.pars.rs](http://www.pars.rs).

- became the killers, are planned to be held in June and July this year. These presentations will take place in four City centres of Appellate Courts.

**Conclusion:** NJA has been conducting significant gender sensitive projects for education of judges and prosecutors. However, when having in mind the dominant marginalization, on one hand, and an essential importance of the gender sensitive education, on another, this gender sensitive perspective of educational aims of the NJA could and should be intensified and more systematically introduced into the curricula.

## **VI. National achievements, challenges and recommendations for gender equality**

### **VI.1. Better Enforcement of Legislation**

The **Constitution** should be reconsidered from the gender perspective and corrected in the provisions where the gender equality perspective has not been fully respected and articulated. The Law on Gender Equality and the Anti-Discrimination Law should be fully and consistently implemented.

### **VI.2. Gender Equality Mechanisms and Networking among Gender Institutional Mechanisms**

State institutional mechanism, which aim at gender equality should be empowered and made more efficient and present in the main field of legislation and policy making. When speaking about legislation, the parliament body for gender equality should be empowered in a sense that all its members - who have been delegated by their parliamentary parties – should pass the gender sensitive education. Only then they would be able to reconsider all legislative proposals from the point of gender equality. In addition, this body shall take care about affirming the culture of women human rights and preventing the hate speech on the gender basis. Parliamentary ethical codex should entail proposals related to prevention of gender based discrimination, manifested in oral, written or practical modality, and to prevention of any forms of sexual harassment and mobbing.

When speaking about the executive in Serbia, The Council for Gender Equality of the Serbian Government should not be marginalized as being a segment of the Ministry of Labor and Social Policy. It should become the real inter-ministerial body which could directly and constantly coordinate and instruct each Ministry, as well as the Government itself. Concerning gender sensitive issues related not only to employment and social security but to all fields of state policy and social life (education, ecology, health care, economics, investments, culture, etc). It means that the state politics should be built strategically and long-lastingly in accordance with the civilization standards of gender equality.

State policy should also be oriented towards introducing the gender sensitive statistical records. **Statistical Yearbooks of Serbia**, which presents general statistical information of Serbia, should be organized in a gender sensitive manner, which means that also inventories of inhabitants should be reorganized in accordance with gender relevant data. Gender sensitive statistics should be introduced in state political, administrative, professional, educational, cultural and all other institutions. The purpose of these gender sensitive statistical records must not serve in any way to the gender discrimination, but only to serve for improvement of gender equality and equal opportunities for both genders. They would also contribute to getting better insights about the trends in male/female distribution of roles in certain social fields and to enact adequate measures of positive discrimination, wherever necessary, according to the existent gender inequalities.

Article 40 from the Law on Gender Equality considers some important dimensions of the statistical record, but not the one related to the need for gender sensitive statistics, which would have served to overcoming unequal opportunities for male and female individuals in certain fields of social activities and gender roles. According to Article 40, "Statistical data collected, recorded and processed at the level of the Republic of Serbia, autonomous province and local self-government units as well as in establishments, bodies and organizations with delegated state powers, as well as in public enterprises and companies shall be disaggregated by gender." Paragraph 2 of Article 40 states that "Statistical data referred to in paragraph 1 thereof shall constitute integral part of the record keeping and statistical system of the Republic of Serbia and will be made available to the public in accordance with the law."

The Ministry of Education and Science should establish a body concerned with gender equality in the field of education, for the universities, primary and high schools. This body should articulate the educational strategy - plan for approving gender equality in all respects – concerning training of teachers and professors, reconsidering the textbooks, curricula and syllabi from the point of gender equality, then, concerning proportion of male and female educators and managements in education. Each educational institution should have a responsible person/trustee - who would be a mandated member of the educational staff - for the issues of gender equality. That trustee shall take care of the implementation of the Ministry of Education projects related to reconsidering curricula, syllabi and textbooks from the point of gender equality. In the case of University education, that person shall take care of the equalizing of processes in employing male and female academic staff, in electing the faculty management, in solving eventual problems of sexual harassment and mobbing. The Ministry of Education and Science has already conducted the project which reconsidered primary schools' textbooks from the gender perspective. This kind of empirical survey should be implemented also for university textbooks, especially in social sciences. The above-mentioned Gender Equality Body of the Ministry of Education and Science should be the mediator and coordinator between the Inter-ministerial Governmental body and the bodies or trustee persons for gender equality which should be established at each educational institution (Faculty, High and Primary Schools).

The Ministry of Education and Science should propose an obligation for each educational institution to adopt the documents and mechanisms for preventing any discrimination based on gender. The Ministry should also reconsider male dominant formulation of academic titles. It will also initiate introducing certain forms of gender studies at all faculties of social sciences.

### ***VI.3.Promotion of Legal Education with Gender Perspectives***

Faculties of Law in Serbia should implement all above mentioned mechanisms and procedures which aim at gender equality. Responsible persons/trustees or bodies for gender equality should be introduced. They will monitor female/male proportion in faculty government, among academics, in electing different bodies. All textbooks and syllabi, as well as the general curriculum of the Law Faculty should be reconsidered from the point of how much the presentation and interpretation of legal issues (of law-making and law implementation, of an essence and main aims of different segments of law) has been gender and human rights sensitive (including women human rights perspective).

Gender studies should be introduced at all Law Faculties. Courses on human rights, including women human rights, should be intensified. Culture of human rights and prevention of any kind of discrimination (including discrimination based on gender) should be intensified at all Law Faculties. Permanent training/education of the whole academic staff in the field of gender equality, anti-discrimination and human rights culture should be introduced.

**Conclusive Statements and Recommendations** - what the Beijing Platform for Action remarks especially for transitional countries in South-East Europe, the Caucasus and Central Asia, has been fully valid for Serbia nowadays. National mechanisms for gender equality in Serbia are understaffed, insufficiently funded and have marginal influence on key policy areas. They have to be empowered systematically and permanently. There is still insufficient training and guidance on introducing gender mainstreaming in different government policies. The lack of training undermines the widespread regional gender mainstreaming strategies in all areas of public policy. As a part of this discrepancy, there is relatively little reported on the impact of training on the effectiveness of strategies. These manifolds have to be eliminated, the training has to be intensified and the results of the gender mainstreaming trainings have to be monitored and constantly improved. Serbia should put in place and/or empower already existing gender focal points, special units and institutes, in order to better promote the practice of gender mainstreaming throughout government activities, as well as similar activities in all relevant social fields (economy, politics, education, media and culture).

Gender – responsive budgeting initiatives, a key tool of gender mainstreaming, have to be intensified. They have to contribute to the main purpose through manifold projects, consisting of issuance of guidelines, training activities (training of monitors, commissioners, trustees, representatives of all relevant political, media and educational bodies responsible for gender mainstreaming; training of university professors as well as of the primary school and high school teachers and lecturers); institutional empowerment and networking; building monitoring infrastructure; developing and improving media coverage; conducting projects for empirical survey on the content of textbooks, curricula and syllabi from the point of gender equality.

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# COUNTRY REPORT ON LEGAL PERSPECTIVES OF GENDER EQUALITY IN SERBIA

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## I. National legal framework and compliance with EU Gender Equality Law

### 1. International Legal Standards and Gender Equality

One of the fields in which gender inequality is most frequent in practice is the labor relationships. This kind of inequality is a consequence of deeply rooted unequal evaluation of work and social roles of men and women. In the domain of work women are exposed to so-called covert or indirect discrimination, which is very difficult to prove, and therefore remains largely unsanctioned.

Gender equality in the field of labor is guaranteed today by many international legal standards.

From the documents of the United Nations, special provisions are included in: the International Covenant on Economic, Social and Cultural Rights of 1966<sup>1</sup>, the Convention on the Elimination of All Forms of Discrimination against Women of 1979<sup>2</sup>, and we should also mention General Comment No. 16 - the equal right of men and women to enjoy all economic, social and cultural rights<sup>3</sup>.

A very important role belongs to the acts of the International Labor Organization, the most important being: Convention No.100 on equal remuneration of male and female workers for work of equal value<sup>4</sup>; Convention No.111 on prohibition of discrimination in employment<sup>5</sup>; Convention No.156 on workers with family obligations<sup>6</sup>.

However, the greatest contribution to the process of gender equalization was made by the European Union in the following documents: the Charter of Fundamental Rights of the European Union<sup>7</sup>; Directive 75117/EEC on the principle of equal pay for men and women<sup>8</sup>; Directive 76/207/EEC on the implementation of the principle of equal treatment of men and women in regards to access to employment, vocational training and working conditions<sup>9</sup>; Directive 86/378/EEC on the implementation of the principle of equal treatment of men and women in occupational social welfare

<sup>1</sup> See Article 3 and Article 7 of the Covenant. "Official Gazette of SFRY" no. 7/1971.

<sup>2</sup> According to Article 11 of the Convention "member States shall take all appropriate measures to eliminate discrimination against women in employment, so that women may have same rights based on equality between men and women, Official Gazette of SFRY no. 11/981 and 13/2002.

<sup>3</sup> Committee on Economic, Social and Cultural Rights, Comment 16 (2005), The equal right of men and women to the enjoyment of all economic, social and cultural rights. <http://www.unhcr.org/refworld/publisher,CESCR,General,43f3067ae,0.html>; accessed May 12, 2012.

<sup>4</sup> <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C100>; last modified May 12, 2012.

<sup>5</sup> <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111>; last modified May 12, 2012.

<sup>6</sup> "Official Gazette of SFRY" no. 7/1987. See more online at: [http://risrs.org/index2.php?option=com\\_docman&task=doc\\_view&gid=41&Itemid=23](http://risrs.org/index2.php?option=com_docman&task=doc_view&gid=41&Itemid=23); last modified May 12, 2012.

<sup>7</sup> See Article 23 which promotes equality between men and women and which states in paragraph 1 that this equality must exist in all areas, including employment, work and earnings. The text of the Charter is available at the following web page: <http://eur-lex.europa.eu/en/treaties/dat/32007X1214/htm/C2007303EN.01000101.htm>; last modified May 14, 2012.

<sup>8</sup> This directive relies on Article 119 of the Treaty and refers to the equality of payment for work of equal value for men and women. The text of the directive is available at the following web page: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31975L0117:EN:HTML>; last modified May 12, 2012.

<sup>9</sup> The goal of this Directive is the application of the principle of equality between men and women in Member States with regard to employment opportunities, including professional improvement and training. See the text of the Directive online at: [http://www.ured-ravnopravnost.hr/site/preuzimanje/dokumenti/eu/86\\_378\\_EEZ.pdf](http://www.ured-ravnopravnost.hr/site/preuzimanje/dokumenti/eu/86_378_EEZ.pdf), last modified May 12, 2012.

systems<sup>10</sup>; Directive 86/613/EEC on the implementation of the principle of equality between men and women engaged in independent economic activity, including farmers and protection of self-employed women during pregnancy and motherhood<sup>11</sup>; Directive 96/34/EC on maternal leave<sup>12</sup>; Directive 2000/78/EC on establishing general requirements for equal treatment in employment and profession<sup>13</sup>; Directive 2006/54/EC on the implementation of the principles of equal opportunities and equal treatment of men and women in employment and profession<sup>14</sup>.

In March 2010, the European Commission adopted the Charter on Women, which confirms its commitment to gender equality and strengthening the gender perspective in all its policies<sup>15</sup>. The Charter defines five priority areas for the advancement of the status of women, namely: the equal right to economic independence, equal pay for equal work and work of equal value, equality in decision-making; dignity, integrity and the eradication of gender-based violence; and gender equality in international activities. In accordance with the Charter, a strategy for equality of women and men was defined from the year 2010 to 2015 in the form of statements of the Commission to the European Parliament, European Council, European Economic and Social Committee and the Committee of Regions.<sup>16</sup>

## 2. Legal Framework on Gender Equality in the Republic of Serbia

The Republic of Serbia in the past period has had a rich legislative activity and in 2009 many laws were enacted in the field of anti-discrimination. Since the Law on Prohibition of Discrimination and the Gender Equality Law were passed during, that is near the end of 2009, their practical implementation will be seen in the future. Significant improvements are expected in the status of women and more efficient protection of their rights.

The greatest achievement of these laws, in this period, is the great impact that the campaign itself, during the passing and adoption of these laws, has made to raise awareness at all levels, both in terms of national definition as well as the necessity of the legislation prohibiting discrimination

<sup>10</sup> The goal of this Directive is the implementation of the principles of equal treatment for men and women in occupational social security systems. See the text of the Directive at the following web page: [http://www.ured-ravnopravnost.hr/site/preuzimanje/dokumentu/eu/86\\_378\\_EEZ.pdf](http://www.ured-ravnopravnost.hr/site/preuzimanje/dokumentu/eu/86_378_EEZ.pdf); last modified May 13, 2012.

<sup>11</sup> The aim of this Directive is to ensure the application of equal treatment in the Member States in relation to men and women engaged in an individual economic activity. Article 2 of the Directive provides that the persons covered by its provisions include: 1) all persons engaged in a profitable activity for their own account and under the conditions laid down in national legislation, including farmers and liberal professions, and 2) their spouses who participate in the activities of the self-employed worker performing the same or additional tasks in accordance with the conditions laid down by national legislation. See the text of the directive at the following website: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31986L0613:EN:HTML>; last modified May 12, 2012.

<sup>12</sup> The aim of this Directive is the annexation of the general agreement on parental leave which was a result of the negotiations between the European Trade Union Confederation (ETUC), European Centre for Public Enterprises (CEEP) and the European Union of Employers (UNICE). The text of the Directive can be found at the following Internet address: last modified 12.05.2012. To see more on general agreements: Urdarević, Bojan, "International General Agreements as a Form of Social Dialogue at the Global Level", *Pravni Život* 549 (2011): 805-817.

<sup>13</sup> The aim of this Directive is setting of a legal framework for combating discrimination on grounds of religion, age, disability or gender in employment and occupation. An interesting article is the Article 10 of the Directive which requires Member States to take measures in accordance with its legal system to ensure that, in case of disputes regarding these issues, the burden of proof is on the defendant. In other words, if a person believes that their right to equal treatment was violated and takes the dispute before the competent authorities, the other side has to prove that there was no violation of this principle. The text of the Directive may be seen the following Internet address: [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&numdoc=32000L0078&model=guichett&lg=en](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&numdoc=32000L0078&model=guichett&lg=en); last modified May 12, 2012.

<sup>14</sup> The aim of this Directive is to ensure the implementation of the principle of equal opportunities and equal treatment for men and women in labor and employment. This means, first of all: access to employment, working conditions, wages and social insurance rights. The text of the Directive may be seen online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:204:0023:0036:en:PDF>; last modified May 13, 2012

<sup>15</sup> The text of the Charter can be found online at: [http://ec.europa.eu/commission\\_2010-2014/president/news/documents/pdf/20100305\\_1\\_en.pdf](http://ec.europa.eu/commission_2010-2014/president/news/documents/pdf/20100305_1_en.pdf); last modified May 14, 2012.

<sup>16</sup> See more in the following report: <http://www.ravnopravnost.gov.rs/files/Strategija%20za%20ravnopravnost%20zena%20i%20muskaraca%202010-2015.pdf>; accessed May 13, 2012.

against women and promoting gender equality. For the purpose of this report we will analyse all current legal acts that are in force in Serbia and which contain Articles related to gender issues and prohibition of discrimination.

The Law on Prohibition of Discrimination<sup>17</sup> regulates the general prohibition of discrimination, types and cases of discrimination, as well as procedures of protection against discrimination (Article 1). All terms used in this law in the masculine gender include the same terms in the feminine gender (Article 2, paragraph 5). In the second chapter of this law, with the title "General Prohibition and Types of Discrimination", the principle of equality is defined (Article 4), as well as certain types of discrimination (Articles 6-13) and special measures, which, being affirmative, are not considered discriminatory (Article 14). In the third chapter, the law regulates specific cases of discrimination: discrimination in proceedings before public authorities (Article 15); in the field of work (Article 16); in public service provision and use of facilities and areas (Article 17); prohibition of religious discrimination (Article 18); in the field of education and vocational training (Article 19), discrimination based on sexual orientation (Article 21); discrimination of children (Article 22), discrimination based on age (Article 23); discrimination of national minorities (Article 24); discrimination based on political or trade union affiliation (Article 24), discrimination against persons with disabilities (Article 26); discrimination with regard to health (Article 27). This manner of listing specific cases of discrimination is common in legislation of other countries and meets the standards of efficient protection in terms of clear guidelines and a lack of uncertainty about application in specific cases. The Law on Prohibition of Discrimination stipulates that discrimination based on gender exists if actions are taken contrary to the principle of gender equality i.e. the principle of respect for equal rights and freedoms of women and men in the political, economic, cultural and other aspects of public, professional, private and family life (Article 20, paragraph 1) and prohibits the denial of rights to publicly or privately acknowledge benefits in relation to sex or due to gender change, physical and other forms of violence, exploitation, expression of hatred, disdain, extortion and harassment based on gender, as well as advocacy, support of and actions based on prejudices, customs and other social patterns of behavior based on the idea of gender inferiority or superiority, or the stereotypical gender roles (Article 20, paragraph 2).

The Law on Employment and Insurance in the Case of Unemployment<sup>18</sup>, as well as the Law on Professional Rehabilitation and Employment of Persons with Disabilities<sup>19</sup> are based on the principles of anti-discrimination and gender equality. The principles of the Law on Employment and Insurance in the Case of Unemployment are prohibition of discrimination, impartiality in employment, gender equality and affirmative action directed towards harder-to-employ unemployed persons, freedom of choice of profession and employment and the gratuity of providing employment to unemployed persons (Article 5). The principles of the Law on Vocational Rehabilitation and Employment of Persons with Disabilities are the respect for human rights and dignity of persons with disabilities, inclusion of persons with disabilities in all spheres of social life on an equal basis - in accordance with professional capabilities, promotion of encouragement of persons with disabilities at appropriate positions and in appropriate working conditions; ban on discrimination against people with disabilities, equal rights and duties and gender equality for persons with disabilities (Article 2).

The Law on the Foundations of the Education System<sup>20</sup> prohibits discrimination and requires that in educational institutions there is a prohibition on activities that threaten, disparage, discriminate against or single out individuals or groups of persons on the basis of: race, ethnicity, language, religion or sexual affiliation, physical and psychological characteristics, disabilities and disability,

<sup>17</sup> "Official Gazette of the Republic of Serbia", No. 22/09.

<sup>18</sup> "Official Gazette of the Republic of Serbia", No. 36/09.

<sup>19</sup> "Official Gazette of the Republic of Serbia", No. 36/09.

<sup>20</sup> "Official Gazette of the Republic of Serbia", No. 72/09.

health status, age, social and cultural background, economic status or political orientation and support. Encouraging or failing to prevent such activities, as well as on other grounds established by the law that prohibits discrimination; discrimination against persons or groups is considered to be any direct or indirect, open or covert, exclusion or restriction of rights and freedoms, unequal treatment or omissions, and unwarranted establishment of distinctions by indulgence or preference. Special measures that were introduced to achieve full equality, protection and advancement of persons or groups of persons who are in an unequal position are not considered discrimination; detailed criteria for the recognition of types of discrimination by an employee, student or other person in the institution, are regulated jointly by the Minister and the Minister in charge of human rights (Article 44).

The Gender Equality Law<sup>21</sup> was, after years of preparation and a lasting parliamentary procedure, adopted in December 2009. This law regulates the creation of equal opportunities to exercise rights and obligations, applying special measures to prevent and eliminate discrimination based on sex and gender and the legal protection procedures of persons exposed to discrimination (Article 1). Under this law, gender equality shall be understood as equal participation of women and men in public and private sectors in compliance with the accepted rules of international law, ratified international agreements, Constitution of the Republic of Serbia and laws (Article 2). Public authorities shall pursue active policy of equal opportunities in all spheres of social life (Article 3). According to the Gender Equality Law, gender-based discrimination shall be considered as any unjustified direct or indirect differentiation, and/or omission aimed at or resulting in aggravating, endangering, disabling or denying recognition, enjoying or exercising human rights and freedoms of persons or groups in political, economic, social, cultural, civic, family or any other area (Article 4). The Gender Equality Law provides equal access to assignments and office and stipulates that, if the representation of the less represented gender in each organizational unit, and in leading positions in the management and control is less than 30%, the public authorities are obliged to implement affirmative action measures in line with the Civil Servants Law and the Law on Public Administration (Article 14). Chapter 5 of the Gender Equality Law entitled "Political and Public Life", regulates in detail: equal opportunities in political and other activities (Article 35); the right to vote (Article 36); equal representation and equal access to the bodies of executive power, public, financial and other institutions (Article 37); obligations of local self-government authorities (Article 39); statistical record (Article 40) and associations whose goals are related to the promotion of gender equality (Article 42).

The Law on Local Elections<sup>22</sup> stipulates that, of the total number of candidates on the list, there must be at least 30% of the less represented gender (Article 20, paragraph 3) and also provides that the electoral list is to be considered incomplete for proclamation of the electoral list, and that the applicant of the list shall be invited to rectify this if the electoral list does not meet these requirements (Article 20, paragraph 4). It is stipulated that the election committee shall refuse to proclaim the electoral list if the applicant of the list does not eliminate these flaws (Article 20, paragraph 5).

The Law on the Election of Parliament Members<sup>23</sup> stipulates that on the electoral list, for every four candidates on the list (the first four places, four second places and so on until the end of the list) there must be one candidate - a member of the gender that is less represented in the list, the total on the list must be at least 30% of the less represented gender in the list (Article 40a. paragraph 1). If the electoral list does not meet the above mentioned requirements, it shall be considered incomplete for proclamation of the electoral list and the proposers will be invited to remedy the deficiencies of the list (Article 40a. paragraph 2). If the applicant fails to remedy these deficiencies, the Republic Electoral Commission shall refuse the declaration of the electoral list (Article 40a. paragraph 3).

<sup>21</sup> "Official Gazette of the Republic of Serbia", No. 104/09.

<sup>22</sup> "Official Gazette of the Republic of Serbia", No. 129/07 and U.S. 34/10-decision

<sup>23</sup> "Official Gazette of the Republic of Serbia", no.35/00; 57/03-decision USRS; 72/03-state law; 75/03-amendment of a state law; 18/04; 85/05-state law; 101 / 05-state law and 104/09.

By adopting the Law on The Unified Voting Register<sup>24</sup>, the legal framework for the exercise of electoral rights in Serbia was significantly improved, since voter registration is a legal requirement for the exercise of voting rights. The law came into force on December 24th, 2009 and will take effect after two years from the effective date. The law regulates, in a unified manner, the matter of voter records, which until now has been regulated by laws regulating the election of representatives and the President of the Republic. The novelty introduced by this Law is ensuring that the voter register is kept as an electronic database, which will certainly affect the efficiency and ease of exercising of voting rights.

The Law on National Councils of National Minorities<sup>25</sup> was passed in order to comprehensively define the status of national councils within the legal system of Serbia, which has provided a complete legislative framework for the promotion and protection of minority rights. This law regulates: the competence of the national councils of national minorities in education, culture, public information and official use of language and writing, relations with State bodies, bodies of autonomous provinces and local governments, the election of national councils, the funding of national councils and other matters. The Law on National Councils of National Minorities provides that, on direct elections of national councils on the list at least 30% of the positions are reserved for the less represented gender, provided that every third spot on the list is reserved for the less represented gender (Article 72, paragraph 3). If the election list does not meet, among other things, this condition, it shall be deemed to be incomplete for the proclamation of the electoral list, and the applicant of the list will be called to remedy the deficiencies of the list (Article 72, paragraph 4). If the applicant fails to remove the list's deficiencies, the Central Election Commission, the authority for the election of national councils, shall refuse to proclaim the electoral list (Article 72, paragraph 5). The identical solution to the representation of women on electoral lists is applied with the choice of electors for national councils (Article 109, paragraph 3). Indirect protection of the principle of representation of women in national councils is provided for direct elections (Article 98, paragraph 6) and the choice of electors (Article 109, paragraph 12) which establishes the rule that the mandates that belong to the list of candidates are awarded to candidates from the list in the order in which their names are listed, where every third spot is reserved for the less represented gender.

The Law on Associations<sup>26</sup> is being applied since 22 October, 2009. The area of association of citizens is regulated in accordance with the highest European standards, the conditions for the establishment and registration of associations have been liberalized, and there is a possibility of the establishment and operation of associations with no entry in the register. The association may be established by at least three founders (founders of the association may be legally capable natural or legal persons), provided that at least one of the founders must have a permanent residence or seat in the territory of the Republic of Serbia (Article 10). It is important to highlight the new legislative solutions, according to which the basis for the prohibition of an association may be goals aimed at inciting of inequality, hatred, or intolerance based, inter alia, on the membership to gender, race, physical, mental or other characteristics or capacities (Article 50, paragraph 1 in conjunction with Article 3 paragraphs 2 and 3). The Law on Political Parties<sup>27</sup> began to be implemented on 23 July 2009.

According to the Law on Army of Serbia<sup>28</sup>, it is envisaged that a professional military person may be a citizen of the Republic of Serbia, who fulfills the condition: that he/she has completed the appropriate military training for the duty which is received, and for a male person, the completion of military service (Article 39, paragraph 1, item 9). For women military service is not a requirement.

<sup>24</sup> "Official Gazette of the Republic of Serbia", No. 104/09.

<sup>25</sup> "Official Gazette of the Republic of Serbia", No. 72/09.

<sup>26</sup> "Official Gazette of the Republic of Serbia", No. 51/09.

<sup>27</sup> "Official Gazette of the Republic of Serbia", No. 36/09.

<sup>28</sup> "Official Gazette of the Republic of Serbia", no. 116/07 and 88/09.

The positive side of the law is the opportunity for women to get employed as professional military personnel. From the total number of employees in the defense, 19% are women in all categories (professional soldiers, officers, civil servants, state appointees, military officials and military appointees) of duties, from military to command, from execution to decision-making. From the total number of women employed in the defense system, 7% are employed as professional military personnel (professional soldiers, NCOs and officers). In the Serbian Army there is a total of 1291 women employed, 18 officers (0.4%), 27 non-commissioned officers (0.37%), 355 professional soldiers (5.62%) and 891 civilian persons (27.14%). At leadership positions in the Serbian Army, there is one woman officer, two noncommissioned officers, two women and nine women civilians. Bearing in mind that the Military Academy began training of female officers for duty, more women officers are expected, and therefore more women in leading positions. During the implementation of the competition for admission to the professional military service as a professional soldier, during 2009, there a great interest of female persons which qualify for admission to professional service noted, and therefore we expect a further increase in the number of professional servicewomen.

## II. National policy framework on Gender Equality

According to the most recent data, there are women among the most important positions in the country, right now (Speaker of Parliament, President of the Constitutional Court, acting president of the Supreme Court). Among the representatives at the National Assembly, 51 are women, accounting for 20.4% of the total (250) members. In the government, of 24 ministries, there are five female ministers. At the local level, they are 27% of the local representatives. Out of 159 municipalities, there are seven female presidents. At the lists of elected judges, of a total of 2399 judges, 1703 were women. Republic of Serbia has ten women ambassadors and four women general consuls (66 or 9.24%).

In the previous period, a series of national strategies were adopted that concretize the constitutionally guaranteed principle of equality in practice. The National Strategy for the Empowerment of Women and Promotion of Gender Equality<sup>29</sup> was adopted on 13 February 2009. This document establishes a comprehensive and coordinated state policy to eliminate discrimination against women, improve their status and integrate gender equality principles in all areas of activity of institutions of the system, as an element of modernization, democratization and faster, more efficient and more equitable social development, in accordance with the policy of equal opportunities proclaimed in the Constitution of the Republic of Serbia (Article 15). This strategy covers six areas which, through a broad and democratic discussion, are assessed as crucial for the empowerment of women and promotion of gender equality: realization of rights of women to participate equally with men in decision-making, eradication of economic inequalities between men and women, achievement of gender equality in education, improving women's health and promoting gender equality in health policy, prevention and combating of all forms of violence against women and providing a comprehensive system of protection for female victims of violence, establishing gender equality in the media, elimination of gender stereotypes and elimination of hate speech (misogyny). The six national priorities are in line with the Beijing Declaration and the Platform for Action.

The planned activities relate to the period from 2009 to 2015, and their implementation should ensure that the long-term accumulation of positive changes so far leads to a deep and lasting transformation of gender relations in the Republic of Serbia. The activities are incorporated into the National Program for Integration of Serbia into the European Union and are an integral part of the overall efforts of the Republic of Serbia towards an EU membership.

<sup>29</sup> "Official Gazette of the Republic of Serbia", No. 15/09.

The strategy is an integral part of the overall changes in society and is coordinated with other strategic documents, particularly with the Strategy for Poverty Reduction in Serbia and UN Millennium Development Goals, follows current trends in social change and is realistic in terms of financial assets of the state.

Associations were included in the creation of the document whose objectives are aimed at eliminating discrimination against women, which made and are making a significant contribution in Republic of Serbia to the democratization and modernization of society, promotion of peace, human rights and democratic values and in particular women's human rights.

The Committee for Gender Equality has produced an Action Plan<sup>30</sup> which includes all six strategic areas for establishing long-term and specific goals, specific activities, expected outcomes, measurable indicators and stakeholders, deadlines and the projection of the needed funds. The Action Plan was prepared in accordance with the Resolution of the 23<sup>rd</sup> UN General Assembly session and recommendations for further activities and initiatives to implement the Beijing Declaration and the Platform for Action. In developing the plan, in addition to experts, representatives of relevant ministries were included and consultations were carried out with representatives of local governments and interested organizations. The Proposed Action Plan is in the process of harmonization in relevant ministries and its adoption is expected to occur during the first quarter of 2010. Part of the planned activities will be funded from the budget.

Other national strategic documents, the Sustainable Development Strategy, National Strategy on Aging, Strategy for Improvement of the Situation of Persons with Disabilities and the Strategy for the Advancement of Roma are gender sensitive, i.e. recognize the gender dimension.

Apart from those national strategies, the Serbian government introduced some very important mechanisms for the advancement of the status of women. It is important to mention that the Council for Gender Equality has not held meetings in the past, and as new institutional and administrative mechanisms were emerging, there was a further stagnation in the work and many activities were transferred to the Directorate for Gender Equality. The new constitutive session of the Council was held on 8 December, 2009. It was noted that it is necessary to find a new, more appropriate role for the Council, to strengthen the cooperation with the Directorate for Gender Equality, to increase opportunities for inter-sectoral action and to emphasize the encouraging and critical role of this body.

In the past period, upon establishing the Directorate for Gender Equality and the Assistant Ombudsman for Gender Equality, there has been a strengthening of the institutional mechanisms for gender equality.

In 2007, within the Ministry of Labor and Social Policy, the Department for Gender Equality was established, and with the adoption of the Law on Ministries<sup>31</sup> in 2008, it became the Directorate for Gender Equality, which transferred this area from sectoral organization to the scope of a special body within the Ministry, which undoubtedly acknowledges the importance of the matters of gender equality, and demonstrates willingness of the state to work towards their improvement.

The competences of the Directorate for Gender Equality, as the first executive in this field are: analysis of the situation and proposal of measures in the promotion of gender equality, development and implementation of national strategies to empower women and promote gender equality, development of draft laws and other regulations in this areas, cooperation with other state bodies, bodies of autonomous provinces and local governments in this area, international cooperation, coordination and provision of professional, administrative and technical support to the Council for Gender Equality, empowerment of women and the promotion of gender equality and equal oppor-

<sup>30</sup> The Action plan was adopted in August 2010.

<sup>31</sup> "Official Gazette of the Republic of Serbia", no. 65/08, 36/09 and 73/10.

tunities policy, integration of the principle of gender equality in all areas of operation of institutions of the system, monitoring the implementation of the recommendations of the UN Committee on the Elimination of Discrimination against Women, as well as other activities in accordance with the law.

In the past period there have been significant improvements in the mechanisms on local level as well. According to the Law on Gender Equality, bodies of local self-government units, within their jurisdiction, provide the realization of gender equality and equal opportunities, encourage and promote gender equality. In the process of adoption of development plans and other documents, they consider measures and activities that contribute to the realization of gender equality and equal opportunities. In the bodies of the local self-government, within the existing organization and acts on internal organization, they organize a permanent working body or an employee is appointed for the matters of gender equality and the conduct of works related achieving equal opportunities in accordance with this Law (Article 39). As there is an explicit legal obligation now, it is expected that the process of forming the bodies where they still do not exist, should continue, as well as the improvement of existing ones.

This process was initiated in 2002, when the Ministry of Public Administration and Local Self-Government, in cooperation with the National Assembly, with the support of the OSCE launched a pilot project addressing Persons Authorized for Gender Equality (Gender Focal Points), in 15 cities in Serbia, which create the first institutional forms of improvement of the status of women at the local level. By the time of passing of the Law on Gender Equality, with the support of the Directorate for Gender Equality, the provincial institutions, international donors and local civil society organizations, in 40% of municipalities in Serbia such bodies have been formed or are in the process of formation (councils, committees, offices, trustees).

The Directorate for Gender Equality is taking a series of activities in order to improve their formation and operation: regular contact that the Directorate maintains with their representatives, assistance in their interlinking, supporting and attending the activities, distribution of materials, education, improvement of cooperation with civil society organizations and donors and others. To this end, a web site is being developed<sup>32</sup> intended for all interested parties, especially local bodies for gender equality, for easy access to information on relevant legal and strategic documents, projects and competitions and exchange of experience and good practice. This site is in the process construction.

Support to the empowerment of local bodies for gender equality is also given by the Standing Conference of Towns and Municipalities, which began promoting the European Charter on Gender Equality at the Local Level of the Council of European Municipalities and Regions, which was presented at the Sixth Ministerial Conference of the Council of Europe. The Charter will be offered in 2010 to local governments for signature by which they adhere to create a local action plan to improve these areas, but they are also given the possibility of international and regional cooperation.

The Directorate for Gender Equality has established a forum for dialogue with civil society organizations in the field of gender equality. The Forum aims to establish a dialogue and a system of efficient and direct transfer and exchange of information, views and perspectives of the mechanisms for achieving gender equality at national and local levels and civil society sectors. During 2009, several meetings were held at which, among other things, it was dealt with the cooperation of local bodies for gender equality and local groups as well as including groups in the preparation of the Action Plan for implementing the National Strategy for the empowerment of women and promotion of gender equality.

<sup>32</sup> Please see [www.gendernet.rs](http://www.gendernet.rs)

In order to support the activities of smaller NGOs, the Directorate has issued a public invitation to interested organizations to submit project proposals for the advancement of women in double and/or multiply disadvantaged groups in the Republic of Serbia. A large number of organizations appeared at the competition (a total of 115 proposals were received) of which nine projects were selected for the funding from the budget of the Directorate for Gender Equality and the additional funds provided by UNDP through the project "Strengthening of Civil Society in Policy Creation and in Practice Relating to Poverty Reduction"

### **III. Improvement of the status of women in the areas of labor and employment**

With regards to the improvement of the situation of women in labor and employment, the enactment of key laws in 2009 has further strengthened legislation in this area, and the most significant innovations are the introduction of equal opportunities and the fact that sexual harassment, along with harassment and sexual extortion are sanctioned and as such with a specific terminology.

The Law on the Prohibition of Discrimination, in the section devoted to specific cases of discrimination, prohibits discrimination in the field of work and the breach of equal opportunities for employment and equal enjoyment of all rights in the area of labor, such as the right to work, free choice of employment, promotion, training and vocational rehabilitation, to equal pay for work of equal value, to just and favorable conditions of work, paid vacation, education and entry into the union, as well as protection from unemployment. Protection from discrimination is enjoyed by an employed person, a person who performs temporary and casual jobs or based on a contract of service or other agreement, a person performing additional work, a person who performs a public function, member of the military, a person seeking a job, students and students on practice, a person on professional education and training without employment, volunteer and all other persons involved in work, at any grounds. It is not considered discrimination to maintain distinction, exclusion or preference because of the peculiarities of a particular job in which the personal characteristics of persons is a real and decisive condition of doing business, if the purpose to be achieved is justified, as well as taking measures to protect certain categories of people - women, pregnant women, mothers, parents, minors, persons with disabilities and others (Article 16).

The Law on Gender Equality regulates labor and employment, introducing significant changes that should contribute to the advancement of women as the less represented gender, and provide more efficient protection of their rights (Articles 11-22). Thus, in Chapter 2 titled "Employment, social protection and health care", the law envisages a number of obligations for employers in terms of equal opportunities and the introduction of special measures to increase employment opportunities for less-represented gender of the employees and to increase participation of under-represented sex in vocational training and providing equal opportunities for advancement (Article 11), record keeping and documentation of the gender structure of employment (Article 12) and planning measures to mitigate or eliminate unequal gender representation and reporting on planned and implemented measures (Article 13).

This law provides for equal access to jobs and positions so that, if the representation of the less represented gender in each organizational unit, and in leading positions in the management and control becomes less than 30%, public authorities are required to implement affirmative action measures in accordance with the Law on Civil Servants and Law on Civil Administration (Article 14).

While initiating employment and work engagement, in public advertisements for jobs and the requirements for their performance, and deciding among the candidates for employment or other form of engagement, distinctions are not permitted by gender, unless there are justifiable reasons established in accordance with the law regulating the work (Article 15).

In terms of assignment and promotion, gender affiliation cannot be an obstacle to progress at work, absenteeism due to pregnancy and parenthood should not be an obstacle for the selection of a higher rank, promotion and training, absence from work due to pregnancy and parenthood cannot be the basis for the deployment of inappropriate activities and termination of employment contract in accordance with the law regulating labor.

The employees, regardless of gender, are entitled to equal pay for equal work or work of equal value with the employer in accordance with the law regulating the work (Article 17).

Labor relations, rights and obligations of civil servants and certain rights and duties of employees with state administration, courts, prosecution offices, state attorney offices, the National Parliament service, the President of the Republic, the Government, the Constitutional Court and within the service of bodies whose members are elected by the National Assembly are regulated by the Law on Civil Servants<sup>33</sup>. It is forbidden to privilege or deny a civil servant in his/her rights and duties, especially due to race, religion, gender, nationality or political affiliation or any other personal quality (Article 7). It is stipulated that, while employing into state bodies, it will be taken into account that the ethnic composition, gender representation and the number of people with disabilities should largely mirror the structure of the population (Article 9, paragraph 3). The Law on Salaries of Civil Servants and Appointees<sup>34</sup> established a way of determining the base salary (Article 7), the method for determining the base salary (Article 8), the method of determining the coefficient and salary group (Article 9), while the wage coefficients are determined by the provisions of the Article 13 of the Law and under Article 14, is determined by the superior. Neither the Law on Labor Relations in State Bodies<sup>35</sup>, which governs the rights and obligations arising from employment of employees in the bodies of territorial autonomy and local self-government, and which was applied before the enactment of the Law on Civil Servants to all employees in state institutions, do not recognize the possibility of setting different wages for the same work with regard to gender. It should be noted that in the Republic of Serbia in the public sector there have been no cases of discrimination against women. Administrative inspection during inspections and even in the process of dealing with complaints of civil servants and citizens did not detect instances of discrimination against state employees and appointees, or employees in the units of local government, with regard to gender.

The previous Law on Employment and Insurance in the case of unemployment was in force from 23 July 2003 till 22 May 2009 based on the principle of equal access and treatment and prohibition of discrimination in employment. Equal access to jobs and equality in the recruitment of women and men guaranteed (Article 8). It also envisaged the possibility of indemnities for discrimination in employment (Article 21).

The new Law on Employment and Insurance in the case of unemployment came into force on 23 May, 2009. This law is based on the principle of gender equality (Article 5). Payment is to be continued during:

- duration of additional education and training, in accordance with the individual employment plan;
- temporary inability to work as determined under the regulations on health insurance, but no later than 30 days from the date of the occurrence of the temporary inability,

<sup>33</sup> "Official Gazette of the Republic of Serbia", no. 79/05, 81/05-amendment, 83/05-amendment, 64/07, 67/07-amendment, 116/08 and 104/09.

<sup>34</sup> "Official Gazette of the Republic of Serbia", no. 62/06, 63/06-amendment, 115/06-amendment and 101/07.

<sup>35</sup> "Official Gazette of the Republic of Serbia", no. 48/91, 66/91, 44/98-state law, 49/99- state law 34/01-state law, 39/02, 49/05-USRS, 79/05-state law, 81/05-amendment of a state law and 83/05-amendment of a state law.

- maternity leave, a leave for reasons of child care and absence from work because of special childcare, according to the regulations on labor and other regulations governing absence from work (Article 73).

Labor Inspection, working within the Ministry of Labor and Social Affairs, had reports on violation of the rights of women for maternity leave, in the sense that the employer does not issue an employed woman a decision for managing the right to maternity leave and leave for reasons of child care, as well as non-payment of salaries during the maternity leave and the leave for reasons of child care. These cases were resolved as a priority, ordering the employer to make the payments, which the employer almost always resolved within the required time (otherwise the labor inspector files misdemeanor charges). As a reason for non-payment of wages during maternity leave and the leave for child care, employers say that they often have their own funds for the payment of these benefits together with other staff salaries, and the contributions to the Health Insurance Fund are not paid regularly, i.e. reimbursed to the employer. It was noted that employers enter into contracts of employment for a certain time more often with women, so that, in case of maternity leave or the leave for child care, they may be able to cancel it, due to the expiry of the period for which it has been established, and thus be free from paying legal obligations. There have been cases where, during the termination of employment contract, as the most frequent cause, employers alleged contempt of labor discipline in order to conceal the true reason for dismissal, which was pregnancy.

The Labor Inspectorate, working within the Ministry of Labor and Social Affairs, is in charge of employment discrimination cases and notes the problem of proving this kind of discrimination.

According to the Penal Code, a person who knowingly fails to comply with laws or regulations, collective agreements and other acts on rights based on work and special protection of working youth, women and disabled persons, or the rights of social insurance, and therefore denies another person or limits the right which belongs to them, shall be punished by fine or imprisonment of up to two years (Article 163). Any person who, knowingly breaking the rules, or otherwise unlawfully, denies or limits the right of citizens to free employment in Serbia under the same conditions, shall be punished by fine or imprisonment up to one year (Article 164). The person responsible for taking measures of protection at work who knowingly fails to comply with laws or regulations or by-laws on safety at work due to which danger to life or health of employees may occur, shall be punished by fine or imprisonment up to one year (Article 169).

The National Employment Action Plan for 2009 envisages encouraging of women's employment through measures such as: a) implementation of programs and projects for unemployed women; b) inclusion of women in active employment policy measures; c) financial incentives for women to establish and develop businesses.

It is interesting to note that assets in the budget of the Republic of Serbia allocated for active employment policy measures, despite the fact that they were increased<sup>36</sup> (2007, 1 950 983 950 dinars, 2008 3 014 billion dinars, 2009 3.5 billion dinars), are still ten times lower compared to developed countries. On average these allocations amount to only 0.1% of GDP, which is very low and insufficient.

On the other hand, the percent of women involved in programs of additional education and training conducted by the National Employment Service is greater than the percentage of men involved. The percentage of women in the total number of persons who have been awarded grants for self employment - to start their own business is still small, although women, under the same conditions, have priority in the scoring ranking due to gender.

<sup>36</sup> In the year of 2007, those assets were around 2 million dinars, in 2008 3 million dinars and in 2009 around 3,5 million dinars.

The biggest number of women in Serbia are employed in the following sectors: agriculture, forestry and water supply 24.5%, wholesale and retail trade and repairs 17.7%, manufacturing industry 15.3%, health and social work 11.4%. The amount of the average net earnings in the last five years is highest in the sector of financial intermediation activities and significantly higher than wages in other sectors; this sector has a much higher number of women than of men. Above the average net wage in Serbia are also the earnings in the following sectors: production of electricity, gas and water, mining and quarrying, government and social insurance, real estate business, rental, transport, storage and communication, health and social work; education. In total, these sectors employ 32.8% of all employed women and 25.8% of all employed men. In other sectors, the average net income is below the national average.

According to data of the Republic Office of Statistics from the year 2007, the average earnings of women are largest in the following sectors: construction, transportation, storage and communications, real estate and other communal, social and personal services. In all other sectors the earnings of men are larger.

When it comes to the earnings of older employees, there is no difference in the calculation of earnings for men and women; the increased percentage in earnings due to years of service is the same. The economic transition has brought to the women in the Republic of Serbia many changes and a general worsening of their status. More and more women work in the lowest-paid industries and service sectors, with a growth of the gap between paid work for men and women. Insufficient payment of women is more pronounced in education, health and social insurance, where women are employed in large numbers. Differences in pay in recent years have expanded to all categories of employment. The study of the Belgrade Center for Human Rights<sup>37</sup> shows that 90% of women think that men find job more easily and 63% believe that men earn more than women. Particularly disadvantaged are mothers and women are more faced than men with age discrimination. Employers avoid hiring women who have more than 40 years, and they, after a previous position, have almost no chance to find new job. Since in most cases they are not eligible for retirement, they lose their regular income.

There is also the feminization of poverty, below the poverty line 52.1% percent are women and 47.9% are men. Every third woman employee fears of job loss and most afraid are employees in private firms, 47%.<sup>38</sup> Many women are working without employment contracts, without contributions to pension, social and health insurance, without the right to leave from work, paid holidays and no protection at work. The economic status of women is determined by the fact that there are significantly more women workers than women employers. There are at least two times more men than women amongst employers. The data for 2007 indicates that per 100 men, 50 employers are female.<sup>39</sup>

Furthermore, a very small percentage of women consider that unions do not deal seriously with the rights and status of the workers, and only 11% believe that trade unions are seriously committed to dealing with the position of women and protection of their rights. Low confidence in the unions is evident from the fact that only 13% of women stated that they would contact the union in the case of harassment at work, and 8% in the case of sexual harassment at work.<sup>40</sup>

A common type of discrimination against women is insufficient recognition and evaluation of their work. In Serbia there is a so-called "glass ceiling" effect, where women see opportunities for improvement, but are divided from that goal by a seemingly invisible barrier (glass ceiling). Women are much less represented in senior management positions. Often the number of women employed

<sup>37</sup> A public opinion research: "Labor Rights and Discrimination – Awareness and Attitudes of Women in Serbia".

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

in companies and large companies meets the standards, but in fact women are much less frequently in the position of decision makers. Women are often not selected during employment and promotion because of their marital status or because of age, regardless of having fulfilled all requirements of expertise. They accept less attractive and less well-paid jobs and agree to contracts which contain illegal conditions, such as “not to become pregnant”. The Belgrade Center for Human Rights conducted a survey, whose results showed that the number of cases in which women seek protection of labor rights before domestic courts is in great disproportion with the perception of women about the actual number of violations of these rights in practice.<sup>41</sup>

Using the Law on Free Access to Information of Public Significance<sup>42</sup>, the Belgrade Centre for Human Rights addressed 130 courts in Serbia with a request to be allowed to observe the conduct of these courts in cases relating to breach of labor rights.<sup>43</sup> Subsequently, 102 responses were obtained, which showed that before as many as 58 courts there are no proceedings. There are 12 labor disputes and 62 criminal proceedings in procedure. The analysis of the results showed that women sought protection of their rights before the courts in 35 cases. The reason for this, besides the fear of losing their jobs and a long lasting inability to find a new job, is also insufficient knowledge of their rights guaranteed by law, the high cost of the procedure and lack of social mechanisms to prevent the victimization of the participants in these actions. These causes affect most gravely and most frequently women who are in the most vulnerable position (e. g., women with lower educational level, poverty-stricken women, women who were unemployed over a long period of time, women who are unskilled to perform tasks which are needed in the labor market, women with disabilities).

#### **IV. Women’s rights in practice in the Republic of Serbia**

##### **1. Understanding of the Women’s Labor Rights**

In recent years, the position of women in the workplace has improved significantly, thanks largely to the international commitment to establish guidelines and obligations which states are obliged to adhere to in order to improve protection of women.

Especially important documents were adopted at the fourth United Nations’ special session on women’s rights in 1996. The Beijing Declaration and the Action Platform adopted by this declaration are very important because the states, by signing, also assume the obligation of adopting a national plan for the improvement of the status.<sup>44</sup> The Action Platform contains twelve points which regulate the key areas for the protection of women’s rights. The aim of these documents is to ensure the full realization of women’s rights as an indivisible and integral part of all human rights and freedoms. The efficient implementation of the human rights of women described in the Beijing Declaration and other international standards which will be discussed in the publication is necessary for the advancement of women in Serbia.

Despite the great changes and success at the legislative level (ratification of many conventions, membership status in the Council of Europe, the adoption of the Labor Law in 2005), in the last two decades it has been very difficult for women in Serbia to realize their labor rights. The difficulties which they face during their working life are varied and grave. The economic transition in Serbia brought many changes to women. Unfortunately, these changes were mostly for the worse. In Serbia, the unemployment among women is increasing relative to men’s unemployment. According to

<sup>41</sup> Ibid.

<sup>42</sup> “Official Gazette of the Republic of Serbia”, no. 120/04, 54/07 and 104/09.

<sup>43</sup> The request was limited to examining the infraction of the following Articles: Labor Law 18-21, 163-169 and Article 128 of the Criminal Code.

<sup>44</sup> At the time of the adoption of the documents in 1996, Federal Republic of Yugoslavia was not a member of the United Nations, but in 2002, through the statement of the Minister of Foreign Affairs, Serbia and Montenegro adopted all international obligations incurred in this period including the Beijing Declaration and Platform for Action.

the National Office of Statistics, among the working population, 32% of women are employed, while the percentage is 49.3% for men.

More and more women work in the lowest-paid areas of economy and service sectors, with a growth in the gap between wages for men and women. Insufficient wages for women are more pronounced in education, health and social insurance, where women are employed in large numbers. Differences in pay in recent years have expanded to all categories of employment.

The economic position of women is also determined by the fact that there are significantly more female workers than employers. There are at least two times more male than female employers. The data for the year 2007 showed that per 100 men employers, there are 50 female employers.

A common form of discrimination against women is insufficient recognition and valuation of their work. In Serbia, there is a very strong so-called “glass ceiling” effect, where women see opportunities for promotion, but are divided from that goal by a seemingly invisible barrier (a glass ceiling).<sup>45</sup> In the period between 2000 and 2006, there was still less than 20% of women on decision makers’ positions, although there are 100 men graduates per 166 women graduates. Another indicator of how much women feel discriminated against is the result of a research which shows that 53% of women believe that their physical appearance is important during employment, while only 9% believe that the physical appearance of men matters.<sup>46</sup>

The pattern according to which women are represented more at lower than at higher positions in society is widely recognizable. The difference between the formal rights that women have and their real influence on political and social events is usually large. Women are much less common at high managerial positions. Often the number of women employed in corporations and large companies meets the standards, but in fact women are much less frequently in the position of decision makers. Companies and government agencies prefer hiring men, which they state in the advertisements. Besides that, women are often excluded from the selection for employment or promotion because of their marital status or because of their age, despite fulfilling all requirements of expertise. Therefore, they are forced to accept less attractive and less well-paid jobs, or even have to accept contracts which include illegal conditions, for example “not to become pregnant.”

Also, the role of women in politics is often marginalized. The media and the society are less sensitive to women’s issues and achievements of women politicians. Women are not perceived as equal political actors and the media are still not developing an awareness of equality between women and men. They are rarely represented in the media, and if they are represented, they often discuss women’s issues such as social welfare, child benefits and gender equality.

The position of men and women, although equal before the law, is not yet at the same level within the society. Equality of rights does not automatically guarantee an equal status. Empowerment of women is not just a matter of legislative reform, but also of comprehensive changes in the attitude of the state and the society towards women. However, the legislative reform is the basis without which it is impossible to improve women’s rights in practice.

## 2. Verdicts of National Courts

Although the general assessment is that current legal regulations in this area largely meet international standards and that there are adequate legal mechanisms that could be used in cases of violation of labor rights of women in the country, it is very difficult to apply them in practice.

<sup>45</sup> The “glass ceiling” effect has been used since the early 1980’s, and refers to the situations in which the progress of employees in the organization has been disabled despite their qualifications because of discrimination predominantly based on gender, but also on race, disability and so on.

<sup>46</sup> Public Opinion Research Labor Rights and Discrimination - Awareness and Attitudes of Women in Serbia.

First of all, the number of cases in which women seek protection of labor rights in domestic courts is largely disproportionate to the perception of female citizens of Serbia on the actual number of violations of these rights in practice. Although there are many reasons for this, we believe that in addition to the fear of loss of job and lasting inability to find a new job, key reasons are related to a lack of knowledge of their rights guaranteed by law, the high costs of procedure and the lack of social mechanisms to prevent the victimization of participants. In addition, one must bear in mind that the stated reasons afflict most gravely and most frequently women who are in the most vulnerable position (e.g. women of lower educational level, poverty-stricken women, women who have been unemployed over a long period of time, women who are unqualified to perform jobs for which there is a need in the market, women with disabilities.)<sup>47</sup>

With the intention to point out the good practice which can serve as an example of proper implementation of existing legislation in Serbia, we give portions of two court decisions of our choice<sup>48</sup>. These verdicts were selected as examples of court decisions which protect the women's rights which have been violated under the applicable legal standards in Serbia, which in no way indicates that the existing regulations are sufficient, but with proper judicial interpretation can serve to protect rights. It is important to note that both verdicts were passed before the adoption of the Law on Prevention of Abuse at Work and the Law on Gender Equality. As far as it is known to us no verdicts were passed in this area following the adoption of these laws.

The Verdict of the Municipal Court in Užice. On 9 October 2006, the Municipal Court in Užice passed a verdict in a civil case, on a class action of several women for compensation due to discrimination on the basis of gender during dismissal and determination of retirement benefits. The plaintiffs had been employed full time in the company "Impol Seval" – "Valjaonica Aluminijuma Sevojno AD". After several years of work, the plaintiffs' employments were terminated on the basis of agreements concluded with the company, and for some of them, on the basis of dismissal due to the lack of need for a particular position. At the time of termination of employment, each plaintiff had over 30 years of service. The defendant has, according to the plaintiff, acted contrary to the principle of good faith and, among other things, determined lesser fees per year of service for women than for men employed in the same company.

Interestingly, the Municipal Court in Užice in the explanation of its decision in this case calls for application of domestic legislation (Article 13 of the Constitution of Serbia, Article 12 and 18 of the Labor Law), but also on the international documents that our country is obliged to respect and apply. This application is a good example of the court action in cases of violation of the rights of women and it shows that, with the full application of positive legal regulations, women may be adequately protected while realizing their right to work.

The verdict has found that parts of the defendants' directors' decision on termination of the employment contract which in the part that determines the amount of the one-time fee, and the termination compensations due to the termination of employment, are null and void and without legal effect. Also, the defendant is obliged to pay the plaintiffs, as indemnation, stated sums in the amount of difference between the appropriate and received one-time payment with statutory interest pursuant to the Law on Default Interest Rate.

As seen from the verdict, the court judged that the defendant's decisions violated the principle of prohibition of gender discrimination contained in the applicable laws of the Republic of Serbia and the international instruments which Serbia is obliged to apply. While determining the one-time

<sup>47</sup> The Belgrade Center for Human Rights, using the rights under the Law on Access to Information of Public Significance, addressed 130 courts in Serbia with a request for access to information on the conduct of these courts in cases concerning the violation of labor rights. Out of 102 responses that were received, the data showed that before as many as 58 courts there are no such proceedings.

<sup>48</sup> See more: Zoric, Jovana, Dacic Nevena, and Nenad Petkovic, "Labour Rights of Women In Serbia" Belgrade Center for Human Rights (2008): 31-42.

compensation, which belongs to the employee due to employment termination, the criterion must be the years of service of the employee, rather than years of service needed to acquire other legal requirements for retirement. Therefore, the actions of the defendant are absolutely illegal, whereby the compensation per year of service was significantly higher for the working men, wrongly guided by the fact that they need more years to meet one of the requirements for retirement. The fact that the Law on Pension and Disability Insurance enables women to reach the conditions for early retirement earlier does not authorize the employer to discriminate against them because of their seniority and to value their years of work less than men<sup>1</sup>.

The Verdict of the Municipal Court in Jagodina. On 3 September 2008, the Municipal Court in Jagodina passed a verdict in which it has applied the existing legal provisions from criminal law to punish harassment of females in the workplace that can be described as mobbing. This was one of the first verdict on mobbing in Serbia and, as far as known to author, the last.

The verdict states that the official, acting chief editor of the “Novi put” publication, abused a journalist, an editor of a section, and treated her in a way that offends human dignity, by saying that she is stupid, that she does not know how to do her job, tore up a prepared text, ejected her from the office in the presence of colleagues, was breaking things around the office and banging things on the table, such as computer equipment, in her presence, banged doors and casted her out of the office, shouting “Get out!”, “Get your rags and get out of here!”, claimed that he could not work with her because of her smell, voice, laughter, presence, requested her not to come to work because he is bothered by her presence at work, acted improperly and said: “ Don’t buy me flowers and a candle, and your conscience may bother you if it will, I will kill you because they can’t move you to another newsroom.”

Taking into account all the facts, the court passed a verdict in which it is considered that a criminal act of abuse and torture under Article 137 Paragraph 3 of the Criminal Code has occurred, and therefore imposed a suspended sentence by determining a sentence of imprisonment of four months and also providing that the sentence shall not be executed if the defendant, within two years after the finality of this verdict, does not commit another crime.

The question of the appropriateness of this punishment arises, especially given the fact that at the time that the verdict was passed, the Law on Gender Equality, as well as the Law on Prevention of Abuse at Work was not passed. One of the major problems encountered while determining penalties for mobbing is the issue of compensation for non-pecuniary damages, or the provision of certain financial satisfaction for suffered fear and anguish, as well as for injury of honor and dignity.

## **V. Concerns associated with the implementation of Gender Equality Law in the Republic of Serbia**

The Law on Gender Equality regulates a vast number of areas, including labor relations. Many solutions in the law are very original compared to the rest of the recent legal practice, and are inspired by international standards, particularly the European Union legislation.

In the Republic of Serbia in 2009, for the first time a special law regulated gender equality as one of the basic human rights and fundamental values of democratic society and prescribed an explicit prohibition of discrimination based on sex and gender. The Gender Equality Law regulates only certain areas that are particularly important for achieving gender equality and establishes only a part of the special measures for achieving gender equality and the prevention and elimination of discrimination based on gender. Many other issues relevant to gender equality are regulated by numerous subsidiary laws that regulate certain aspects of social life (family relations, health, education, labor relations, employment, etc).

The field of labor relations in the Gender Equality Law (hereinafter the Law) is regulated by Articles 11-22 and is located in the second part of the law which is entitled: "Employment, social and health welfare." However, we must first consider the provision of Article 10 paragraph 1 item 9 which defines an employer under this law as a legal entity or natural person employing, and/or engaging in work one or more persons, exclusive of the public authority within the meaning of this law. In this way, the range of entities that are obliged to take most of the measures envisaged by law is significantly narrowed down because its provisions exclude the employees of public bodies, and they therefore remain without certain guarantees of equal opportunities and treatment in regard to gender.

Article 11 of the law requires the employer to, regardless of gender, provides equal opportunities and treatment to employees, in connection with exercising the rights arising from labor relations and based on labor, in accordance with the law which regulates labor. The aim of this Article of the law is to generally eliminate gender inequality in connection with labor relations and work engagement, which is an obligation under international standards. It is mostly aimed at eliminating inequality at the expense of women, but there are also reverse situation, when women are given unfounded advantages over men<sup>49</sup>. This Article of the law would not have had much practical value if there was a possibility of quick and efficient legal protection against discrimination. In this regard, it is convenient that the Article 43 paragraph 2 of the law provides the possibility for the union to, acting as an interfeerer, with the consent of the discriminated person, initiate the procedure for judicial protection against discrimination<sup>50</sup>. Article 49 of the law is related, as it stipulates that, if during the proceedings the prosecutor made a probable case that an act of discrimination was committed based on gender, the burden of proof that such act has not been a violation of the principle of equality is borne by the defendant. This solution is in compliance with the Directive 2000/78/EC on establishing general requirements for equal treatment in employment and occupation.

Article 12 Paragraph 1 of the law stipulates the obligation of the employer to keep records on the gender composition of the staff in compliance with the law governing labor record keeping and shall enable access to them on request of labor inspection and those responsible for gender equality, in a manner and pursuant to the law governing personal data protection<sup>51</sup>. Here, there is a useful novelty in our law, since the lack of gender statistics was one of the most debilitating factors for the conduct of gender equality policy.

Comparative experience shows that precise and clear indicators that may point to inequalities between women and men in the labor field are a precondition for quality statistics. Therefore, the law stipulates in Article 13 paragraph 1 the obligation for employers who have more than 50 employees for indefinite period, to adopt a plan of measures to eliminate or mitigate unequal gender representation for each calendar year. The objective of this norm is that the employer, gradually

<sup>49</sup> For example, in the Barber case (*Douglas Harvey Barber v Guardina Royal Exchange Assurance Guardino*) a complaint referred to the disadvantage of men in pension systems. Douglas Barber was 52 years of age and lost his job due to organizational changes in the company where he worked. The pension plan in the company where he worked predicted that in the event that any of their employees being made redundant, they are entitled to retirement, provided they are 55 years of age for men and 50 years for women. Since Barber was 52, he was at a disadvantage compared to his colleagues, therefore, the Court found that the complaint of Mr. Barber was founded, as such a pension system enables higher payments from pension funds to women which violates the principle of equal remuneration. The Court has requested that all systems that envisage different conditions for retirement be corrected because they are considered discriminatory. See more on this case at the following website: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61988J0262:EN:HTML>; last modified May 17, 2012.

<sup>50</sup> Jašarević, Senad, "Labor Stipulations in the Law on Gender Equality and International Standards", *Journal of Labor and Social Law*, (2012): 57-71.

<sup>51</sup> It is the Law on Records in the Area of Labor ("Official Gazette of the Republic of Serbia" no. 101/2005, 36/2009), which in Article 2 establishes eight types of records maintained in the field of labor. However, none of these records is about the gender structure of employees, and therefore the provision of Article 12 Paragraph 1 Law on Gender Equality, without adequate development in the Law on Records in the Area of Labor, leaves the question of the manner of keeping these records without proper answers.

restructuring the labor force, establishes an equal ratio of genders<sup>52</sup>. However, the criteria set by the law are defined so that the circle of addressees of this duty is further narrowed down. Namely, in order for the employer to be required to plan and prepare a report, there must be more than 50 employees and they must be employed full time. If we consider the economic structure in the Republic of Serbia, the fact that the state is still the largest employer, and that the private sector is consisted mainly of small and medium enterprises, the question of the practical effect of this provision arises.

The provision of the Article 14 of the law is very interesting, according to which, if the representation of underrepresented gender in any organizational unity, at management positions, bodies and bodies of surveillance is less than 30%, public authorities shall undertake affirmative measures in line with the Civil Servants Law and Law on Public Administration. The law, therefore, clearly establishes the obligation of public authorities; however, it does not provide sanctions to be applied in the event that this obligation had not been fulfilled.

The law, in Article 15 prohibits the distinction by gender in public advertising of working positions and requirements for their performance and deciding on the choice of persons seeking employment or other forms of working engagement. We think that an opportunity was missed to, beside gender, state also other properties by which it is possible to make distinctions, and which can be indirectly linked to gender, such as marital status, pregnancy and parenthood. However, the recommendation of the International Labor Organization no. 165 on workers with family responsibilities includes among its provisions one that states that it will not be considered justified to refuse to employ a person because of pregnancy, maternity, marital or family status. However, given that the recommendation has no binding legal effect, and therefore is not a source of law, such provision should have been included in the text of the law. We cannot fail to notice that the violation of Article 15 by the employer is sanctioned in Article 54 paragraph 1 item 4 and is a misdemeanor for which a fine may be imposed between 10.000 to 100.000 dinars. A question arises – what are the sanctions for the public authorities if they do not comply with the provisions of Article 15 of the law.

According to Article 16, paragraph 1, gender affiliation shall not be an obstacle for career promotion. The law also prescribes in the same Article, paragraph 2 that parental leave shall not be an obstacle for advancement, promotion and advance training.

Article 18 of the law regulates harassment, sexual harassment and sexual blackmail at work or related to work. In the Article 10 paragraph 1, points 6-8, the legislator defined the meaning of these terms. Thus, harassment means any unsolicited verbal, non verbal or physical act intended to or resulting in an injury of personal dignity or substantial emotional fear to an individual or causing intimidating, hostile, humiliating, degrading or offensive environment, based on sex or gender. Sexual harassment means any unsolicited verbal, non verbal and physical act of sexual nature intended to or resulting in a violation of personal dignity, hostile, degrading or offensive environment, based on sex or genders. Sexual blackmail means any behavior of a responsible person intended to solicit services of sexual nature, who blackmails an individual with a disclosure that will result in damage or injury to ones' honor or reputation in case of refusal to provide the solicited services. The employee who is subjected to harassment, sexual harassment or sexual extortion shall, in accordance with Article 18, paragraph 2 of the law, deliver a written notice to the employer of the circumstances that indicate this, and to seek protection from the employer. The law does not further regulate the conduct of the employer at the request of the employee from which entails that the Labor Law or Law on the Prevention of Abuse at Work is to be applied as a *lex generalis*<sup>53</sup>.

<sup>52</sup> Gradual balancing of the workforce can be achieved by having a period where the employer would not employ members of the gender that is more prevalent, or by filling vacant leadership positions by assigning employees of the less prevalent gender.

<sup>53</sup> According to the Law on Labor, the employer may terminate the contract of employment with an employee if there is a justified cause that relates to the ability of the employee, his or her behavior and needs of employers, and in cases where the employee violates official duties as determined by a general act or employment contract. Disciplinary responsibility is no longer represented in the Law on Labor and so there are no more provisions on the conduct of disciplinary proceedings and disciplinary action. Law on

Article 19 of the law regulates the obligation of the employer to take care in each cycle of professional development and training that gender presence reflects as far as possible the structure of persons employed with the employer or the organizational unit for which the training is conducted. Here we should emphasize two things. First, this provision again applies only to the employer as defined by this law, but not to public authorities. Second, the law does not establish an explicit duty of the employer, but uses an inadequate term “take care” which largely renders the whole Article of the law nonsensical. The intention of the legislator is more than clear - they want none of the genders to be “underrepresented” or “over-represented,” but it is not clear how this will be achieved on the basis of this formulation<sup>54</sup>.

With regard to employment and work-related relations, the law regulates two more issues: the proportion of the less represented gender in committees for collective negotiations (Article 21) and encourage employment and self employment of the less represented gender (Article 22).

Trade unions and employers’ unions, according to the Article 21 of the law shall, while forming negotiation committees in accordance with the law which regulates labor, provide at least 30% of the representatives of the less represented sex, that is, the number of representatives of the less presented sex in proportion to the participation of the sexes in membership unions and employers’ associations. Namely, it has been established that the disadvantaged status of women in the area of work is caused, among other things, by the under-representation in decision-making and collective negotiations on working conditions. However, the law does not regulate the question of the effect of the collective agreement if negotiations were led by committees where less frequent sex was not involved in the relevant share. In principle, this question should not be subject to this law, but to Law on Labor, but it also contains no provision on this issue.

Article 22 of the law applies to employment incentives. It establishes equal access to jobs and equality in the employment process, possibility of introducing affirmative measures to encourage employment and self employment, including measures of the active policy of a large number of persons of the gender which is less represented. In many countries, women find employment more difficultly compared to men, especially in more profitable sectors. Therefore, the ILO formulated the Recommendation no. 90 on equal pay in 1951 and in Article 6, it explicitly enumerated actions to be taken by all member states to increase the productive efficiency of women<sup>55</sup>.

## Conclusion

The Gender Equality Law, as well as other recently passed anti-discrimination laws, brings into our legal system a series of original legal solutions in areas which it regulates. It is a practice that has been introduced in recent years in international, and especially European legal standards, with the goal of eliminating gender inequality wherever it exists. The passing of the law was largely influenced by the needs of the Republic of Serbia to adapt to European standards in the area, since it has tendencies towards membership in the European Union. However, the law-making process lasted for four years where several drafts were sent to the parliament procedure and withdrawn from it, so the need for political compromise significantly affected the quality of the legal text.

We conclude that the effect and scope of Gender Equality Law depend primarily on the compatibility and congruency of solutions of this law with the relevant subsidiary legislation. In this regard, special measures from the subsidiary legislation may support and complement the solutions

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Prevention of Abuse at Work, on the other hand, in Articles 13-28, regulates the procedure for protection from abuse, which is led against the employer and above all, through the mediation process. A reasonable question is how appropriate mediation is in cases of sexual extortion and harassment.

<sup>54</sup> Pajvančić, Marijana, Petrušić Nevena, and Senad Jasarević, Commentary on the Law on Gender Equality, Belgrade, 2010, available online at: <http://www.fes.rs/pubs/2010/pdf/16.Komentar%20zakona%20o%20ravnopravnosti%20polova.pdf>, accessed May 12, 2012.

<sup>55</sup> See the text of the Recommendation online at: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R090>; last modified May 10, 2012.

of the Gender Equality Law, just as the sanctions in the subsidiary legislation may indirectly protect the value of the rights granted herein. On the other hand, contradictory solutions, or legal loopholes, may cause problems in practice and reduce the efficiency of the realization and protection of gender equality.

Finally, in order for the rights under the Gender Equality Law to be exercised, it is also necessary to have a favorable social climate, since gender equality goes beyond legal matters and requires a change of attitudes, particularly gender stereotypes and gender roles. Of particular concern is the lack of tools to implement a large number of legal provisions, which indicates that the application and compliance with the law will largely depend on the understanding and acceptance of the concept of gender equality and the readiness of the very subjects that are covered by the law to act in accordance with its provisions.

Time will tell whether our society is ripe for the application of such legislation, but it is certain that the new regulations in the domain of labor will not begin to live without a serious practical support by the state and the social partners.

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## CONCLUSIONS AND FUTURE SCENARIO

The Conference "Legal Perspectives of Gender Equality in South East Europe" organized by the South East European Law School Network (SEELS) and supported by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, Open Regional Fund for South East Europe-Legal Reform took place at the University of Sarajevo, Faculty of Law on 24<sup>th</sup> and 25<sup>th</sup> September, 2012. The Conference enabled gathering for the first time of the distinguished and most dedicated experts representing the academic staff from SEELS members, state officials, judicial training academies/centers, NGO representatives and international community in the region of South East Europe working in the field of Gender Equality. The Conference contributed to networking of these relevant actors in SEE countries, sharing their knowledge, experience, best practices and lessons learnt and exploring future opportunities and modes for regional cooperation.

**The final outcome of the Conference was the establishment of the SEE Gender Expert's Law Forum (hereinafter: the Forum) under the SEELS Network.** The Forum will be chaired by a Chair with mandate of one year. Ms. Ivana Grubescic, LL.M, Senior Assistant at the University of Zenica, Faculty of Law from Bosnia and Herzegovina is elected for the first year to chair the Forum.

The main aims of the Forum will be:

- Treating gender equality as an important cornerstone in the enjoyment of human rights of men and women, as well contributing to societal, regional and world peace.
- Sharing knowledge, experience, best practices and lessons learnt.
- Exploring modes for regional cooperation.
- Increasing public awareness on gender equality.
- Regional promotion and protection of gender equality and women's empowerment.
- Introducing gender mainstreamed curricula.
- Development of gender legal education.

The members of the Forum will be representatives from the South East European countries from the:

- Academic staff from SEELS members.
- Relevant national Government bodies.
- National Judiciary academies.
- NGOs.
- International organisations.
- Experts in gender area.

Other relevant gender experts and organizations can join upon Invitation from the SEELS Network and decision made with majority votes from the actual members of the Forum.

Acting as an expert body, the Forum will have competencies in:

- Giving recommendations for improvement of the national gender policies and strategies.
- Implementing surveys and analysis of the gender awareness in SEE countries.
- Giving experts opinion for gender laws.
- Developing gender media campaigns.
- Organizing events with different target groups.

In relation, the main activities of the Forum will be focused on the:

- Establishment of a pool of gender experts.
- Organising public awareness and media campaigns.
- Organizing various conferences, trainings and seminars in the area.
- Development and printing of PR materials.
- Development, applying and implementing joint projects.

Key topics presented and discussed at the Conference were:

- EU's Roadmap for gender equality
- Gender mainstreaming
- EU "Women's Charter": Strategy for equality between women and men 2010-2015
- A European Gender Equality Pact (2011-2020)
- Institutional support for gender equality in the EU
- National legal framework and compliance with EU Gender Equality Law
- National policy framework on gender equality (strategies; programs, etc.)
- National institutional framework on gender equality (relevant bodies and competencies)
- Gender equality in legal education
- Gender distribution at the Law Faculties
- Gender studies offered at higher educational institutions
- Curricula Gender mainstreaming
- Gender equality in legal professions
- Gender distribution in legal professions
- Addressing gender bias in judiciary training programs
- National achievements, challenges and recommendations for gender equality
- Advocate gender equality mechanisms and better enforcement of legislation
- Support for networking among gender institutional mechanisms
- Promotion of legal education with gender perspectives.

The **first session** of the conference was dedicated to the "**Gender Equality in the European Union**". Ms. Genoveva Tisheva, Managing director of the Bulgarian Research Foundation and member of the Network of independent legal experts on gender equality to the European Commission presented an overview of the existing EU legislation on gender equality, the relationship between EU Law and the national legal orders, enforcement of the EU Gender Equality Law, gender mainstreaming as a main concept of EU soft law, the EU Roadmap for gender equality, the EU "Women's Charter": Strategy for equality between women and men 2010- 2015, the European Gender Equality Pact 2011- 2020 and the institutional support for gender equality in the EU.

The **second session** was dedicated on the "**Gender Equality in the Legal Environment of South East Europe**" with the overview of the situation in Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia. The country reports were presented by Prof. Dr. Oriona Muçollari, Faculty of Law Tirana, (Albania); Prof. Dr. Jasna Bakšić Muftić, Faculty of Law Sarajevo together with LL.M Ivana Grubešić, Faculty of Law Zenica (Bosnia and Herzegovina); Prof. Dr. Ivana Grgurev, Faculty of Law Zagreb (Croatia); Prof. Dr. Karolina Ristova Asterud, Faculty of Law "Iustinianus Primus" Skopje (Macedonia); Prof. Dr. Vesna Simović, Faculty of Law Montenegro (Montenegro); Ass. Prof. Dr.

Bojan Urdarević, Faculty of Law Kragujevac together with Prof. Dr. Dragica Vujadinović, Faculty of Law Belgrade (Serbia).

The **third session** was dedicated to the **“National Legal and Policy Framework and Measures on Gender Equality”** comprising of presentations on the recent developments in SEE countries on gender equality, relevant national documents, strategies and laws adopted, level of harmonization with EU rules, established national/governmental institutions dealing with gender equality, government campaign and public awareness on this issue. On behalf of the governmental bodies from the countries in the region, the presenters at this session were: Ms. Alida Tota from the Ministry of Labor, Social Affairs and Equal Opportunities - Directorate for Equal Opportunities and Family Policies of Albania; Mr. Zlatan Hrnčić from the Gender Center of the Federation of Bosnia and Herzegovina; Ms. Spomenka Krunić from the Gender Centre of Republika Srpska; Ms. Helena Štimac Radin, Government of the Republic of Croatia and Ms. Merima Bakovic, Ministry of Justice from Montenegro.

The second day of the Conference started with the **fourth session** on **“Addressing Gender Bias in Judiciary Training Programs”**. They representatives from the judiciary academies and centres from SEE countries presented the recent developments in preparing the curricula and training programs for the judiciary, how the issue of gender equality and whether it has been considered, whether gender mainstreaming is applied in designing curricula and training programs, whether gender bias is present in choosing and appointment of new judges and public prosecutors in their countries. The presenters at this session were: Ms. Emira Shkurti, School of Magistrates of Albania; Ms. Aida Trožić, Centre for Judicial and Prosecutorial Training of the Federation of Bosnia and Herzegovina; Ms. Marina Pejović, Judicial Training Center of Montenegro and Ms. Mirjana Golubović, Judicial Academy of Serbia.

The **fifth session** from the conference addressed on **“The Role of NGO Sector in SEE countries for Promotion of the Gender Equality.”** The representatives from various NGOs presented how their NGO and the NGO sector in general in their country is active in dealing with gender equality, what are the visible results produced so far, whether and which grants and donors supported their work so far and whether they have good relations and cooperation with the governmental institutions. Presenters at this session were Ms. Evis Garunja, Gender Alliance for Development Center of Albania; Ms. Silva Sumić, Women’s Association Split from Croatia; Ms. Savka Todorovska, National Council for Gender Equality (SOZM) from Macedonia; Ms. Ljiljana Raičević, Women’s Safe House from Podgorica, Montenegro; and Ms. Vanja Macanović from the Autonomous Women’s Center in Belgrade, Serbia.

The sixth session of the conference was dedicated on **“The Future Challenges and Opportunities: Modes for Regional Cooperation”**. Dr. Veronika Efremova from GIZ ORF – Legal Reform presented the potential funding and the common fields of interest also presenting ideas for a joint regional project. Ms. Amna Berbić, project manager of a UNDP project on “The Women Police Officers Network in South East Europe” also presented the project as a successful regional story at the conference. At the end, Dr. Efremova presented the concept for establishment of the SEE Gender Expert’s Law Forum under the SEELS. Following the consensus by the participants, Assistant LLM Ivana Grubešić, from the University of Zenica, Faculty of Law (Bosnia and Herzegovina) was appointed as a chair of the SEE Gender Expert’s Law Forum with a mandate of one year.

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The participants agreed on the following general conclusions from the Conference:

- 1) To succeed better implementation of laws.
- 2) To strengthen capacities and monitoring mechanisms of the relevant authorities.
- 3) To advocate gender equality mechanisms.
- 4) To work on gender budget sensibility issue.
- 5) To Introduce/further develop Gender Equality Law course and gendering Curricula at Law Faculties and Judiciary Academies.
- 6) To familiarize legal professions with the anti-discrimination concept (trainings on gender right).
- 7) To improve gender statistical records by state political, administrative, professional, educational, cultural and other institutions.
- 8) To intensify regional cooperation.
- 9) To raise public awareness on anti-discrimination legislation.



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