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Constitutional warranties for gender equality
Case studies of Serbia and Montenegro
(Process of engendering the Constitutions in the SEE region - testimony)

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1. First step in 2002/2003

In Serbia, the first step characterizes the production of the first drafts for the future new Serbian Constitution.¹

One can find visible attempts of the systematic constitutional regulation of gender equality in two proposals of the first constitutional documents. The first proposal of this kind was made by the experts gathered in the NGO named Forum Iuris 2002.² The parties which stood for this model and gave it their support were: The Reformists from Vojvodina and the League of SD of Vojvodina. The second proposal was the Draft of the Serbian Constitution prepared by the Democratic Party (2003.).³ The parties I have named had accepted the concepts of these constitutional documents but they were not focused on human rights issues but on other issues, especially the ones which had tackled the organization of power – especially the position of the President of the Republic as well as the issue of vertical division of power – namely territorial organization and organization of local self governance. In the debate around constitutional issues, the standpoint that the human rights constitutional corpus is not questionable at all was predominant, and therefore human rights were not a subject of special interest. The writers and actors of the constitutional documents were given the opportunity to define gender equality as a part of the set of human rights due to many factors, including the fact that this issue was not in the spot light. Individual engagement, especially of the women experts and politicians who worked on these documents, was of special importance.

1.1 the Model of Serbian Constitution, made by Forum Iuris proposes the warranties for human rights on the bases of international standards and regulates: the obligation of the state, that it has, in accordance with the principle of social solidarity, to take positive measures for economic and social assistance to the citizens and social groups which are, for different reasons, in unequal position, with the aim to eradicate

¹ See more in comparative overview of the constitutional solutions regarding gender equality in proposed projects of the new Serbian Constitution, (there were 9 such projects all together, out of which 4 were the result of the work of experts, and 5 of them were the result of the work of 5 political parties), dr. Marijana Pajvančić, *Ustav Srbije I ravnopravnost polova*, Glasnik advokatske komore Vojvodine br. 2 – 3/ 2005. str. 129 – 137.

² The author of this article was a member of the expert group which has elaborated this model. See: *Model Ustava Srbije*, Novi Sad, Forum iuris, 2002.

³ See the study: *Predlozi za novi Ustav Srbije*, FES, Beograd, 2005.

economic and social barriers for the enjoyment of equal rights; the principles of equality before the law; equality in protection of freedom and rights; entering the wedlock on the basis of the free consent of future spouses, equality during the duration of wedlock, equality at the occasion of divorce; equality of parents in parental rights and obligations; equality of male and female citizens to enter in public service or exercise political functions under equal conditionalities; the right to equal opportunities and equal treatment in the choice of profession and employment free of any discrimination based on gender; special rights for employed women, youth and disabled; the right to equal pay for the work of equal value, equal rights to training; the right to respect of personal dignity at workplace; the right to protection of motherhood of employed women; the right to equal opportunities and equal treatment of employed men and women with family obligations, the obligation of the state and of the employer to take legal measures in order to insure the rights connected with employment and at the basis of employment, accessibility of all forms of education under equal conditionalities, obligation of the state to insure health care for all children, pregnant women and elderly if they do not have this right on the basis of some other regulations; the right to asylum because of the prosecution based on specific gender. In this proposal non-discriminative terminology is used.⁴ But there is no definition of direct and indirect discrimination. There is no statement about affirmative action. The policy of equal opportunities is not stated as a general obligation of the state, but only in the connection with the principle of social solidarity. There is no ban for the functioning of associations and political parties if they practice discrimination based on gender, but only if they discriminate or disseminate hate based on race, ethnicity and religion. There is no constitutional warranty for free decision on giving birth. The right to maternal and parental leave is not explicitly granted.

1.2 Draft of the Serbian Constitution (Democratic Party) also derives from international standards on human rights and regulates: ban of discrimination based on gender, equality before the law, the right on equal legal protection, free of any discrimination; possibility to introduce affirmative action, ban to limit human rights under the pretext that they are not protected in the Constitution; ban of forced labour and explicit formulation that sexual or economic exploitation of the persons in dire situation is defined as forced labour; the right of man and woman of the legally appropriate age to enter wedlock and start a family; equality of spouses in entering the wedlock, in its duration, and at its ending; the right of the parents or legal custodians to insure to their children religious and moral education in accordance with their own beliefs; the right to asylum because of the prosecutions on the bases of specific gender; the right on special protection of the family, mother and child; the right of the mother to get support and protection in legally defined period before and after the childbirth; the right to special health protection of children, pregnant women, and elderly, if they do not enjoy it already on the basis of other regulations. There is an effort to use a non-discriminative terminology⁵, but this effort is not consistent throughout the text. Some very important

⁴ The Preamble starts with the wording: "Male and female citizens of Serbia" with the note, that in all cases where the wording of the subjects of rights and freedoms is in the masculine form, it is understood that the same rights and freedoms are equally meant for the female subjects.

⁵ The Preamble starts with the wording: "Male and female citizens of Serbia" but later on in the text, the use of female and male grammatical forms are not consistent and there is no general note regarding the use of the male subjects with equal validity for the female subjects.

rights are not regulated, for example the freedom of decision on childbirth, or the right to maternity and parental leave, equality of mother and father in their parental rights and obligations; there is no state obligations to develop equal opportunities' policy, special rights to protection of working pregnant women and mothers, the right to equal pay for the work of equal value. Special protection and support are granted only to the mothers before and after the childbirth, while respective rights are not granted also to the father of the child. There is also no ban for the functioning of the associations and parties because of the discrimination or dissemination of hate on the bases of gender, but only because of the discrimination or dissemination of hate on the bases of race, ethnicity or religion.

2. Second – decisive step in 2005

Second step towards constitutional formulation of gender equality is marked with serious expert preparations and continuous promotion of effective constitutional solutions regarding gender equality. The question of the constitution was open for a long period of time, an open debate on the new constitution was going on between the experts as well as on the political scene. This was also an occasion for the experts taking part in this debate to come out with their proposals regarding gender equality.

In this period, the author of this testimony has published several articles in legal reviews, acquainting in this way professional public with the subject of constitutional regulation of gender equality, which hadn't attracted much attention until this time. With the articles: *Ravnopravnost polova – predlozi za novi Ustav Srbije* (Glasnik advokatske komore Vojvodine br. 2 – 3/2005, str. 104 – 120); *Novi Ustav Srbije i ravnopravnost polova*, Globalizacija. Com. 1/2005, str. 171 -185 (www.globalizacija.com) the attention of professional public was oriented also towards this issue.

The importance of the systematic and holistic constitutional regulation of this important sphere was recognized also in the non governmental sector as well as in political parties, which also strated to work more systematically on this issue. The possibilities to formulate and advocate for different proposals of constitutional regulation of the issue of gender equality as well as for the debate about them, were found in different public activities. Some were organized by NGO-s (for example in the framework of the Women Can Do It project, or within regular seminars for education of politicians organized by the Belgrade Foundation for Political Excellency. Some were offered by the OSCE Mission in Serbia within their programmes of the work with MP-s, politicians, women's groups, etc). Many debates of this sort were led in the framework of professional meetings, at SD women party organizations' conferences, and in the broadest public, on public meetings or in the debates in the media

All these activities, especially stubborn and continuous engagement on this specific issue have risen the awareness about the importance of the constitutional warranties for gender equality in political parties, in professional public as well as in public in general.

The Model of Serbian Constitution, prepared by a group of male and female experts⁶, established by the President of the Republic, offered the possibility to transform all former awareness raising activities into the proposal of wording of the constitutional document with a rather realistic chance that this paper could get the support from the

⁶ The author of this testimony was a member of this group of experts

subjects (President of the Republic) with the effective right to propose the revision of the Constitution. This group of male and female experts was working independently and later on, when its Model of the new Serbian Constitution was published, it got the support of the respective organs of the Democratic Party. This Model where gender equality is defined as one of the basic principles of the concept of political community, became one of the two main proposals (Governmental proposal and the proposal of the President of the Republic) on the basis of which was made the new Constitution of Serbia.

The Draft of the Serbian Constitution made by the government of Serbia was the second source upon which is built the actual Serbian Constitution. In this document, gender equality is not seen as a basic principle of the concept of political community, but the authors of this Draft keep the standard approach, placing gender equality only in the context of human rights.

Proposal of the group of experts⁷ formed by the President of the Republic, includes general warranties and special rights concerning gender equality. This proposal uses non-discriminatory terminology. In general principles of the Constitution, there is a warranty for equality of men and women and the state is obliged to set up and implement the policy of equal opportunities. In general statements about human rights direct application of international law is granted, as well as direct application of the constitutional human rights ; there is a ban of direct and indirect discrimination; measures of affirmative action are foreseen as instruments for erasing of discrimination. Between the statements of principles regarding human rights, there are some which indirectly protect constitutionally granted human rights from possible limitations or annihilation due to the interpretations of constitutional warranties. There is no possibility that the state, a group or an individual could take any action aiming to annihilation of the human rights granted by the Constitution or to limit these rights more that to the level of the one acceptable by the Constitution. There is an explicit ban of limitation of any human rights under the pretext that this right is not granted by the Constitution. This proposal also includes some special warranties about gender equality: ban of sexual exploitation, which is defined as forced labour; free consent of spouses at entering the wedlock, equality of spouses in the wedlock, explicit warranties of the positive measures for parliamentarian and local elections, warranties of electing at least one deputy speaker of parliament for less represented sex, special protection of mothers and single parents, equality of parents in their parental rights and obligations.

Draft of the Constitution of the Republic of Serbia which was prepared by the government of Serbia⁸ also includes the statements regarding gender equality. Between general rules one has to mention direct implementation of the international laws and of the Constitution and explicit ban of direct and indirect discrimination. These general rules make possible also direct implementation of international legislation regarding gender equality. This proposal bans discrimination based on gender, and cites, in accordance

⁷ This experts' group consisted of the following persons: prof dr M. Grubač, prof dr V. Dimitrijevic, prof dr M. Pajvančić, prof dr D. Popović, dr O. Nikolić, mr V. Djerić, mr S. Bulajić, mr S. Čiplić and mr R. Žarevac.

⁸ This proposal was basically preped by the Democratic Party of Serbia (President of this party is a Prime Minister of Serbia: Vojislav Koštunica, and this proposal became a basic source for the wording of the actual Constitution of Serbia.

wirth international standards, direct and indirect discrimination as the forms of discrimination. It speaks about positive discrimination which includes laws, measures and activities, foreseeing it as a new institute and instrument which should be used to eradicate discrimination. Between special statements about gender equality we single out: ban on trafficking in human beings, ban of sexual exploitation which is defined as forced labour, equality of spouses, warranties of freedom of decision on childbirth, parental rights, constitutional warranties of special protection of the family, mother and child and special health protection of the pregnant women.

This proposal doesn't use non discriminatory terminology. The state is not obliged to set up and implement the policy of equal opportunities. There are no warranties for free consent of both spouses entering wedlock or special protection for single parents. Principle of positive discrimination is not further elaborated or precized in respective chapters of the draft of the Constitution.

There were other **proposals of the constitution which were also taken into account in the final wording of the new Serbian Constitution.**⁹ An overview of the constitutional solutions tackling the constitutional principle of gender equality leads to some general conclusions.

In all proposals one can see the effort to use nondiscriminatory terminology but only with parcial success. Only two of the projects in their Preambles, use subjects in male and female grammatical gender (male and female citizens). There is only one attempt of using this gendered terminology throughout the text of the proposal of the new constitution.

In most of the proposals there are warranties of equality of men and women either in the form of the positive norms or in the form of the ban of discrimination on the basis of gender.

Most of the proposals include the possibilities of affirmative action and positive measures.

There are special warranties for equality before the law and for equality in the rights to protection of freedoms and rights. In some constitutional proposals there is no definition of the forms of discrimination (direct or indirect). It is obvious that the incitement of intolerance and hate based on gender is not banned, and that there is no ban of the activities of associations and political parties due to their discrimination or dissemination of hate based on gender. The ban of this sort is foreseen only for the discrimination or incitement of hate on the basis of race, ethnicity or religion. In all the proposal but one, there is no obligation of the state to set up and implement the policy of equal opportunities.

Most of the proposals also include the warranty for the free decision on the childbirth, but in a different context: in some cases it is a general principle, in others - parents' right.

The biggest number of proposed Constitutions granted special gender equality rights. They speak about special protection of women in their reproductive role (mothers, pregnant women, women after giving birth). Never the less not one of the proposals precized the right to paid maternity and even less parental leave. There are no granted

⁹ In its evaluation the Commission of Venice states that the constitutional proposals made by the experts were of much higher quality than the solutions accepted in the enacted Serbian Constitution.

social rights of the parents – women and men. In spite of the attempts in some of the proposals to put an accent on equality of both parents with regard to the children, these attempts are not consistent. (For example, the right to the healthcare and special care after the birth of the child is granted only to the mothers, but not also to the fathers) . Only in one proposal there is foreseen that this healthcare and support will be financed from public resources. This is crucial for the possibility of effective realization of these rights. Holystic warranties of the rights of single parents are also missing. Some rights are granted only by a general norm which needs precization in order to be able to be implemented (for example the norm that family, mothers and children enjoy special care of the society and of the state).

One can notice that there are regulations for the protection of women in the process of work. These warranties are regulated quite well, even if some of them which are formulated only as general norm, might be much more effective in the form of concrete obligations of the employers. It is indicative that only some of the proposals include explicit norm of equal pay for the work of equal value. Only in one proposal one can find the warranty of explicit right to equal possibilities and equal treatment in the choice of one's profession and employment without discrimination on the basis of gender. The right to education is granted as a general right of every person in all of the proposals. Never the less there are some differences with regard to the level of education (for example: the right to primary education or to all levels of education).

All proposals are including equality of the spouses: free consent for entering the wedlock, equality during the wedlock and at the occasion of divorce. In some projects, sexual exploitation of the persons in dire situation is defined as forced labour banned by the Constitution.

3. Third step – coordinated activities in the region in 2006/2007

The third step is marked with the well planned attempt of coordination of engendering the new constitutions in the region of the South East Europe. Two processes characterize this step. The first is the process of engendering the constitution of Serbia, which was enacted in autumn of 2006, as the first between the three countries where the change of the Constitutions was in political debate . The second consists in the initiation of the engendering of the constitutions of Montenegro and Bosnia and Herzegovina, where the new constitutions were in preparations in 2006 and 2007. The new constitution of Montenegro was enacted in autumn of 2007, the attempt for the change of the Costitution in Bosnia and Herzegovina failed completely.

In the middle of 2006, at the regional meeting of UNIFEM, this organization was defining its strategic focuses of action for the year to come. The author of this testimony participated at this meeting, and she initiated that one of the regional priorities should be the definition of the set of principles and rules for engendering of the Constitutions in order to be used in the advocacy for constitutionasl changes foreseen in several countries of the region – Serbia, Montenegro, Bosnia and Herzegovina). The areguments for this proposal were the following: first, political discussion on constitutional change was already going on in all three neighbouring countries; the revision of their constitutions was expected in the nearest future. Second: the moment of the revision of the constitution

is a very important moment as this is the time when basic social principles are agreed and written down in the constitution which is the highest legal act of each country, not subdued to frequent changes – therefore it is of crucial importance to define and implement in the constitution also the basic principles of gender equality. Third: all three countries used to be not so long ago parts of the same federal state. The cooperation between the women activists of these three countries is continuous. This makes the communication and exchange of experiences easier, and offers the possibility to use regional cooperation as a tool for clear formulation of constitutional gender equality principles and accompanying institutes and mechanisms. As in the meantime, Serbia has enacted its new Constitution¹⁰ with all major warranties of gender equality, the project was not realized in Serbia, but in Montenegro and in Bosnia and Herzegovina, with intensive cooperation of female and male experts from Serbia.

The coordination of this project was given to the Governmental office for Gender Equality of Montenegro. The project was realized with the support of UNIFEM in 2007. It started with a regional conference under the title: “Gender Equality as a segment of human rights in the new Montenegrin Constitution”.¹¹ After this conference there were several expert meetings, tribunes, public presentations and promotions of the idea of the gender sensitive Constitution. The constitution of Montenegro was enacted in the fall of 2007. These activities of the Governmental Office for Gender Equality were supported by the Democratic Party of Socialists of Montenegro.

All what was done in the field of gender equality in the region before, continuous coordinated and successful cooperation of SOCIAL DEMOCRATIC WOMEN WORKING WITHIN THE CEE NETWORK FOR GENDER ISSUES, WITHIN THE FRAMEWORK OF THE NPA WOMEN CAN DO IT PROJECT, WITHIN THE PROJECTS OF UNIFEM, AND SP GTF, WHICH UNIFIED women experts, activists from NGO-s, political parties, gender equality mechanisms and parliaments, resulted in positive changes in constitutional regulations with regard to gender equality.

The new Constitution of Serbia was enacted the first in the region. It served as the inspiration for the others. This is why we shortly describe and comment on its solutions and its shortcomings.

Constitution of Serbia and gender equality – overview of constitutional solutions

Constitutional norms regarding gender equality are systematized in several chapters of the Constitution. One can find some of them between general norms, most of them are placed in the chapter of human rights and some of them in the chapter of the organization of power.

In **general norms of the Constitution** there are several ones granting gender equality or at least, creating favorable constitutional framework for the policy of equal opportunities.

¹⁰ Most of the norms relating to the warranties of gender equality or to the principles which set up basic constitutional framework for the realization of gender equality and which are included in the new Serbian Constitution, enacted in 2006, were taken from the Model of Serbian Constitution commissioned by the President of the Republic of Serbia (Tadić). This Model was gender sensitive and made possible that the new Serbian constitution includes all major warranties for gender equality.

¹¹ This conference took place in November of 2006, just a little before the new Serbian Constitution was enacted. See in the publication: «Ustav i rodna ravnopravnost», Podgorica, 2007.

The first one defines the concept of political community, which rests on the rule of law and social justice. *The principle of social justice* is the basic constitutional principle which enables the realization of the gender equality rights, and binds the state to create the conditions which make their realization feasible. *The principle of rule of law* grants equal treatment of every person and testifies the consent of the government to accept constitutional and legal limitations (power in the limits of laws). Closely connected to these two principles is also the *principle of the secular state*. Churches and religious communities are separated from the state and no religion can be installed as state or obligatory religion. In its basic principles, this Constitution explicitly accepts *international law as a part of internal law* which is directly applicable. What is missing is so called integrative clause, important for European integration. Instead of the primacy of international law over the national law, this Constitution states the consent of international law with the Constitution and domestic law and the Constitutional Court is there to decide about this consent.

This Constitution is not using nondiscriminatory terminology. Gender neutral grammatical form is used less often than in former Constitution. In some cases this very neutral form could be a problem, for example when the free decision regarding childbirth is used in the form: Everybody freely decides about the birth of one's children.

The most important of them all is the constitutional *warranty of equality of men and women*. This principle is followed also by clearly defined obligation of the state to *develop the policy of equal opportunities*. All these constitutional rules are derived from the principle of social justice which are cited in the Constitution as one of the main principles of the community.

In the chapter on human rights and minority rights, between the fundamental norms are also the ones which directly enable the realization of gender equality and create a favorable constitutional framework for the realization of the set of special rights.

This is the norm about *direct application of constitutional norms* on human rights. The same rule does not relate to the ratified international treaties. This is a serious shortcoming, because there are many ratified international treaties which include warranties for women human rights! The Constitution only stipulates that its norms on human rights have *to be interpreted in accordance to international standards*. This rule might lead to the conclusion that the legislators haven't given up the primacy of international law altogether. However the norms regarding the relations between national and international laws are opposing each other and one can expect the problems in their implementation!

Important set of *warranties for equal treatment of women and men* are the norms granting equality before the law, equal right to protection of rights, the right to legal protection, including international legal protection.

The general norm on *ban of discrimination on the basis of gender* has been kept, as well as the one on the ban of discrimination on the basis of any personal circumstance. Differently than in the former Constitution, and in accordance with international conventions, the Constitution defines the forms of discrimination: direct and indirect one. There is a norm which makes possible the enactment of special positive measures in order to eliminate de facto discrimination and achieve gender equality and there is a statement of non-discriminatory nature of such positive measures. The achieved level of human rights is protected. It can not be diminished. This is of crucial

importance for the set of economic and social human rights. These rights are under the pressure of restrictions because these are “costly” rights, and the level of these rights is often higher than the minimal standards of European Union, what is often used in political argumentation as a reason for the reduction of these already achieved rights. (For example: the length of paid maternity leave, the remuneration in the period of paid maternity leave).

In the chapter about **human and minority rights**, in the part dealing with the systemization of **personal rights and freedoms**, in the group of fundamental personal rights, new Serbian Constitution contains several norms directly related to gender equality.

After granting dignity of the person, right to life, and untouchability of the physical and psychical integrity of the person, there is a direct *ban of all sorts of trafficking in human beings*, as well as of forced labour; *sexual or economic exploitation* of the persons in dire situation *is explicitly defined as forced labour*. In this way, the Constitution recognizes most drastic forms of violations of fundamental human rights which main victims in most of the cases are women and children.

The right to asylum is granted to the aliens. They can aspect the asylum in Serbia not only when fearing prosecution based on race, language, religion, political beliefs, ethnicity or belonging to a special group, but also if they are prosecuted *because they belong to a specific sex*.

Important warranty of individual human rights are also constitutional norms about *promotion and respect of diversity* between the people, and the norms about *prohibition of inciting hate* based on personal qualities or circumstances. It should be mentioned though that the Constitution enumerates only some of the personal circumstances and between them gender is not mentioned. The accent is on the differences regarding ethnic, cultural, linguistic or religious identity. There is a prohibition and a definition of offence for any behavior meant to incite racial, ethnic or religious hate. This Constitution is so not equally protecting an individual with regard to all its personal circumstances. This norm is in the collision with the general prohibition of discrimination in the same Constitution!

In the package of rather modest rights concerning the **right to work**, this Constitution, on the top of the general warranty that everybody has the right to free choice of employment, and that everybody has the right to compete for any workplace under the same conditionalities, there are also some warranties related to the process of work (respect of the dignity of the person at work; safe and healthy working conditions; protection at work; limited working time; daily and weekly rest, paid annual leave;; legal protection in case of firing). There is only a general norm regarding women’s rights to special protection at work and special working conditions; detailed regulations are left to be defined by the legislators. General norm of fair remuneration for the work is missing, as well as the norms concerning two, very important issues from international legislation: equal pay for the work of equal value, as well as valorization of unpaid household work.

Constitutional warranties concerning **the rights related to the wedlock and family** take into account several specific rights and freedoms. Following international legal standards of human rights, this Constitution puts in the first plan the freedom of deciding to enter in wedlock. But the norms are confusing. The general norm gives

everybody the right to freely decide about entering in wedlock; in the second paragraph of the same article, this right is limited to the *man and the woman*. The possibility to enter in marriage of the partners from the same sex, granted with the general norm, is denied by the following sentence which defines the wedlock only as a community of a man and a woman. Such conflicting formulations might create problems in the implementation of these rights.

In accordance with the general principle of the secular state in the fundamental norms, the Constitution contains also the norm *about civic marriage*, valide when performed in the institution of the state authority.

Equality of man and woman in wedlock includes three crucial elements. All the three of them are cited in this Constitution: equality when entering wedlock, equality in the times of duration of wedlock, and equality at the occasion of divorce.

In principle, formalized *wedlock and not formally registered community are equalized*. The Constitution doesn't define the quality and the substance of this equalization, but asks from the legislator to define them. In this sens these are not constitutional but only legal rights!

One of the basic standards of women human rights and a good indicator of their quality is the right **to decide about giving birth**. The freedom in deciding of giving birth is the right of the woman. New Serbian Constitution gives the warranty of this freedom, but not in the way to make a woman the only subject of this right without any doubt. Linguistic form which is used is neutral „everybody has the right to freely decide about giving birth to a child”. This can create the problems in the implementation of this constitutional norm, as the circle of subjects included in the term: everybody can be different. Actual Family Law defines this right as a right of a woman. It is specially said (U USTAVU???- proveri) that the *state encourages the parents to decide to give birth to the children* and helps them in this.

There are **warranties for parental rights**. These rights rest upon **equality of the parents** in their parental rights and obligations with regard to maintenance, rearing and education of the children. These rights are not absolute, they might be restricted. *Restrictions concerning enjoyment of parental rights* include the possibility of limitation or total denial of all or some of these rights. These rights can be restricted or denied only by the decision of the court in the best interest of the child and might concern one or both parents.

Special protection of **reproductive rights and rights connected to the rearing of the children** **prava i prava vezanih za podizanje dece** is granted only in principle and the subjects of these rights are enumerated (mothers, families, single parents, children). The substance of these rights should be defined by the laws. There is also a warranty of the *special support and protection for the mothers before and after giving birth*, but there is no definition what this support and protection mean in practice and there is no law explicitly foreseen which should regulate this right. Some ways of this protection are named in the Constitution in the articles about *healthcare which should be covered from the public resources* for some categories of persons: pregnant women, mothers on maternity leave, single parents with the children under seven, elderly, if they are not covered by any other healthcare insurance.

In accordance with the principle of social justice, in principle there are warranties for the **right to social protection**. Concrete rights and categories of the persons who can

enjoy this right defines the Law. So these are legal, not constitutional rights too. The way how the subjects of this right to social protection are defined leaves the dilemma, if this right goes to all *citizens and families*, or only to the *employed and their families*, or to both categories but with the different quantity and substance of this right.

Right to representation is granted in the norm about *equal representation of genders in National Assembly of Serbia*. It is left to the Law to regulate the implementation of this norm in the electoral system, but the Consatitution set up the principle of 50% of women MP-s as a chriterium of representaion for the National Assembly.