

# CONFERENCE – FEMINIST LEGACY IN THEORY AND PRACTICE

## LAWGEM – DAY 1

June 30, 2022

### FIRST SESSION:

#### INTRODUCTORY REMARKS:

In her Introductory remarks Professor Dragica Vujadinovic - the LAWGEM project Coordinator welcomed all the participants, underlined the important topics that would be presented throughout two-days sessions that are also covered in the Textbook edited by D. Vujadinović, M. Froehlich, Th. Giegerich, *Gender Competent Legal Knowledge*, Springer, 2022, which has been one of the main intellectual outputs of the LAWGEM project. Participants were then welcomed by the Vice-Dean for Science Nina Krsljanin, who not only greeted our guests in name of the Dean of the Faculty of Law, but also as a member of the University of Belgrade LAWGEM team. Nina Krsljanin mentioned the success of the project throughout the years and reminded the participants on the importance of the topic that will be treated in this conference that would be a valuable contribution to the development of the gender competent approach to law and practice. The Commissioner for the Protection of Equality of Republic of Serbia Brankica Jankovic stressed the fact that we opened a new page in the gender equality with this project and underlined the importance of the application of the law in practice emphasising gender perspective of the legal practice. Professor Dragica Vujadinovic welcomed key-note speakers and thanked them for their participation and their efforts in the LAWGEM project. She reminded of the main aim of this Project-creating the new Master programme – Law and Gender that will cover Law and all its aspects regarding this topic but also have a multidisciplinary approach, involving professors to reconsider their knowledge from the gender perspective and changing the academic work and approach in general. Professor Vujadinovic announced the first Round Table – Feminist Judgments, chaired by Professor Ivana Krstić.

### ROUND TABLE I – FEMINIST JUDGMENTS

Moderator: Prof. Dr. Ivana Krstić

**Professor Ivana Krstic** opened the session by expressing her gratitude to all participants including Professor Susan Baer for her contribution, as well as Judge in the European Court for Human Rights Ivana Jelic, who were involved and contributed greatly but could not make it to the Conference. Professor Krstic thanked Professor Marco Evola for his equally great contribution regarding the analysis of the judgments and case law of the. She announced the first speaker- **Brankica Jankovic** who presented the role of the Commissioner for the Protection of Equality, the importance of the institution as well as its activities to improve protection against discrimination. She underlined the importance of monitoring and active work in order to progress in improving gender equality. Besides, other relevant topics, she treated women's participation in public and political life in Serbia as well as gender representation in the Judiciary (72% of

women perform the judicial function). She presented areas of discrimination according to the Commissioner's cases and continued to present strategic litigation and its role to achieve broader social goals, raise awareness on discrimination and social groups that are discriminated. She explained the position of the Commissioner in the litigation cases as a party with active role, main objective of the litigation- clarifying a particular legal rule and seeking the court's interpretation, ensuring that anti-discrimination rules are applied, highlighting serious issues of discrimination. One of the strategic objectives of the Commissioner is to develop the case-law and to monitor the implementation of laws, by-laws and all other strategic documents. She stressed the importance of changing discriminatory practice.

Professor Ivana Krstic thanked Brankica Jankovic for her presentation, pointing out as well to the importance of strategic cases and criteria how to choose cases. Professor Krstic added that Brankica Jankovic raised several important issues especially how the cases will be followed. Professor Krstic then introduced the next speaker Relja Pantic, from the Commissioner's office who presented strategic litigation cases that discrimination based on sex (gender) and family status at work. Afterwards, Professor Krstic and **Relja Pantovic** discussed the cases that were before The Court of Cassation and whether the balance was properly done as well as to recognize the role of Commissioner in the cases of discrimination.

The discussion followed and professor Tanasije Marinkovic reminded that we need to rethink the judicial culture, reminding that judiciary branch do not see itself as separate branch of the government; rendering principle legal opinions. He also mentioned that it was the responsibility of the Academia, and the manner and approach of teaching students that there is only one right answer. He stressed that we need to ensure better understanding of sensitive issues.

Following the short discussion **Professor Rosemary Hunter, University of Kent and a keynote speaker** at the Conference spoke about the genesis of the Feminist judgments projects (with Women's Legal Education and Action Fund LEAF) in Canada. She mentioned the success before the Canadian Court, but also about the hard times when they had the feeling that the Court stopped listening to them and didn't feel like they have receptive audience. Professor Hunter explained that by writing the alternative judgments they wished that the Court put that type of argumentation from the gender equality perspective. The Idea of re-writing judgments from the feminist perspective originated in Canada and spread to UK and so on. She also mentioned the projects in New Zealand with indigenous population comparing Anglo-European feminist approach and Maori women approach (indigenous women approach to feminist judgments). This was subsequently followed by projects in the USA and in Ireland. She paid particular attention to the issues in Ireland, having in mind the very strong catholic heritage, role of the mothers, maternity, reproduction. She added that the Project is currently ongoing in Scotland, in India (interesting colonial heritage, relationship between law and the state), as well as in Africa and Canada.

Professor Hunter went on to explain how feminist methodology can operate in different legal culture and tradition (civil and common law). She also spoke about the method and the importance on the focus on the written output. The specificity about re-writing the judgments is imagining the different judge at the same time at the same court and subject to the same rules and practices. Outcome should be different result with different reasoning. The result is not the problem but the reasoning. She underlined that changing the reasoning was in order to introduce the feminist approach. She reflected on motivations to re-write judgments: limited influence of feminist legal scholarship, implement feminist legal analysis into law, implement feminist legal

reforms, correct masculine biases, include women's lived experience, justive and empowerment for women. The experience has to be understood and incorporated – racial minorities, gender dimension- achieving justice (original judgment made them angry) – claim for justice.

She raised an important issue whether there is a space for feminism in judgments- how can feminism be incorporated in a plausible way: understanding the facts, understanding the context (the society or understanding the particular issue that many women face), not seeing something in abstract, thinking about what to do with the law- telling the story differently and all in all revision of the law. She stressed that it is crucial to address the parties with care, sympathy and that within any judicial system there is a possibility for a feminist approach and that prevention rather than sentence is always a key.

During the discussion several important questions were raised: Interviews with feminist judges, case-law and practice and the fact that for example in some countries this project does not exist like in Germany, as Dr. Marion Rowekamp stressed throughout the discussion. The discussion was finalized with the question is it possible and how should codes or codifications be written from a feminist perspective.

## SECOND SESSION:

### ROUND TABLE II BOOK LAUNCH – DISSEMINATION OF THE TEXTBOOK *GENDER COMPETENT LEGAL KNOWLEDGE*

Moderator: Prof. Dr. Dragica Vujadinović

Professor Dragica Vujadinovic announced the aim the Round Table and the overall goal of the textbook that will be published by Springer. This session then continued with the speech of **Dr. Mareike Fröhlich**, who introduced the aim, structure and the content of the Textbook *Gender Competent Legal Knowledge*. She found that this book represents the revolution of master studies with general approach to the topic, with articles written of more than 50 authors. The text book gives different aspects of gender equality in criminal law, criminology, labor and employment law, as well as in social security law. The textbook also deals with economic empowerment of women.

**Prof. Dr. Damir Banović** recognized this textbook as multi-practical guide for gender equality, unique in this region and above. The special significance was made by recognizing the importance of gender equality in other areas such as economics, politics, sociology, etymology, language. This multidisciplinary approach is something that makes this textbook important for all those who get in touch with gender equality. The fact that experts from five universities were involved in the creation of this Textbook give it an added value. Gender perspective and individual perspective are taken into account. Banovic stated that this textbook changes the approach to the higher education. In this way, the legal education is given new perspective. This textbook shows that gender is more than making difference between men and women. In this textbook multiple meaning of feminism is portrayed and explained. In addition, according to Damir Banovic this textbook represents theoretical and practical guide. This is important because

of the gender stereotypes that are still present in societies, especially, in legal practice. At the end, Banovic singled out as important the interdisciplinary approach to gender equality in this text book.

The words of Damir Banovic were followed by the exposé given by **Dr. Cettina di Salvo**, who considered this textbook as essential response on how to make law in practice more effective and how to overcome gender stereotypes. She pointed out to the importance of abolishing discrimination on different grounds, as well as to the education of all people dealing with gender equality. This textbook is, according to Dr. Salvo a contribution to effectiveness concerning gender equality. She concluded that there is a need for minority protection, then to map the weaknesses of the system and to work on them. This textbook shows position of modern society in way of improving in achieving gender equality.

At the end of this section, during the discussion it was concluded that gender equality is not an individual question, and that it should be considered as an integrating aim of the society. There is a need that we all become gender inclusive, rather than gender blind. The latest abolishment of the right of abortion in the USA confirmed that there is no moving forward when it comes to gender equality.

### THIRD SESSION:

#### ROUND TABLE III – FEMINIST PERSPECTIVE ON GENDER – A GENERAL CONTEXT

Moderator: Prof. Dr. Dragica Vujadinović

The first speaker in the third session was **Dr. Adrien Wing**, Associate Dean for International and Comparative Law Programs and the Director of the University of Iowa Center for Human Rights. Her presentation was dedicated to Critical race feminism theory, and she spoke about the issues referring to the fact that African Americans continue to have an unequal position in the United States of America even today. Namely, the Critical race theory was created a couple of decades ago, but it was “trapped” in academic circles for a long time, and it has been attracting greater media attention and attention of society in the last few years. This theory refers to analysis of the intersection of race, society, and law in the USA and its implications on a position of the individual in the society. In light of the mentioned, she reflected on the events in the USA that happened in the previous period and their impact on the position of African Americans. What is more, she emphasized the fact that, contrary to some expectations, the election of the new USA president did not necessarily contribute to the improvement of the position of African Americans in all spheres, that is, to achieving equality regardless of race. That is especially due to the fact the in many USA states, the issue of education, remains in the autonomy of state, and precisely in education is often the root of racial discrimination. Moreover, she stated that discourses that try to deny the racist history of the USA remain present even today. This is precisely why today continues to exist the need recall the Critical race theory. The

reason for this lies in the fact that even today not everyone has the same starting point, that there is a “tradition” that some have more than others that lasts for decades and centuries. A clear example of this is the fact that decades ago, after the war, war veterans acquired the right to land. However, this right (and rule) has one “exception” – the right to inherit did not apply to African Americans. Therefore, even if today we say that everyone has the same starting point for finding a job, there is still a difference in inherited wealth.

Further on, and in relation to the mentioned, Professor Wing stated that we should ask ourselves why feminism is important in this regard and stressed the Critical race feminism theory has an answer to this question. In other words, the intersection of race and gender is very important when analyzing the issues of someone’s status and situation in the society. In light of the mentioned, it can be said that intersectional discrimination is present at almost every step, and an example of this is the clearly present gap in earnings, which is especially present when it comes to women of Hispanic origin, as well as African-American women. The sphere of labor relations is not the only sphere where there are inequalities; they are also present in the health system, and especially in the context of the COVID-19 virus pandemic, where, as a rule, African-American women are “on the front lines” and in numerous other spheres and almost every “context”. Ultimately, Professor Wing said the question remains about should all of us do in order to fight against such inequalities. She believed that it is necessary to combine theory and practice. Legislation needs to be changed, but also it is crucial to fight against the constant discrimination present in practice. This fight is a fight that needs to be present on a daily level and in general – the fight for equal pay, the fight against sexual abuse, but also the ratification of CEDAW (which the US has not ratified) and the introduction of the gender dimension into the US Constitution. Professor Wing concluded that when fighting for equality in general, the political, social, but always personal context and position of each individual fighting for equality should be taken into account.

The next speaker was **Dr. Marion Röwekamp**, historian and lawyer, appointed to the Wilhelm and Alexander von Humboldt Chair at El Colegio de México and she spoke about feminist legal history. The speaker underlined the issue of intersectionality of different personal grounds, and therefore the fact that laws during history were created with the “best” solutions for rich men and “worst” solutions for poor women. In this sense, she mentioned Marion Duggan, and the fact that a century ago she referred to problems with education, that is, the fact that education is often the root of inequality, that is, inequality in education is later reflected in all spheres of life. On the other hand, at the end of the 19th century, Johanna Löwenherz cites the legal wording that “everyone is equal” and wonders if this means that women are also equal with men. Also, Dr. Röwekamp recalled we should not forget the important words of Emilie Kempin, who claimed that in the time she lived, in the 19th century, a woman in the society of that time “was not a citizen”, but her husband, that was, a man that “delegated her rights to her”. Moreover, she claimed that society is very hypocritical because it allows, but also demands, the “right” of women to pay taxes, but does not give them the possibility to participate in deciding how the collected money is to be used. Emilie Kempin concludes that, in that time, women were limited in all spheres of life – they could work in numerous professions, they could go to court or

at all participate in decision-making processes. Women remain “locked” in the family sphere, and without the possibility to participate in the public sphere.

Finally, the Dr. Röwekamp also mentioned Elizabeth Cady Stanton, who, in the time she lived (1860s) believed that there are still a little over 130 years left before women would achieve complete equality with men in society. In light of the mentioned above, Dr. Marion Röwekamp believes that these problems did not remain in the 19th or 20th century, but are still present today, and that it is therefore necessary to apply an interdisciplinary approach when dealing with the situation of women in society today.

The next speaker was **Dr. Nina Kršljanin**, Assistant professor at the Faculty of Law of the University of Belgrade, Department of Legal History and Vice-Dean for Science at the Faculty of Law University of Belgrade. Her presentation focused on the gender perspective in comparative legal history. In this regard, she emphasized that dealing with the gender dimension does not only mean dealing with the position of women, but also with specifics related to the position of men throughout history. In other words, she stated that the history of gender issues does not only involve dealing with the position of women, although this undeniably *remains a central issue*. When we talk about the historical context, Dr. Kršljanin stated, it is important to keep in mind that the position of women in all ancient countries was not the same – for example, by the standards of the time, women had a very favorable position in Ancient Egypt. Also, Muhammad introduced rules that gave women significantly more rights than they had before. Even though the position of women has changed and evolved over time, all the challenges related to the position of women do not remain in history but are present even today.

Furthermore, **Dr. Fabio Macioce**, full professor of Legal Theory and Bioethics at the Lumsa University of Rome and **Dr. Antonio Álvarez del Cuvillo**, professor of Labor and Social Security Law at University of Cádiz have spoken about the feminist political and legal theories. In this light, Dr. Fabio Macioce raised the issue of whether only laws that do not guarantee equality are the (whole) problem. He believed that the problem is much broader and deeper and that it has its roots in power relations, that is, the fact that throughout history power is tied to the position of men, and that the oppression of vulnerable groups unfortunately existed, and continues to exist. It is oppression that defines the position of women both then and now, and therefore it is necessary to consider what further mechanisms to establish, and how to achieve equality in practice.

Dr. Antonio Álvarez del Cuvillo spoke about the position of women, and in this regard the speaker made a distinction between the terms “discrimination” and “subordination”. Namely, he is of the opinion that there is a lot of attention dedicated to discrimination, but discrimination is only part of the problem, and that in fact women in society are still in a subordinated position, and discrimination is an integral part of that. Moreover, he associated the term “discrimination” with a certain anomaly in society, and the problems of subordinate treatment of women are present at every step. In this context, in the case of discrimination, there is always a responsible person or entity, and here we are talking about the entire society and opinions present in society. Therefore, he stated that he believed that formal equality, which is linked to the prohibition of discrimination through legislation, is necessary, but not sufficient, and that it is necessary to have

as comprehensive an approach as possible and to create as many mechanisms aimed at achieving equality in practice.

**Valerija Dabetić**, Teaching Assistant on the courses Sociology of Law and Legal Ethics at the Faculty of Law of the University of Belgrade, spoke about the sociology of law and gender equality. In this sense, she highlighted the fact that gender roles shape and ultimately define the access to social resources, professional positions, and social status. In her presentation, she focused on the role of mass media in creating, promoting, and maintaining symbolic representation of gender. Namely, the mass media have a huge influence on the creation and change of discourse in society, and therefore the image of women and the treatment of women in the it has a great influence on the position of women in society in general. In this sense, she emphasized that messages that are transmitted through mass media are never neutral and objective. In this regard, when it comes to gender perspective, i.e., representation of gender, and especially women in a symbolic way, it is important to have in mind the following. The media, Valerija Dabetic stressed, uses ideology-colored language and promotes gender stereotypes, as well as misogynistic and sexist phrases, and finally it promotes rape culture, i.e., environment in which rape of women is trivialized, normalized eroticized and justified through social, cultural, and structural practices. Valerija Dabetic conclude that, given the extremely large influence that the mass media has on society, it is necessary in this sphere to work on the fight against the above, and to, as a starting point, recognize the need to move from *status quo*.

Finally, **Dr. Zara Saeidzadeh**, a postdoctoral researcher in Gender Studies at Örebro University in Sweden in her presentations dealt on the one hand with the sociology of law and gender equality, and on the other hand with feminist methodologies and gender research. When it comes to the sociology of law and gender, she referred to the sphere of education and in that context stated that it is impossible to speak about equality if the importance of equality is not nurtured and promoted through education. What is more, she stated that many issues that have a gender dimension are still present today in various and numerous aspects, including the spheres of employment and labor relations, in terms of the law (but not only the legal text, but the implementation of the law), marital rape, forced marriage and all other issues in practice to which women are exposed. The speaker also touched on the issue of the media, that is, the image of women in the media. In this regard, women, globally, are not represented in the media, and when they are, they are most often represented as sexual objects. Unfortunately, Zara stated, the problem does not stop with the media, it is present everywhere. Moreover, the public and private spheres are inextricably intertwined, and inequality in one sphere is usually reflected in the other.

When it comes to feminist methodologies, the speaker touched upon the issues of gender, sexuality, power relations, structural inequalities, violence, and numerous other issues, which are inextricably linked to the gender dimension. In this light, she referred to the issue of intersectionality, that is, intersectional discrimination. When it comes to feminist methodology, it implies that in general the position of women in various aspects should be looked at from a feminist perspective. In this light, it is necessary to take into account the rate of presence of gender-based violence against women, the economic position of women, the position of women in the health system, as well as the attribution of “traditional gender roles” to men and women.

The need for a feminist methodology is particularly present when it comes to the position of women on the labor market and in the sphere of labor relations. Also, the speaker spoke about symbolic representation of gender and the fact that women are still often represented as someone who belongs only to the private and family sphere. She also stated that on the other hand, women are also represented as sexual objects through the media, and especially through pornographic content. As a rule, women are “guilty” if they are victims of violence, and their inappropriate representation is present both in the private and public spheres.