

SESSION 4: STRENGTHENING CAPACITIES IN THE LEGAL PROFESSIONS TO
IMPROVE WOMEN'S ACCESS TO JUSTICE

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GENDER EQUALITY AND WOMEN'S RIGHTS
IN TRAINING FOR LAWYERS IN SOUTH EAST EUROPE

(at the Regional Conference of the project “ Improving women’s access to justice in five Eastern Partnership countries”, Armenia, Azerbaijan, Georgia, Republic of Moldova and Ukraine, organized by the Council of Europe in partnership with the National Institute of Justice of the Republic of Moldova, Chisinau, 24-25 October 2016)

I. General Overview Regarding Gender Equality Achievements in South East Europe (SEE). In 2012, the South East European Law School Network (SEELS), with the support of Deutsche Gesellschaft fur Internationale Zusammenarbeit (GIZ), has conducted a research project regarding the legal perspectives of gender equality in South East Europe, with special emphasis on women in the legal professions and in gender equality training for lawyers. This is the most recent such comprehensive and comparative research on the region on this topic. It was published in a book in 2012 titled *Legal Perspectives of Gender Equality in South East Europe*, for which free copies are available for downloading at <http://www.seelawschool.org>. As I took part in the research, let me first use the opportunity of this Conference to share some of the findings and some of the good practices that we have identified for the whole region of SEE (Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia). In terms of the gender equality legal framework (constitutions, legislations/laws), all of these countries have a solid standing, with great progress achieved after the UN Beijing Conference of Women in 1995, but especially in the aftermath of joining the Council of Europe, and later, by applying for EU Membership. It is quite evident that the Council of Europe’s legal standard, especially the ECHR and the jurisprudence of the European Court for Human Rights, has pushed these countries into a intensive process of gender mainstreaming of their legislations and policy instruments, as well in

terms of the organizational set-up of central and local governing authorities. The process is complemented and intertwined with the parallel process of approximation with the EU law i.e. with the EU's so-called gender equality *acquis*. In terms of the legislative framework, several findings can be summed-up as common: 1.) The constitutions of all SEE countries have **constitutional gender anti-discrimination clauses and gender equality clauses**; 2.) All SEE countries have **special anti-discrimination laws** (direct and indirect discrimination) in accordance with UN/CEDAW, CoE/ECHR and EU legal standards, and that cover both public and private sphere. In terms of adjudication, these laws have provided different precise legal grounds, definitions of forms of gender discrimination, and special legal action before the courts on grounds of gender discrimination. It has greatly influenced changes of labor laws, social security laws, family laws, etc.; 3.) All SEE countries have **“an umbrella” laws on gender equality among women and men** in accordance with UN/CEDAW, Council of Europe and EU legal standards. It covers all spheres of social life, public and private, and it is by manner of these laws that novel legal terms and concepts have been introduced in their domestic legal orders, such as “gender mainstreaming” (in laws, education, media, policy-making documents, etc.), “gender sensitive budgeting”, “gender sensitive language”, “gendered statistics”. These laws introduce different “basic” and “special” measures on gender equality, sanctions if measures are not implemented, as well as stipulate special institutional requirements and mechanisms for implementation, coordination and overseeing the implementation of the law. These “an umbrella” laws are starting referral point of the gender equality aspect of any other law, most prominently on special laws on gender-sensitive budgeting, education, media, statistics, language, and are followed-up by different periodical implementation policy documents on the levels of central government (adopted either by national parliament or national government) and local self-governments; 4.) **All SEE countries have introduced (variations of) gender equality quotas on electoral lists for parliamentary and local elections (minimum of 30% representation of the less represented sex)** which, in a relatively short period, has improved women's participation in politics and women's political representation throughout the region, and, consequently, putting women's economic, social, political and other concern, including the newly adopted gender equality legislation, more in the focus of everyday political activities; As an outstanding example in this respect is the Law on Gender Equality of Bosnia

and Herzegovina of 2009, which extends the definition of “equal gender representation” to 40%, and not only to elective (legislative) positions, but also to the “structures of the executive and judicial power,” with first significant effect in the area of the judiciary; 5.) In all SEE countries, in addition to reforms in the general criminal/penal laws or criminal/penal codes, **special laws and/or national strategies on combating violence against women and domestic violence** have been adopted, shelter centers established, and the issues is gaining on prominence. However, as of October 2016, Croatia and Macedonia are only signatory parties of the CoE’s Istanbul Convention on preventing and combating violence against women and domestic violence; 6.) **The institutional capacity, institutional network and remedies for addressing the gender (in)equality issues has been significantly increased**, both on national and local levels, and in the legislative and executive branches of the power. In most of these SEE countries, there are special parliamentary (sub)committees on gender equality, as well as special bodies on gender equality within the government structure, mostly as part of the Ministry of Labor and Social Policy (directorates on gender equality) or, in some cases, like in Montenegro, in the Ministry on Human and Minority Rights. These ministries and bodies are the key bodies which oversee the overall implementation of the gender equality legislation. The institutional capacity is strengthened also with the work of the independent bodies that oversee the anti-discrimination legislation (independent anti-discrimination commissions) and , in the framework of their competences, the offices of the ombudspersons, although in some cases, like in Croatia, there is even a special Ombudsperson for gender equality. Due to the laws on gender equality, similar institutional organization has started to build-up on the level of local self-government, with advisers/coordinators for gender equality, usually appointed from among the administration staff, in the offices of mayors, as well as special gender equality committees in the local councils, accompanied with local policy documents on gender equality; 7.) Despite the achievements, still there **are weaknesses and challenges regarding the gender equality legislation, the most important being:** a.) there is a need for further improvement in the legislation, especially in terms of electoral gender quotas, labor laws and social policy (protection against discrimination of pregnant women and mothers in employment and work, overcoming differences in retirement age for both genders, introduction or betterment of the paternal leave, flexibility and balancing of work-family); b.) better and more substantial

reporting system, as well as systematic political monitoring over the implementation of gender equality laws and policy instruments, implementation of sanctions for failing to implement; c.) more focus on training and education of state and local officials and administration on gender equality legislation ; d.) better dissemination of information and raising awareness among the citizens on the gender equality legislation, especially women, more so about the available political, administrative and legal remedies for redress of problems and violations of gender equality legislation; e.) strengthening the institutional capacity, especially by providing more adequate financial support.

II. Forms of monitoring and (administrative and legal) remedies for gender inequality redress in South East Europe. The reforms in the body of law on gender equality includes different forms of mechanisms of monitoring and (administrative and legal) remedies. The main form of monitoring is an established system of reporting under monetary sanctions for failing to report, which in some SEE countries are quite substantial, in Macedonia most notably. Most of the governmental bodies and agencies report to the national government (typically, Ministry of Labor and Social Policy), while other (independent) bodies report to the national parliament i.e. to the parliamentary committees on gender equality, such as the anti-discrimination commissions, the national statistical office, etc. In empirical terms, the parliamentary reporting shows to be most effective in stirring political debate, and attracting media and public attention and discussion. It also provides for an additional NGO input. The ministries on labor and social policy, as main coordinators for monitoring the implementation of the gender equality on governmental level, typically also have their internal system of individual petitioning. The antidiscrimination laws, laws on gender equality and the laws on ombudsperson, typically also provide for petitioning mechanisms, including anonymous. This logic is replicated on the level of local self-government, in terms of their competences regarding gender equality. However, the main achievement of these laws, in addition to the reforms in the criminal law, in the introduction to novel misdemeanors and crimes regarding violations on gender equality legislation, as well as legal grounds both for criminal and civil lawsuits. For example, in Macedonia, in terms of remedies regarding gender (in)equalities, the following is available: a) Petition against unequal gender treatment before the Legal Representative of the Ministry of Labour and Social Policy; b) Petition against gender discrimination before the Ombudsperson; c)

Petition against gender discrimination before the Commission for Protection against Discrimination; and d) Judicial (court) protection of the right for equal treatment (gender equality law), and against gender discrimination (anti-discrimination law). In both cases, it is a civil lawsuit, before civil court and in civil law procedure. The lawsuit is treated as urgent. The petitioner may ask the court: a) to establish that the sued party has violated the petitioner's right to gender equal treatment by commission or omission; b) to prohibit the sued party to undertake actions that violate or may violate petitioner's right gender equal treatment; c) to decide on material or nonmaterial damages; d) to order publishing of the court judgment in the media on the expense of the sued party. The burden of proof on the sued party, i.e. "When a person who considers herself/himself a victim of discrimination offers fact on basis of which it may be assumed that such discrimination indeed happened, then the person that is sued has to prove that he/she did not violate the right of equal treatment." The anti-discrimination law also allows for a third party involvement on the side of the petitioner, and a collective lawsuit submitted by a NGO which deals with issues of equal treatment and (non)discrimination as co-petitioners, if they make it probable to the court that the case involves an action or non-action of the sued party that has contributed to the discrimination of many individuals, and if the individual petitioner(s) asset to it. Initial data indicated modest implementation of the remedies, but with a solid potential, as citizen's get more informed about them, understand the concepts, and how to correctly use them.

III. Women's Representation in Legal Professions and in Adjudication of Justice in South East Europe. As mentioned, the gender equality legislation also provides for obligation for collecting gendered statistical data. However, as our research has established, when it comes to the legal professions, such statistical data have not been collected, in fact, it was our research that made the effort to collect and analyze such gender sensitive data, for the first time. This is a good illustration of an on-going weakness of persisting discrepancy between the solid legislation on gender equality, on one side, and the implementation process of such legislation, on the other side. The interesting finding was that in SEE countries, in average, being a judge, is a "female profession" or, at least, a profession in which women are solidly represented, especially in comparison to politics (legislature, governments, mayors, local councils, political parties) and in top business positions and company boards. For example, in 2012, out of total 6302 judges, 2168

were male, and 4134 were female. In percentages, total number of female judges per country: 41% in Albania, 61% in Bosnia and Herzegovina, 70% in Croatia, 59 % in Macedonia, 56 % in Montenegro and 72 % in Serbia. In average, 66%. However, as the courts systems are a pyramid, our research has found that, although the women are overwhelming represented as judges, the representation is not evenly distributed at all levels of the court pyramid, on the contrary. Female judges are most represented in courts of first instance, and much less in the higher courts (appellate courts), and least in supreme courts and constitutional courts. Least represented are in the position of court presidents, especially in highest courts. Apart from Croatia and Serbia, where female court presidents made up the majority of 57% and 58% respectively, in the other SEE countries the numbers are as follows: Albania – 32%, Bosnia and Herzegovina – 43%, Macedonia -20% and Montenegro – 23%. As for the other legal professions, the research has shown that while the notaries are “gender equal profession”, the professions of public prosecutors and attorneys are, in average, still male dominated legal professions in SEE, as is illustrated with the case study below. Again, just for illustrative purposes, in my home country, Macedonia, the research had showed that there are only 19,2% female prosecutors, 37,5% female attorneys at law, while the situation is much better when it comes to state attorneys (54% female), notaries (56,7%) and legal executive agents (45, 5%).

IV. Women’s Representation and Women’s Rights in Legal Education and Training for Lawyers in South East Europe. Overall, in the SEE countries, when it comes to female representation among student population in legal studies, it can be observed that legal education, especially on undergraduate level, is “female dominated,” with female students ratio comfortably reaching up to the half of the student population, sometimes 60 %- 70% (with an exception of Albania, and to an extent, Bosnia and Herzegovina). When it comes to the academic staff (full, associate and assistant professors) and managing staff (deans and vice deans) of the law schools, the situation is somewhat different. In total, at the 11 law schools in the SEELS network (the law schools of Zagreb, Split, Rijeka, Sarajevo, Zenica, Podgorica, Tirana, Belgrade, Nis, Kragujevac and Skopje), as of 2012, there were 331 male professors (58%) and 243 female professors (42%). At the time of the research, all deans were male, while out of total 29 vice-deans, 18 were male (62%) and 11 were female (38%). However, the general trend is that of changing for the benefit of female representation among academic staff, as more than half of the junior teaching staff is

female. For example, in my home country of Macedonia, in the academic year 2002/2003, only 37,1% were female professors, while at the time of the research, in the academic year of 2011/2012, that number has reached to 46,1%, primarily because many of the junior academic staff were female, and had reached to the level of professorship in the meantime. As from the academic year of 2012/2013, the female representation among professors has reached to 52%, and it was the first time in the history of the law school that female professors have outnumbered male professors. As with the situation with the other legal professions, our research has found that there were no ready gendered statistics, which indicates that the legal obligation for collecting gender sensitive statistics is not much respected. Unfortunately, the situation is not that much better also with respect to the gender mainstreaming of the legal education and training for lawyers, i.e. there are some very limited results, and much work has to be done in the SEE countries, in order to follow-up the comprehensive new gender equality legislation, and enable its full implementation. At none of the **SEELS law schools**, there is a compulsory **course in “Gender and Law”** which will specifically target the gendered aspects of the legislation, especially considering all the changes in the legislation mentioned above. In the law school curriculums, those aspects are left to be studied only in the more general framework of the specific subject areas, such as constitutional law, criminal law, labor law, family and inheritance law, international law, EU law, etc. When offered, such specific academic courses on gender and law are offered only as optional courses (for example, in Serbia and Bosnia and Herzegovina law schools). However, in some of the SEE countries, there are significant steps made, quite often by instigation of the government (through the ministries of education and science), in **introducing interdisciplinary gender studies at university level** (Bosnia and Herzegovina, Croatia, Macedonia and Serbia). Moreover, there are some independent/ private higher education study centers dedicated specifically to the gender issues (Croatia, Macedonia, Serbia). Also, there is an **evident growing interest among graduate students (master and PH.D level) that are interested to pursue their master or doctoral thesis research in different legal aspects of the gender equality**. This is a very positive trend as it provides with a new body of data in each particular country on the situation with the gender equality, as well as it provides with an additional and new study and educational material dealing with different complex questions and issues regarding the gender equality legislation, quite important for its prospective

implementation. Furthermore, the law schools much more than before are open to participate in different gender equality awareness campaigns of UN, Coe, EU, the NGO sector, regarding gender equality or specific gender equality problems (domestic/gender violence, trafficking in women, sexual harassment, women in the media, etc.), or organize their own academic round table discussions, seminars, etc., especially in coordination or on the initiative of the different students' organizations, (the local branch of the European Law Students's Association- ELSA, for example). For the most part, the situation is very similar with the curriculums of the **training academies for judges and prosecutors that most SEE countries have**, and which are compulsory for the lawyers who want to qualify for judges and prosecutors, as well as for their continuing education and training, once appointed to those offices. For the most part, these training academies include the gender perspective in the regular curriculums on the other more general subject areas of law, with no specific courses targeting gender and law, or the jurisprudence of international/European courts, such as the one of the European Court of Human Rights, apart from Bosnia and Herzegovina, which is most advanced in this respect, and where the curriculums of these academies regularly include training on methods of application of CEDAW, and jurisprudence of the ECHR. As for the rest, when they do educate on such jurisprudence, the usual approach is in form of guest lectures, seminars, conferences, study visits, but not necessarily in a regular manner for each generation of trainees. Unfortunately, there is not much such activity also with the professional organizations and associations of the different legal professions, with some notable exceptions such as the Judges' Association of Serbia which have had some projects (seminars) with respect to the gender issues and gender jurisprudence under the ECHR on a more regular basis, an example that needs to be followed in the other SEE countries, but also by other professional associations of the other legal professions, especially the associations of the attorneys at law. As a final note, I would like to stress that despite of the legal obligation under the gender equality law that all SEE countries have, there is hardly any progress in terms of the gender sensitivity of the legal language. Apart from some initial legal steps made by Croatia regarding the correct gender naming of professions, the SEE region is still seriously challenged in this respect, and much work remains to be done.