

GENDER MAINSTREAMING IN LEGAL EDUCATION IN SERBIA: A PILOT ANALYSIS OF CURRICULA AND TEXTBOOKS

The general aim of this paper is to initiate a long-lasting systemic process of reviewing higher education in Serbia from a gender-sensitive point of view, and to offer initial input for building action plans and policies oriented towards this goal.

The main focus is on analyzing legal studies from a gender-sensitive point of view and on initiating gender mainstreaming within law schools. However, this paper can aspire only to modest achievements, dealing solely with preliminary research of legal studies, with a limited but a representative sample. Namely, only two accredited study programs at two public university faculties of law in Serbia – at the Faculty of Law in Belgrade and the Faculty of Law in Niš – were taken into consideration. This pilot analysis is based on an established methodology for gender-sensitive analysis of curricula as well as of syllabi and textbooks for certain legal courses. The mentioned methodology introduces specific gender-sensitive indicators as well as three categories for assessing learning outcomes of study programs, syllabi and textbooks: gender-negative, gender-neutral, and gender-sensitive. The focus of the investigation was on of the following courses: Sociology of Law, Constitutional Law, Family Law, Labor Law, and Criminal Law.

The meaning and importance of gender mainstreaming in law schools is explained in the Introduction. The normative and strategic framework for gender mainstreaming in higher education in Serbia is presented in the second chapter. The main focus of analysis – the reconsideration of curricula and textbooks from a gender perspective – is elaborated through the following three chapters: the third chapter explores the main indicators of the gender-sensitive analysis of legal education; the fourth is devoted to the analytical framework and methodology of investigation; chapter five presents the research results and their interpretation.

The concluding notes clarify discrepancies between the normative and strategic international and national framework for gender mainstreaming of higher education, on the one hand, and the given state of affairs in Serbian legal education, on the other. The text includes recommendations for gender action plans, which could contribute to the improvement of legal and higher education in general.

Key words: *Legal education. – Gender mainstreaming. – Serbia.*

1. INTRODUCTION

In the past thirty years or so, the relevant international and national legislation and strategic documents have outlined the necessity of establishing gender equality in higher education, offering to that end formal preconditions and standards for gender mainstreaming of higher education. However, the existing higher education in Serbia and elsewhere mostly remained far from the proposed strategic aims and declared attempts, meaning that a patriarchal matrix persisted strongly in the field.

Education content and practices represent powerful instruments for reproducing current gender regimes, which have been significantly colored by the patriarchal matrix. Gender inequalities, accumulated over centuries, still permeate all spheres of public and private life, including higher education. Despite a significant number of women in the student population and academic staff, the hegemony of male academics and the patriarchal system of values in academia are still the norm.

On the other hand, education represents an important channel for transferring and promoting values of freedom, social justice and equality, as well as a significant factor for improving gender equality, understood as a crucial indicator of sustainable human development in the new millennium. Hence the obligation of education institutions in contemporary societies, especially those in transition, as is the case with Serbia, to accept and promote the idea and practice of gender equality as a basic postulate of democracy, equality and justice. Of course, the mainstreaming of gender equality in higher education requires manifold institutional, pedagogical, and education changes.

Gender equality is a complex and multidimensional concept, with multiple and sometimes controversial conceptions. Due to different articulations of the nature and purpose of gender equality,¹ this concept has different definitions in literature and legal documents.² In our analysis, we use the definition that gender equality means equal access for all persons, irrespective of gender, to all spheres of social and private life, as well as their equal status and opportunities to exercise basic rights and reap equal rewards from the output.³

Gender mainstreaming of higher education is especially important in the case of law schools, because the creation and implementation of law depends on the competences of lawyers. Given that legal rules represent a fundamental instrument for enacting gender equality policy,⁴ the education of lawyers has been one of the most important factors in implementing this policy in all spheres of social relations. In that regard, the words of Harvard Law School Professor Felix Frankfurter, spoken in

¹ Gender Equality Index Report, European Institute for Gender Equality, 2013. Available at <http://eige.europa.eu/sites/default/files/documents/Gender-Equality-Index-Report.pdf> (accessed 10 October 2017)

² Gender mainstreaming – Conceptual framework, methodology and presentation of good practices, Final report of activities of the Group of Specialists on Mainstreaming, <http://www.unhcr.org/3c160b06a.pdf>; *One hundred words for equality: A glossary of terms on equality between women and men*, European Commission, http://www.eduhi.at/dl/100_words_for_equality.pdf; Strategy for equality between women and men 2010–2015, EC, 2010, http://ec.europa.eu/justice/gender-equality/document/index_en.htm.

³ Definition of gender equality in National Strategy on Improvement of Women Status and Gender Equality for the Period 2016-2020. (<http://socijalnoukljucivanje.gov.rs/en/the-national-strategy-for-gender-equality-until-2020-adopted/>)

⁴ M. Pajvančić, N. Petrušić, “Značaj institucionalnih mehanizama za ostvarivanje rodne ravnopravnosti” (Importance of Institutional Mechanisms for Enabling Gender Equality), Zbornik Pravnog fakulteta u Nišu, No. 67, 2014, 26.

1927, still hold true: “In the last analysis, the law is what the lawyers are. And the law and the lawyers are what the law schools make them.”⁵

Gender mainstreaming of legal education requires, among other things, reconsidering study programs of all faculties of law in general, and syllabi and textbooks for individual courses, all from the point of gender-sensitive content and language, ensuring formal preconditions for better gender balance in academia, overcoming gender stereotypes and prejudices among professors and students when interpreting legislation or particular legal fields, concrete laws, case law, as well as considering the multidisciplinary dimension of legal education.

The necessity of a gender-sensitive approach in legal education emerges also from the highest value and normative standards of modern international and national law. Educating students of law (future lawyers, judges, prosecutors, administrative workers, members of parliament and government bodies) in a gender-sensitive manner means a real investment in better legislation and a more correct interpretation and implementation of law. It also means an investment in a better future by sensitizing judges in particular, but also legal professionals in all fields of legal practice. This serves the fulfillment of the essence of contemporary law – equal respect and protection for all individuals.⁶

The aspects of law school most in need of a comprehensive revision through gender sensitivity are the following: gender dimensions of curricula, syllabi and textbooks, the "hidden curricula" (educational and social setting), the status of women in academic and research staff, as well as in upper management, the gender quality of scientific research projects, vertical and horizontal segregation of academic staff and students, and the role and activity of female members in student organizations and in faculty government bodies. Proper attention should also be paid to the language of education. Nevertheless, the quality of the curricula and textbooks is crucial for enacting educational aims.

Here we present the results of an exploratory analysis of gender dimensions of the undergraduate legal study programs (curricula) at the faculties of law in Belgrade and Niš, as well as the syllabi and textbooks for their most relevant courses, based on the explained methodology.

⁵ Letter from Felix Frankfurter, Professor, Harvard Law School, to Mr. Rosenwald (13 May 1927), quoted in B. P. Elman, “Creating a culture of professional responsibility and ethics: a leadership role for law schools”, http://www.lsuc.on.ca/media/eighth_colloquium_professional_responsibility_ethics.pdf (accessed 29 September 2017).

⁶ D. Vujadinović, “Country Report on Legal Perspectives of Gender Equality in Serbia”, in *Legal Perspectives of Gender Equality in Southeast Europe*, SEELS, Skopje, November 2012.

2. THE NORMATIVE AND STRATEGIC FRAMEWORK FOR GENDER MAINSTREAMING OF HIGHER EDUCATION IN SERBIA

Based on international normative and strategic documents, gender mainstreaming of higher education represents a strategic aim of the Serbian state and society. These documents could be considered as inherently progressive, because they strive toward a representation of civilizational standards of universal equality applied to the gender issue, while acknowledging the right to differences between gender identities. The appearance of international and national legal and policy mechanisms for women's rights represents a great historical achievement of recent history: it encompasses half of humanity and incorporates all other expressions of complex coupling of universal equality, the right to equal opportunities and the right to difference.

2.1. The Normative Framework

The normative framework consists of international and national rules, which guarantee gender equality, forbid gender-based discrimination, and define the obligations of the state and its bodies with regard to gender equality policy.

At the international level, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁷ is crucial. This document, among other things, proposes state obligations to ensure equality for both women and men in the field of education.⁸ Special focus is put on the elimination of stereotyped conceptions of male/female roles at all levels and forms of education, especially by revising textbooks, study programs, educational methods, etc.⁹

Regarding equal rights to education, the main international document is the International Covenant on Economic, Social and Cultural Rights,¹⁰ which guarantees the right to education, forbids

⁷ *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), General Assembly Resolution 34/180, 18 December 1979. The convention was ratified by the SFRY (Official Gazette of the SFRY – International Treaties, No. 11/81), and it was valid in the FRY and the Serbia and Montenegro state union on the basis of succession. It is valid in the Republic of Serbia on the same basis.

⁸ *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women*, CEDAW/C/GC/28, par. 5.

⁹ Art. 10. CEDAW.

¹⁰ *International Covenant on Economic, Social and Cultural Rights*, General Assembly Resolution 2200A (XXI), 16 December, 1966. The convention was ratified by the SFRY (Official Gazette of the SFRY – International Treaties, No.

discrimination on any grounds (including gender),¹¹ and proposes the obligation that member states ensure the right to education for all men and women.¹²

Numerous declarations and recommendations are also part of the internationally relevant framework for gender mainstreaming of higher education.¹³

The Beijing Declaration¹⁴ and Platform for Action¹⁵, adopted at the Fourth World Conference on Women in 1995, states that study programs and teaching materials are still significantly under the influence of gender discrimination, which reinforces traditional male and female roles. The lack of awareness about gender equality among teachers at all levels of education reproduces and reinforces existent gender inequality and simultaneously stimulates discriminatory tendencies.¹⁶

The 2007 Council of Europe Recommendation on gender mainstreaming in higher education¹⁷ asserts that education for democratic citizenry contributes to the promotion of the principle of gender equality and encourages the creation of peaceful and harmonious human relations. It also points to the need for a gender dimension in study program contents to eradicate sexist stereotypes and prepare young people for gender partnerships in both their private and public lives. Additionally, recommendations are made to states on how to influence authors and publishers of teaching materials to become aware of the importance of gender equality, as a qualitative criterion for the creation and selection of material.

The World Declaration on Higher Education for the Twenty-First Century¹⁸ recommends the elimination of gender stereotypes in higher education, taking into consideration gender dimensions in different scientific disciplines, active participation of women in educational institutions at all levels of work and in all disciplines, especially in the scope of decision making.¹⁹

7/71), and it was valid in FRY and the Serbia and Montenegro state union on the basis of succession. It is valid in the Republic of Serbia on the same basis.

¹¹ Art. 2. *op.cit.*

¹² Art. 3. *Ibid.*

¹³ N. Petrušić, S. Konstantinović Vilić, "Modeli rodne senzitivizacije pravničkog obrazovanja", (Models of Gender Sensitization of the Lawyers' Education), in *Prava dece i rodna ravnopravnost - Između normativnog i realnog (Rights of Children and Gender Equality - Between Normative and Real)*, Pravni fakultet, Istočno Sarajevo, 2012, 426-430.

¹⁴ <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm> (accessed 10 October 2017)

¹⁵ <http://www.un.org/womenwatch/daw/beijing/platform/> (accessed 10 October 2017)

¹⁶ This Platform aims to develop education with no discrimination, and compel governments and education bodies and institutions to elaborate on the recommendations and create study programs, textbooks and other tools without gender stereotypes for all levels of education, including education of educators. (*Ibid.*)

¹⁷ *Recommendation CM/Rec(2007)13 of the Committee of Ministers to member states on gender mainstreaming in education and explanatory memorandum*, <http://www.coe.int/en/web/genderequality/gender-mainstreaming-at-the-council-of-europe> (accessed 17 September 2017).

¹⁸ *World Declaration on Higher Education for the Twenty-First Century, Vision and Action*. UNESCO, Paris, 1998, http://www.unesco.org/education/educprog/wche/declaration_eng.htm (accessed 17 September 2017)

¹⁹ D. Popović, D. Duhaček, "From the Zurich Circle to Gender Studies: Gender Equality and Higher Education in Serbia", *Godišnjak Fakulteta političkih nauka*, Belgrade 2009, 688.

Gender mainstreaming of higher education represents an important element in establishing the European Higher Education Area, defined by the so-called Bologna Declaration,²⁰ which, among other things, encompasses education for gender equality, peace and tolerance.²¹

The legal basis for gender mainstreaming of higher education at the national level is, firstly, the 2006 Constitution of the Republic of Serbia.²² It forbids any form of discrimination of groups or individuals on the basis of any personal feature,²³ and opens space for introducing special measures for conducting factual equality for discriminated groups or individuals. Particularly important are the provisions that ensure equality between women and men. They obligate the state to promote a policy of equal opportunity,²⁴ and to that end use appropriate measures for eliminating (factual) inequality between women and men, and create circumstances in which both sexes enjoy their guaranteed rights under equal conditions.

Prohibition of gender-based discrimination is proposed by the general anti-discrimination law – the 2009 Law on the Prohibition of Discrimination in the Republic of Serbia, which considers gender-based discrimination as a special form of discrimination.²⁵

Gender-based discrimination is also considered in a special anti-discrimination law – the 2009 Law on Equality Between Sexes, which requires governmental bodies to pursue active policies of equal opportunities in all spheres of social life,²⁶ including education.²⁷ This law explicitly prescribes the duty for education institutions to ensure that study programs include education on gender equality for the sake of overcoming gender-based restrictions in roles, as well as gender-based stereotypes and prejudices. It also proposes an obligation that study programs, standards for textbooks, and educational methods be framed in a way that leads towards a policy of equal opportunities for men and women.²⁸ The new Law on Gender Equality is currently being drafted.

²⁰ *The European Higher Education Area – Joint Declaration of the European Ministers of Education*, http://www.magna-charta.org/resources/files/BOLOGNA_DECLARATION.pdf (accessed 19 October 2017).

²¹ D. Popović, D. Duhaček, 689.

²² “Official Gazette of the RS” No. 98/2006.

²³ Art 21. Constitution of the RS.

²⁴ Art 15. *Ibid.*

²⁵ Art. 20, *Ibid.* See: N. Petrušić, I. Krstić, T. Marinković, *Komentar Zakona o zabrani diskriminacije (Commentary on the Law on the Prohibition of Discrimination)*, Glasnik, Belgrade 2016, 155-156.

²⁶ Art 3. Law on Gender Equality.

²⁷ M. Pajvančić, N. Petrušić, S. Jašarević, *Komentar Zakona o ravnopravnosti polova (Commentary on the Law on Equality Between Sexes)*, Center of Modern Skills, Belgrade 2010, 76-77.

²⁸ Art 32. Law on Equality Between Sexes.

The Law on Higher Education in the Republic of Serbia²⁹ also prohibits gender-based discrimination by way of principles of higher education, which include respect for human rights and prohibition of all forms of discrimination.

2.2. The Strategic Framework

Improvement of gender equality and suppression of gender-based discrimination represent strategic aims of the Serbian state, which is constitutionally defined as a social state based on human rights, rule of law and European principles and values.³⁰ The crucial strategic document, which defines an all-encompassing system of measures and activities for pursuing a policy of gender equality, is the National Strategy for Gender Equality 2016-2020 and the accompanying Action Plan 2016-2018.³¹ Gender-sensitive education is one of the document's special targets within the first strategic aim called "Changed Gender Patterns and Improved Culture of Gender Equality." This Strategy starts from the Concluding Remarks of the CEDAW Committee relevant to Serbia, which point to persistent gender stereotypes in educational materials and textbooks, and concludes on its own behalf that study programs and educational materials at all levels of education are not gender-sensitive.³² Certain measures are proposed in this Strategy for gender mainstreaming of education in general, some of which are especially relevant to higher education.³³ Further, there is a proposition of a strategic aim to establish Gender Studies at the undergraduate and postgraduate levels, to the highest extent possible.

²⁹ "Službeni glasnik RS", (Official Gazette of the RS), No. 76/2005, 100/2007 – authentic interpretation, 97/2008, 44/2010, 93/2012, 89/2013, 99/2014, 45/2015 – authentic interpretation, 68/2015 and 87/2016. In late September 2017, the Serbian Parliament adopted the *Law Amending the Law on Higher Education*, which contains no new solutions relevant to this issue.

³⁰ Art 1. Constitution the RS.

³¹ "Službeni glasnik RS", (Official Gazette of the RS), No. 4/2016.

³² The same statement was present also in the previous strategy for the period 2009-2015.

³³ The following measures are: introducing obligatory gender-sensitive and anti-discriminatory study programs and educational contents at all levels of education, including education of adults and education of media professionals; revision of education content and textbooks with view to eliminating gender stereotypes, discriminatory content and language; advancement of competences of educators through their education regarding gender equality; introducing gender sensitive language in all educational content; introduction of knowledge about female contribution to science, culture and art.

The Strategy for Prevention and Protection against Discrimination 2013-2018,³⁴ points to the absence of gender-sensitive content in textbooks and study programs. Changing the traditional patriarchal stereotype is proposed as a general aim, and its particular aim is for all study programs to become gender-sensitive and include content about unacceptability of discrimination and gender stereotypes.

In spite of the fact that educational content and practices represent very powerful instruments for gender mainstreaming of education and all spheres of public and private life, the issue of gender inequality is neither problematized in the Strategy for Education Development in Serbia (2012-2020), nor can it be found among the strategic aims.³⁵ This Strategy insofar belongs to the scope of gender-blind state documents. By contrast, the Strategy of Scientific and Technological Development of the Republic of Serbia 2016-2020 – “Research for Innovation”,³⁶ includes gender-equality improvement as one of six measures that will ensure excellence and expertise in science.

3. GENDER ANALYSIS AND GENDER-SENSITIVE INDICATORS FOR ASSESSING LEGAL EDUCATION

Law schools, and higher education in general, have three crucial roles: education, scientific research, and support of social development.³⁷ The main aims of legal education are to prepare students for the legal profession at a high level of competence, to become fully devoted to justice and fairness, as well as to imbue the highest ethical standards, common good and full respect for human dignity. Additionally, legal education has the aim to prepare students for living, studying and working in pluralistic, multicultural and globalized surroundings.

In our analysis, we start from the premise that institutions of higher education in general, and law schools in particular, will fulfill their obligation, prescribed by the normative and strategic documents of the Serbian state, to act in accordance with the policy of gender equality and make a systemic effort for its accomplishment. Consequently, we also start from the premise that faculties of law will fulfill their obligation to integrate gender perspectives into study programs that define why,

³⁴ “Službeni glasnik RS”, (Official Gazette of the RS), No. 60/2013.

³⁵ “Službeni glasnik RS”, (Official Gazette of the RS), No. 107/2012.

³⁶ “Službeni glasnik RS”, (Official Gazette of the RS), No. 25/2016.

³⁷ *The Magna Charta Universitatum*, the document signed by 388 rectors and heads of universities throughout Europe on 18 September 1988, on the occasion of the celebration of the 900th anniversary of the University of Bologna. <http://www.magna-charta.org/magna-charta-universitatum/the-magna-charta-1/the-magna-charta>.

what, and how is to be studied,³⁸ and to reconsider and revise all textbooks in a gender-sensitive manner.³⁹

The assessment of gender perspectives of legal education supposes an all-encompassing reviewing of all its elements: its study programs, educational circumstances, and human resources.

Regarding inherent features of particular samples of legal education, there are a several crucial indicators for assessing the level of their gender mainstreaming.

The first indicator is *gender sensitivity of study programs*. Education programs are the engine of secondary socialization, i.e. the main possible creators and promoters of gender stereotypes.⁴⁰ It is, therefore, necessary to consider the gender dimensions of all the elements of study programs.

The second indicator is *gender sensitivity of textbooks*, because they are the main educational means and sources of knowledge about social and legal phenomena and institutes. Therefore, their gender analysis is of crucial importance for assessing gender sensitivity of legal education.⁴¹

The third indicator is the so-called *hidden curriculum*, which is related to the extent of presence of the patriarchal matrix in the educational context.⁴² This concept refers to a social setting and unwritten rules in pedagogical approaches and social relations within education, which often reproduce patriarchal patterns.⁴³ Lecturers and students interpret social and legal phenomena through lectures, seminars, practical work. Their internalized gender stereotypes often contribute to the patriarchal matrix within the education and pedagogic process. Different systems of values, including patriarchy, influence formal and informal contacts and relations between lecturers and their students, as well as among students, and this also represents a kind of knowledge to which students are exposed in the educational institution⁴⁴ and its organizational culture.⁴⁵ Indicators that belong to the

³⁸ See: Martina Vukasović, *Razvoj kurikuluma u visokom obrazovanju (Development of Curricula in Higher Education)*, AAOM, Dosije, Belgrade 2006, 25.

³⁹ See: Jana Bačević *et al.*, *Analiza rodne dimenzije u visokoškolskom obrazovnom materijalu (Analysis of Gender Dimension in Higher Education Materials)*, United Nations Development Program (UNDP), Administration for Gender Equality, Ministry of Labor and Social Policy, Belgrade 2010.

⁴⁰ J. Mertus, Z. Mršević, M. Dutt, N. Flowers, *Ženska ljudska prava - Praktična implementacija (Female Human Rights - Practical Implementation)*, Belgrade 1995, 16.

⁴¹ See: D. Stjepanović-Zaharijevski, D. Gavrilović, N. Petrušić, "Obrazovanje za rodnu ravnopravnost, Analiza obrazovnih materijala za osnovnu i srednju školu" (Education for Gender Equality, Analysis of Educational Materials for Primary and High School), Mena Group, UNDP, Belgrade 2010, 14.

⁴² Stjepanović-Zaharijevski *et.al.* 97.

⁴³ Isidora N. Jarić, "Javni i skriveni kurikulumi srednjoškolske nastave sociologije: Obrazovne reforme u Srbiji 1960-2006" (*Overt and Hidden Curricula in Teaching Sociology in Secondary Schools: Educational Reforms in Serbia 1960-2006*), PhD dissertation, University of Belgrade Faculty of Philosophy, Belgrade 2012, 21.

⁴⁴ P. Georgievski, "Sociologija obrazovnih programa" (Sociology of Educational Program), *Sociološki rečnik (Sociological Dictionary)*, (A. Mimica and M. Bogdanović eds.), Belgrade, 549. See also: N. I. Jarić, 19.

"hidden curriculum" are: value statements of lecturers, students and decision-makers regarding gender roles and gender equality; the level of existing gender-based discrimination and harassment, including sexual harassment between teachers and students, among teachers, and among students; the existence and practical efficacy of instruments for preventing and sanctioning gender-based discrimination and gender-based harassment.

The fourth indicator concerns *gender balancing of human resources*, with issues of equal opportunities for women to take part in lecturing, scientific and research processes, and for their career promotion.

The fifth indicator is related to *quantitative gender balance in the academic staff and student population*, including the analysis of vertical and horizontal segregation: the gender structure of the academic staff, top management and governmental bodies; the gender structure of the student population, members and leadership of student organizations, and of student representatives in the governing institutional bodies; the status of women in career promotion within the academic and research field of work. Gender-sensitive statistics are an unavoidable part of this framework of consideration.

Given that higher education has been inseparable from scientific research, it is necessary to also reconsider the *gender sensitivity of scientific legal research* projects, from the perspective of their content and distribution of male and female positions in research teams.

Together, these indicators comprise a framework for implementing a substantive gender analysis,⁴⁵ which encompasses insights into proposed female/male social roles, with differences in conditions, needs, representation, availability of sources, access to development, as well as in controlling and decision-making power, etc. Gender analysis indicates whether the concerned mode of education contributes to overcoming gender-biased social roles or not.

4. PILOT ANALYSIS: ANALYTICAL FRAMEWORK AND IMPLEMENTED METHODOLOGY

We have applied this method of gender analysis for reconsidering legal education from the point of national strategic aims related to gender equality policy in the field of education. Our

⁴⁵ Anita Ramštek, *Rodna ravnopravnost, priručnik za predavače*, Ministarstvo inostranih poslova Republike Slovenije, iv (*Gender Equality, Handbook for Lecturers*), Ministry of Foreign Affairs of the Republic Slovenia, http://www.ijp.rs/uploads/editor/joined_document.pdf (accessed 23 September 2017).

⁴⁶ *One hundred words for equality: A glossary of terms on equality between women and men.*

investigation is of an explorative, preliminary character: the pilot analysis is the most efficient way for generating hypotheses and defining propositions and guidelines for future comprehensive research. Due to limited resources, only two crucial educational elements/indicators will be the subject of this gender analysis: study programs of undergraduate legal studies, and textbooks as primary educational resources for certain legal courses. The research sample consists of two accredited legal study programs, which belong to two public universities in Serbia. Most students who graduate with a law degree in Serbia are alumni of these universities.⁴⁷ The sample also includes select textbooks for certain key legal courses.

The gender analysis of undergraduate study programs has to answer to the question whether the gender perspective is present and to what extent. Therefore, the subject of our investigation were all elements of study programs: structure, purpose, aims, anticipated competences, lists and structure of mandatory and optional courses, as well as their proposed aims, learning outcomes, and contents.

We collected data by applying the quantitative and qualitative method in our search for the answers to the following questions:

- 1) Is acknowledging/understanding of gender dimension of legal education proposed as a learning outcome?
- 2) Is Human Rights a course unto itself, and if so, does it have an optional or mandatory status? This implies that the existence and status of this course indicates *per se* the merit of openness of the study program for developing legal education around human rights. A further implication is that sensitivity of a study program for law on human rights represents a solid basis for further steps towards a gender-sensitive approach, even if the Human Rights course may not have been gender-sensitive at the given moment.
- 3) Is Gender Studies a course unto itself and with what status?
- 4) Are gender dimensions of social and legal concepts and institutes mentioned and to what extent in the syllabi of certain courses?
- 5) How many topics overall have been interpreted through the gender perspective?

The collected data allowed for the classifying of study programs into one of the following categories: gender-negative, gender-neutral, and gender-sensitive. In this categorization, “gender-

⁴⁷ There are thirteen accredited higher education institutions in Serbia where the title of Bachelor of Law can be taken. Six are publicly funded, while seven of these faculties have been founded by legal and private entities, in accordance with Art. 40 of the Law on Higher Education.

negative” are study programs that contain an explicit affirmation of stereotyped gender roles and gender discriminatory attitudes; “gender-neutral” are ones that do not contain explanatory topics of gender aspects of social and legal phenomena and institutes, and insofar are “gender blind”. “Gender-sensitive” is the program that recognizes and adequately interprets gender dimensions of social and legal phenomena and institutes, and also recognizes inequalities produced by the application of gender-neutral legal norms.⁴⁸

When textbooks are concerned, we applied the following approach for creating the sample: first, we assessed the list of most important gender relevant topics (concepts and phenomena), which will represent units of introspection and together comprise the analytical framework of research. They are: 1) gender equality 2) gender stereotypes and prejudices 3) discrimination – structural and individual, 4) political representation of women, 5) special measures favoring deprived social groups, 6) balancing of professional and family life, 7) marriage, 8) extra-marital community, 9) same-sex partnerships, 10) parenthood, 11) reproductive rights, 12) rights of LGBT persons, 13) gender-based violence, 14) crimes based on gendered hatred, 15) gender (in)sensitivity of the textbook language. In accordance with selected topics, we created a list of the obligatory courses that would most directly deal with these topics: Sociology of Law, Constitutional Law, Family Law, Labor Law, and Criminal Law. Then we collected information from official course syllabi regarding mandatory reading, forming a sample of twelve textbooks. It is interesting to note that only one of these textbooks had a female author.

We first investigated whether these textbooks consider expected gender-relevant topics or not, and then paid attention to the parts of the texts in which they were taken into consideration. We applied qualitative analysis to those units and investigated the scope and significance given to gender-relevant topics compared to others, the way they were explained and linked to other topics, the scope in which gender stereotypes were eventually considered, and how new gender-sensitive legislative solutions – regarding female political participation, protection from gender-based discrimination and

⁴⁸ In the Netherlands universities report gender-sensitive contents of study programs according to four classifying categories: 1) program is gender-oriented; 2) program contains obligatory components on gender issues; 3) opting for non-obligatory modules on gender issue is available; 4) program does not have gender orientation. (M. Langeveld, C. Vijfhuizen, M. Gondwe, *Complexities of gender mainstreaming in higher education capacity development programmes*, The Dutch organisation for internationalisation in education, 2012, 14. <https://www.nuffic.nl/en/publications/find-a-publication/complexities-of-gender-mainstreaming-in-higher-education-capacity-development-programmes.pdf> (accessed 14 September 2017).

The results of this research also indicate that of the 676 study programs in 2011, 22% (149) included obligatory gender-related elements and modules, 19% (129) offered optional gender-related modules and 59% (398) did not include a gender orientation.

gender-based violence – are interpreted in them. Insights gained this way represent the basis for conclusions about the level of gender-sensitivity of textbooks, as well as their categorization as gender-negative, gender-neutral, or gender-sensitive. We applied the same criteria to the categorization of textbooks as to study programs.

5. RESEARCH RESULTS AND THEIR INTERPRETATION

5.1. Study Programs

The undergraduate study program of the University of Belgrade Faculty of Law⁴⁹ consists of 76 courses, which have been distributed over four academic years, and of which 24 are obligatory courses for all students, 20 obligatory for specific modules,⁵⁰ and 32 courses from the third and fourth academic year have optional status.⁵¹ Additionally, there are six Skills included in this legal study program.

In this study program there is no mention of gender dimension of law, neither in the description of purpose and aims, nor in the competences proposed to be attained during the undergraduate study of law. The stated purpose of this study program is to enable students to implement law, as well as to creatively and critically consider problems of application and production of legislation, and ensure that their further work is in accordance with the rule of law. A further purpose of this study program is to respond to the need of contemporary legal education and legal professionals to successfully deal with contemporary social challenges, while also preserving respect and connection with the values articulated over many decades. For the creation of the aims of this study program, the Faculty cites competitiveness and harmonization with the Bologna Declaration: it seeks to be “a true representative of the European system of higher education.” As for the competences, the students ought to achieve the necessary ability to understand, interpret, explore and

⁴⁹ Accredited study program of undergraduate studies at the Faculty of Law University of Belgrade - Decision on Accreditation, Ministry of Education, Science and Technological Development, Committee for Accreditation of Scientific-Research Organizations, No. 021-01-17/61, 12.03.2013, Belgrade.

⁵⁰ From the second academic year students opt for one of four educational thematic groups, and four courses from the opted educational group then become obligatory.

⁵¹ There are 18 courses on the list of optional courses offered in the third academic year, and 14 in the fourth academic year. Each student chooses one optional course for the third and fourth year of his/her studies, each, i. e. two optional courses in total.

apply legal knowledge, necessary for the processes of European integration, especially in the case of Serbia's accession. However, it is evident that knowledge and understanding of gender dimensions of legal studies and professionalism is not mentioned in these principle proposals, nor has it been defined as any learning outcome of this undergraduate study program of law.

When the Human Rights course is concerned, it is one of the obligatory courses for the international law module, e.g. obligatory in the third academic year for students who opted for this module, but is not obligatory for all students of undergraduate legal studies.

The gender studies course is included in this study program, with the title Gender Law, and has the status of an optional course at the third academic year. It is one of 18 optional courses, offered last on the list.

In analyzing the syllabi for particular courses and their defined aims, learning outcomes and content, we intended to gain insights into whether they include gender aspects of social and legal phenomena and institutes, and if so, in what way and to what extent.

The collected data shows that of the 78 courses, there are only 11 (including Gender Law), that encompass phenomena and institutes dealing with the gender dimension. However, as a rule, the gender dimensions have not been considered in a gender-sensitive manner. For example, in the syllabus for Sociology of Law, which is an obligatory course for all students of the first academic year, there are noted gender relevant topics such as "Social Reproduction and Legal Regulation", "Contemporary Marriage", "Family and Family Law", "Social Relations and Rights of Generations and Genders", "Social Inequalities and Law". However, there are no indications regarding the gender-sensitive dimension of these topics or any others within the content of this syllabus, as well as regarding the aims and outcomes of the given course. The situation is similar in the case of other syllabi.

As a conclusion, there are certain gender-relevant topics within the syllabi of the considered study program, although in relatively small numbers. However, these gender-relevant topics are not considered in a gender-sensitive manner and nowhere in the syllabi is there any mention of an intention to interpret them from a gender perspective. The only exception is the syllabus for Gender Law, in which all the topics are presented in a gender-sensitive manner.

According to the criteria for assessing the level of gender mainstreaming in study programs, the one in Belgrade belongs to the gender-neutral category.

The study program at the University of Niš Faculty of Law,⁵² includes 72 courses, of which 24 are obligatory; 48 have optional status and are divided into four lists, one for each academic year. The descriptions of structure, purpose, aims, competences do not include any mention of a gender dimension of law, nor is the knowledge and understanding of it defined in the learning outcomes.

Human Rights does not exist in the curriculum as a separate course.

There is a course, Legal Gender Studies, as one of 17 optional courses in the third academic year.

An insight into the syllabi reveals that of the 72 courses, only 14 courses contain topics (phenomena and institutes) with inherent gender features. The collected data also clearly indicate that there is no syllabus, with even an attempt to consider topics in a gender-sensitive manner, even when topics with direct gender features and dimensions are mentioned in them. For example, in the syllabus for International Public Law, an obligatory course of the second academic year, there are topics related to human rights (though labelled inappropriately “rights of men”), and mentioned are “children’s rights” and “rights of disabled persons” and international treaties related to them; however, women’s human rights and the UN CEDAW Convention related to them are not mentioned.

The only exception, again, is the syllabus for Legal Gender Studies, in which all topics are considered in a gender-sensitive perspective.

5.2. Textbooks

In the selected textbooks⁵³ we examined whether gender-relevant concepts and phenomena exist or not. Where we found their existence, the next step of our investigation was to test whether

Accredited study program of undergraduate studies at the University of Niš, Faculty of Law, <http://www.prafak.ni.ac.rs/files/studije/Studijski-program-osnovnih-akademskih-studija-prava-iz-2013.pdf> (accessed 15. October 2017)

⁵³ Saša Bovan, *Osnovi sociologije prava (Basics of Sociology of Law)*, Faculty of Law, Belgrade, 2017; Milovan M. Mitrović, Danilo S. Vuković, *Uvod u sociologiju prava (Introduction into Sociology of Law)*, Faculty of Law, Belgrade, 2016; Ratko Marković, *Ustavno pravo (Constitutional Law)*, Faculty of Law, Belgrade 2017; Dragan M. Stojanović, *Ustavno pravo (Constitutional Law)*, Sven, Niš 2013; Zoran Ponjavić, *Porodično pravo (Family Law)*, Official Gazette, Belgrade 2017; Marija Draškić, *Porodično pravo i prava deteta (Family Law and Rights of the Child)*, Faculty of Law, Belgrade 2015; Slobodan Panov, *Porodično pravo (Family Law)*, Faculty of Law, Belgrade 2015; Predrag Jovanović, *Radno pravo (Labor Law)*, Faculty of Law, Novi Sad 2012; Branko Lubarda, *Radno pravo (Labor Law)*, Faculty of Law, Belgrade 2012; Zoran Stojanović, Nataša Delić, *Krivično pravo. Posebni deo (Criminal Law. Specific Part)*, Pravna knjiga, Belgrade 2017; Dragan Jovašević, *Krivično pravo. Posebni deo (Criminal Law. Specific Part)*, Nomos, Belgrade 2006.

they were considered in a gender-sensitive way and how much significance has been given them in an overall comparative perspective. Then we also investigated the presence or absence of gender stereotypes, as well as whether new legislative gender-sensitive solutions have been present in these textbooks, and if so – how they are interpreted.

The aim of our pilot analysis was to offer a methodological and analytical framework for a particular and comparative gender analysis of any textbook. Hence a summary analysis of these textbooks will be presented primarily and particular textbooks and their authors will not be referred to extensively here, but only in a few exemplifying cases. In our opinion, the announcing of detailed research results concerning the contents of particular textbooks, a delicate task *per se*, would be much more appropriate for a future comprehensive research project, which would carry out a gender analysis of all the textbooks included in the accredited legal study programs in Serbia. Even Europe-wide projects aiming at all higher education textbook analysis from a gender-sensitive point of view would be of a great importance, not only for research aims but also for improving gender mainstreaming of higher education in Europe and beyond.

Textbooks for Sociology and Sociology of Law do have more or less gender-sensitive explanations for the most referential gender-sensitive topics. However, all other topics are written in a gender-neutral way, even if they have an inherently gender dimension. Gender-sensitive analyses cover not more than 10% to 15% of the content. New gender-sensitive laws are not mentioned. Gender insensitive language is used.

Most of textbooks for Family Law are gender-neutral.⁵⁴ In some of them, certain topics, which have a gender dimension, are interpreted in a gender-sensitive way,⁵⁵ although in the final score, they also belong to gender-neutral textbooks.⁵⁶ However, there is the textbook⁵⁷ which

⁵⁴ M. Draskić, M. Z. Ponjavić.

⁵⁵ Draškić points to the gender dimension of domestic violence and accentuates that victims of this sort of violence mostly are women and children. She also explains legal obligation of states to secure efficient protection from domestic violence. (*Ibid.*, 54-60)

⁵⁶ For example, Draškić explains the principles of family law, among which are the principle linked to the free decision-making related to giving birth to a child and the principle related to forbidding discrimination; from a gender-equality point of view the statement that the right to free decision-making to give birth represents a “constitutional right of men” (22) is controversial, as well as that the norm that recognizes the right of women to make decision in this regard is contrary to Constitution and international documents on human rights (22, fn. 41). When the principle of forbidding discrimination is concerned, controversial is mentioning of the right of women to abortion, as an example for cases in which the principle of gender-equality, i.e. equal opportunities, equality in legal rights and duties for male and female citizens is not exercised and men are harmed. (23). Ponjavić, for example, promotes arguments of pro-life social movements that in the case of conflict between the rights of mother to her body integrity and the right of fetus to live priority shall be given to the fetus’ right (67). He also argues in favor of a legal ban on marriage between mentally

contains implicitly or explicitly particular gender-negative statements; more focus in analysis of marriage is given to religious dogmas about marriage than to legislative norms of contemporary family law; a negative viewpoint of principle of gender equality⁵⁸, as well as of homosexual partnership and legal protection of homosexual rights is presented,⁵⁹ and the right to abortion has been even called into question; negative critique of the Law on Preventing Domestic Violence⁶⁰ is presented;⁶¹ there is no explanation of the gender basis of domestic violence, indeed, the explanation offered is even gender-negative.⁶²

In the textbooks for Constitutional Law, the constitutional guarantee of gender equality and policies of equal opportunities (declared for the first time in the 2006 Constitution) is not given a proper theoretical interpretation. Most topics do not have a gender dimension; where present, they are interpreted in a gender-neutral way. A few topics do have a gender dimension, although not interpreted properly: proper explanations of policies of equal opportunity is absent, as well as differentiation between formal and substantive equality; the purpose of special affirmative measures is not explained, including those proposed for political participation of women; the language used is gender insensitive. Women are sometimes referred to by an offensive and clichéd formulation “the weaker sex.”⁶³

One of the textbooks for Labor Law⁶⁴ does indeed contain a significant amount of gender-sensitive content. There is also emphasis on the feminist movement’s contribution to the development of labor law.⁶⁵ The principle of equality in employment and work is considered in a gender-sensitive manner, with strong emphasis on the principle of equal opportunities and gender-based discrimination and its prohibition. In discussing gender-based discrimination, the textbook points out that it primarily refers to women, but sometimes also men and transsexual persons. Considering harassment

disabled persons, with an argument that society thusly protects itself from “population degeneration” (118), and when he explains the aim of marriage he speaks about “normal satisfying of the sexual drive (104).

⁵⁷ S. Panov.

⁵⁸ “The main complaint against the principle of gender-equality stems from its inability to satisfy the legitimate and different needs of spouses, which are expressions not only of their *collective* features, based on sexual identity, but also of their individual features based on different preferences, sensibilities, inclinations towards a cultural model or personal axiology.” (10)

⁵⁹ *Ibid.*, 62-73.

⁶⁰ “Službeni glasnik RS”, (Official Gazette of the RS), No. 94/16).

⁶¹ S. Panov, 393- 399.

⁶² In the chapter “Protection Against Domestic Violence”, contested, as potentially harmful, are the legislative solutions proposed to prevent this type of violence. (379-412).

⁶³ D. M. Stojanović, *Ustavno pravo (Constitutional Law)*, Sven, Niš 2013, p. 155.

⁶⁴ B. Lubarda.

⁶⁵ B. Lubarda, 43.

at work, the issue of the victim's gender is neglected. There are a few examples of gender-sensitive language in this textbook.⁶⁶ However, ultimately, this textbook, although less than others, also belongs to textbooks written in a gender insensitive and gender-neutral manner.⁶⁷ Another textbook points out a smaller presence of women in certain professions and to a necessity for policy measures of so-called positive discrimination, although the author does not explain the causes of the given factual disbalance.⁶⁸ This textbook is mostly gender-neutral, though also with examples with wrongly interpreted certain institutes, such as sexual harassment (as not being gender-based discrimination⁶⁹) or parental leave (as the fathers' right which can only be exercised if the mother cannot exercise her right or is unemployed).⁷⁰

In the textbooks for Criminal Law most of the topics have no inherent gender dimension. Topics that inherently have a gender dimension are not considered in a gender-sensitive way.⁷¹ An explanation of the gender dimensions of sexual violence is lacking. Insufficient attention is paid to criminal acts with elements of discrimination. The social danger of hate and honor crimes is not examined.

6. CONCLUSION

The results of the pilot analysis show almost a complete absence of gender-sensitive approaches in curricula and textbooks. In some of the analyzed textbooks we even encountered gender stereotypes. None of the textbooks provide gender-sensitive explanations of the historical genesis and development of modern and contemporary law. The language of study programs, of syllabi and textbooks is, as a rule, gender insensitive.

⁶⁶ In his textbook Lubarda uses the Serbian notion "employed" in a male and female alteration. (23)

⁶⁷ When standard institutes of labor law are on agenda, they are considered in a gender-neutral way, although there are cases in which gender-sensitive approach would be necessary, such as in the case of career promotion and gender pay gap.

⁶⁸ P. Jovanović, 126.

⁶⁹ *Ibid.*, 261.

⁷⁰ *Ibid.*, 277.

⁷¹ For example, there is no consideration in these textbooks of the legislative rule according to which "the serious and persistent resistance" of a rape victim represents an important element of the criminal act of rape. (See: D. Jovašević, 87; Z. Stojanović, O. Perić, 101).

All of this indicates that legal studies do not meet the normative and strategic aims and standards proposed by Serbian education and government bodies regarding gender mainstreaming of higher education.

Our initial premises in this analysis – that higher education institutions and law schools should pursue gender equality policy and that they might factually contribute in a systemic way to its implementation through gender mainstreaming of study programs, syllabi and textbooks – have been shown by the state of affairs to be utterly lacking.

Recommendations have to be oriented towards enacting gender action plans for gender mainstreaming of all higher education institutions, including faculties of law. Gender action plans of this kind are quite necessary. They should contribute to the systemic improvement of the quality of study programs and textbooks, overcoming patriarchal cultural patterns in “hidden curricula”, better balancing human resources within research and education processes, enabling the career promotion of women in science and academia, and also achieving gender-sensitive statistics.

Politics of gender mainstreaming of higher education and referential action plans could contain the following measures, among others:

Application guidelines for institution accreditation should include obligatory inclusion of gender-sensitive purposes, aims, learning outcomes for study programs and syllabi wherever reasonably appropriate. Moreover, an obligatory precondition for successful accreditation should be a proposed gender-sensitive approach in curricula and syllabi. In short, accreditation of study programs should be conditioned by a mandatory articulation of aims, outcomes, competences, syllabi contents and textbooks that are gender-sensitive.

Standards for a gender-sensitive approach concerning content and language of textbooks should also become obligatory. Textbooks should be subject to systemic checks from the viewpoint of gender-sensitive language, aversion to stereotypes and prejudices, as well as a gender-sensitive approach to inherently gendered phenomena. There should also be consideration of numerous other topics that have inherent but obscured gender dimensions, which can be revealed and articulated in a gender-sensitive manner. In addition to containing entries about contributions by female authors to a given field, textbooks should note the longstanding invisibility of women in modern universal legal norms and the history of feminist and other forms of emancipatory struggles for their visibility. In other words, legal textbooks should become a materialized awareness about the difference between a gender-neutral and gender-sensitive understanding of the history of law and genesis of legal institutes

and norms. They also ought to delve deeper into gender-sensitive comprehension and implementation of the legal system. Even if the authors of textbooks have personal value affiliations close to gender stereotypes, they must leave aside stereotyped interpretations of legal phenomena and institutes. Normative and strategic documents regarding higher education in the Serbian state, as well as the highest civilization standards of international law, demands that all authors respect a gender-sensitive approach in articulating textbook contents.

It is necessary to transfer knowledge to students through lectures and textbooks about new gender-sensitive legislations. It is also necessary to amend university education by eliminating the patriarchal matrix of the “hidden curricula”. It is also important to introduce training seminars for educators; to organize open days devoted to issues of gender equality; to publish gender-instructive booklets for students; to organize instructive seminars for all participants in the educational process, including the media and journalists.

It is essential to enrich particular courses with gender dimensions and gender-sensitive attitudes, systematically introduce gender study courses, as well as Masters and PhD programs on gender issues.

A further goal are offices for human resources and gender issues. Responsible for better gender balancing, they will ensure that application forms and procedures for recruiting new employees allow for the career promotion of female candidates in academia. These offices would introduce systemic measures for the counteracting the negative effects of pregnancy and parenthood on women’s careers in academia, and for better balancing of work and care for parents, whether they are both employed at the university or not.

There should be obligatory introduction of gender-sensitive statistics and budgeting.

The next step in the development of legal education is integrating gender equality. Yet, there is a huge discrepancy between normative and declarative proposals and the reality of higher and legal education. This problem must be overcome, that is, gender equality must be brought into the foreground, above all, for the continued improvement of the quality of the legal education and the legal profession.

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