

Professor Marijana Pajvančić PhD
Faculty of Law Novi Sad

Institutional mechanism for achieving gender equality – overview of the normative framework and practice in the countries of the region

Subject of the analysis

Overview of the institutional mechanisms' normative framework and practice,¹ whose purpose and goal is working on achieving gender equality within the government structure, will be especially focused on:

- **Institutions** formed within government bodies' structure among whose competencies are those that directly relate to the area of gender equality.
- **Instruments** which are at the disposal of institutions in charge of the gender equality issues and which can be used them in implementation of activities within their area of competence
- **Strategies** which define the policy, courses of action, priorities and obligations of primarily governmental bodies in the area of gender equality.

In this paper we will try to establish the parameters which will enable us to review two groups of key issues.

- The first group of issues relates to the **institutional normative framework** which proscribes forms, content, quality and capacities of institutional gender equality mechanisms. Special attention will be given to the following questions:

Do all the necessary elements (institutions, instruments, strategies) for active engagement in the field of achieving gender equality exist in the constitutional and legal system?

Are the institutional gender equality mechanisms defined in a complete, comprehensive and realistic manner?

Are they clearly positioned within the system and incorporated in constitutional institutions system as its organizational and functional part?

Are clear, formalized and predetermined procedures for their participation in the design, adoption and implementation of regulations, decisions and policies defined?

- The second group of issues relates to the **review of key obstacles** standing in the way of strategies (e.g. National Action Plans) and normative solutions (international documents, laws, regulations) implementation, as well as to the possible steps, measures and activities that could be undertaken in order to remove the obstacles in the way of normative solutions and strategies' implementation, or at least to alleviate their influence.

What are the institutional gender equality mechanisms (terminology)?

First some basic remarks o the use of the term. The term institutional gender equality mechanisms is most often used as a general (generic) idea that designates all organizational forms (*institutions* active in the field of gender equality) within the state,

¹ On the legal framework of gender equality in more detail in the following study: M. Pajvancic PhD *Right to Gender equality*, Novi Sad, Provincial Gender Equality Council, 2008.

regional or local government structure; all normative sources, laws and all other legal acts (*instruments*) which are used for the purpose of achieving gender equality; all political acts (*strategies*) which design policies and define the course of political action in the area of gender equality.

We can agree that such a wide definition of the content that the term *institutional gender mechanism* includes is not the best solution because connecting different contents and bringing them under a general and content-wise not sufficiently clearly profiled umbrella term can create difficulties. When using a term, its imprecise content can be a source of incomprehension and even misunderstandings. In the area which is the topic of this analysis and for which “government institutions, legal regulations, gender equality” are more or less key words, terminological clarity is extremely important because this is a specific professional (primarily) legal terminology, and departures from conventions in this area can be a cause for misunderstandings.

That is why the meaning of terms that are used in the analysis is to be defined at the very beginning.

Under the term **gender equality institutions** we consider different, normatively established and institutionalized organizational units (agencies, organizations, bodies etc) which are formed within the authorities’ structure as well as within the regional and local self government agencies. These are the bodies which are formed in the parliament, within the government, in the framework of the ombudsman institution, in institutions that within the scope of their competence decide on the protection of human rights (e.g. court, constitutional court) etc. Comparative practice shows that the forms of these bodies can be different, not only having in mind the branch of government (or level of power) they are formed in, but also in relation to their profile and position within the same government branch in different systems (e.g. whether a working body for gender equality has been formed within the parliament or a group of female MPs is working informally; whether a permanent or *ad hoc* working body for gender equality is established within the parliament etc)

The term **instruments for achieving gender equality** is used to designate certain means (“tools”) which are at disposal of gender equality institutions in order for them to perform their duties. Instruments for achieving gender equality can be various. Three most important groups of instruments are those that define the normative framework (material law and procedures) and in that way establish parameters for undertaking of activities, implementation instruments that regulate the implementation of normatively defined material law, and rights’ protection instruments for the case when a right has been violated.

Instruments that define the normative framework encompass two basic groups: one are the universal (OUN) and regional (e.g. EU documents, CE documents etc) international instruments (international sources of law) which cover multiple sources (conventions that are subject to ratification, generally accepted rules of international law, recommendations of international bodies that supervise the implementation of international human rights standards, practice of international court bodies which decide on human rights protection); and the other are different internal legal regulations. Among the internal legal instruments the most important ones are definitely the constitution and the laws.

When talking about laws as instruments for achieving gender equality in internal law it is necessary to point out the need for noticing the difference between at least three separate groups of laws and for distinguishing among them, having in mind their content and the place that they occupy within the normative framework of gender equality. These are, first and foremost, the general antidiscrimination law (establishes the general framework of prohibition of all forms of discrimination); law on gender equality (regulates the equality of genders in different areas and prohibits discrimination on the basis of belonging to a certain gender) and subsidiary legislation that covers a large number of laws which by segments often regulate very important gender equality issues (e.g. criminal legislation, family law, law on labor, laws on education, election legislation, law on ombudsman etc). Differentiation between the mentioned laws is necessary in order to perceive their mutual relationship (harmonization or non-harmonization) which can often cause problems in the implementation of legal decisions, especially if those decision are contradictive in different laws or if there are legal gaps because one of the laws is regulating an important issue.

Implementation instruments cover regulations that regulate law implementation and the supervision of that implementation. Among these instruments two groups are especially important: provisions for the execution of laws that the government passes on the basis of general constitutional authorization to regulate the implementation and the control over that implementation, and different regulations (e.g. rules and regulations, instructions etc) which the ministries pass, on the basis of legal mandate, and through these acts more precisely regulate individual issues of importance for implementation of laws.

Rights' protection instruments represent an important segment of securing implementation and rights' protection, because they are activated at a very sensitive moment – only after the right has been violated. Protection instruments cover different legal means (objection, suit, complaint, constitutional complaint) which are at disposal of an individual (sometimes at the disposal of an organization as well – class action) in order for that individual to initiate proceedings in front of the bodies authorized to protect human rights and, accordingly, all those rights that relate to gender equality (e.g. ombudsman) or to decide on their protection (e.g. courts, constitutional court)

The term **strategies** is used to designate different documents that define policies in the gender equality domain (policy paper) and concrete activities that are to be undertaken in order for the policies to be realized, that determine concrete implementers for activities related to strategy implementation, define deadlines within which concrete activities have to be accomplished as well as other issues of importance for policy realization. Strategies also differ depending on the content of issue in their focus and on the body that adopts them (the government or the parliament). The strategies that differ by their content are those that directly relate to the area of gender equality (e.g. National Action Plan for achieving gender equality) and strategies that relate to other areas of importance for the achieving of gender equality (e.g. Poverty Reduction Strategy; Employment and Human Resources Development Strategy; Sustainable Development Strategy; Anti-Trafficking Strategy; Strategy for Protection and Improvement of Reproductive Health etc)

I

Institutions that are active in the area of gender equality

Insight into comparative experiences demonstrates that different institutions which act in the area of achieving gender equality within the framework of the constitutional and political system have been formed in the countries of the region. In majority of the countries the gender equality institutions exist within the framework of legislative and executive power. It is, however, noticeable that a more complete institutional arrangement is lacking in the area of rights protection, especially in the court authority domain. If it exists, the only special institutional arrangement in the rights protection area is the institution of deputy ombudsman (citizen protector, parliamentary commissioner) in charge of gender equality. Beside the forming of gender equality institutions in all branches of the government (horizontal division of power) it is also very important that these institutions are formed by vertical line (regional and local level)²

1. Parliamentary institutions

In all **the countries of the region working bodies (boards, committees, commissions) for gender equality** have been formed within the structure of the parliament as a legislative body and highest representative of the female and male citizens.³ These working bodies have been established by the power of a special parliament decision or the parliament's Rules of Procedure and they have the status of permanent parliamentary working bodies. The forming of parliamentary bodies for gender equality is an important first step in the forming of the institutions which will be engaged continuously and in an organized manner, and within the competence given to a legislative body, in the legislative procedure related to the formulating of legal regulations and adoption of other regulations important for the normative defining of gender equality.

² For example in Bosnia and Herzegovina on the entity level, on canton level and local level; in Serbia on the autonomous province level and in a part of local communities; in Montenegro in the majority of local communities etc.

³ The Committee for Gender Equality of the parliament of the Republic of Montenegro has been founded on July 11th 2001, by the Decision of the Parliament on the establishing of the Committee for Gender Equality, as a permanent working body of the Parliament. The following were formed as parliamentary gender equality bodies in the constitutional system of BiH: Commission for Gender Equality of the BiH parliament assembly on the *level of central bodies*, Commission for Gender Equality of the BiH Federation Parliament House of Representatives, Commission for Gender Equality of the BiH Federation Parliament Home of Peoples and the Board for eEqual Opportunities of the BiH National Assembly on *entity level*; Commission for Gender Issues in canton assemblies on canton level and local assemblies' Boards or local councils' Commissions for Gender Issues on local level. In the Serbian constitutional system National Parliament's Gender Equality Council was formed on the level of the Republic (in 2003) and the Gender Equality Council of the Parliament of the Autonomous Province of Vojvodina was established in AP of Vojvodina (in 2002). In the documents delivered to us there are no data on the existence of a working body for gender equality in Kosovo parliament, but the Law on Gender Equality regulates Parliament's obligations related to gender equality policy.

Parliament boards participate in the legislative procedure during the process that precedes the parliament plenary debate on the law. They have a right to state their opinion on the law proposal, to submit a law proposal as a group of MPs, to submit amendments to the law proposal, to discuss the implementation of legal regulations.

There are no other forms of institutional action (such as a group that would gather female MPs, female parliamentary lobby etc) in the area of gender equality, nor are there any specific parliamentary procedures established which would enable consultations for female MPs in the goal of a coordinated joint action regarding the issues which are estimated as important from the viewpoint of gender equality.

Analysis of status and competences of parliamentary committees for gender equality also indicate some weaknesses in their work. Some of these weaknesses are of general character and are more or less characteristic for all the countries in the region, and others are specific and representative of the situation in only some countries in the region.

In briefest terms the general weaknesses are:

- *Incomplete normative definition of the position of parliamentary working bodies for gender equality in the legislative process.* The competences of these bodies are often defined in general and basic terms and it is impossible to recognize in it the particularity reflected in the interdisciplinary area this working body covers. It is left to the parliamentary practice to operationalize these basic rules, with more or less success. Gender equality is not a sector but an interdisciplinary area. This is exactly why the content of the work of parliamentary body for gender equality is distinctive in comparison with other working bodies whose competences are related to a single area and hence are easily determined and clearly defined (e.g. education, health, finances). Interdisciplinary character of gender equality is not sufficiently recognized in day-to-day activities, so the activity of parliamentary working bodies for gender equality in practice swings between two extremes: the restrictively understood content of competence which is closely linked only to laws and regulations most directly related to gender equality on one hand, and widely understood competences linked to gender aspect of every law and regulation, on the other. This results in sparse content of specific working body activities (which is often the case in practice) or possibly in an overblown activity that the working body can not successfully implement.

Proposal:

Between the abovementioned extremes a solutions that more closely defines the content of competences should be found (and designed in regulations) while acknowledging the interdisciplinary character of this area.

The criteria for the definition of key areas that the content of work of parliamentary working bodies would focus on could be found in the most important areas determined by the Convention on Elimination of all Forms of Discrimination against Women (e.g. education, health services, political life, family..). The content could be amended when necessary and in accordance with the areas defined by the national gender equality strategies. The laws regulating these issues would be obligatorily submitted for consideration to the working body for gender equality.

The content of the competence of the working body for gender equality should also remain open for possibility of reviewing those legal proposals and regulations that

exist outside the area of primary competenc. Normative solutions should enable the participation of these bodies in the legislative procedure and the decision-making related to every law if the working body members estimate that that law is significant from the viewpoint of gender equality. In that case, on the demand of the working body for gender equality, the law would be submitted for consideration to this working body as well.

- *Narrowed space for essential action and influence on legislative policy*, having in mind that parliamentary legislative bodies get involved in the process in the moment that the law enters the parliament procedure and when actual possibilities and opportunities to influence the law's content are minimal. When the law appears in front of the parliamentary working body its concept has been defined. The law is often already formulated in the proposal phase so the legislative procedure is frequently a single instance one. If the law originated in the government (the most common case) it is hardly to be expected that the parliamentary majority which supports the government would pose objections to the law and decide to submit amendments which would change the existing regulations. Parliamentary opposition can be expected to transform its dissatisfaction into the amendments of the proposal law, but without any significant chances to receive parliament majority for their proposals, which is the condition for them to be adopted.

Proposal:

Consider the possibility of empowering the parliamentary working bodies for gender equality in order for them to exert a bigger influence on law content design, especially through the use of MPs rights to submit a proposal law by themselves (for example, lconnecting female MPs from different political parties and gathering them to participate in a joint project important for gender equality, possibility of engaging experts in certain fields for defining of proposal laws; logistic and administrative support; participation of experts in the work of the committee barring decision making rights etc)

- There are no *interparliamentary consultation procedures* nor flexible institutionalized forms of female MPs action regarding the gender equality issues of common interest.

Proposal:

Establish parliamentary procedures that enable the consultations of female MPs on the issues related to gender equality, as well as flexible organization forms of female MPs meetings, if there is an interest for that.

2. Gender equality institutions within the executive branch of power

Numerous gender equality institutions, varying both in their status and in their nature, were formed within the organized executive branch of power. This makes the matter in executive branch more complex when compared to the situation in the parliament since there are apparent differences among institutional solutions when it comes to position, structure, competences and manner of work of gender equality

institutions which are established and operating within the executive and state administration.

General and common characteristics of gender equality institutions established within the executive branch in the countries subjected to this analysis are reflected in:

- *Greater number of gender equality institutions* which are formed within the executive branch with different status. Solutions that can be encountered in the comparative practice in the region include: government bodies,⁴ a ministry that covers multiple sectors⁵ (this is often the Ministry of human Rights)⁶ as well as different institutional forms of organizational units within one of the ministries.⁷ Complex internal structure of the state, dispersed and complicated multi-degree and multitype territorial organization multiply functioning problems for gender equality institutions operating within the executive branch of power.⁸

Proposal:

Review the justification for the existence of too high a number of different institutions without any clearly defined position within the executive power structure. Concretely profile their status within the executive branch (form of organization, competences, mutual relationships with other bodies operating in the framework of

⁴ In Bosnia and Herzegovina a person in charge of gender equality (gender issues) is appointed *on entity level* in each of the ministries and Gender Center of BiH federation (Decree of the BiH Federation government from 2000) and Gender Center of Republika Srpska (Decree of the Government of Republika Srpska from 2001.) were also established; Coordination Canton Board for Gender Issues is formed on *canton level* while, on the *local community level*, a Commission for Gender Issues is established within the Commissioner's Office, and there is also the Commission for Gender issues on municipal level established in municipalities.

In Serbia, the Gender equality Council (established in 2003) was established *on the level of Republic* by a Government decision as an intersectoral advisory body and, alongside the Council, The Directorate for Gender Equality was formed within the Ministry of Labor and Social Policy; on the *province level* in the Autonomous province of Vojvodina we have the Provincial Institute for Gender Equality formed in 2004 as an independent body of the Province; in Kosovo the Office for Gender Equality was established by the Law on Gender Equality (2004) as a special government body that the ministries have to cooperate with, and a person in charge of gender equality which is a member of the interministerial council for issues of gender equality is appointed in each ministry. More on Serbia experience in : M. Pajvančić, PhD: *Gender equality – representation in the assemblies and institutional mechanisms – 5 years later*, in Anthology *Five years later*, Novi sad, Gender Equality Council, 2006, p. . 9 – 25.

In Montenegro the Government made a decision on the founding of the Office for Gender Equality (in 2003), in the role of the government body, with the Ministry for Protection of Human and Minority Rights working alongside it in the domain of gender equality.

⁵ In Serbia, on the *level of the province* the Provincial Secretariat for Labor, Employment and Gender Equality (special department which has the status within the provincial government corresponding to the status of a ministry) was established in 2002, and the Council for Gender Equality was formed the same year as an advisory body of the Provincial Secretariat for Labor, Employment and Gender Equality.

⁶ For example, on the institutional level in BiH and in a specific manner in Montenegro. It is interesting to note that in Serbia the area of gender equality is linked to the Ministry of Labor and Social Policy although a Ministry of Human and Minority Rights exists in Serbia.

⁷ In BiH, the BiH Agency for Gender Equality is established on the *national level* within the Ministry of Human Rights and Refugees. In Serbia, on the *national level*, the Sector for Gender Equality was formed within the Ministry of Labor and Social Policy in 2007. After the change of the Law on Ministries due to the 2008 elections Directorate for Gender Equality was formed in the Ministry of labor and Social Policy.

⁸ For example, in BiH.

executive power) as well as the relation towards the legislative body and other authorities (e.g. ombudsman).

- *Different content of competence* that the gender equality bodies established within the executive branch possess, as well as the differences among them regarding the *quality and scope of competences*. In some countries that have a status of advisory bodies.⁹ In others these are policy creating institutions that decide on the policy defining documents and the instruments for its realization.¹⁰ In some places these are the institutions whose competence is drafted in such a way that it is difficult to clearly answer the question whether they are advisory bodies or the bodies possessing a competence capacity which includes decision making,¹¹ or if they are actually one of the methods of coordinated action of different actors in the area of gender equality.¹²

Proposal:

Differentiate between the scope and quality of competences of gender equality institutions operating within the executive branch and make a distinction between the advisory institutions and those that make direct decisions on issues from their area of competence.

- *Different structure and manner in which the members* of gender equality institutions *are elected (appointed)* within the framework of executive power. There are noticeable efforts towards the establishment of intersectoral cooperation, but the concrete solutions attempting to enable this are different.

The efforts within government bodies are most frequently oriented towards the securing of representation of different sectors (representatives of all¹³ or only certain ministries¹⁴), precisely out of the respect for the need for providing intersectoral cooperation in the area of gender equality, considering its already mentioned interdisciplinary nature. In this case priority was given to the structure of the body which should provide intersectoral coordination. But some government bodies¹⁵ do not include members from the representatives of different departments, but are constituted of several public servants and persons managing the office, and one of the important tasks of a government body is precisely the coordination, connecting and joint work with persons in charge of gender equality in the ministries. This is the second model of intersectoral work. In this case, intersectoral approach is provided primarily by the work method and the procedures of interaction between the government body and persons in charge of gender equality in each of the ministries.

⁹ e.g. Gender Equality Council of the Government of the Republic of Serbia

¹⁰ e.g. Provincial Secretariat for Labor, Employment and Gender Equality in AP of Vojvodina.

¹¹ e.g. Gender Centers in Federation of BiH and Republika Srpska

¹² e.g. Interministerial Council in Kosovo.

¹³ e.g. according to the Kosovo Law on gender Equality

¹⁴ e.g. the structure of the Republic Gender Equality Council of Serbia.

¹⁵ e.g. Montenegro Office for Gender Equality

Proposal:

Organizational (body structure composition) and process preconditions (consulting, coordination, interaction and similar procedures that enable direct participation of multiple departments in the regulations, measures and policies preparation, proposal and implementation) that guarantee the intersectoral and interdepartmental approach to gender equality in the system should be provided in the gender equality institutions operating within the executive branch .

Such large variety in competences forming, status, structure, content and quality as well as the number of gender equality institutions established in the executive branch reflects, in our opinion, circumstances (possibilities and needs) of each specific environment and generally can't be defined *per se* as a problem or obstacle for achieving gender equality.

- *Essential problems* with gender equality institutions operating within the executive branch are basically focused on two issues.

One relates to *the position of gender equality institutions within the executive branch* (their relationship with other institutions operating within the executive branch and the relationship with the legislative body). Two issues deserve special attention in this context: whether these institutions directly create regulations, define policies and submit law proposals to the government (direct communication with the government) or they can do this only through an intermediary, that is indirectly (most often through the ministries within which they are operating); whether these institutions have institutional and procedural possibilities to directly communicate with the ministries in regards with the preparation and proposal of regulations, policies and measures (considering the interdisciplinary character of gender equality this is especially important) or such options do not exist, but somebody else takes over the communication with other ministries or government bodies.

The other is the *competence of gender equality institutions* established within the executive branch. The competence is not profiled precisely enough which relates not only to the content of competence, but first and foremost to the scope, quality and quantity of competence. The issue is focused in the question whether the gender equality institutions formed within the executive branch have at their disposal the full capacity of a set of rights related to policy, regulations and measures design and proposals, or this competence is subjected to certain limitations.

It is noticeable that, among the competences of these institution, there is a lack of explicit citing of competences related to regulation preparation and proposal (e.g. provisions for law execution) and passing of regulations for law execution (e.g. rules of procedure or instructions that more closely define the manner of law or measures implementation) or policies implementation, which are the instrument necessary for law, measures and policies implementation.

There is also a lack of explicit citing of execution control instruments as well as the instruments of supervision over the implementation of laws, regulations, measures and policies.

Competences are often basically defined and their operationalization is missing, especially when dealing with the work in the area of those competences that directly relate to law, measures and policies implementation. In the circumstances when several

gender equality institutions are active within the executive branch, imprecise definition of their competences¹⁶ can be a source of positive or negative conflict of competences which reflects negatively on the efficiency of their work.

Proposal:

If the circumstances allow it, gender equality institutions formed within the executive branch should be normatively positioned in such a manner that they have direct communication with the government (proposal making, reporting etc).

The competences of gender equality institutions operating within the executive branch should be made precise and concrete, especially the quality and scope of competences profiling the body's position (advisory competence or right of decision making), as well as the competences related to execution and execution control.

Eliminate positive conflict of competence, and prevent gaps and vagueness that could lead to negative conflict of competence by replacing or amending normative solutions which would replace the legal gap with a clear content norm.

3. Gender equality institutions in the human rights protection system

Within the human and minority rights protection system, specific gender equality institutions are related only to the ombudsman institution.

More precisely, gender equality institutions within the human rights protection system are established as the ombudsman (citizens' protector) representatives specialized for certain human rights areas, one among the which is deputy ombudsman in charge of gender equality.¹⁷ In the countries of the region this is an exception, while in most countries there are no special gender equality institutions within the human rights protection system.

4. Local gender equality institutions

Different forms of gender equality institutions operating on the local level are encountered in the countries of the region. Establishing gender equality institutions on the local level is very important for the achieving and practical implementation of gender

¹⁶ For example, among the competences of the Gender Equality Council as an expert advisory body of the Government of Serbia are also jobs related to the "reviewing and proposing of measures for improvement of gender equality policy, as well the measures for improvement of intersectoral cooperation in this area" ; *Directorate for Gender Equality* as an administrative body within the Ministry of Labor and Social Policy is competent to implement "professional activities and the activities of the state administration which relate to the analysis of the situation and the proposing of measures in the area of improving gender equality"; the *Ministry of Human and Minority Rights* "implements professional activities and state administration activities related to: (...) protection and improvement of human and minority rights; (...) anti-discriminatory policy (...) harmonization of the work of state administration bodies in the area of human rights protection" For more details, see Addendum 1, attached to the analysis..

¹⁷ For example, in Serbia one out of all four Deputy Ombudsman is specialized for gender equality area, rights of persons with disabilities and children rights (article 6 of the Law on Ombudsman from 2005); in the AP of Vojvodina the Provincial Ombudsman has been appointed and operating since 2003 and he has 5 deputies, one out of which is in charge of gender equality (article 17 of the Decision on Provincial Ombudsman); on Kosovo this function is covered by the Commissioner for Gender Equality (on the basis of 2004. Law on Gender Equality).

equality laws, measures and strategies, because the highest number of rights (strategies, programs and measures) is directly implemented exactly in the local community on local level.

Local gender equality institutions have a direct opportunity to work on practical implementation of these rights. Beside this local gender equality institutions have an opportunity, within the competences and authority of local communities, to develop different local policies, to create and implement local measures for encouraging gender equality, in one word to create and implement equal opportunities policy in accordance with the concrete needs of local community.

Among the issues related to local gender equality institutions several deserve comments and attention.

- Local gender equality institutions (form, status in the local community bodies' structure, selection, competences etc) *are not legally regulated in all the countries in the region*,¹⁸ but are founded by local communities' regulations¹⁹ with, often external, encouragement.²⁰ This is reflected in their position in local self government bodies' structure, which is susceptible to easy changes. As the practice shows, in some of the countries of the region the destiny of local gender equality institutions often depends on who the power holders are on the local level, so the change of local government is followed by the termination (or establishment) of local gender equality institutions.²¹

Proposal:

Local gender equality institutions should be legally based and in that way the stability of their functioning ensured, because they are a very important, we could even say indispensable, factor in practical implementation of gender equality laws, measures and strategies.

In regards to this, we point out that the practice in the countries in the region can be quite varied. We can expect a question to be raised about the type of law that should regulate this (whether the law on gender equality or the laws regulating the local self government) and about the ministry that should be in charge of these issues (whether the ministry of state administration, local self government, or ministry in charge of the gender equality issues).

- The consequences of such a status of local gender equality institutions are also reflected in the fact that *the competence of these bodies is not clearly and concretely*

¹⁸ The law regulates these institutions on BiH and Kosovo

¹⁹ These are, in most cases, individual legal regulation of local communities (decision of local community bodies that establishes the gender equality institution, determines its structure and defines the scope of its competence), and much more seldom these are general regulations of local communities (e.g. statute as the most important local community regulation that regulates local community bodies, their mandate, competences and manner of work).

²⁰ e.g. OSCE missions have worked in Serbia and Montenegro on the establishing of local gender equality institutions, and on their training in order for them to be able to act on gender equality issues in the local community; incites also came form provincial gender equality institutions (e.g. in AP of Vojvodina this was the Secretariat for Labor, Employment and Gender Equality) or the government bodies for gender equality (e.g. in Montenegro this was the Office for Gender Equality of the Government of Montenegro which implemented this activity in a coordinated manner and with OSCE mission's support).

²¹ e.g. in Serbia

defined,²² but are most usually determined by blanket norms²³ In practice, this leads to the situation where the actual content of competences is hard to distinguish, as with those that the local gender equality institutions would realize during the implementation process of laws, measures and strategies defined by the central authority bodies, so even more with those competences that the local gender equality bodies could realize within the local community's competences in the area of gender equality and especially equal opportunities policy which is implemented not only on the central authority level but in local community as well.

Proposal:

Specific competences of local gender equality institutions should be clearly defined while especially taking into the account two groups of jobs:

- jobs related to the activities of local gender equality institutions on the implementation of laws, measures and activities defined by the central authority, and
- jobs which, in the framework of local communities' competence, operationalize and precisely define the activities of local communities in the area of gender equality and the implementation of the local equal opportunities policy

II

Instruments for achieving gender equality

Among the institutional gender equality mechanisms significant segment are the instruments (tools) that the gender equality institutions use in order to realize their competence and implement activities belonging to that competences.

In brief terms, under instruments we mean first and foremost legal regulations, legal and other instruments used in order to operationally and concretely realize equal opportunities policy and effectively accomplish gender equality in practice as well.

Legal regulations as gender equality instruments include *international universal and regional sources* (ratified conventions and widely accepted rules of international law) as well as *general legal acts of internal law* among which are the constitution, laws (general Law against Discrimination, Law on Gender Equality as well as subsidiary legislation which regulates areas of special importance for the achievement of gender equality, for example criminal, family, labor legislation, laws on education, health services etc), general by-laws passed in the goal of law implementation (for example, government decrees for law implementation as well as rules and regulations, instructions and other ministerial acts that more closely define law implementation), by-laws of regional and local community bodies (e.g. statute, decisions).

²² Kosovo Law on Gender Equality, although it doesn't precisely regulate the competences of local gender equality institutions by itself, refers to the by-law through which the appropriate ministry will regulate the competences of local gender equality institutions.

²³ e.g.. "they take care of the achieving of gender equality in the local community".

1. International sources as the instrument of gender equality policy

International sources are an important instrument of gender equality policy, because the implementation of standards established by these documents on human rights vouches and protects a set of basic human right' and gender equality guarantees. General international documents on human rights (e.g. Pact on Citizen and Political Rights, Pact on Social and Economic Rights as well as adjoining protocols from both pacts) have been ratified in all the countries of the region, along with the special international documents that relate to gender equality among which special place belong to the Convention on the Elimination of All Forms of Discrimination against Women (as well as the Option protocol with this convention) as well as the regional documents on human rights (e.g. European convention on protection of basic rights and liberties)

International human rights standards are on principle acknowledged in constitutional systems of all the countries in the region. However, it is noticeable that there are differences in the constitutional systems regarding the status of international sources in the system. The most significant difference is related to the acknowledging of the principle of international law primacy over the internal one and the adjoining status of international sources in the internal law. The solutions vary form those that in principle acknowledge the primacy of international over internal law and guarantee the right to address international organization for rights protection but that lack an integrative clause;²⁴ through solutions that guarantee direct implementation of international human rights sources and guarantee the right to address international organizations for rights protection, but explicitly state that international contracts have to be in accordance with the constitution and establish the constitutional court's jurisdiction for evaluation the harmonization of ratified international contracts with the constitution;²⁵ to the solutions that accept the integrated clause (delegation of sovernity)²⁶ and explicitly acknowledge the primacy of itemized international human rights sources (among which the Convention on the Elimination of All Forms of Discrimination against Women²⁷), and in case the internal right differs from international standards they proscribe direct implementation of international standards.

Proposal:

Since international human rights instruments are an important instrument for achieving gender equality and implementing equal rights policy, and having in mind the status differences of these sources in the constitutional systems of countries in the region as well as the European integration processes that all these countries participate in, it would be necessary to clearly define the status of international human rights sources in the internal law, explicitly regulate their direct implementation and primacy over internal

²⁴ e.g. Montenegro Constitution.

²⁵ e.g. Serbian Constitution. More on the status of international sources in the human rights protection system in :M. Pajvančić, PhD, *Controversies of the institutional framework of human rights protection, Constitutional and international legal guarantees of human rights protection* Anthology , Nis Faculty of Law, 2008, p. 245 – 261.

²⁶ e.g. article 20 of Kosovo Constitution.

²⁷ e.g. article 22 of Kosovo Constitution.

law in the case of internal law and international standards collision, and a integrative clause should be incorporated in constitutional systems.

2. Constitution as an instrument of gender equality policy²⁸

The common general characteristics of the social context the constitutional process took place in during the last couple of years in the countries of the region (adoption of new constitutions or partial constitution revisions) are distinguished by four basic characteristics:

- The countries in the region have initiated *fundamental constitutional changes* which are clearly recognizable not only in the constitution's content but also in the process of its adoption.

- All constitutions belong to the group of *transition countries constitutions* and possess characteristics typical for constitutions of transition countries, which are reflected in the domain of constitutional guarantees of human and minority rights and constitutional status of these rights, in the area of power organization (limited governance principle and division of power – power in the limits of the law), in the economy (guarantee of private property, right to entrepreneurship, market economy) on the other hand, but also in the keeping of some constitutional guarantees characteristic for pre-transition era (e.g. keeping the social justice principle, guaranties for a set of social and economic rights).

- *Constitutional process*, design and adoption of constitution in the countries of the region, was under the influence of the *international community*. International community representatives were involved in different ways in the design of constitutional solutions²⁹ or in the constitution adoption process.

- All the countries in the region *participate in European integration processes* and see their future as the one of a EU member.

Constitutional provision on gender equality were designed in accordance with this general framework. Constitutional provisions on gender equality – those that *indirectly* relate to gender equality and regulate the social context of the framework which will

²⁸ In this paper only a brief review of the Constitution as an instrument for achieving gender equality will be given, because this is a topic of a separate project. The author of this paper states with regret that she did not have the opportunity to work as an expert on the analysis of the gender equality in the constitutions of the countries in the region, although she has initiated the work on a project with this topic; as a regular Constitutional Law professor on the faculty of law she has published several papers on this topic in national and international magazines; she was directly involved in the formulating of the most important constitutional norms on gender equality and their implementation in the recently adopted constitutions (especially in the case of the Constitution of Serbia and the Constitution of Montenegro) and she was one of the opening speakers on this subject in international conferences (in Bosnia and Herzegovina and Montenegro) on the topic of constitution and gender equality.

²⁹ This was most directly the case with the design of the BiH Constitution and Kosovo Constitution. Venetian Commission was involved in the constitutional process in Montenegro and it delivered its opinion and suggestions regarding the Constitution. Some representatives of the international community in Serbia openly supported the adoption of the Constitution and especially the campaign for voting on constitutional referendum, although part of critical public in Serbia had warned about serious weaknesses of the constitutional solutions and called for a boycott of constitutional referendum, and the Venetian Commission delivered (although more than six months after the adoption of the constitution) some serious objections on Constitution that the individuals (experts) that called for boycott had pointed out.

contain the content and quality of gender equality guarantees (e.g. social justice principle, secular state, direct constitutional and judicial protection of human rights, right to address international institutions for rights protection), as well as those *directly* related to gender equality (e.g. guaranteeing equality, prohibition of direct and indirect discrimination) or regulate some *specific rights* (e.g. pregnant women rights, reproductive rights, parental rights), have found their place in the region's constitutions with more or less success.

Explicit constitutional provisions on guaranteeing equality between women and men, provisions on the state's obligation to implement equal rights³⁰ in the goal of effective exercise of rights to gender equality, as well as the undertaking of specific measures which are the instrument of the equal opportunities policy implementation, and the non-discriminatory character of specific measures exist only in some constitutions of the countries in the region.³¹

Although certain weaknesses in constitutional guarantees of gender equality are visible³² you could say that constitutional guarantees still establish the framework (larger or smaller) in which it is possible to realize gender equality (although not always with the same content), especially if the constitutional guarantees are viewed in the context of international human rights sources which are and equally important source of human rights, as well as of the gender equality standards.

Proposal:

Despite of the fact that the constitutions of the countries in the region do not fully guarantee all the rights of significance for gender equality, it is hardly to be expected that immediately after the adoption of new constitutions they would be submitted to revision in order for guarantees necessary for achieving gender equality to be incorporated in them, and for controversial constitutional solutions to be eliminated, especially having in mind the complexity of constitution revision process.

A more productive approach seems to be the one where the way out would be sought, on one side, in the framework of EU accession process in which the status of international human rights sources (along with the international standards related to gender equality) would receive the position in internal law that it has in EU member states, and on the other side in the corrections of constitutional regulations through legislation and constitutional and judicial practice which would refer to the international

³⁰ Constitution of Serbia, article 15 and Constitution of Montenegro article 18

³¹ Constitution of Serbia, article 21

³² For example, even though the effort of constitution makers to use the gender neutral form (e.g. everybody, nobody, person) whenever possible is evident, not a single one of the constitutions in the region uses gender sensitive terminology, in spite of the already adopted conclusions of the Interparliamentary Union that it is necessary to use gender sensitive language in regulations (a good example of such clause in comparative law is provide in the article 7 of the Austrian Constitution); in Kosovo constitution the social justice principle is omitted and it establishes the most important constitutional basis and the framework of equal opportunities policy, while this principle is kept in the Constitution of Serbia and the Constitution of Montenegro; equal opportunities policy is phrased as an obligation of the state and the implementation of specific measures which are the instruments for achieving this policy are explicitly regulated only in the Constitution of Serbia and the Constitution of Montenegro; freedom of choice to continue or terminate a pregnancy is guaranteed only in some (e.g. Serbia) etc.

human rights standards and especially to the practice of international bodies deciding on the human rights protection.

3. Law as the instrument of gender equality policy

It is necessary to point out at the very beginning the three groups of legal sources which do not possess the same significance as the instruments for achieving gender equality.

In one group there is the *general law against discrimination* whose content, as the name of the law itself demonstrates, relates to all forms of discrimination, their prohibition and sanctioning. The law against discrimination sets the basic legal framework for recognition of different forms of discrimination (direct, indirect), regulates the basic institutions related to different forms of discrimination (especially in the case of indirect discrimination which is often difficult to discern), determines the system (misdemeanors, criminal offences) and the type of sanction (a fine, a prison sentence) that sanction the violation of discrimination prohibition, regulates the legal sanctions maximum and minimum etc.

The second group of laws is constituted of *special laws* that regulate discrimination related to specific personal characteristics of the subjects which can be a basis for discrimination (members of national minorities, the children., the elderly, people with disabilities). Laws on gender equality are in this group. In the internal law, the law on gender equality is undoubtedly the most important instrument which enables the running of gender equality policy.

The third group is *subsidiary legislation*. Laws regulating some other areas of social life belong to this group, but they are also especially important for gender equality because they regulate the areas of most immediate interest for achieving gender equality. Among the laws belonging to this group, for example, are those belonging to criminal, family and labor legislation, as well as the laws that regulate elections, education, health services, media laws, law on misdemeanors etc.

The sole fact that , apart from the already mentioned general and specific laws against discrimination, subsidiary legislation is also equally important for the area of gender equality demonstrates the intersectoral nature of gender equality and system-wise limited possibilities of achieving results in this field just through the capacities of antidiscriminatory legislation.

Proposal:

Legislation-wise, subsidiary legislation should be included, beside the anti-discriminatory legislation, in the content of instruments for implementing gender equality and all these instruments should be viewed as a whole with common content. This is important because it helps the elimination of a very present prejudice in the practice that there is a certain hierarchy within the legislative corpus which regulates gender equality, and that prejudice can be recognized in the frequent demand for the legislation regulating some specific areas important for gender equality as well, to be “harmonized (conciliated)” with anti-discriminatory legislation, and especially Law on Gender Equality which are considered, as follows from this demand and without any valid legal basis (e.g. they are not adopted according to any special procedure that differs

in any manner from the adoption procedure for all other laws) as some sort of specific laws (basic or, colloquially put, “umbrella” laws)

It would be useful to produce a list of more important laws from the subsidiary laws group in order to timely and actively involve gender equality institutions especially, but also other actors of legislative process in the process of laws’ preparation and adoption. .

Laws on gender equality have been adopted in the countries of the region.³³

Serbia represents a specific exception to this. Neither a general law against discrimination nor a Law on Gender Equality have been adopted in Serbia, The draft law has been prepared a couple of years ago,³⁴ and it has entered parliamentary procedure in 2006. Since then the text of the law has been amended several times (mostly to the detriment of gender equality principles).³⁵ Several very important provisions for achieving the right to gender equality have been left out. The law was removed from the procedure several times (and then returned again)³⁶. In the moment of work on this manuscript, namely more than 7 months after the election promise on urgent adoption of Law on Gender Equality, according to our knowledge this law (as well as the general law against discrimination) designated as a government priority, is still in the phase of legislative procedure that takes place in the ministries, therefore still not submitted to the government for consideration. Several times already the critical public has brought to attention of the public this, now already serious and evident problem related to the fact that the Law has still not been adopted, the fact that this important Law is often used as an instrument in the daily political interest of election campaigns, as well as the situation that the actions related to its adoption are difficult to explain rationally.

³³ In BiH in 2003, in Montenegro in 2007.

³⁴ The expert group that worked on the preparation of draft law has finished its work in 2005, and in 2006 the law entered the parliament procedure. The draft law was publicly published. See the publication *Towards the Law on Gender Equality*, Provincial Gender Equality Council, Novi Sad, 2006. During the 2006, a wide public campaign on suggested Draft law was organized in favor of its adoption. See the Anthology *Public Advocating for the passing of the Law on Gender equality – Towards the Law on Gender equality- European future of Serbia*, Modern Skills Center, Belgrade 2006.

³⁵ Although they were not publicly published, we would like to refer our readers to three, in the author’s opinion, very important critical comparative analyses of the solutions contained in the first draft of the Law on Gender Equality and the solutions from later version of the law, and after the interventions in the legal text: N. Petrušić, PhD: *Comparative analysis of the Draft Law on Gender Equality of the expert group and the proposal Law on Gender Equality submitted by the Assembly of the AP of Vojvodina in the role of competent proposer to the Parliament of Serbia*; Z. Šijački *Gender Identity in the Draft law on gender Equality*; and the author of this paper M. Pajvančić, PhD *Critical reflection on the Proposal Law on Gender Equality*. The careful leader of these papers won’t miss the common thread linking them – the permanent narrowing of law’s content (in comparison with the draft prepared by the expert group) whether through the omission of legal provision, especially the imperative ones and the ones regulating the sanctions, whether through the generalizing of concrete legal norms which, after the intervention, become basic rules which are very hard to implement.

³⁶ Usually this was during one of the election campaigns, and several times with a firm promise that the Law on Gender Equality was one of the priorities and that its adoption was to be expected soon after the elections. The last time this happened was in May of 2008, just a few days before the elections. On the recently held regional conference in Belgrade in December of 2008, the same promises from May of 2008 were made about the priority and importance of adoption of the Law on Gender Equality and general antidiscrimination law. .

Let us add the fact that the parliament of AP Vojvodina has adopted a Declaration on Gender Equality as early as in the beginning of 2004, and a Decision on Gender Equality somewhat later the same year, along with the Decision on the Founding of the provincial Institute for Gender equality. In the same year (2004) Kosovo Parliament has also adopted a Law on Gender Equality.

Everything stated here unfortunately speaks in favor of the conclusion that in Serbia, for apparently a long period of time, there has not existed an honest and serious political readiness to adopt the Law on Gender Equality.

Proposal:

It is necessary to urgently encourage and activities on adoption of the Law on Gender Equality in Serbia. If there is no such possibility we should turn back to the initial solutions from the first version of the Law produced by an expert group.

Immediate responsibility for initiating this process lies on government bodies for gender equality. This is their constitutional and legal obligation. It is legitimate to demand and expect their active engagement on this issue. The law is the instrument of their action in the area of gender equality. If this basic instrument is missing it is warranted to ask a question what is the purpose that justifies the existence and action of government gender equality institutions.

A support and coordinated activities of all actors operating in the area of gender equality is necessary when encouraging activities, in order to express wider support to the urgent adoption of the law on gender equality.

Through the insight into the laws on gender equality³⁷ adopted in the region it is possible to recognize some of their general and common characteristics.

- *The content of laws on gender equality* is not standardized or clearly profiled in comparative practice which is also noticeable in analyzed laws. Prohibition of discrimination, regulation of forms of discrimination and defining of basic aspects of gender based discrimination (e.g. parenting, motherhood, marriage status, sexual orientation) are a part of the content in all of the analyzed laws. It is noticeable that what is missing (or is sparse) in the majority of the laws are the provisions related to law implementation and instruments necessary for that implementation (e.g. government provisions for law enforcement, regulations passed by the ministries that operationalize the manner of law implementation etc), as well as the provisions on the sanctions for the violation of the law, and those violations are most often sanctioned as misdemeanors. This could be considered as kind of a standard content of laws on gender equality.

Proposal:

It is necessary to include in the content of the law on gender equality the provision on regulations for law implementation (government decrees for law implementation, ministries regulations that more closely regulate the manner of law

³⁷ In this analysis, we included the Decision on Gender Equality that regulates, on the level of AP of Vojvodina (adopted in the Assembly of AP of Vojvodina in 2004), the area of gender equality, within the competences and authority proscribed by the Constitution and Law on determining of the competence of the Autonomous Province of Vojvodina. We decided on such an approach since the Law on Gender Equality is yet to be adopted in Serbia.

implementation etc), and especially the provision that operationalize the instruments of law implementation and supervision over that implementation, as well as the provisions on sanctions for legal violations.

The difference regarding other elements of the content is noticeable among the laws.

In some laws focus is on the state's obligations to implement *equal opportunities policy* and, accordingly, on specific measures and competence of the government bodies related to design and implementation of specific measures.³⁸ Such approach to the legal regulation of gender equality is rational, because it focuses on the essential strategic framework of securing gender equality (equal opportunities policy), on the most important instrument of gender equality policy (special measures) and on operationalization of tasks, competences and responsibilities of the most important actors running the equal opportunities policy (government bodies, especially the government and the ministries). Legal framework designed in such a manner lacks the operationalization of specific areas of importance for achieving gender equality. It supposes that the subsidiary legislation regulating these areas will be an equally important instrument (in such a context) for regulating gender equality as the law on gender equality. This situation should be kept in mind during the practical realization of the law, because the instruments of implementation control and supervision will often be in the hands of the ministries covering specific areas, so cooperation will be necessary, as well as the coordination of the activities of the ministry covering the area of human and minority rights, and which is in charge of the implementation of gender equality law with the ministries that cover different areas important for achieving gender equality.

The majority of laws³⁹ analyzed endeavor to include *wider content* in the legal framework of gender equality. Beside the issues that have found their place in all the analyzed laws, the law content relates to government institutions (their competences and obligations related to the area of gender equality and law implementation), regulates gender equality in some areas of social life (e.g. public life, economy, employment, education, media etc) important for achieving gender equality, and particularly regulates the institutions established with the task of working in the area of gender equality (e.g. government bodies, offices for gender equality, local gender equality institutions etc)/ The content of the law designed in such a way demonstrates the endeavor to (more or less, with more or less success) express the intersectoral character of gender equality in a certain manner and within the law that regulates gender equality. A more detailed insight into the law content and the differences noted between the laws related to the, for example, the variety of areas that the legislator considered important for gender equality,⁴⁰ to the manner of regulating the competences and responsibilities of state

³⁸ e.g. in Montenegro

³⁹ e.g. BiH and Kosovo Laws on Gender Equality, as well as the Decision on Gender Equality of the AP of Vojvodina

⁴⁰ We notice differences among the laws in the areas defined by the law as important for gender equality. For example, the BiH Law on Gender Equality lists education, social protection, health protection, sports and culture, public life, media, prohibition of violence, statistical records, court protection, obligations of the government, gender sensitive statistics, supervision over the implementation of the law, and at the same time, over the competences and obligations of gender equality institutions etc. The Kosovo Law on Gender Equality places the emphasis on competence and responsibilities of the government power (parliament,

bodies and especially the gender equality institutions⁴¹ etc, testify of the degree of success of this attempt.

Proposal:

If the legislators decide to design the law's content in such a way that it covers important areas for achieving gender equality, it would be useful and expedient to harmonize the content of the area the legislator focuses on with the content of issues and areas the Convention on the Elimination of All Forms of Discrimination against Women refers to, and which can serve as a useful manual for the legislator.

The general characteristic of such an approach by the legislator is reflected in: often very basic provisions by which the law regulates gender equality in certain areas which indirectly points to the expectation of the legislator that the laws regulating a specific area (e.g. health services, education, family legislation, labor legislation, criminal legislation etc.) will also more thoroughly regulate gender equality in these areas; discrepancy and contradiction between the provisions of the law on gender equality and the provisions of the law regulating a specific area which can be a source of significant problems in law implementation; difficulties in clearly and emphatically locating the responsibility for implementation of law on gender equality, which arise from the conflict of competence (especially the negative one) between the government institutions whose competences primarily relate to implementation of the law

- *Status of the law on gender equality in the legal system* is in practice one of the issues that are connected to practical problems and misunderstandings. This law is on one hand linked, content-wise, to the general law against discrimination. On the other hand, since it regulates several different areas, specially those considered as especially important for gender equality, its content is also linked to a whole set of laws out of which each one regulates a specific area of social life. Difficulties arising from this are most often related to the problem of differentiating between the content (scope, quality and comprehensiveness) of the matter regulated by the law on gender equality on one side, and law against discrimination, that is the laws that regulate specific areas, on the other. Practical actions vary from the extreme out of which on one side is the one that considers (without any valid formal legal foundation) the law on gender equality a type of a basic law (colloquially system law, umbrella law), to those, on the other side, who consider this law as a certain codification of the area of gender equality which is reflected

government, ministries) and special gender equality (e.g. Office for Gender Equality, parliamentary commissioner for gender equality, gender equality commissioners in the ministries); quotas for less represented gender in the institutions of power (40%); violations of gender equality; gender sensitive statistics; political parties; civil society; economy; labor and employment; education; media etc. the content of the Decision on Gender Equality (and that content is predetermined by the scope and content of the competences held by the bodies of AP of Vojvodina) focuses on the areas of education and culture; labor and employment; family; violence; political life; gender sensitive statistics and the obligations of AP bodies regarding the achievement of gender equality, as well as on the special measure as the instrument of equal opportunities policy.

⁴¹ Some laws (e.g. BIH) are mostly focused on the special gender equality institutions while only some of the other competent government bodies are named (most often the ministries with competence in this area) The other ones (e.g. Kosovo) show an evident attempt to legally define the competence and responsibilities of all government bodies in the area of gender equality, and special attention is given to the gender equality institutions. A similar solution is accepted in the Decision on Gender equality of the AP of Vojvodina.

in the number of laws covering specific areas and regulating in detail all (or most of) the issues important for gender equality within those areas

Practical consequences of such an approach are reflected in the demand for the laws regulating specific areas to be harmonized, content-wise, with the law on gender equality, because it is considered some sort of a basic law, and laws regulating specific areas a sort of special laws, whose content (according to this viewpoint) would have to be harmonized with the basic law). The demands for the laws regulating specific areas to be harmonized and conciliated with the law on gender equality are not legally founded, nor are there legal instruments which could ensure this, however logical it might seem to seek the harmonization of the content of regulations. Laws on gender equality are in no way different from any other laws in the legal system. They have no special status in the legal system that would be different from the status of any other law. The law is not passed in accordance with any special legislative procedure (e.g. qualified majority for adoption of the law, possible legislative referendum for adoption of the law, qualified proposal law providers etc.) which would differ from the procedure for adoption of other laws in the parliament and which (if proscribed by the constitution) could secure a special status in the legal system for the law on gender equality making it different from the other laws. Under these conditions, the demand for the harmonization of laws regulating specific areas with the law on gender equality would have a foothold in the legal order.

Practical consequence of the second approach would be reflected in the problems arising from the attempt to optimize, content-wise, the relationship between the laws on gender equality and the laws regulating specific areas, and to establish the clear criteria for distinguishing the content of the subject matter which will not bring into question the regulations (content, scope and quality) of the law on gender equality, nor the regulations of laws regulating specific areas.

Proposal:

A way out of the dilemmas arising from the status of the law on gender equality in the legal system could be sought in two manners.

One would have to be the establishing and issuing of a special (qualified and more strict) procedure in adherence to which the law on gender equality would be adopted, which would put this law in a different position when compared to other laws in the legal system, ensure its supremacy over other laws and provide legal instruments which could be efficiently used in order to harmonize the content of specific laws with the law on gender equality. This is the harder road and it implies the revision of the constitution because the qualified procedure of law adoption is proscribed by the constitution..

The other would be reflected in the establishing of concrete, precise and clear criteria for distinguishing of the content of the subject matter regulated by the law on gender equality on one hand, and the issues which are regulated by the specific laws on the other. In our opinion, during the establishing of these criteria two basic issues should be kept in mind: the areas regulated by the law on gender equality and the specific content, quality and scope of regulatory rules. It would be useful to be guided by the Convention on the Elimination of All Forms of Discrimination against Women when identifying the areas which will be regulated by the law on gender equality. When it comes to the specific traits of the content, scope and quality of regulations that will characterize the law on gender equality and distinguish it from other laws, in our opinion

this would be the special measures and instruments of equal opportunities policy. The distinctiveness of the law on gender equality would be reflected, according to this suggestion, in the fact that this law would regulate special measures, activities and instruments of equal opportunities policy implementation in the areas the law on gender equality relates to (using the Convention on the Elimination of All Forms of Discrimination against Women as a starting point).

- *The laws on gender equality do not refer to implementation instruments* (government provisions, rules and regulations, instructions and other documents issued by appropriate ministries). This represents a big problem for the process of implementation of these laws. Even supposing that the law on gender equality has on principle⁴² or even more concretely⁴³ regulated the control over the law implementation and determined the actors responsible for that implementation and their competences, these legal provisions are not applicable because they are not operationalized instruments (regulations, measures, activities etc) which are necessary for law implementation.⁴⁴

Proposal:

Legal provisions on gender equality should be complemented by the norms regulating the instruments that implement the law, proscribe clearly defined procedures for action in the law implementation process and concretely determine the actors responsible for law implementation.

4. Government and ministries by-laws – implementation instruments

Among the important instruments for achieving gender equality and implementing the policy of equal opportunities a special position is held by a group of instruments distinguished by the fact that they the most directly serve the implementation of all regulations (international contracts, the constitution, law on gender equality and subsidiary legislation) determining the area of gender equality. These are government decrees for law implementation and special by-laws issued by the ministries within their area of competence, and which more precisely regulate issues of importance for law implementation.

An, even though the issue of gender law practical implementation is undoubtedly the most important issue on this area and at the same time an issue characteristic for the circumstances in all the countries in the region, the law implementation instruments missing from legal systems are not in the centre of the attention. They are not seriously discussed, nor are there any noticeable efforts to normatively establish the missing instruments, to define their nature (e.g. monitoring of law implementation, supervision,

⁴² E.g. article 21 of BiH Law on Gender Equality

⁴³ E.g. articles 22 and 32 of the Law on Gender Equality of Montenegro

⁴⁴ E.g. article 32 of the Law on Gender Equality of Montenegro proscribes that “the supervision over the implementation of the law should be executed by the Ministry” (of Human and Minority Rights, *M. Pajvančić*), but here is not a single provision that regulates the supervision instruments, manner of executing the supervision, procedure during the execution of supervision, acts (or actions) that the ministry can pass (or undertake) in order to eliminate problems in implementation of the law which prove as real during the supervision process and which are an obstacle for practical implementation of the law.

control of the implementation) and types (government acts, ministry regulations etc), to determine the content of these regulations which is important for faster and more efficient implementation of the law, to clearly determine the main implementers of the law, to precisely determine their competences and responsibility (and make a distinction between them if more actors are working on practical implementation) in the law implementation process, in one word to regulate the issues and procedures without which it is impossible to ensure efficient implementation of the gender equality law.

The issues mentioned are important from one more point of view – the reporting in accordance with the Convention on the Elimination of All Forms of Discrimination against Women and organization of activities related to the preparation of national reports. The monitoring of the legislation implementation (anti-discriminatory legislation, Law on Gender Equality and subsidiary legislation), of other regulations related to gender equality issues, as well as of activities and measures undertaken in the goal of securing gender equality, is an important prerequisite for successful implementation of government bodies' activities related to reporting on implementation of the Convention on the Elimination of All Forms of Discrimination against Women. Monitoring of the practical implementation of normative solutions and strategies should be organized, implemented by the state authorities, a continuous process in accordance with predetermined rules, and based on objective criteria and indicators.

Proposal:

Considering the seriousness of the problems focused on the implementation process of the Law on Gender Equality, our proposal would be to pay special attention to the instruments for practical law implementation; to prepare concrete proposals related to implementation instruments for each of the countries through coordinated joint activity of government gender equality bodies and national and international experts; to complement the laws on gender equality (and, when necessary, other laws, such as the law on government or the law on ministries) with provisions which would regulate implementation instruments and all other issues (actors, competences, forms of supervision, manner and procedure of monitoring law implementation process as well as the control of law enforcement etc) of importance for practical implementation of the law.

III

Policy defining strategies

In the framework of the system of gender equality institutional mechanisms, beside the gender equality institutions and instruments for realizing gender equality policy, an important segment are the strategies - documents that define both general and specific policies in the areas of special importance for achieving gender equality. These documents possess multiple importance for practical implementation of the gender equality policy because they define, for a longer period of time (usually around 5 years) the most important goals which we wish to achieve in the area of gender equality; they determine the measures, activities and steps which are to be undertaken in order to attain the set goals; they operationalize the areas and determine priorities of the most immediate

interest for achieving gender equality in each one of these areas; they determine institutions and bodies which will directly work on the realization of the goals, define their tasks and responsibility for policy implementation; they set the deadlines in which the competent bodies and institutions should undertake measures and activities related to the improving of gender equality, in one word, they operationalize a large number of issues of the most immediate importance for practical realization of gender equality.

The strategic documents which, in the widest sense of the word, define the national policies in the area of gender equality have been adopted in majority of the countries in the region.⁴⁵ The strategic document defining the gender equality policies on national level has yet to be adopted in Serbia. The document is prepared and it is expected to be submitted to the government for reviewing and adoption.⁴⁶

Insight into the strategic documents defining the basic directions and establishing parameters for national gender equality policies, as well as their analysis point out several basic characteristics of these documents.

- *Status of the strategic documents within the legal system* is not easy to determine. This is what the content of the matter strategic documents focus on demonstrates (for example, wider social context in which the document is adopted; general estimate of the situation in the area of gender equality; legal framework in which the gender equality is implemented; establishing of goals and their ranking in order of importance; selection of areas which are considered as the most important for achieving gender equality in a specific period etc).

Hence, the question arises about the nature of the relationship between the strategies as policy documents and legal documents (ratified international conventions, constitution). We want to point out the dilemma contained in this question – must the content of the strategies be in agreement with the positive law? This is not just a theoretical, but also very practical question. It is important to answer it because that tell us about the criteria determining the position of strategic documents in the legal system. The analysis of strategies shows that they take the legal framework⁴⁷ into consideration and that they are adopted within a certain legal context. But just on the basis of a sole fact

⁴⁵ Two documents defining the gender equality policy were adopted in BiH in 2005. National Action Plan for Gender in accordance with the Beijing platform and Operational plan by areas (note: in the submitted document the term “draft” is used which makes it difficult to discern whether the document was adopted or is still in the adoption process, *M. Pajvančić*). Action Plan for achieving Gender Equality was adopted in Montenegro in 2007. In Kosovo, the Action Plan for achieving Gender equality was adopted in 2003.

⁴⁶ Although a document defining the national gender equality strategy (then under the name of National Action Plan for Improving the Position of women and promoting gender equality) was prepared (first in the draft form and then in the draft proposal form) a couple of years ago (in 2006) under favor of Gender Equality Council of the Republic of Serbia, at this moment in Serbia the strategic document (this time named the National Strategy for the Improving the Position of Women and Promoting Gender Equality) is still in the Ministry of Labor and Social Policy – Directorate for Gender Equality. It is expected that the document will be submitted to the government for adoption.

⁴⁷ For example, see the basic sources explicitly referred to in the Action Plan for achieving Gender Equality in Montenegro. (pages 2 to 5) among which are the international sources related to gender equality (UN standards for achieving gender equality; EU standards for achieving gender equality – EU legal acts related to the area of gender equality and equal treatment of women and men, CoE legal acts related to the equal treatment of women and men) as well as legal regulations of the internal law (constitution, laws etc); Proposal of National Strategy for Improving the Position of Women and Promoting Gender Equality in Serbia (page 3)

that the strategies' adoption is placed in the context of normative framework established by the positive law and the legal system in general, it can not be simply concluded that strategies, especially the goals defined by them, have to be in accord with the normative framework. We base this observation primarily on the content of strategic documents defining the gender equality policies, an which is focused, among other things, on identifying legal regulations which are necessary to be adopted or amended in order to achieve the goals set by the strategy.

Defining of policies in the strategic documents on gender equality exists, hence, in the framework of positive law when it puts into context the legal framework of gender equality policy, but it is not limited by the positive law when establishing goals and projecting measures and activities which have to be implemented in order for the goals to be achieved.

- *Strategies are government acts.* The most important activities that define the position of government within the constitutional system are: policy implementing and law enforcement. Strategies are government acts by which it establishes direction of a policy it intends to implement in a certain area. Strategy relating to gender equality is a, we could say, plan document of the government projecting the action and activities of the government in the area of gender equality.

Problem that can arise regarding this issues is reflected in the fact that government acts, although publicly announced, are still not available for general public. Little is known about strategies in our widest public. Information on strategy content, planned activities, realization of goals set by the strategy and the problems in the realization of set goals are often not available for wider public.

It is also evident that the parliament often lacks insight into the content and implementation of strategic documents defining the government policy in the area of gender equality. Namely, these documents do not enter parliamentary procedure because the government adopts them, but the MPs often lack more detailed information on them.

Proposal:

Goals, measures and activities implemented in the goal of improving the position of women and achieving gender equality should be made available to wider public and more visible (e.g. engaging government mechanisms for gender equality on introduction with strategic documents defining the gender equality policy; intermittent reporting on results; reviewing of the report in parliament boards for gender equality; campaigns in the wider public; media coverage of the implementation of strategies etc)

It would be useful to produce, alongside the strategic documents, the agendas on how to provide information on their content and implementation. The informing of MPs and especially working bodies of the parliament established for the area of gender equality should by all means be included in these agendas.

- *Gender equality strategy and the relation towards other government strategies* is also an important issue for achieving gender equality because often gender equality policies are specified not only in the framework of a special strategy issued by the government for the area of gender equality but also in strategies related to other areas. The fact that gender equality is not a separate sector but an area covering several separate fields comes into focus in this case as well. That is why it is necessary to include

subsidiary strategies (those relating to specific areas of importance for gender equality) in the approach to gender equality strategies, and appropriate subsidiary strategies should also be involved in the analysis of strategic documents defining the gender equality policy. Gender equality strategy and subsidiary strategies are complementary documents and the harmonization of their content is desirable because it enables the coordinated implementation action of several actors in different areas.

In some⁴⁸ of the strategies analyzed such an approach is clearly evident. We point them out as best practice examples. The others lack the explicit and specific referral to subsidiary strategies, but some of the subsidiary strategies are mentioned in some parts of the document defining the strategy in the area of gender equality.⁴⁹

Recommendation:

During the preparation of the strategies that define goals and project policies in the area of gender equality we should keep in mind those aspects of strategy related to the areas of social life especially important for achieving gender equality. This will provide a more complete perception of different dimensions in which the gender equality is manifested in different areas. The content of strategic documents on gender equality will correspond more to subsidiary strategies and the process of goal realization will be faster and easier because actors from different areas will work in coordination on their realization.

It would also be useful and desirable to actively involve the gender equality institutions in the subsidiary strategies design process in the areas especially important for gender equality as well as to monitor the realization of the goals set in subsidiary strategies.

- The important issue for the defining of gender equality policy is also the *moment of their adoption*. The practice of countries in the region is different in this aspect as well. In some, the strategic documents were adopted after the passing of the law on gender equality⁵⁰, in others it is likely that their adoption will precede the adoption of the law.⁵¹

⁴⁸ In the Action plan for achieving Gender Equality in Montenegro it is explicitly stated that this plan “ is linked with already adopted development documents, strategies, policies, as well as the ones that are being designed, and above all with the national program for EU integration of Montenegro, National Sustainable Development Strategy, National Strategy for Employment and Human Resources Development for the period from 2007 to 2011, Development and Poverty Reduction Strategy, Strategy against Trafficking, National Action Plan for “Roma Inclusion Decade 2005-2015”, Strategy for the improving the Position of RAE Population in Montenegro 2008-2012, Strategy for Integrating Persons with Disabilities in Montenegro, Strategy for Protection and Improvement of Reproductive Health

⁴⁹ For example, in the Proposal of National Strategy for Improving the Position of Women and Gender Equality in Serbia the Poverty Reduction Strategy is specially mentioned and it includes the gender dimension of the poverty and designs a part of special poverty reduction policies related to the position of women.

⁵⁰ For example, the Law on Gender Equality was adopted in Montenegro in 2007. and the National plan for Achieving Gender Equality in Montenegro in 2008. The Law on Gender Equality was adopted in BiH in 2003. and the National Action Plan in accordance with the Beijing platform and Operational Plan by areas in 2005.

⁵¹ For example, in Serbia, in which according to the current state of affairs (comparing the procedural phase in which the proposal Law on Gender Equality is now, on one hand, and the phase in which the proposal of the National Strategy for Improving the Position of Women and Promoting Gender Equality is, on the

Why is the moment of strategic document adoption important and why do we take the moment of adoption of the gender equality law as the turning point? Because this can influence the specifying of the nature of strategic document on gender equality and the role this document has as a part of the system of gender equality institutional mechanisms. If it is adopted before the law on gender equality this document will have more characteristics of a plan document which designs the policies in the gender equality domain. If it is, on the other hand, adopted after the adoption of the law on gender equality, it will (more or less) have the characteristics of the acts defining the implementation related policy.

Proposal:

Considering the fact that the problems related to the implementation of gender equality documents and the practical implementation of gender equality policies are a general leitmotif of all the countries in the region, and in the framework of the efforts to empower instruments for implementing legislative regulations and measures that contribute to the achieving of gender equality, it would be useful for the gender equality strategies at his moment, as a part of institutional gender equality mechanisms (not forgetting their role as the documents that determine strategic directions of gender equality policy and define the realization measures, activity and steps) to be defined, content-wise, primarily as implementation instruments

- *Content of strategic documents* which define gender equality policy in the countries of the region varies, despite some common characteristics. The differences that we noted are related to areas covered by the document⁵² and their position in the structure

other) there are realistic chances for the government's strategic document defining the gender equality policy to be adopted before the law.

⁵² For example, The National Action Plan in accordance with the Beijing Platform adopted in BiH focuses on 12 areas considered as important for gender equality (women and poverty, education and training of women, women and health, violence against the women, women and armed conflicts, women and economy, women in power and decision-making, international mechanisms for the improving of the position of women, women human rights, women and media, women and the environment, female child) while the Operational Plan by areas lists 15 special areas (gender equality in the light of European integrations, cooperation and capacity building, macroeconomic and development strategies, gender sensitive budgeting, political life and decision-making, employment and labor market, social inclusion, gender sensitive media, lifelong education, health, prevention and protection, domestic violence, gender based violence, harassment, sexual harassment and trafficking; role of men; harmonization of professional obligations and family life; gender sustainable environment; IT and communication technologies). Unlike this the proposal of the National Strategy for improvement of the position of women and gender equality in Serbia least six areas as priority areas of policy design and action in the gender equality domain (increasing the participation of women in decision making processes; improvement of the financial position of women; achieving gender equality in decision making; improvement of the health of women and of the health policy; prevention and elimination of violence against women and improvement of the protection of victims; elimination of the gender stereotypes in the media and promotion of gender equality). Action Plan for achieving Gender Equality in Kosovo puts the emphasis on six areas important for achieving gender equality (inclusion in economy; human rights and violence against women and children; women in politics; equality of women and men in education; health and social care; culture) but within a general goal defined as the integration of gender perspective in policies in all spheres of society and which specifically lists several activities (gender sensitive statistics; developing gender sensitive budget; optimizing of the relationship between the professional engagement and family life; possibility of employment for vulnerable groups). Action Plan for achieving Gender Equality in Montenegro names eight areas especially important for gender equality (European integrations; education; health; violence against women; economy and

of the document which testify about the way the gender equality priorities were established and the way they are reflected in the actual circumstances of every country⁵³ Documents differ in the volume as well.⁵⁴ The differences are also evident in the manner and the parameters on which the general and specific goals within each area were structured, and especially regarding the operationalization of planned immediate activities and measures, in identifying the policy realization instruments as well as the obligations and responsibilities of government and other institutions which should directly work on the realization of measures and policies.

The differences we pointed out are relevant above all from the viewpoint of realistic opportunities for effective applicability of strategic documents. Large documents, coverage of a large number of areas, goals that are not clearly structured by importance and priorities, purely basically defined measures and activities to be undertaken as well as the competences and responsibilities of the bodies operating in the process of gender equality policy realization reduce the chances of achieving the goals in the area of gender equality determined by these documents.

It is evident that the strategic documents lack the concrete defining of the instruments which could serve as efficient mechanisms and procedures of the supervision of government's work in the process of implementation of the gender policy determined by the strategic documents as well as the instruments of control over the work of the government which could influence the government to implement (or be forced to implement) its policy in the area of gender equality

Proposal:

For the strategic documents that establish the goals and define the policies in the area of gender equality what is especially important is the following::

- clear definition of goals and ranking of goals in order of their importance;
- translation of goals to a concrete system of measures and activities that contribute to their realization;
- focusing of the activities on smaller number of areas, without the damage to the preservation of country specific priorities;
- precisely defined competences and especially responsibilities of the bodies and institutions participating in the realization of gender equality policies;
- operationalization of the role that the gender equality institutions have in the implementation of strategy defined gender equality policies;

sustainable development; politics and decision making; media, culture and sports; institutional mechanisms for design and implementation of gender equality)

⁵³ For example, The Action Plan for achieving Gender Equality in Montenegro places European integrations in the first place; the Proposal of the National Strategy for Improving the Position of Women and Promoting Gender Equality in Serbia mentions the increase in the participation of women in decision making processes as the issue of highest importance; the National Action Plan for Gender in accordance with the Beijing platform in BiH gives precedence to women and poverty; Action Plan for achieving Gender Equality in Kosovo gives precedence over all other issues to the inclusion of women in the economy.

⁵⁴ For example, the National Action Plan for Gender in accordance with the Beijing platform adopted in BiH has over 150 pages in which it defines the framework of policies in the area of gender equality, and the adjoining instrument, Operational Plan by areas, expounds on operational activities in 122 pages. All other strategic documents that we had the opportunity to analyze have organized the subject matter they regulate in a more concise manner (Montenegro strategy has 42 pages, Serbian 50, and Kosovo's 68) which can contribute to an easier operational implementation of these documents.

- establishing of instruments for supervision and control over the work of the government in the implementation of gender equality policies defined by the strategic documents;
- document volume which would be appropriate for practical operational use.

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By summarizing the stated proposals related to specific issues which are a subject of analysis of the functioning of institutional gender equality mechanisms in the countries of the region, and having in mind that the key issue is identified in effective practical application of the laws, policies and measures, as well as in the practical functioning of gender equality institutions, we will briefly point out several main directions on which the activities should be focused.

First, *clear positioning of gender equality institutions* (position, structure, competence responsibility and relationship with the other bodies participating in the decision making process) in the structures within which they were formed, especially clear defining of the competence with the eliminating of the positive conflict of competence and the establishing of the rules that reduce the chances for negative conflict of interest. It is especially important to establish and empower the gender equality institutions operating in the area of human rights protection.

The second, *focusing on implementation instruments* (establishing of these instruments if they are not present), instruments of follow-up (monitoring, reporting) and supervision (control) over the implementation of laws, strategies and policies and instruments for the protection of rights. In this context we mention not only the national instruments but also especially the international ones (e.g. reporting in accordance with the Convention the eliminating of all forms of discrimination against women and especially the implementation of the recommendations related to actions on accordance with the Convention)

The third, *ensuring and maintaining intersectoral approach to gender equality* in the work of the gender equality institutions (system prerequisites and procedures that enable coordination, harmonization of the work etc) on the projection and use of gender equality instruments (inclusion of subsidiary legislation and other instruments etc), as well as in the defining of the parameters that establish the framework and operational plans of the realization of gender equality policies (inclusion of subsidiary strategies that define the policies in areas of importance for gender equality).

Addendum 1.

Comparative review of the competence of the gender equality institutions operating within the executive branch in Serbia

1. Gender equality Council, as expert advisory body of the Government:

- reviews and proposes measures for the improvement of the policy for achieving gender equality, as well as the measures for the improvement of intersectoral cooperation in this area.

- reviews the harmonization of the existing laws with the basic international conventions and pacts on female human rights and raises the initiative for change in the law that would eliminate discrepancies.

- monitors and analyzes the implementation of legal provisions and the ratified international documents against gender discrimination and suggests measures for their literal implementation;

- raises the initiative for the undertaking of short term measures that contribute to gender equality;

- monitors the situation in the area of achieving gender equality policy, evaluates the effects of measures for achieving gender equality and reports to the Government on that;

- raises the initiative for passing the program of statistical data collecting, processing and publishing which would ensure the equal treatment of genders;

- monitors the data on representation of women and men in selected and appointed positions and reports to the Government on that;

- monitors and analyzes the selection criteria in different procedures of selection and appointment to public functions and provides initiative for the elimination of obstacles that negatively influence the selection and appointment of the less represented gender;

- initiates and supports the training and education programs of employees in public institutions and organizations in the goal of promoting gender equality;

- reviews and initiates programs and proposes measure for encouraging and professional training of women for participation in public and political life;

- reviews other issues of importance for the achieving of gender equality (Decision the founding of the Gender Equality Council, "Official Gazette of the Republic of Serbia" No13/03,83/04, 3/05)

2. Directorate for Gender equality, as administrative body within the Ministry of Labor and Social Policy, deals with the professional actions and state administration actions related to :

- analysis of the situation and the proposal of measures in the area of gender equality improvement;

- design and implementation of the National Strategy for Improving the Position of Women and Promoting Gender Equality;

- design of draft laws and other regulation in this area;

- cooperation with other government bodies, bodies of the autonomous provinces and bodies of local self government units in this area;

- international cooperation;
- coordination of the work and providing professional and administrative and technical support to the Gender Equality Council;
- improvement of the position of women and the promotion of gender equality and equal opportunities policy;
- gender mainstreaming in system institutions;
- implementation of the UN Committee recommendations on the elimination of discrimination against women, as well as other activities in accordance with the law (article 189 of the Law on Ministries)

3. Ministry of Human and Minority Rights deals with the work of state administration related to:

- general issues of the position of the minority representatives;
- keeping of the registry of national minorities national councils;
- selection of national minorities national councils;
- protection and improvement of human and minority rights;
- design of regulations on human and minority rights;
- monitoring of the harmonization of national regulations with international contracts and other international legal acts on human and minority rights;
- representation of the Republic of Serbia in front of the European Court for Human Rights;
- position of the national minorities representatives who live in the territory of the Republic of Serbia and the exercise of minority rights;
- establishing the connections of national minorities with their countries of origin;
- anti-discriminatory policy;
- position and realization of the competence of the national minorities national councils;
- harmonization of the work state administration in the human rights protection area, as well as other jobs determined by the law (act 26 of the Law on Ministries).