

UNIVERZITET U BEOGRADU – PRAVNI FAKULTET
UNIVERSITY OF BELGRADE FACULTY OF LAW

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UKRŠTENA DISKRIMINACIJA ŽENA I DEVOJČICA SA
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INTERSECTIONAL DISCRIMINATION OF WOMEN AND GIRLS
WITH DISABILITIES AND MEANS OF THEIR EMPOWERMENT

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Marco Evola
(ur./eds)*

*New Quality in Education for Gender Equality – Strategic Partnership for the
Development of Master`s Study Program LAW AND GENDER – LAWGEM*

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FOREWORD

A little over three decades ago, Professor Kimberlé Crenshaw introduced the concept of intersectionality into legal theory, providing a better understanding of the cumulative effect of several different grounds of discrimination and the legal problems that arise thereof. This encouraged authors from various disciplines (especially sociology and political science) to consider the possibilities and the limits of the intersectional approach. The same applies to law especially as the concept of multiple discrimination, which includes intersectional discrimination, has been coined in the meantime. Nevertheless, legal science inherited a smaller number of publications on implementation of the intersectional approach than other disciplines, which is one of the reasons that this edited volume is dedicated to the issue of intersectional discrimination. Our attention is focused on the intersectional discrimination of women and girls with disabilities, because we wanted to offer readers a book in which the position of this vulnerable and marginalized group will be considered from the point of view of different branches of law (human rights law, anti-discrimination law, civil law, family law, company law, labour law, social security law, tax law and criminal law), as well as from the point of view of several other disciplines (social policy, economic analysis of law, law and religion, sociology, and criminology). We also wanted to offer an evaluation of legal responses to intersectional discrimination of women and girls with disabilities.

By publishing this book, the University of Belgrade Faculty of Law continues the series of significant steps, taken over the last decade, in promoting inclusive culture in higher education. With the conviction that we can't talk about academic and scientific excellence today, if higher education is not inclusive, the University of Belgrade Faculty of Law carried out several activities related to the education of students on the principles and values of equality and the fight against discrimination. This included the enrichment of study programs by adding Minority Rights as a new course, as well as introducing legal clinics that have been consistently successful in training students in understanding discrimination. This is especially important for the Legal Clinic for Discrimination Issues, which was founded in order to be a support for vulnerable population, i.e. to provide support to these persons in situations where their rights are most threatened. In addition, this legal clinic gave their participants the opportunity to react to the systemic discrimination, as well as to write letters to the relevant state authorities to warn them about omissions in the formulation of relevant regulations and their inconsistent application in practice.

The Faculty of Law's efforts to promote an inclusive culture in higher education are also reflected in the organization of summer schools and conferences dedicated to vulnerable groups. In 2010, a five-day summer school named "Prohibition of discrimination against persons with disabilities" was organized in cooperation with the Open Society Fund in Belgrade, the Faculty of Law and the International Institute for Human Rights and Peace from Caen (France), the Ombudsman, the Ministry of Human and Minority

Rights, the Ministry of Labour and Social Policy and the National Organization of Persons with Disabilities of Serbia. The school, which was attended by a total of 100 students, aimed to answer the unresolved questions of discrimination of persons with disabilities, to shed light on the current situation in a systematic and multidisciplinary manner, to indicate ways of overcoming the weaknesses of regulations in the field of protection of persons with disabilities, as well as to facilitate the implementation of new normative solutions aligned with international and European standards in this field. One of the results of the very successful summer school was the publication of the edited volume *Prohibition of Discrimination against Persons with Disabilities*, prepared by Prof. Dr. Jovica Trkulja, Prof. Dr. Branko Rakić and Dr. Damjan Tatić (Faculty of Law, University of Belgrade / National Organization of Persons with Disabilities of Serbia / Službeni glasnik, Belgrade, 2012).

Eleven years later, the University of Belgrade Faculty of Law, with the support of the UN Agency for Gender Equality and Women's Empowerment UN Women, organized the conference "Gender (in)equality of persons with disabilities". The conference was held under the auspices of the scientific project "New Quality in Education for Gender Equality – Strategic Partnership for the Development of Master's Study Program Law and Gender (LAW-GEM)", which is being implemented by the University of Belgrade and the Universities in Saarland (Germany), Cádiz (Spain) and Örebro (Sweden), as well as the Italian University LUMSA. The key task of the researchers in this project is to establish the study program for the master's academic studies "Law and gender", while other tasks are related to the publication of a textbook, which contains texts for all mandatory and optional courses of the new study program, the establishment of a legal clinic for gender equality, establishment of an online platform for lifelong learning about gender equality, and the creation of a questionnaire for the empirical research of the views of lecturers on the most important aspects of gender equality.

Bearing in mind how important the risk of intersectional discrimination against women and girls with disabilities is to the creation of conditions for effective implementation of the principle of gender equality, the University of Belgrade Faculty of Law organized a conference dedicated to this issue. The Scientific Committee of the conference consisted of: Prof. Dr. Dragica Vujadinović (University of Belgrade Faculty of Law), Prof. Dr. Ivana Krstić (University of Belgrade Faculty of Law), Prof. Dr. Ljubinka Kovačević (University of Belgrade Faculty of Law), Ana Pavlović, Ph.D. candidate (University of Belgrade Faculty of Law), Prof. Dr. Thomas Giegerich (*Universität des Saarlandes – Europa Institut*), Dr. Mareike Fröhlich (*Universität des Saarlandes – Europa Institut*), Prof. Dr. Marco Evola (*Libera Università degli Studi Maria Ss. Assunta di Roma/Palermo*), Prof. Dr. M^a Isabel Ribes Moreno (*Universidad de Cádiz – Facultad de Ciencias del Trabajo*) and Prof. Dr. Susanne Strand (*Örebro universitet – Institutionen för juridik, psykologi och socialt arbete*). Representatives of several associations of persons with disabilities (Central Asian Forum for Persons with Disabilities, Association of Women with Disabilities *Шырак*, Women's Foundation *CERMI* from Spain, *Disability Rights International*, NGO "Iz kruga – Vojvodina"), as well as students with disabilities participated in the conference, and pointed out the biggest problems they're facing, especially in the field of education and employment.

Presentations at the conference were followed by a lively discussion, concluding that the inclusion of persons with disabilities is not going to be possible without raising awareness of the judicial office holders, political decision makers and the society as a whole about these issues. It was also concluded that it is necessary to encourage lecturers and students of law schools to deal more deeply with issues of intersectional discrimination, especially discrimination of persons with disabilities.

The publication of the edited volume *Ukrštena diskriminacija žena i devojčica sa invaliditetom i instrumenti za njihovo osnaživanje / Intersectional Discrimination of Women and Girls with Disabilities and Means of their Empowerment* should contribute to the achievement of some of the indicated goals. This book offers theoretical and practical insights into issues of importance for the legal position of persons with disabilities in general, and women and girls with disabilities in particular. The papers included in the book will help explain how disability and sex/gender intersect in the context of social, political and economic processes, as well as expound on legal instruments that contribute to the creation of conditions for effective enjoyment of human rights and fundamental freedoms for all. The hope remains that with the publication of this edited volume, a firm step forward will be made in the efforts of the University of Belgrade Faculty of Law to improve the visibility of intersectional discrimination, and to contribute to its solution by systematizing the existing knowledge in this field, as well as through methodological innovations and consideration of a multitude of topics from all of the basic legal disciplines and some other scientific disciplines. We are also hoping that the contributions published in the edited volume will inspire other scholars to consider disability as an analytical category and to include it in their research on a regular basis.

The articles are grouped into ten chapters, with a different number of articles within each chapter. In a sense, this reflects the incidence and prevalence of discrimination against women and girls with disabilities in certain segments of social relations. At the same time, all the articles together form a whole, since they are connected thematically, and are aiming towards the same goal – a critical assessment of the content and limitations of the relevant regulations and public policies and measures undertaken to establish essential equality in society.

The edited volume starts with the paper by *Dr. Dragica Vujadinović*, Full Professor of the University of Belgrade Faculty of Law, which is dedicated to the theoretical and methodological assumptions of a critical analysis of gender-based discrimination in the general sense and related to women and girls with disabilities. The authoress explores the concept of disability, as well as the place of the intersectional approach in feminist work on gender equality. Special attention is paid to the critical deconstruction and overcoming of intersectional discrimination, while pointing out the necessity of adopting an inclusive intersectional approach to gender justice and justice for people with disabilities in democratic societies.

Our book has been enriched with several papers in the field of human rights law and anti-discrimination law, starting with the contribution entitled “Protection of women with disabilities in the anti-discrimination law of the European Union”, written by Full Professor of the University of Zagreb Faculty of Law *Dr. Ivana Grgurev*. The authoress starts from the premise that persons with

disabilities are not adequately protected from discrimination in the EU law, with low visibility of women with disabilities. This is because under the EU law, the protection of persons with disabilities only covers their protection in the field of employment and occupation, while the multiple discrimination of women is only mentioned in the preambles of two directives, and the Court of Justice of the European Union does not recognize the concept of intersectional discrimination in its judgements. At the same time, it points out the obligation of the Court of Justice of the European Union to interpret the law of this organization in accordance with the Convention on the Rights of Persons with Disabilities, which, due to the implementation of the human rights model, could ensure the protection of women with disabilities from discrimination. Consequently, the paper carefully and accurately analyzes and critically reviews the relevant case law of the Court of Justice of the European Union, as well as its consequences on the position of women with disabilities in the EU labour market.

Research associate of the Institute of Comparative Law in Belgrade *Dr. Mario Reljanović* devoted his paper to the obligations arising from Article 6 of the Convention on the Rights of Persons with Disabilities. More precisely, it is about the obligations that the states take on regarding the multiple discrimination of girls and women with disabilities, bearing in mind that *Dr. Reljanović's* research is limited to their discrimination in education and employment. Namely, the author considers these fields indicative of good and bad practices, as well as systemic and structural discrimination. In this sense, the paper examines the necessity of proactive actions by the states and introducing sanctions for multiple and intersectional discrimination against girls and women with disabilities. This is followed by a review of the states' obligations to build a solid legal framework for protection against discrimination and to act with measures aimed at increasing the visibility and achieving the factual equality of girls and women with disabilities.

The implementation of the Convention on the Rights of Persons with Disabilities was also analyzed by *Dr. Damjan Tatić*, legal advisor to the National Organization of Persons with Disabilities of Serbia and former Vice-president of the Committee for the Rights of Persons with Disabilities. *Dr. Tatić* devoted his paper to the recommendations that this supervisory body of the United Nations sent to the Republic of Serbia in 2006, regarding the position of women and girls with disabilities. The author particularly discussed the issue of acting on the recommendations of the Committee for the Rights of Persons with Disabilities, and identifying concrete measures that can contribute to the prevention of discrimination and greater inclusion of women and girls with disabilities in society.

Dr. Valentina Gennadyevna Mikrina, Associate Professor at the MGIMO (U) of the Russian Ministry of Foreign Affairs (Odintsovo branch), examines the impact of multiple discrimination on the exercise of human rights by women and girls with disabilities. This issue was discussed in the context of the key sources of law of international origin, as well as the relevant legislation of the Russian Federation. This is just one in a series of papers offering a more detailed insight into the legislation and case law of certain countries, which are very valuable for comparing different solutions, and for identifying

problems that impede the realization of human rights of women and girls with disabilities in almost all of the European countries. Identifying these problems and gaining insight into legal and other measures to overcome them, as well as learning about the effectiveness of those measures, will help in finding the solutions that can serve as inspiration or a template for other legislators, but also with identifying the major obstacles that accompany the realization of human rights by the vulnerable and marginalized individuals and groups.

Starting from the premise that the consequences of endangering and damaging the environment hit women and girls with disabilities particularly hard, *Ljubomir Tintor*, a Ph.D. student at the University of Belgrade Faculty of Law, analyses the environmental protection regimes that take gender equality into account. More specifically, these are the climate change, biodiversity and desertification regimes. They were analyzed in this paper from the perspective of disability as well as the principle of gender equality, with special reference to relevant international instruments. Importance of this paper is reflected in the fact that the author made useful *de lege ferenda* proposals for improving the position of women and girls with disabilities, especially in terms of overcoming the harmful effects of climate change.

Ljubomir Tintor's paper also deals with forced migrations (due to the harmful effects of climate change), but a proper evaluation of the position of women and girls with disabilities has to include a comprehensive assessment of the position of women and girls in mixed migration flows. The paper written by *Bojan Stojanović, Bogdan Krsić and Zoran Stojanović* from Belgrade is dedicated to this issue, as they exhaustively analyzed the rights of female asylum seekers, refugees and migrants with disabilities. It has been proven that the aforementioned persons represent one of the most vulnerable groups, whose position has been further aggravated by the Covid-19 pandemic.

Ivana Nikolić, a Ph.D. student at the University of Belgrade Faculty of Law presents in her contribution the results of research related to international instruments that can facilitate the prohibition of forced sterilization of women and girls with disabilities. As this tool of systemic discrimination of marginalized groups is still used in practice, the authoress explains the reasons behind such actions, as well as the fundamental problems that are causing it. The paper then continues with the research into the inability of international law to eradicate forced sterilization, and proposes measures to establish alternatives.

The part of the edited volume that is closely devoted to human rights is rounded off by two papers written by young authors who researched the protection of the rights of women and girls with disabilities, in special administrative proceedings before the ombudsman, as well as in court proceedings. *Vasilije Marković*, a Research Assistant at the Institute of Comparative Law in Belgrade, writes about the role of the ombudsman in fighting intersectional discrimination against women with disabilities. The advantages of this legal instrument are flexibility and wide range of actions of the ombudsman, and the key proposal for its improvement is to have a single, integrated institution that would provide protection against discrimination on all prohibited grounds. This proposal has been formulated upon detailed analysis of the problem of establishing an appropriate comparator in intersectional discrimination, as well as upon analysis of solutions in the Swedish and Croatian legal

systems, and a detailed consideration of the legal framework and case law of the Commissioner for the Protection of Equality in the Republic of Serbia.

On the other hand, the paper of *Milica Midžović*, a Teaching Assistant at the University of Priština with a temporary seat in Kosovska Mitrovica Faculty of Law, deals with the marginalization of women with disabilities in the judicial system of the Republic of Serbia. By ratifying a series of international conventions, the Republic of Serbia undertook to provide everyone on its territory with all the needed protection against discrimination, while the main obstacles to the effective realization of judicial protection of the right to equality are, in the opinion of the authoress, related to the length of the court proceedings, the lack of trust in the courts, and insufficient training and insensitivity of judges to discrimination. This is accompanied by the lack of information of persons with disabilities about the possibility of obtaining judicial protection against discrimination, as well as the inaccessibility of courts.

The third part of the edited volume is dedicated to civil and family law. In this part, *Prof. Dr. Katarina Dolović Bojić* and *Doc. Dr. Snežana Dabić Nikićević* from the University of Belgrade Faculty of Law analyse the position of persons with disabilities in the field of legal capacity (legal agency). This traditional, although very much current topic is viewed from the position of possible deprivation of legal capacity, as well as from the position of providing legal aid (assistance) to adults. One of the reasons for writing this paper is the upcoming incorporation of solutions and ideas from the Convention on the Rights of Persons with Disabilities into the legislation of the Republic of Serbia, through amendments to the Family Law. The authors point to the presumed reasons for the changes, but also to the expected legal consequences and results, with arguments for the different interpretations found in literature.

Associate Professor of the University of Belgrade Faculty of Law *Dr. Uroš Novaković* investigates the problem of domestic violence from the perspective of women with disabilities. At the same time, the author opted for a multi-disciplinary approach, and considered the problem in question from the perspective of the criminal, family and labour law. The research sample includes sources of law of international origin, as well as sources of law of the Republic of Serbia. The paper emphasizes the breadth of the spectrum of behaviour that can be used to establish domestic violence over women with disabilities. Also, all the major obstacles that women with disabilities face in terms of using the safe house accommodation have been identified – from the inaccessibility of these facilities to the absence of sign language interpreters.

The edited volume also contains two papers on company law, since important instruments for empowering women with disabilities can be found in this field. *Dr. Nebojša Jovanović*, Full Professor at the University of Belgrade Faculty of Law, meticulously analyzed the legal position of companies for employment of persons with disabilities in the Republic of Serbia. This issue is analysed both from the perspective of the legal regime of company creation, legal form and activity, as well as from the perspective of the economic privileges these companies enjoy, especially in the form of state aid. This includes a comparison of the legal position of companies for employment of persons with disabilities with the position of other employers who have the obligation to hire persons with disabilities, but do not have the same privileges.

The establishment of social enterprises can contribute to the empowerment of women with disabilities, which is why *Tijana Kovačević*, Ph.D. student at the University of Belgrade Faculty of Law, analyzed the key legal aspects of employing people with disabilities in social enterprises. This included the advantages and disadvantages of the development of the so-called third sector, as well as similarities and differences between social enterprises, on the one hand, and “traditional” enterprises and other legal entities, on the other hand. This gives an insight into the manner and conditions under which social enterprises contribute to the creation of jobs, as well as the manner in which they support and/or substitute the welfare state, especially with regard to issues related to social protection.

The edited volume also includes several papers that analyse the employment and work of women with disabilities, including the difficulties they traditionally face when seeking and maintaining employment, as well as difficulties with advancement in their professional careers. *Dr. Ljubinka Kovačević*, Full Professor at the University of Belgrade Faculty of Law, examines the risk of discrimination against persons with disabilities in the world of work, their employment models (sheltered employment, open market employment with or without reasonable accommodation, and quotas for employment of persons with disabilities) and the combination of negative stereotypes related to disability and negative gender stereotypes that accompany the employment and work of women with disabilities. A part of this paper is dedicated to the fundamental concepts of intersectionality, as well as the definition, regulation and comprehension of intersectional discrimination, and the challenges with implementation of the intersectional approach in law. In her paper, Prof. Dr. Kovačević reviews the advantages and challenges of implementing the intersectional approach in labour law, and concludes that accepting this approach could help with the efforts to improve the employability and working conditions of women with disabilities. At the same time, the paper points out the difficulty of establishing a comparator in intersectional discrimination, as well as the fact that the concept of intersectionality is somewhat vague, making it impossible to establish a clear scope of application of anti-discrimination legislation, or the intensity of its impact on social relations. Finally, the authoress points to the proactive duties of public authorities and employers aimed at promoting equality, and to social dialogue, as powerful instrument for preventing intersectional discrimination.

Dr. Lazar Jovevski, Full Professor at the “Ss. Cyril and Methodius” University “Iustinianus Primus” Faculty of Law, devoted his paper to issues related to the position and treatment of women at work and in employment relationships in general, as well as the position and treatment of women with disabilities. In addition to the legal analysis, the research of Prof. Dr. Jovevski includes wider social, psychological and ethical issues in relation to the dilemma of whether women are a special group in the world of work or are completely equal to men. The author also analyses the need for special double protection of women with disabilities in the labour market.

The position of women with disabilities on the labour market was also analysed by the University of Cadiz Professor *Dr. Thais Guerrero Padrón*. The authoress paid special attention to the issue of integration of women with disabilities into the labour market in Spain, which was viewed through the prism

of the findings of the United Nations Committee on the Rights of Persons with Disabilities regarding compliance of Spanish legislation and case law with the Convention on the Rights of Persons with Disabilities. It was concluded that in Spain, the concept of disability and the treatment of disability at the political and legal level were developed in parallel with the change of approach to disability at the international and European level, together with the affirmation of the genderization of the disability policy. Furthermore, the paper carefully analyzes recent legal measures adopted in response to the findings of the Committee on the Rights of Persons with Disabilities, with delicate consideration of their actual effectiveness in such a peculiar labour market as the Spanish one. This includes a review of the Law 15/2022, of July 12, 2022, which introduced the concept of intersectional discrimination against women with disabilities into the Spanish law.

Associate Professors at the Cádiz University *Dr. Vanesa Hervías Parejo* and *Dr. Francisca Bernal Santamaría* wrote a paper dedicated to the discrimination of young women with disabilities in the labour market. This topic was analysed from the perspective of intersectionality, based on the idea that the position of young women with disabilities cannot be understood or explained by only taking into account the gender perspective, and that it is necessary to articulate multiple variables that are interconnected and reproduced through their mutual relationship. These issues were discussed in the light of the relevant norms and public policies in Spain, as well as from the point of view of feminist social work. Special attention in the research was paid to the influence of the family environment and strategies for reconciling personal, family and professional life on the training and employment of women with disabilities.

The position of women with disabilities in the Spanish labour market is also discussed in the paper of the Cadiz University Professor *Dr. M.^a Isabel Ribes Moreno*. The main focus of the paper is the wage discrimination, where Spain and other EU Member States were included in the sample. It also includes valuable analysis of the initiatives for adoption of the Minimum Wage Directive in the European Union and the Pay Transparency Directive. These initiatives were analysed in relation to the earnings of women with disabilities. In addition, the authoress offered suggestions for improving the situation in Spain and the European Union. Her conclusions are convincingly illustrated by statistical data on the unemployment rate, employment rate and activity rate in the European Union, while highlighting the problems related to the absence of reliable and comparable statistics, which is crucial for complete understanding of the real impact of disability on wages.

Dr. Valentina Franca, Associate Professor of the University of Ljubljana Faculty of Public Administration and *Adrijana Mitrić*, Teaching Assistant at the University of Ljubljana School of Economics and Business investigate the problem of workplace violence by third parties. Their research included employees in public institutions for higher education in the field of social sciences in Slovenia, with special attention paid to employed women with disabilities. This paper offers insight into the way workplace violence by users of the employer's services is regulated in international and Slovenian law, and gives proposals for the protection of vulnerable categories of employees from third-party violence.

The group of papers dedicated to the labour law aspects of the position of women with disabilities was enhanced by the paper “The role of trade unions in tackling multiple and intersectional discrimination of women with disabilities”, written by *Dr. Tijana Ugarković* and *Marko Jović* from Belgrade. The paper examines the intersection of disability and gender in the field of labour law and social security law. It delves into the importance of connecting associations of persons with disabilities with trade unions, which, although not recognized in the Convention on the Rights of Persons with Disabilities, do have a mechanism for social dialogue, most effectively realized in practice through the principle of participation. The authors skilfully point out that all citizens must participate in achieving social change concerning equality, and that the special responsibility lies with the state and with the social partners. Also, it wouldn't be possible to achieve transformative equality without the trade unions, nor to strengthen social solidarity or participatory democracy.

The paper written by *Dr. Mila Petrović*, Assistant Professor at the “Union” University Faculty of Law in Belgrade, offers the results of the research into the legal position of employees whose disability was caused by workplace injury or by occupational disease, with notable reference to Serbian law. This research problem deserves special attention, considering that in the Republic of Serbia, persons with limited capability for work have a disadvantageous position on the labour market, but are also denied benefits from the pension and disability insurance. Special attention in the research has been devoted to women with disabilities that were caused by occupational risks during the Covid-19 pandemic.

Jovana Rajić-Čalić, Research Assistant at the Institute of Comparative Law in Belgrade, examined the issue of discrimination against girls and women with disabilities in the fields of education and employment, since discrimination in the field of education often “spills over” into the field of employment. Therefore, the problems of unemployment and poverty of women with disabilities can be explained, among other things, by their insufficient education, i.e., the lack or obsolescence of knowledge, skills and abilities, due to discrimination of persons with disabilities in the field of education, as well as by the mismatch between the education system and the demands of the labour market. In this regard, it is important to note that girls and young women with disabilities drop out of primary and secondary school more often, but also less often graduate from colleges than boys and young men with disabilities, who are much more often encouraged to look for work, while girls and women with disabilities are more often directed towards the social benefits.

Gender stereotypes that accompany the work of women with disabilities, as well as women in general, are often related to the difficulties of harmonizing professional and family duties. This is particularly serious for women with disabilities, especially when we take into account the difficult access to child care services, as well as the fact that such services are often expensive, so even when they do exist, they do not facilitate the integration of women with disabilities into the labour market. Also, mothers with disabilities often face the prejudice that they are not capable of being good parents, which can further deter them from using assistance services, for fear that their child will

be taken away from them. Some of these problems were pointed out by *Mina Kuzminac*, Teaching Assistant at the University of Belgrade Faculty of Law.

These studies are accompanied by research into key social security law aspects of the position of women with disabilities. *Dr. Filip Bojić*, Assistant Professor at the University of Belgrade Faculty of Law, analyses the place of women with disabilities in the pension and disability insurance system. This includes the research of the conditions for exercising the right to old-age and disability pensions, in particular the conditions concerning the minimum length of insurance, since unemployment or intermittent participation in the labour force prevent women with disabilities from contributing equally to the financing of pension and disability insurance. On the other hand, women with disabilities who meet the conditions for exercising the right to these benefits encounter the problem of their modest amount, since unequal pay for men and women for the same work is reflected in the amount of the pensions. In this sense, the author makes several *de lege ferenda* proposals for improving the protection of women with disabilities against the risk of old age, disability or death of a family member, both within the framework of mandatory social insurance and through their participation in voluntary pension funds.

There are three papers in the edited volume dedicated to the (formal and informal) care of persons who are dependent on the care provided by others, since persons with disabilities may need a whole range of services in the field of healthcare and social protection, which can be provided either at home or in institutions. The topicality of this research is conditioned by the increase in the number of people who, due to old age, illness and disability, need help for normal functioning. *Dr Marija Dragičević*, Assistant Professor at the University of Niš Faculty of Law, provides a critical review of the system of long-term care in the EU Member States, as well as in the Republic of Serbia. This research is very valuable because of the author's proposals to improve the Serbian long-term care system, since exercise of the relevant rights is accompanied by a series of problems and challenges, as long-term care hasn't been set up as a separate branch of social insurance, and because various forms of informal assistance exist. Consequently, a more skilful balancing between institutional and non-institutional support, between material and non-material aid, and between activities at the national and local level is suggested.

This is followed by two papers examining family (informal) caregiving, which is discussed in the light of the principles of solidarity and equality, with special reference to gender equality, since women regularly appear as family caregivers. *Dr. Sanja Stojković Zlatanović*, Research Fellow at the Institute of Social Sciences in Belgrade, investigates the possibilities for the reconceptualization of family (informal) caregiving in the period after the pandemic, using the examples of Japan, Germany and Sweden, as countries where the position of family caregivers has been legally regulated. Based on these insights, proposals were formulated for regulating the position of caregivers in the labour and social security law of the Republic of Serbia. Special attention in the research has been devoted to the challenges of recognizing, realizing and protecting the basic labour and social rights of vulnerable social groups, taking into account the limitations of the mod-

ern social security system in the process of adapting to changed circumstances in the world of work and society in general.

The paper written by *Kristina Balnožan*, Senior Judicial Associate for the Basic Court in Pančevo, deals with the issue of family (informal) caregiving. The author deals with the problem of unpaid work of women related to the care of persons with disabilities, as well as other family members who are dependent on the care provided by others, and in the light of the premise that effective protection of persons with disabilities presupposes the provision of appropriate support to the caregivers. The author also analyses the impact of the crisis caused by the Covid-19 pandemic on the regulation of the position of caregivers, since the crisis, besides causing more negative consequences, also influenced the increased interest in informal care. In this sense, the necessity of designing and implementing a series of labour law and social security law mechanisms of importance for preserving and improving the skills and abilities of caregivers, and for ensuring their economic and social security, has been pointed out.

A separate chapter in the edited volume has been dedicated to tax law, since the position of persons with disabilities in the tax system is important for prevention of intersectional discrimination. The ability-to-pay principle mandates the assessment of the tax burden in proportion to the taxpayer's economic capacity, which is why tax systems should take into account the impact that disability can have on the taxpayer's economic capacity. The same applies to the taxpayer's economic capacity of persons who provide care and financial support to disabled family members. *Dr. Teresa Pontón Aricha*, Associate Professor at the Cadiz University Faculty of Law, investigated this issue in light of the personal income tax regulations in Spain, and detailed its contribution to preventing double discrimination of women with disabilities. In this sense, important proposals were made for the improvement of legal solutions in this field, with the aim of achieving full equality in the tax system.

The aforementioned issue was also considered from the perspective of the tax system of the Republic of Serbia, in the paper written by *Lidija Živković*, Teaching Assistant at the University of Belgrade Faculty of Law. The authoress examines the ability of the Serbian tax system to take into account the impact of disability on the taxpayer's economic capacity, as well as on the economic capacity of taxpayers who provide care and financial support to persons with disabilities. This included an assessment of the broader tax related legal framework from the point of view of the needs of persons with disabilities, as well as individual tax related legal provisions specifically intended to improve the (economic) position of these persons. Importance of the results of this research lies in the fact that the insensitivity of the creators of the Serbian tax policy to the needs of citizens who are economically disadvantaged due to their gender, disability or other personal characteristics is pointed out.

Although the issue of employment quotas for persons with disabilities had already been discussed in several papers in the chapter of the edited volume devoted to the labour law and employment policy, a proper understanding of this problem requires that it be considered from the perspective of law and economics. The paper of the National Coordinator of the International Labour Organization in the Republic of Serbia *Dr. Jovan Protić* is dedicated to

the effectiveness of the quota system for the employment of persons with disabilities in the Republic of Serbia. The author doesn't only analyze the ability of employment quotas to increase the employment rate of people with disabilities, but also the effectiveness and economic aspects of employment quotas in general. The results of the research are significant for understanding the position of persons with disabilities, since the quota system enables the integration of these persons into the labour market, primarily thanks to the increase in labour supply, the reduction in expenditures for social transfers and the increase in GDP *per capita*. We believe that the readers of the Edited volume will find the author's suggestions for improving the legal framework towards ensuring greater effectiveness of employment quotas for persons with disabilities, that is, ensuring their greater employment, useful.

Although protection of persons with disabilities under the criminal law is the last resort (*ultima ratio*), it has to be considered to get a full understanding of the legal position of women and girls with disabilities. It is from this perspective that the Full Professor of the University of Belgrade Faculty of Law and Judge of the Constitutional Court of Serbia *Dr. Milan Škulić*, and Associate Professor at the same faculty *Dr. Vanja Bajović*, decided to investigate the key aspects of sexual abuse against women with disabilities in Serbian criminal law and case law. This included a meticulous consideration of the features of the criminal offence of sexual abuse of a helpless person, as well as the possibility to redefine it in accordance with The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). This research seems significant due to the fact that women with disabilities are often exposed to various forms of abuse, including sexual abuse, but that the official statistics related to reporting and conducting criminal proceedings for the crime of sexual abuse of a helpless person are defeating. On the other hand, it was pointed out that the Criminal Code of the Republic of Serbia defines the criminal offense of sexual abuse of a helpless person, in correlation with the criminal offense of rape, as non-consensual sexual acts. Therefore, the basic feature of this criminal offense is exploitation of the victim's helplessness, which threatens to incriminate voluntary sexual relations of persons who are considered "helpless". It's important to point out that Family Law classifies sexual relations with a helpless person as a form of domestic abuse. Voluntary consent of persons with disabilities has also been critically re-examined, as they often have no other option but to agree to the sexual abuse, in fear of consequences of refusal and due to their dependent position on the perpetrator.

The complex issue of sexual offenses committed against women and girls with disabilities is discussed in depth by *Dr. Nataša Mrvić Petrović*, Full Professor and Principal Research Fellow at the Institute of Comparative Law in Belgrade, and *Dr. Dragan Obradović*, Research Associate and Judge of the High Court in Valjevo. Their paper cites solutions from German and Slovenian law, and emphasizes the relevance of the provisions of the Istanbul Convention. In addition to the key substantive legal issues, the paper also illuminates sensitive points of the procedure in which the victims are persons with disabilities, especially persons with mental disorders. Namely, women and girls with disabilities face a high risk of sexual violence, and they encounter numerous difficul-

ties in terms of obtaining criminal protection. The authors, therefore, analyze the crucial obstacles in criminal prosecution and trial, and indicate the need for changes in the approach to regulating crimes of sexual violence (rape and forced intercourse with a helpless person). Changes in criminal legislation can, however, improve the protection of sexual integrity of women with disabilities only if they are accompanied by changes in the social approach to this group of people.

Aleksandar Stevanović, Research Associate at the Institute for Criminological and Sociological Research in Belgrade, analyzed the position of persons with disabilities in the criminal justice system. The author considered the legal and criminological aspects of this issue, and identified material and procedural provisions of the criminal legislation that can lead to indirect discrimination of persons with disabilities. He also analyzed the content of major criminological theories, the current paradigm of anti-criminal reaction, as well as the practical application of the criminal justice mechanism in case of persons with disabilities.

As the roots of discrimination against women with disabilities are found, among other places, in the ideological and value systems established by religions, especially the traditional ones, *Dr. Branko Rakić*, Full Professor at the University of Belgrade Faculty of Law devoted his paper to the Christian (East and West), Islamic and Jewish views of women and persons with disabilities, both within the organizational structure and activities of the church and religious communities, and society in general. The author cleverly concludes that the views of the so-called Abrahamic religions about the position of women and persons with disabilities in the context of implementation of religious rules as state rules or the influence of religions on the construction of state legal systems – must be analyzed through the historical conditions in which these religions originated and developed. In addition, it is necessary to take into account the essence of their teachings, i.e. the fact that the so-called Abrahamic religions are the religions of love, mercy and equality.

Finally, the readers of the Edited volume have the opportunity to get to know the results of the research of the position of women and girls with disabilities from the sociological perspective. The paper written by *Gordana Rajkov*, who unfortunately passed away in 2022, and *Sanja Nikolin*, offers the results of the research of participation of persons with disabilities in political life. This important issue was examined in the light of elections held in the Republic of Serbia during the Covid-19 pandemic, with the analysis of pandemic impact on the behavior of persons with disabilities in Serbia as voters and more generally, as active citizens. The authors suggest urgent short- and medium-term measures for eliminating irregularities in the legal system, as well as measures for the improvement of polling stations' accessibility and safety. This particularly included proposals concerning inclusion of alternative voting methods and inclusive legal reform.

Mila Đorđević, Teaching Assistant at the University of Belgrade Faculty of Law, discusses the issue of accessibility of cities in the Republic of Serbia for women with disabilities. This issue was investigated from the perspective of social sustainability, as a concept that presumes full integration of all residents of a territory, regardless of their individual characteristics. In this sense, the interaction between gender and disability in relation to the social sustainability

of cities was examined, especially taking into account the safety of women and persons with disabilities and their opportunities for movement within cities.

The work of *Dr. Filip Mirić* from Niš draws attention to the real problems of people with disabilities, especially regarding their adaptation in the social environment. The author clearly points out the key problems and gives his opinion and recommendations for how to overcome them or mitigate their impact. In addition to the scientific value, Dr. Mirić's findings also have a practical value, because almost all issues of importance for successful communication with persons with disabilities have been considered. This paper is particularly valuable because it provides ideas for further extensive scientific research on a sample that would include a significant number of people with different forms of disability.

Pavle Novevski, a trainee lawyer from Belgrade, analyzes the role of the media in the field of discrimination against women and girls with disabilities, since the media play an important role in shaping modern society, primarily by influencing the creation of ideas and determining what is acceptable in a society and what isn't. Visibility in the media has therefore become a presumption of overall visibility, which is why the author points out that the media, as a rule, do not provide visibility to the marginalized and vulnerable groups. Therefore, the paper analyzes the role of the media in the discrimination of women and girls with disabilities from both the Serbian and international perspective. The author's findings are illustrated by the media image of women with disabilities, with a focus on the (lack of) space that is given to their presence and their voice; the author also provided useful suggestions to improve this situation.

The editors of the Edited volume owe their deepest gratitude to the authors for their enthusiasm, for their great effort and for the excellent papers that enriched our collection. Having in mind the importance of participation in creating a truly inclusive society, some of the authors are persons with disabilities. Also, some of the authors are Ph.D. students. This gives us great pleasure, especially because of how important it is to sensitize young people regarding prevention of discrimination of persons with disabilities and because of how important it is to get them accustomed to noticing research problems in this field.

Distinguished reviewers of Edited volume and distinguished reviewers of papers from Bosnia and Herzegovina, Montenegro, Italy, Mexico, Poland, Portugal, Republic of Srpska, North Macedonia, Slovenia, Serbia, Croatia and Spain made significant contributions to the published papers. Their hard work, helpfulness and appropriate and encouraging suggestions were very valuable. Without their contribution, the papers in our Edited volume wouldn't have been as good, for which we would like to express our deepest gratitude.

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EXPLORING THE POSSIBILITIES OF RE- CONCEPTUALISING THE FAMILY (INFORMAL) CAREGIVING IN POST-PANDEMIC PERIOD – SOCIAL VALUES, ECONOMIC OBJECTIVES AND LEGAL PRINCIPLES

Abstract

Approaching the concept of family caregiving presupposes the analysis of different theoretical standpoints and public policy frameworks regarding family, state, or both family and state i.e. share responsibility to care, by identification of best practice model. Furthermore, the principles of solidarity, equity, particularly gender equity, having in mind that women's involvement in caregiving is dominated, followed by holistic and human-centered approaches, need to be considered adequately, particularly as a part of the Building Back Better concept in the post-Covid period. The recent economic objectivities invoked by the international policymakers before the Covid-19 crisis and settled as sustainable economic growth point to the importance of reducing socio-economic inequalities with respect to vulnerable populations such as, certainly, women and people with disabilities. By clarifying the socio-economic and legal status of family caregivers, in terms of universal ethical values of the society, economic objectives, and legal principles, the inequality, discrimination, and exclusion issues of both categories of vulnerable populations could be addressed by targeting measures to mitigate the economic and social impact of the crisis on the most vulnerable ones. Given that, the paper aims to contribute to the ongoing scholarly debate of human rights and policy challenges regarding different categories of vulnerability in the social security systems due to weaknesses of communities, countries, and institutional structures to recover from hazards and become more resilient to future disasters.

Keywords: *Family (Informal) caregiving; Gender equity; Socio-economic values; Legal principles; Comparative policy research.*

I INTRODUCTION AND BACKGROUND OF THE STUDY

The Covid-19 pandemics undoubtedly caused multiple negative implications to individuals' daily life, particularly, to those considered as vulnerable populations, i.e. adults with chronic health conditions and individuals with physical and cognitive impairments. Additionally, the burden of public health

crisis has been also transmitted to those considered as multiple vulnerable i.e. elderly populations, meaning that many older individuals experience acute or chronic medical conditions that require assistance and support on daily bases. On the other side, the limitation of access to health and social protection care facilities, as well as support services for care recipients in terms of implementing the social distances policies during the pandemic period, impact deeply the socio-economic status of those who provide the long-term care to their family members i.e. the family (informal) caregivers by exacerbated the caregiving crisis. Given that, many studies¹ have shown that family caregiving will be the most challenging issue of the social policies of almost every country in the post-pandemic period, having in mind the phenomena of population aging that is expected to progress in the future. The research questions that arise in this regard are predominantly linked to the underlying values embedded in social welfare state policy concept, in its broad sense. The ethical, cultural, and social values of the state impact the core questions of drafting conceptual and policy framework of the institute of family caregiving, particularly referring to the responsibility to care (debates regarding Family *versus* State responsibility to care), economic objectives of the cost-effectiveness publicly financing the family caregiving, and following legal consideration of the notion. Thus, from a legal standpoint, the principles of solidarity, equity, particularly gender equity, and autonomy of family caregivers are crucial to address. It will consequently impact exercising basic socio-economic rights – the right to work, the right to non-discrimination² as well as the right to balance work and family life of family caregivers. Considerably, middle-aged women are most affected by family caregiving — predominantly forced to choose between leaving jobs and caring for care-needy family members – requiring an adequate normative solution. In contemporary, industrial society there is an increase of women providing care to those who suffer from long-term and complex health problems including the older ones, in a completely unpaid, informal way.³ It does not mean that men are not affected, but much less than women, while some studies (dealing with analyzing court decisions) in the United States (US) have shown that men like women face prejudice and discrimination practice in the workplace when trying to fulfill both, work and family caregiving responsibilities.⁴

1 See Yoko Niimi, *Juggling paid work and elderly care provision in Japan: does a flexible work environment help caregivers cope?* (2021), 1-16; Nicolle P. G. Boumans and Elisabeth Dorant, 'The relationships of job and family demands and job and family resources with family caregivers' strain', *Scandinavian Journal of Caring Sciences*, Vol. 35, No. 2, 202; Sean Fahle and Kathleen McGarry, *Caregiving and work: The relationship between labor market attachment and parental caregiving* (2017).

2 The development of modern labour law presupposes the increase in the scope and level of protection of vulnerable workers as well as the introduction of additional measures to avoid discrimination practice. Sanja Stojković Zlatanović, *Genetički i drugi zdravstveni osnovi diskriminacije na radu* (2019), 155.

3 Patricia Frericks, Per H. Jensen and Birgit Pfau-Effinger, 'Social rights and employment rights related to family care: Family care regimes in Europe', *Journal of Aging Studies*, Vol. 29, 2014, 66.

4 Joan Williams, Shauna Shames and Raja Kudchadkar, *Ending Discrimination Against Family Caregivers* (2003), 1.

While a number of studies have dealt with empirical analyses of sociodemographic and mental-health status characteristics (such as increased depression, anxiety, and lower quality of life), including overall well-being of family caregivers, far too little attention has been paid to revealing legal situation and the quality and level of social rights for family caregivers. Among them, studies analyzing social care policies and normative solutions of providing (informal) family care to those in need in European countries are dominated, by finding differences in the institutional framework and family care regime among representative European countries.⁵ Furthermore, the debates continuous about the best policy approach toward setting the financial support regime for caregivers, arguing two different models – providing direct or indirect financial support through the fiscal, and social security system or by expanding the protection measures, and providing additional rights through amending employment and labour regulation. However, undoubtedly, many findings showed rapid changes in labour and social protection regimes and consequently in family caregiving impacted by both demographic, and changes in economic policy, having a serious effect on working status, attachment to the labour market, and well-being in general of those who provide long-term care. Having said that, achieving sustainable development goals determined by the 2030 United Nations Agenda of Sustainable Development (2015) in terms of SDG 8 (decent work and economic growth), SDG 5 (gender equity), and SDG 10 (reduced inequalities) presuppose rethinking the institute of family caregiving, by revisiting current normative framework and filling the gaps of status-protection measures for family caregivers. After all, the digital transformation and Industry 4.0 will inevitably change the labour market, business model, and work organization. Greater flexibility of work arrangements with portable devices (computers, tablets, and smartphones), and improvements in internet connectivity and infrastructure will impact on standard employment relationship model introducing the novel, hybrid model of working ‘anywhere, anytime.’ Accordingly, Niimi has already drawn attention to the relationship between flexible work arrangements and the ability to combine paid work with family caregiving responsibilities, by analyzing the Japanese legislation on the support systems for caregivers.⁶ The Japanese social legislation is rare because introduces flexible work arrangements designed specifically for working caregivers which could represent a legislative interesting model for consideration. On the other side, in most European countries, the (conservative) welfare model of the state dominates where social rights mostly derive from formal employment relationships, but recently many European countries have supported the formalization of family caregiving introducing or extending the social rights of those who provide

5 See Frericks, Jensen and Pfau-Effinger, *op. cit.*, 66-77; Janice Keefe and Beth Rajnovich, ‘To Pay or Not to Pay: Examining Underlying Principles in the Debate on Financial Support for Family Caregivers’, *Canadian Journal on Aging / La Revue canadienne du vieillissement*, Vol. 26, 2007, 77-90.

6 Yoko Niimi, *Juggling paid work and elderly care provision in Japan: does a flexible work environment help family caregivers cope?* (2021), 1-16.

care by providing cash payments through social security system or paid care leave options through labor regulation.⁷ The formalization of family caregiving is grounded on collective i.e. shared responsibility approach, and concepts of universalism and de-familiarization of care in terms of debates of choosing the best-practice model – model of family obligation, state responsibility, or shared – family and state responsibility to care.⁸ Moreover, the gender gap in family caregiving is identified as a significant indicator of gender inequality impacted on women's labour status needed to be properly addressed by anti-discrimination legislation.

The aim of this study is to draw attention on importance of legal formalization of the family caregiving by introducing a mixture of social rights and work-related rights for family caregivers due to contemporary concept of achieving the sustainable development goals in post-pandemic period. The family caregiver is defined broadly, as an employed person who provides a broad range of financially uncompensated ongoing care to family members in need due to physical, cognitive, or mental health conditions, regardless of the care recipient's age.⁹ According to Eurostat the participation rate of women in family care activities is significantly higher than that of men in all countries and quite stable – between 94% and 98 %¹⁰ so in the paper, the issue of gender discrimination and protection measures will be particularly address. The in-depth and holistic analysis of underlying societal values and legal principles of family care in the context of approaching a functional/integrated human rights paradigm has been applied, accompanied by the legal comparative method of reviewing the social care policies of various representative countries in terms of (normative) framing the family caregiving. The paper has been divided into four parts. In the first section, demographic and societal changes that influenced increasing family caregiving, followed by a review of the literature examining the impact of the caregiver's responsibilities on workforce participation, and consequently individual employment status will be presented. The second and third sections of the study will deal with legal considerations of the institute of family caregiving aiming to explore more workable solutions to combine work and family responsibilities in terms of basic human rights protection and the development of non-discrimination practice. An overview of the comparative family caregiving models of various representative countries points to offering a best-practice model by setting valuable recommendations in the national domain, thus, filling the current regulative gap.

7 Frericks, Jensen and Pfau-Effinger, *op. cit.*, 67.

8 Keefe and Rajnovich, *op. cit.*, 80-81.

9 Linda Duxbury, Christopher Higgins and Bonnie Schroeder, *Balancing Paid Work and Caregiving Responsibilities: A Closer Look at Family Caregivers in Canada* (2009), 25.

10 Martina Schonard, Ina Sokolska and Johannes Heezen, *Women's rights and well-being in a post-Covid world: Internet of things (IoT) and related abuses, new ways of working, teleworking, tele-learning, unpaid care and housework, women in leadership and decision-making process* (2021), 5.

II SOCIO-ECONOMIC DETERMINANTES OF FAMILY CAREGIVING – CHALLENGES AND OPPORTUNITIES

The phenomenon of population aging is expected to progress in the future by increasing the need for daily care in a long run, but changes in the nature of family structure (lower fertility rates and smaller families, decrease in the marriage rate and the parent-child co-residence rate, higher rates of childlessness, divorce) as well as women's growing participation in the workforce are expected to reduce the availability of family member to provide care to those in need.¹¹ The statistics showed that on average 34.3% of the total population in 20 European countries are family caregivers¹² while according to the Caregiving USA Report, 53 million Americans (accounting for 17.6% share of the total population) are providing unpaid care for relatives and friends, where 61% of them are female.¹³ Hence, these overlapping shifts affect women in particular, who make up approximately two-thirds of family caregivers.¹⁴ At the same time, the labor force participation rate of women has increased requiring the introduction of a care policy model that will provide a way for female caregivers to keep working while also meeting caregiving needs.

As mentioned above, population aging has become the most socio-economic challenge of the century. According to Eurostat, the share of the population aged 65 years and over is increasing in every European Union Member State (EU), EFTA, and candidate country. Furthermore, the population of the EU-27 is projected to continue to age according to Eurostat's baseline projections. Between 2020 and 2050, the share of the working age contingent (20-64 years) in the total population is expected to decline – from 59.1% to 52.0%, and the share of the population aged 65 and above to increase – from 20.6% to 29.5%. Accordingly, the old-age dependency ratio¹⁵ for the EU-27 is projected to increase from 34.8 % in 2020 to 56.7 % by 2050, and the total-age dependency ratio from 69.1% in 2020 to 92.2% by 2050.¹⁶ The indicators of demographic aging indicate similar trends in Serbia. According to the baseline sce-

11 Boumans and Dorant, 568.

12 *Ibidem*.

13 Nationale Alliance for Caregiving, *Report – Caregiving in the USA* (2020), 11.

14 National Academies of Sciences, Engineering, and Medicine, *Reducing the Impact of Dementia in America: A Decadal Survey of the Behavioral and Social Sciences* (2021), 3.

15 The old-age-dependency ratio is defined as the ratio between the number of persons aged 65 years and more over the number of working-age persons (20-64 years); the total-age dependency ratio is defined as the ratio between the sum of the young (aged below 20 years) and the old (aged 65 years and above) over the number of working-age persons (20-64 years).

16 Eurostat, EUROPOP2019 – Population projections at national level (2019-2100), Demographic balances and indicators by type of projection, https://ec.europa.eu/eurostat/data-browser/explore/all/popul?lang=en&subtheme=proj.proj_19n&display=list&sort=category&extractionId=PROJ_19NDBI_custom_3380670

nario of population projections presented in the UNDP's most recent *Human development report for Serbia*, the share of old population (aged 65 and above) will rise from 21.4% in 2020 to 27.1 by 2050. Consequently, the old-age dependency ratio for Serbia is expected to increase from 36.0% in 2020 to 50.0% by 2050, and the total-age dependency ratio from 69.0% in 2020 to 84.0% by 2050.¹⁷ It could be noted that the pace of aging is expected to be somewhat slower in Serbia than in the EU-27 despite similar current level of the process. This is explained by comparatively shorter life span of people in Serbia both current and projected, which means that aging will be mostly fueled from the bottom of population pyramid (low birth rates) in contrast to the EU.¹⁸

While increased life expectancy contribute to achievement of sustainable development goals,¹⁹ almost all countries are faced with the social, economic, and public health costs and challenges of population ageing, and according to the OECD projected population aging rise in old-age dependency ratios will put the financing of pensions, health and long-term care under high pressure.²⁰ The pressure is not only financially expressed in directed cost but also the shortages of human resources (care providers) could not be neglected. In terms of healthcare system functionality, many clinical practice guidelines, also, advocate for the engagement of caregivers in healthcare plans.²¹ Furthermore, the recommendations of the OECD are set to expand the coverage of social security systems, on one side, and advocate better labor market inclusion of women, and other vulnerable populations, on the other, suggesting a mixture of policy measures devided within different sectors (both, health care and social care). All this considered, as the population of older increases over time, the need for care, and the number of those providing care will also increase, policymakers need to offer a comprehensive, integrated, multi-sectoral, and long-term policy framework for family caregivers, by highlighting the importance of taking gender into account when formulating policies in this area. A report of the European Parliament regarding women's rights and well-being in the post-pandemic period stresses the issue of the gender gap in unpaid family care by indicating the principal reason for women's uninvolved in labour market is unpaid care work, where '606 million women of working age have declared themselves to be unavailable for employment or not seeking a

17 Vladimir Nikitović, 'Višeslojna priroda depopulacije u Srbiji – noviji trendovi i izgledi' in D. Vuković (ed.), *Nacionalni izveštaj o ljudskom razvoju – Srbija 2022 – Ljudski razvoj kao odgovor na demografske promene* (2022), 70.

18 *Ibid.*, 56.

19 In the 2013 UN Agenda of sustainable development, the population aging has been mentioned related to the protection of older population as vulnerable group, requiring the adequate policy measures. Pawel Jarzebski *et al.*, 'Ageing and population shrinking: implications for sustainability in the urban century', *NPJ Urban Sustainability*, 1 (2021), 17.

20 OECG, *Ageing and demographic change, Fiscal challenges and inclusive growth in ageing societies*, <https://www.oecd.org/economy/ageing-inclusive-growth/>

21 Patricia M. Davidson, Martha Allison Abshire, Glenn Paull and Sarah L. Szanton 'Family caregivers: Important but often poorly understood', *Wiley Journal of Clinical Nursing*, Vol. 27, No. 23, 2018, 4242-4244.

job due to unpaid care work, while only 41 million men are inactive for the same reason.²² Moreover, according to the International Labour Organization (ILO), the involvement of women in unpaid homework and family care contribute to the higher gender gaps in labour force participation rates while the statistics show that in the developed countries with comprehensive equity and anti-discrimination legislation additional measures of protection such as maternity and childcare benefits encourages women to keep jobs and stay active at the labour market.²³ Having said that, there was also the proposal for the introduction of policy and legal framework for family caregivers, highlighting particularly the position of female caregivers, setting the additional benefits schemes that dates back to the 1990s, when Hyland (1990) pointed to the population aging trends in America, and suggested 'eldercare benefits' that include a mixture of policy measures such as paid care leave for the employed caregivers, and flexible work schedules (e.g. job sharing, reduced work hours).²⁴ Many scholars have, also, argued that providing financial support through social security system and respite for employed family caregivers is necessary because caregiving spans not only families but has broader social implications, particularly in workforce participation.²⁵ Given that, a number of empirical studies examined the effect of caregiving on workforce participation, pointing out the consensus among researchers that have been reached about the adverse effects of caregiving on employment rate, particularly among women.²⁶

III LEGAL INSIGHTS INTO FAMILY CAREGIVING – A GLIMSE TO UNDERLYING VALUES, PRINCIPLES AND RIGHTS

Legal understanding of the institute of family caregiving is mainly linked to the inherent issues of parenthood and parenthood rights and obligations in Family law. The legal construction of caregiving as parenthood meaning equating caregiving with parenthood has been derived from the moral, social, cultural, as well as religious values and beliefs in a particular time period that further impacted on decision-makers to set up the conceptual framework for the model of providing additional benefits to caregivers i.e. whether or not financial support will be introduced and if does would it be from the economic (costs) or social reasons (valuing the care and well-being that is expected to be provided to the population affected).²⁷ For a very long time,

22 Schonard, Sokolska and Heezen, *op. cit.*, 4.

23 Claire Harasty and Martin Ostermeier, *Population ageing: Alternative measures of dependency and implications for the future of work* (2020), 10.

24 Stephanie Hyland, 'Helping Employees with Family Care', *Mountly Labour Review*, Vol. 113, No. 9, 1990, 25.

25 Patricia Davidson and Michelle DiGiacomo, 'Family caregiving: benefits and burdens', *Circulation: Cardiovascular Quality and Outcomes*, Vol. 8, No. 2, 2015, 133–134.

26 Niimi, *op. cit.*, 4.

27 Keefe and Rajnovich, 80.

the conservative approach has been accepted in that regard, grounded in a belief that the natural family, particularly women has the primary obligation to care for dependants without any material compensation.²⁸ The proponents argued the moral incompatibility between the love for family members, considered a part of 'nature' family responsibility, and cash and other benefits for caregiving that could lead to emotional distance and even abuse of dependent family members.²⁹ On the other side, the criticisms of the conservative approach advocate for rethinking the traditional social construct of caregiving by creating an alternative legal status that will coexist with parenthood in a legal regime for caregiving.³⁰ Kapp (2012), based on the recent American case law, argued that 'the morality and materiality are not incompatible', and caregiving could be both, the act of love and the act of pecuniary expectations considering the changes in societal, cultural, moral and family values and beliefs. He found in terms of analyzing court practice i.e. legal claims alleged the cash or other financial benefits by family caregivers, that the legal ground for most of these claims was based on the 'legal theory of value' where caregivers' labour must be compensated on the principle of fairness, and to be paid on the equal bases considering the value of services/care provided.³¹ According to the legal theory of value, in the essence of every legal judgment is the issue of how values and rational choice among them should be interpreted, which further impact the public policy we collectively adopt as well as legal standards that courts choose.³² In that regard, the fair distribution of burdens among all parties concerned is a core question needed to be properly addressed when it comes to the drafting of (family care) public policy and interpretation of often confronting values of the society, particularly in terms of the legal transition process. Although the primary responsibility of providing care to a family member (regardless of the age of the care recipient – child, the old or disabled parent, or another close family member) still stays within the family, contemporary trends and changes in societal values supports the equitable sharing of caregivers responsibilities between family and the state, as well as within the family by advocating the so-called caregiver's networks.³³ Shifts in societal values and derived legal construction of family caregiving are grounded on the development and prevailing of the value of equity (by affirming gender equity and non-discrimination), and the principle of rational choice of every person regardless of biological differences, also pointing to the need to change the legal construction of 'ideal worker'

28 *Ibidem.*

29 *Ibidem.*

30 Melissa Murray, 'The networked family: reframing the legal understanding of caregiving and caregivers', *Virginia Law Review*, Vol. 94, 2008, 390.

31 Marshall B. Kapp, *For Love, Legacy, or Pay: Legal and Pecuniary Aspects of Family Caregiving* (2012), 8.

32 Richard H. Pildes, 'Conceptions of Value in Legal Thought', *Michigan Law Review*, Vol. 90, No. 6, 1992, 1527.

33 Lashewicz *et al.*, *op. cit.*, 91.

in a capitalistic society as a person who has no caregiving responsibilities.³⁴ Thus, it could be noted, that the process of reframing the traditional-conservative legal construction of family caregiving started with the affirmation of the principle of gender equity and the right to non-discrimination due to the status of caregivers that most affect women in the area of labour, followed by the principle of autonomy and proclamation of the right to work-family balance. Regarding the principle of autonomy, ordinarily, the caregiving has been provided on a voluntary basis but the question arises – is this actually true or the caregiver does not objectively make a choice considering the prevailing moral, social, and cultural beliefs and the discrimination practice that prevails in a community and workplace? The studies have showed that many caregivers declared being the subject of discrimination based on caregiving responsibilities, where the discrimination exists when well-performing employees are targeted for personnel actions (such as failure to hire, reduced compensation, failure to promote, lay-offs) based on their roles as caregivers or on assumptions of how they will or could act as caregivers.³⁵ In order to combat the caregivers' discrimination at the workplace besides the statutory proclamation of prohibition of this type of discrimination, it is also important to fully provide the implementation of the right to balance work and family responsibilities. At the level of the EU, Directive 2019/1158 on work-life balance for parents and carers³⁶ was adopted in 2019 with the primary aim to address the women's underrepresentation in the labor market by introducing a set of policy and legal measures that ensure better sharing of family care responsibilities. In terms of family caregiving of importance is the adoption of so-called *carers' leave*, where workers who provide personal care or support to a relative will be entitled to five days of leave per year as well as the right to request flexible working arrangements. The Directive reaffirms the principle of gender equity by promoting the shared responsibilities for care between men and women when drafting the work-life balance policy, in the light of demographic changes of population aging, and increasing the need for informal care in many member states. The aim is to secure remaining in the labor market of those workers with family responsibility, but the Directive when entitling the workers' right to carers' leave does not provide remuneration for the duration of this leave, transferring the burden of caregiving only to the caregiver. It does not support the principle of public-private i.e. shared responsibility to care needed to be grounded on both, economic and social objectives. Economic objectives of care cost-efficiency could also be satisfied by applying financial support policies arguing that it reduces institutional-

34 Laura T. Kessler, 'The Attachment Gap: Employment Discrimination, Women's Cultural Caregiving, and the Limits of Economic and Liberal Legal Theory', *University of Michigan Journal of Law Reform*, Vol. 34, No. 3, 2001, 375.

35 Joan Williams, Shauna Shames and Raja Kudchadkar, *Ending Discrimination Against Family Caregivers – Report*, Program on WorkLife Law (2003), 1.

36 Directive (EU) 2019/1158 of the European parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, *Official Journal of the European Union*, L 188/79, 12.7.2019.

zation of the care recipient and therefore reduces the cost of the health and social care system while social objectives are linked to the value of informal support and intergenerational solidarity of welfare state.³⁷

The social values of equity, autonomy and solidarity matched with their legal counterpart – the right to protection from gender discrimination, the right to balance work and family life, and the right to social protection benefits are embedded in the current EU policy and normative framework of both childcare and long-term (elderly and disabled) care. Given that, we could agree with views mostly expressed in literature that the trends in EU Family Care policy and law derive from concepts of ‘equal employment’ and ‘work-life balance’, but have now been directed to the ‘equal sharing of care’ approach between the gender within the family, that also need to be empowered by ‘public-private equal sharing’ broader approach i.e. sharing care responsibilities between both, the family and state. The broader public-private equal sharing approach has also been linked to the value of solidarity but need to be considered in the context of current societal changes and new global social risks (population aging, public health threats, climate change issues). Thus, the equal sharing approach (at the level of family and at the higher level of family and the state) could be further analyzed in terms of Building Back Better concept. Building Back Better is a policy concept of post-disaster community recovery where the engagement of the state is crucial aiming not only to return to the pre-disaster level of development but also to improve physical, social, environmental, and economic conditions creating more resilient system.³⁸ The concept is linked to the so-called Care economy model (including child care, community-based care, paid family and medical leave, and is defined as system in which workers and families provide services vital to caring for the population impacted an increase in both, income and employment) introduced recently in the USA – by Building Back Better Act that significantly expanded the federal contribution to Medicaid’s home and community-based care as a part of protection measures in pandemic and post-pandemic period. The Building Back Better Act introduces a new national paid family and medical leave program of up to 4 weeks for workers.³⁹ This paid leave program would allow individuals to take time to care for a newborn, care for a family member with a serious health condition, and care for themselves if struck by a personal health problem.⁴⁰ Care economy programs in the USA and wider (also stressed in the United Nations (UN) policy documents) aim to build resilient societies and systems by strengthening care policies with a gender lens, particularly addressing women’s positions as care pro-

37 Keefe and Rajnovich, *op. cit.*, 83.

38 Sandeeka Mannakkara, Suzanne Wilkinson and Tinu Rose Francis, ‘Build Back Better Principles for Reconstruction’ in Beer, M., Kougioumtzoglou, I., Patelli, E., Au, IK. (eds) *Encyclopedia of Earthquake Engineering* (2014), 1.

39 *The economic evidence behind 10 policies in the Build Back Better Act*, The Washington Center for Equitable Growth (2021), <https://equitablegrowth.org/the-economic-evidence-behind-10-policies-in-the-build-back-better-act/>.

40 *Ibidem*.

viders. The strengthening measures are mainly a hybrid in nature combining traditional social protection benefits with work-related protection measures of employment and labor law while some countries are introducing also fiscal measures of tax relief for caregivers. The special focus is on gender issues of combating the discrimination practice based on caregivers' responsibilities.

It is important to note that, when comparing the current EU policy framework in Family (Informal) Care introduced by EU Directive 2019/1158 on work-life balance for parents and carers with its legal counterpart in the US – Building Back Better Act, the normative provisions of the latter are far more favorable for family caregivers by entitling them to 4 weeks paid leave compared to only 5 days unpaid leave per year for EU family caregivers. Thus, the traditional dichotomy between the US liberal (market-oriented) policy approach in social care labeled as non-generous to the poor and vulnerable, and the EU social welfare approach (expressed in the catchphrase of the so-called 'European Social Model' that advocates both, economic growth and, social justice and cohesion) has been brought into question. Could the 'EU welfare state' objectively deal with the challenges of population aging and other global social risks i.e. provide social protection to all vulnerable groups while promoting sustainable economic growth, and addressing properly the ongoing public health, security, and economic crisis? It will be extremely challenging for EU policy-makers, particularly having in mind the differences in the adopted welfare model among EU member states in terms of introduced social protection measures as well as in the size of the budget devoted to the protection of vulnerable populations and redistribution. Van Kersbergen & Vis (2014) stays in the line with Esping-Andersen classification of welfare states by distinguishing three types of welfare state – 1. liberal (found in the US and United Kingdom, market-orientated and favoring private social insurance, where redistribution function of the state in terms of social protection benefits and services to the vulnerable and poor are modest); 2. social democratic (found in the Nordic countries, also tax-financed but the benefits and services are more generous than that introduced in the liberal model with a much broader scope of the population affected) and 3. conservative type of welfare state (characterized for the states of Bismarckian social insurance model, primarily Germany and Austria, where qualification for the social protection benefits and services derives from the pay contribution to the social funds as a part of employment engagements).⁴¹ Given that, Van Kersbergen & Vis argue the fluid and flexible nature of the welfare regimes that depends a lot on the economic resources of the state while the effects of the welfare state on inequality depend on how social benefits and services are allocated and financed.⁴² A strong state with a high labor participation rate and consequently optimal tax capacity will favor to more generous social benefits system, by lowering social inequalities, which could significantly contribute to the more generous benefits for family caregivers.

41 Kees van Kersbergen and Barbara Vis, *Comparative Welfare State Politics – Development, Opportunities, and Reform* (2013), 9-11.

42 *Ibid.*, 15.

IV POLICY AND NORMATIVE FRAMEWORK OF FAMILY CAREGIVING – A COMPARATIVE PERSPECTIVE

Regardless of the very fragmented regimes of the welfare states around the globe, the proclamation of the UN sustainable development goals impacted many states to recognize the necessity of formalization the (informal) family caregiving in terms of reconciliation of family life, work, and care, particularly by improving the employability of women, making caring a visible option for potential carriers. Many European and non-European countries supported the strengthening of the care market, and introduced cash-for-care systems, by combining measures of the social security system (additional cash benefits for caregivers) and work-related measures of care leave options.⁴³ In this section, an overview of welfare regimes of family caregiving in representative countries will be presented, stressing the heterogeneity and diversity of adopted measures impacted mainly by the adopted financial model.

Germany is the country with an increasing need for long-term care services, where the burden of care mostly lies on women of working age, so recent studies point to the importance of finding a best-practice model of reconciliation work and care responsibilities.⁴⁴ German legislation framework comprises the protection of caregivers within the Long-term Insurance Act (SGX IX) implemented in 1995 and 1996 that announced the shift in the German care system from mostly unpaid family care to state organized care as a part of additional 'social insurance' program that was established as a new universal social right. However, the basic responsibility to care still stays on the family while statutory long-term insurance cover only part of the costs. Benefits are differentiated considering the level of care receiver's dependency, and the recipient could choose to receive care in cash or in kind (home care, attendance at day-care centers, and residence in nursing homes) or even combine both.⁴⁵ The option for the care recipient is also to choose care from his family member, where the care allowance amount is lower than that paid for official care from the state agency.⁴⁶ This Law was a pioneer important for German care policy by assigning the special status of 'carrier' for those who provide more than 14h weeks of care, and are not employed or are only part-time engaged.⁴⁷ The care relationship is grounded on a contract between the care insurance and the carer, and the status entitles the carer to old-age

43 Frericks, Jensen and Pfau-Effinger, *op. cit.*, 67.

44 European Commission, Directorate-General for Employment, Social Affairs and Inclusion, *Peer Review on 'Work-Life Balance: promoting gender equality in informal long-term care provision'. Host Country Discussion Paper – Germany: Family care and paid work among working-age women and men in Germany: on the way towards more gender equality?* (2020), 1.

45 Wolfgang Keck and Chiara Saraceno, 'Caring for a parent while working for pay in the German welfare regime', *International Journal of Ageing and Later Life*, Vol. 5, No. 1, 2010, 112.

46 Frericks, Jensen and Pfau-Effinger, *op. cit.*, 69.

47 Keck and Saraceno, *op. cit.*, 113.

pension benefits as well as insurance from accidents at the workplace.⁴⁸ The caregiver is not entitled to protection against dismissal but has the right to unpaid four-week leave in case of sicknesses or for vacation.⁴⁹ In order to improve the caregiver status, particularly, in terms of work-life balance and gender equality, Germany started reform by adopting the Family Leave Act in 2008 and the Family Caregiver Leave Act in 2012, where the latter come into force in 2015. The main novelty was related to leave entitlements from work for family caregivers, divided for short-term, middle-term, and long-term care needs, with the right to claim wage compensation benefits or interest-free loans from the Federal Department for Family and Civil Society Affairs. Thus, for short-term care needs, the employed family member could claim up to 10 working days off with the right to wage compensation, for middle-term care needs, he has the right to a full or partial release from work up to 6 months, and has been entitled to an interest-free loan from the state official body, while for long-term care need, the employed family caregiver could claim so-called 'Family caregiver leave' – to be entitled to partial work release up to 24 months with a minimum working time of 15 hours per week, and also with the right to claim interest-free loan.⁵⁰ The legislation is flexible, the care responsibilities could be shared within the family and in the Covid-19 pandemic period, carers' grants and the leave for short-term needs were extended to 20 working days.⁵¹ The German family care legislation has significantly been improved over time, and it could be noticed that now it provides a wide specter of social and work-related rights for family caregivers whose *sui generis* status was recognized within the system and formalized as such. Family caregivers enter into a special contract-based relationship with beneficiaries, and although the cash payments for caregivers are lower than those allocated for nursing-home care, and depends on the employees'/recipients' contributions during their working ages, the reform of 2008 and 2012 introduces different models of paid leave for caregivers, where the status of family (informal) caregivers were drastically improved – they became formally recognized in the system with the mix of social and work-related rights flexibly settled while the introduction of wage compensations guarantee a certain financial and job stability for both, women and men.

The model of the Sweden's regulation of family caregiving point to the integration of the principles of de-familiarization and universalism in the social welfare system with full state responsibility of providing care to older and dependent populations.⁵² The main characteristics of family caregiving in Sweden are public financing, state responsibility where the family has the

48 Frericks, Jensen and Pfau-Effinger, *op. cit.*, 69.

49 *Ibid.*, 70.

50 European Commission, Directorate-General for Employment, Social Affairs and Inclusion, *op. cit.*, 13.

51 *Ibid.*, 14.

52 Petra Ulmanen, *Family care in the Swedish welfare state: extent, content and consequences*, Work in progress: Paper to the Transforming care conference (2017), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/http://www.transforming-care.net/wp-content/uploads/2017/06/TP13_a-Ulmanen.pdf

autonomy to choose to care for dependants or not, and decentralization of care to local municipalities while the main sources of financing are local taxes.⁵³ This system is labeled as significantly generous among other European welfare states. It means that family members could voluntarily provide care but there is no legal obligation to care, and by amending the Social Services Act conducted in 2009, if the family member decides to provide care, the municipalities became obligated to support caregivers. Particularly, there are two measures introduced to support family caregivers – 1. Carers' allowance, implying the employment relationship between family caregivers and municipality, while the status of caregivers corresponds to the status of the employee in the municipal care services, entitled to the remuneration and social insurance claims; and 2. Leave for palliative care, where the potential caregiver could choose between full-time or part-time leave for maximum of 100 days per person in need with the right to claim the payment for caring during the care period.⁵⁴ Compared to the German policy approach and legislation framework where social insurance schemes do not guarantee the compensation of all costs related to caregiving, depending on wage contributions during the working age period, in Sweden, the costs are covered by the municipality i.e. the state from taxes. It could be noted that in the Sweden system, the principle of equality and autonomy of care providers has been implemented, meaning that the participation of working-age people in labour market has been seen as an important public policy goal while the state takes the responsibility to care for the elderly and dependant populations. It seems that the general conceptual idea is to transfer the traditional social risks such as sicknesses/disability and old age to the state while providing the protection of the status of those who are not at risk i.e. working age population stressing the complete voluntary of family caregiving, by avoiding the discrimination of employed family members.

Japan as a country with the world's most aged population, has approached the issue of increased need for family caregiving, by introducing the policy mechanisms of support to the working family member enacted in the Child Care and Family Care Leave Act (adopted in 1995 and entered into force in 1999).⁵⁵ The Act entitles employed caregivers to continuous leave for up to 93 days per family member in need for long-term needs, and up to 5 days off per year for short-term needs introduced by amending the Act in 2009 and 2010. The Child Care and Family Care Leave Act has been amended on January 2021 by allowing employees to take family care leave on an hourly basis that is also applies to the employees who work part-time (four hours or less per day).⁵⁶ The employed caregiver could opt for flexible working hours

53 Per Gunnar Edebalk, 'Ways of Funding and Organising Elderly Care in Sweden', in T. Bengtsson (ed.), *Population Ageing – A Threat to the Welfare State?* (2010), 76.

54 Sören Hoyer and Nele Reich, *Leave and financial support for family caregivers in EU member states* (2016), 25-26.

55 Niimi, *op. cit.*, 3-4.

56 *Japan: More Flexible Family Care Leave Mandated* (2021), <https://www.shrm.org/resourcesandtools/hr-topics/global-hr/pages/japan-more-flexible-family-care-leave.aspx>

for up to three years and claim the exception from overtime and late-night work during this period.⁵⁷ As is the case in Germany, in Japan as well there is compulsory insurance for elderly care, while in Sweden the insurance system is not introduced, but there is a significant difference in the organization and financing of the insurance system between Germany and Japan. So, in Germany, the insurance is organized within the national sickness fund, and financed by the income of the insurers, while in Japan it is the responsibility of municipalities and financed through taxes.⁵⁸ Furthermore, in Japan, the insurance covers 90% of all costs, while in Germany the insurance covers a much lower amount, but in Japan, compared to Germany, family caregivers could not claim monetary compensation for caregiving within the social security system.⁵⁹

V NOTE: LEGAL GAP IN SERBIAN REGULATION

In Serbian labour and social security legislation there is no provisions dealing with family caregiving. Although a number of civil society organizations dealing with the rights of vulnerable populations (people with rare diseases, people with disabilities, and those in need of palliative care) also supported by the unions (the Association of Independent Trade Unions of Belgrade has recently submitted a request to Serbian Government for the adoption of a special law on Family Caregivers⁶⁰) advocating the family caregiving formalization and recognition within the social and labour system, there is still no moving forward. However, the development of innovative and flexible support programs for populations at risk based on public-private partnership has been argued as a sustainable policy response in terms of the reform process that is ongoing.⁶¹

The Serbian Labour Act provides paid leave for an employed person (those working in the standard employment relationship) for up to 5 days per year for obtaining the marriage status, childbirth, serious illness of a family member, as well as in other cases determined by the general act and employment contract.⁶² Serious illness of a family member implies caregiving services but other more concrete provisions regarding family caregiving are lacking. Also, neither Labour Act nor any other employment regulation contains provisions of flexible work engagements for family caregivers, inferring

57 Niimi, *op. cit.*, 3-4.

58 Per Gunnar Edebalk, *op. cit.*, 77.

59 *Ibidem*.

60 Available at: <https://www.021.rs/story/Info/Srbija/300027/Status-roditelj-negovatelj-ponovo-aktuelizovan-roditelji-objasnjavaju-zbog-cega-im-je-neophodan.html>

61 Sanja Stojković Zlatanović, 'Alternative Care for Children in Social Welfare System – Policy and Legal Challenges', *Serbian Political Thought*, Vol, 74, No. 4, 2021, 138.

62 Serbian Labour Act, *Official Gazette*, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – Constitutional Court decision, 113/2017 and 95/2018 – authentic interpretation, Article 77.

that the status of family caregivers in Serbia is not formalized i.e. normatively framed or institutionalized. Moreover, the Old Age and Disability Insurance Act entitles the beneficiaries of a retirement pension to the right to monetary compensation for help and care of another person, who is due to the nature and severity of the injury or illness in need of assistance, and care to perform daily activities and meet basic life needs.⁶³ However, the provisions of the Old Age and Disability Insurance Act have not specifically referred to the family member who provides care to dependants. The payment would be made to the beneficiary of the pension, making the family caregivers unrecognized and invisible within the system. Given the lack of regulation of family caregiving, the German model could be the most adequate one for legal transplantation in Serbia. Both systems have been grounded on the Bismarckian model of social security, mostly relaid on employees' contributions during the working-aged period, pointing to a shared responsibility of care, among the contributor/beneficiaries, state, and family. However, in order to compile with the principles of (gender) equality and autonomy, caregiving must be voluntarily chosen by those in need and their family member such as the case in Sweden. A mix of social and work-related rights need to be introduced by special law approaching the subject of family caregiving from a holistic, integrated, and shared caregivers/care recipient-centered approach. In Serbia, there is a proposal to amend the Social Protection Act in terms of formalization of family caregiving but the contemporary approaches to the notion stresses also the importance of tackling the impact of labour participation, gender equality, and work-life balance. Thus, the issues of family caregiving need to be addressed by special legislation.

VI CONCLUSION

The societal phenomenon of population aging will definitely impact on increasing demand for caregiving services, so the role of a family member in providing care must not be neglected. Moreover, a gender issue in family caregiving is important to address, but also one should note that how women and men allocate unpaid care work depends on many factors such as social norms, gender stereotypes, and role ascriptions, as well as on institutional and normative frameworks and *vice versa*. The status of family caregivers must be formalized and recognized within the social security and labour system. Broader 'public-private equal sharing' and 'gender sharing' approach within the family has been seen as the fairest, grounded on the principles of solidarity, equality, and autonomy. Consequently, the broader shared approach to family caregiving supports the proclamation and the implementation of the right to work-life balance that has recently been promoted at the EU level by

63 Serbian Old Age and Disability Insurance Act, *Official Gazette*, No. 34/2003, 64/2004 – CCRS decision, 84/2004 – law, 85/2005, 101/2005 – law, 63/2006 – CCRS decision, 5/2009, 107/2009, 101/2010, 93/2012, 62/2013, 108/2013, 75/2014, 142/2014, 73/2018, 46/2019 – CC decision, 86/2019 and 62/2021, Article 41a.

the introduction of the so-called Work-life Balance Directive (Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU). The state-adopted social welfare regime significantly impacts family caregivers' status in terms of generosity and the assignation of social benefits and/or work-related rights. Family caregiving could be an employment model if has been voluntarily chosen by the family member but also additional engagement supported by both, the social security system through social benefits and labour system through paid leave options. Paid leave model needs to be settled considering the calculated period of care recipient need, i.e. short, middle, or long-term care need, such as implemented in the German family care system. Generally, the so-called Care economy sector is expected to grow meaning the demand for care for the elderly and disabled persons will increase drastically, requiring regulation that will ensure decent working and living conditions for potential caregivers, that in the post-pandemic period could provide an opportunity to 'Build back better' through sustainable investments in gender-responsible social security, care, and employment systems.

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ISTRAŽIVANJE MOGUĆNOSTI ZA REKONCEPTUALIZACIJU (NEFORMALNE) PORODIČNE NEGE U PERIODU NAKON PANDEMIJE – DRUŠTVENE VREDNOSTI, EKONOMSKI CILJEVI I PRAVNA NAČELA

Apstrakt

Analiza instituta (neformalnog) porodičnog negovatelja zahteva sagledavanje različitih teorijsko-konceptualnih stanovišta i javnopolitičkih okvira, a vezano za porodičnu, odnosno privatnu, državnu, odnosno javnu ili podeljenu javno-privatnu odgovornost, gde se kao cilj identifikuje utvrđivanje modela najbolje prakse. Teorijski osnov rada počiva na principima solidarnosti i jednakosti, sa fokusom na jednakost polova, a shodno primetnoj dominaciji žena kao pružalaca porodične nege, uz primenu holističkog pristupa predmetu istraživanja, kao i pristupa usmerenog ka čoveku-građaninu. Osim toga, primenom uporednopravnog metoda, odnosno analizom normativnih rešenja odabranih država – Nemačke, Švedske i Japana, koje su regulisale status porodičnih negovatelja, daje se predlog za definisanje socijalnopravnog, odnosno radnopravnog statusa ove kategorije u domaćem pravu *de lege ferenda*, budući da je primetna potpuna odsutnost pravnih pravila u ovoj oblasti. Istraživanje, u krajnjem, ima za cilj da doprinese akademskoj raspravi o izazovima priznavanja, ostvarivanja i zaštite osnovnih socijalnih i radnih prava ranjivih društvenih grupa, uzimajući u obzir slabosti i ograničenja savremenog sistema socijalne sigurnosti da se prilagodi promenjenim okolnostima transformacije ekonomsko-socijalnog modela neokapitalizma u pravcu uspostavljanja „otpornijeg“ modela održivog razvoja.

Ključne reči: *Institut porodičnog negovatelja; Jednakost polova; Socio-ekonomske vrednosti; Pravni principi; Uporednopravna rešenja.*