

ANALYSIS OF THE LEGAL FRAMEWORK RELEVANT FOR THE FIELD OF INHERITANCE

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Република Србија
МИНИСТАРСТВО ЗА РАД,
ЗАПОШЉАВАЊЕ, БОРАЧКА
И СОЦИЈАЛНА ПИТАЊА



Република Србија
МИНИСТАРСТВО ЗА ЉУДСКА
И МАЊИНСКА ПРАВА И
ДРУШТВЕНИ ДИАЛОГ



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1. INTRODUCTORY NOTES

Inheritance represents an area that has long been neglected as a topic in public, because it is considered to be a private sphere, where the testator has the right to dispose of his or her property, and if he or she does not do so, the law recognises equality between the heirs. Historically speaking, inheritance is an area in which the male line of inheritance was fully dominant for a long time. Even historical documents show that men were the exclusive heirs or had a significant advantage over female heirs. Hammurabi's Code of Laws from 2000 B.C. recognised only male heirs, as did the ancient Indian Laws of Manu, where daughters could inherit a share of the property only if their brothers agreed to that. Talmudic law recognised the primacy of male heirs, as did ancient Greek and medieval law. It is only the Bourgeois Revolution in France with its principles of "Liberty. Equality. Fraternity" that made men and women equal, but Napoleon's civil code preserved the authority of men over women and property.¹ This indicates a dominant patriarchal matrix that has existed throughout the centuries and has particularly been reflected in the area of inheritance.

Although the lack of formal control over land and its resources has long historical roots, this problem was not given importance while the family had ownership over it, and all its members were only beneficiaries of the right, which consisted of producing food for the family. It was only with the establishment of colonial regimes that the concept of formal individual ownership of land and property was introduced for the first time in many cultures.² In many cultures, women had access to land through men, or they were not granted equal rights as to men. If any disputes arose, they were mostly decided upon by men who relied on their personal opinions in the disputes in question.³ The role of cultural and social norms against women's right to inheritance or their ability to manage property is still particularly strong, which makes women dependent on male descendants or male relatives. This leads to women having limited opportunities in society, lower education, increased poverty, weaker health, and very often to all forms of violence, including economic violence.

The struggle for property often exists at the local level because it arises within communities and families. In this context, traditional norms and beliefs remain strong, which leads to the persistence of male dominance despite legislative guarantees. It is particularly

¹ Mirjana Miškić, *Nasljedna prava žena u Bosni i Hercegovini* (Inheritance rights of women in Bosnia and Herzegovina), *Srpska pravna misao*, No. 54, 2021.

² Nadia Steinzor, *Women's Property and Inheritance Rights: Improving Lives in a Changing Time*, Development Alternatives, 2003, 2.

³ Ibid.

important to emphasise that most legal systems prohibit discrimination of women and men, but it is difficult to change the influence of traditional customary norms without taking adequate measures related to raising awareness and providing information on the consequences of the renunciation of inheritance. Law and practice in different regions pertaining to women's right to property and inheritance are similar, despite complex barriers that prevent women from enjoying effectively their rights to land and inheritance. For instance, in Latin America, standards have been introduced to guarantee equality between men and women in this area, although the land reforms implemented have neglected gender requirements. In South Asia, despite significant progress, serious inequalities still exist. In certain parts of the Middle East and North Africa, Sharia law largely shapes this area and leads to women's inequality. This is particularly visible in the case of widows or abandoned women, when they renounce their inheritance in favour of their brothers and for the sake of providing economic support.⁴

In many countries, the law seeks to protect the wife after the death of her husband, but this creates and perpetuates her dependence on relatives or children.⁵ It is interesting to mention some specific examples. For instance, in Burkina Faso, women do not inherit land and are dependent on their husbands in terms of access to land on which they grow crops. In Brazil, studies carried out in rural areas have shown that although the law does not expressly prohibit women from inheriting land, patrilineal cultural values result in inheritance practices that favour sons. In some Muslim countries in Asia and Africa, the part of the land that daughters inherit is usually much smaller than that of their brothers, and they can often inherit only personal property without getting any land at all (for example, Senegal, Uzbekistan). In a very limited number of cases, both law and practice recognise that men and women have equal rights to property, and that sons and daughters have equal inheritance rights. Examples include bilateral inheritance communities in Ecuador, Kandy Buddhists in Sri Lanka, various ethnic groups in Madagascar, and some matrilineal societies in Asia and Africa. However, even in matrilineal societies, where land is passed down from mother to daughter (India, Malaysia), land is often controlled and passed down from one generation of men to the next. For instance, in the matrilineal societies of Malawi and Mozambique, the rule is that only men can clear the land, thus effectively giving them control over this resource. It should also be emphasised that many matrilineal societies have changed and evolved into patrilineal

⁴ UNAIDS Initiative, Backgrounder, Securing Women's Property and Inheritance Rights, The Global Coalition on Women and Aids, available at https://data.unaids.org/gcwa/gcwa_bg_property_en.pdf.

⁵ Nina Berg and others, Women's Inheritance and Property Rights: A Vehicle to Accelerate Progress Towards Achievement of the Millennium Development Goals, Paper No. 13, IDLO, 2010, 3-4.

ones.⁶ It is especially significant to highlight that the influence of social and cultural norms overrides even religious ones. An example for this are the Mossi of Muslim faith in Burkina Faso, where daughters inherit the land (although a part of the share is inherited by their brothers), while only sons use it in practice. Daughters mostly get temporary rights to use their father's land if they leave their husband's home in the event of his death, divorce or separation. Single daughters with children also have these temporary rights, but the daughter is expected to get married and leave her family and community, which is then no longer obligated to care for her. In many communities, a daughter's right to inherit may depend on several factors: marital status, whether the system is matrilineal or patrilineal, payment of dowry or bride price at the time of marriage, whether there are both sons and daughters, whether it is a family-owned or ancestral land.

The Serbian Civil Code from 1844 defined an unequal inheritance position of male and female heirs, while the Constitution of the Federal People's Republic of Yugoslavia immediately after the Second World War, i.e. in 1946, guaranteed the equality of men and women in all areas of state, economic, social and political life.⁷ This solution was recognised in all subsequent constitutional documents and laws in the field of inheritance. In other words, the equality of men and women in the field of inheritance has been guaranteed for eight decades now. In addition, all the countries that emerged after the collapse of the SFRY took over this tradition and passed advanced anti-discrimination laws. However, a rooted tradition and customs persist and lead to inequality in practice, although this issue is important for women's political participation and economic empowerment. The aforementioned traditional practices are linked to the assumption that men, as breadwinners, keep under control and manage the land – implicitly reflecting the idea that women are unable to effectively manage productive resources such as land, that productive resources given to women are "lost to another family" in case of marriage, divorce or death of a man, and that men are those who will ensure the financial security for women.⁸ However, to ensure their security, it is necessary for women to gain as much political and economic power and autonomy as possible. Women living in rural areas also find that secure land rights advance their social and political status in particular, and improve their sense of self-confidence and security. By reducing the risk of forced eviction or poverty, direct and secure land rights increase women's bargaining power in the home and improve their level of public

⁶ See more about this in Susanna Lastarria-Cornhiel, Zoraida Garcia - Frias, Gender and land rights: findings and lessons from country studies, available at: <https://www.fao.org/4/a0297e/a0297e08.htm>.

⁷ Article 26 of the Constitution of FNRJ, *Official Gazette of FNRJ*, II, No. 10.

⁸ OHCHR, Realizing Womens's Rights to Land and Other Productive Resources, 2013, p. 2, available at <https://www.ohchr.org/sites/default/files/Documents/Publications/RealizingWomensRightstoLand.pdf>.

participation.⁹ Therefore, it is clear that the practice of inheritance and the strengthening of property rights are of key importance for the exercise of women's human rights, but also for economic and social development. However, the first step is to examine whether the legal framework in the Republic of Serbia is adequate, and whether there are legal gaps or norms that lead to discrimination against women in the area of inheritance. It should be taken into account that the adoption of laws does not guarantee positive activities and institutional change, and that there is often a certain period of time necessary for the implementation of the rights guaranteed by these laws to take full effect. That delay is the result of political resistance, economic issues, and most often social and cultural norms having negative effects on enjoyment of those rights. Therefore, it is particularly important to examine whether the laws really recognise this reality and whether special measures have been introduced to protect women from harmful practices.

⁹ ActionAid International, “Securing women’s rights to land and livelihoods a key to ending hunger and fighting AIDS”, ActionAid International Briefing Paper, 2008.

2. CONSTITUTION OF THE REPUBLIC OF SERBIA

The Constitution of the Republic of Serbia¹⁰ contains a wide catalogue of human rights and guarantees equality and the prohibition of discrimination as one of the fundamental principles. The general anti-discrimination constitutional norm, i.e. Article 21 of the Constitution proclaims that “all are equal before the Constitution and law”, and that „everyone shall have the right to equal legal protection, without discrimination. “ Pursuant to the Constitution, “any discrimination, direct or indirect, on any grounds, in particular based on race, sex, ethnicity, social origin, birth, religion, political or other beliefs, financial status, culture, language, age, mental or physical disability shall be prohibited.”¹¹ In other words, the Constitutional provision has an open character, i.e. lists the most common grounds for discrimination, but does not close it, which leaves room for protection against discrimination on other grounds, and in addition to discrimination based on “sex”, it also protects against discrimination on the basis of “gender”. Article 21, paragraph 4 of the Serbian Constitution particularly recognises the deviation from the principle of equality, that is to say, the possibility of introducing “special measures that the Republic of Serbia may introduce to achieve full equality of individuals or group of individuals who are in a substantially unequal position compared to other citizens”, and which shall not be deemed discrimination. In addition to the general anti-discrimination norm, the Constitution also contains Article 15, by which the state guarantees the equality of women and men and commits to developing equal opportunities policies.

The Constitution guarantees the right to inheritance in compliance with the law and guarantees that it may not be denied or restricted for the reason of non-fulfilment of public obligations.¹² The Constitution also guarantees that the entering into a marriage, duration or dissolution of a marriage shall be based on the equality of man and woman, as well as that cohabiting unions shall be equal to marriage, in compliance with the law,¹³ whereas it also guarantees equal rights to children born in and out of wedlock.¹⁴ In addition, the Constitution

¹⁰ Constitution of the Republic of Serbia, “*Official Gazette of the Republic of Serbia*“, No. 98/2006.

¹¹ Article 21, paragraph 3 of the Constitution.

¹² Article 59 of the Constitution.

¹³ Article 62 of the Constitution.

¹⁴ Article 64, paragraph 4 of the Constitution.

guarantees the right to property and specifies when that property rights may be taken away or restricted.¹⁵

Finally, the Constitution guarantees equal protection of rights before courts and other state authorities, holders of public powers and bodies of the autonomous province or local self-government, and the right to appeal.¹⁶ Moreover, everyone shall be guaranteed the right to legal aid in accordance with the law, as well as the right to free legal aid.¹⁷

In this way, the Constitution sets up a good foundation for the protection of women against any form of discrimination, including unequal treatment in the field of inheritance.

¹⁵ Article 58 of the Constitution.

¹⁶ Article 36 of the Constitution.

¹⁷ Article 67 of the Constitution.

3. INTERNATIONAL FRAMEWORK RELEVANT FOR INHERITANCE

The Constitution determines the hierarchy of legal norms in the Republic of Serbia by placing international law immediately after the Constitution, then laws and finally by-laws.¹⁸ Moreover, international law (generally accepted rules of international law and ratified international treaties) represents an integral part of the legal system and is applied directly,¹⁹ and they guarantee the equality of women and men in all aspects of social life, including inheritance. Thus, the Universal Declaration of Human Rights prohibits discrimination on any grounds, including gender (Article 2), in the enjoyment of the rights guaranteed by this important international instrument. These rights include, among others, the right to property, food, housing and education. Also, the International Covenant on Civil and Political Rights guarantees equality between men and women (Article 3) and prohibits discrimination in relation to the enjoyment of other rights and freedoms from the Covenant, including the right to free expression of opinion, as well as equal protection before the law. In General Comment No. 19 from 1990, the Human Rights Committee particularly emphasised the importance of protection in the family, the right to marriage and the equality of spouses, which includes all the issues related to their relationship such as the choice of residence, running of the household, education of children and administration of assets.²⁰ In addition, the Committee particularly emphasises that women must have equal rights to inheritance as men in the event of the death of one of the spouses.²¹ The International Covenant on Economic, Social and Cultural Rights similarly guarantees the equality of men and women, and the rights that are of particular importance for inheritance are, in addition to the prohibition of discrimination, the right to an adequate living standard and adequate housing, financial independence and earnings, possession, management and disposal of property. The Committee on Economic, Social and Cultural Rights expressed concern that in Tunisia women inherit only half as

¹⁸ See Article 16 and Article 167 of the Constitution of the Republic of Serbia.

¹⁹ See more about the hierarchy of legal rules in the system of the Republic of Serbia in Ivana Krstić, Status and implementation of the European Convention of Human Rights in the Republic of Serbia, and in Comparative Study on the Implementation of the ECHR at the national level, Council of Europe, Belgrade, 2016, p. 89 - 105, available at <https://rm.coe.int/16806fbc15>.

²⁰ Human Rights Committee, General Comment No. 19: Article 23 – Protection of the Family, the Right to Marriage and Equality of the Spouses, 27 July 1990, paragraph 8.

²¹ Human Rights Committee, General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women), 29 March 2000, paragraph 26.

much as men inherit and recommended that women and men should have equal rights to inherit property.²²

The most important international instrument that guarantees equality and prohibits discrimination based on sex, i.e. gender is the Convention on the Elimination of All Forms of Discrimination against Women.²³ The Convention firstly prohibits discrimination, which means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field..²⁴ The Convention imposes a particularly important obligation of the state in the form of changing social and cultural customs regarding the behaviour of men and women in order to eliminate prejudices, and other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on traditional roles for men and women.²⁵ The Convention specifies the elimination of discrimination in terms of the right to social protection²⁶, as well as taking all possible measures to eliminate discrimination against women in other areas of economic and social life.²⁷ Article 16, paragraph 1, item h) is particularly significant, which requires the states to take all appropriate measures to eliminate discrimination against women in all matters related to marriage and family relations, and in particular to ensure the equality of spouses, women and men in terms of property ownership, i.e. acquisition, management and disposition of property. This norm constitutes a key provision guaranteeing the right to property to married women. In particular, it is insisted that national customs may diminish the right of women or even prevent women from owning and managing property.²⁸ In addition, in connection with this Article, Article 15, paragraph 1 is mentioned, which emphasises that any law or custom that gives men the right to a larger share of property in the event of a divorce or dissolution of marriage, or after the death of a relative, is discriminatory and has serious impact on the practical ability of a woman to divorce her husband, to support herself and to live with dignity. Thus, the right to inheritance in equal parts “should be guaranteed regardless of the woman's marital status.”²⁹

²² UN doc. E/2000/22 (E/C.12/1999/11), paragraphs 165 and 173.

²³ Law on Ratification of the Convention on the Elimination of All Forms of Discrimination against Women, "Official Gazette of the SFRY – International treaties", No. 11/81.

²⁴ Article 1 of the Convention.

²⁵ Article 5, paragraph 1 of the Convention.

²⁶ Article 11, paragraph 1, item e)

²⁷ Article 13 of the Convention.

²⁸ M. Arsha A. Freeman, Christine Chinkin, Beate Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary*, Oxford Commentaries on International Law, 2012, 524.

²⁹ Human Rights Committee, General Recommendation No. 21 (Equality in Marriage and Family Relations), 1994, paragraph 28.

In General Recommendation no. 21 on equality in marriage and family relations, the Committee on the Elimination of Discrimination against Women highlighted that the right to own, manage, enjoy and dispose of property is the central point of a woman's right to financial independence. Therefore, any violation of the principle of equal property ownership in inheritance must be abolished because it is contrary to the provisions of the Convention. In addition, the Committee expresses concern regarding inheritance, despite the lack of explicit mention of inheritance in the text of the Convention. It recommends that states introduce legislative reform to ensure equal inheritance rights for women.³⁰ The Committee recognises that some states still do not recognise the right of daughters and other female relatives to inherit or inherit equally with sons and other male relatives, and that this practice should be abolished as soon as possible. In General Recommendation No. 27 on the rights of older women, the Committee recognises the right of widows to inherit. Inheritance is also mentioned in the context of Article 14, emphasising its importance for women who live in rural areas and for whom land is the only source of subsistence. The Committee concludes that many states deny widows equality with widowers in respect of inheritance, leaving them vulnerable economically upon the death of a spouse. Some legal systems formally provide widows with other means of economic security, such as through support payments from male relatives, but these are often not implemented in practice.³¹ In addition, in some countries, widows are subject to "property dispossession" or "property grabs", in which relatives of a deceased husband, claiming customary rights, dispossess the widow and her children from property accumulated during the marriage.³² Finally, the states are obligated to adopt laws relating to the making of wills that provide equal rights to women and men as testators, heirs and usufructuaries.³³

Also, one of the indicators of Goal 5 of the 2030 Agenda for Sustainable Development, which relates to gender equality, is focused on the equal inheritance of daughters and sons, as well as widows. With this, the issue of inheritance at the global level is set as one of the priority issues for the achievement of the stated goal.

The question of assessment of the Serbian legislation and practice was the subject of evaluation before UN committees. Therefore, in its last concluding observations, the Human Rights Committee particularly emphasised that the country has a good legislative and strategic anti-discrimination framework, but that further work should be done and steps taken

³⁰ Ibid.

³¹ Convention on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 16 on economic consequences of marriage, family relations and their dissolution, CEDAW/C/CG/29, 30 October 2013, paragraph 49.

³² Ibid, paragraph 50.

³³ Ibid, paragraph 52.

to strengthen their implementation and oversight of implementation.³⁴ In addition, the Committee on the Elimination of All Forms of Discrimination against Women emphasises that women in Serbia own only 11% of the land, that most property is traditionally registered to men, that sons are prioritised over daughters, who are expected to renounce their inheritance in favour of brothers, as well as that extramarital cohabiting partners are excluded from inheritance.³⁵ Therefore, Serbia is expected to eliminate discrimination against women in the field of inheritance and establish a system of joint property registration. When considering this report, an alternative report was also taken into account, which stated that older women, especially those living in the rural areas, are discriminated against by being excluded from decision-making even in their families, that they rarely own property, and that they are most often without pensions and other benefits. On the other hand, women living in cohabiting unions are in a more disadvantageous position compared to married women, because after the death of their cohabiting partner they do not have the right to inheritance. Older women living in rural areas are very rarely the owners of the property they live and work on, as only 9.1% of women live on their own property, and 88.5% on their husband's property, while in only 2.4% of cases the property is joint property. If they live alone and do not have children, regardless of whether they have never married or are widowed, women are deprived of the right to inheritance, because they are expected not to inherit the house and land, and in particular they are expected to give up property in favour of children. Thus, according to tradition, they will inherit the property only if there are no male heirs.³⁶

At the European level, there are not so many instruments that proclaim equality in the field of inheritance, but it is important to mention the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which treats the right of inheritance in the context of the right to property, proclaimed in Article 1 of the First Protocol to the Convention. This provision guarantees the right to peaceful enjoyment of property and the prohibition of its deprivation, except subject to the conditions provided for by the law and general principles of international law. In the context of inheritance, property refers to "legitimately expected" property.³⁷ In addition, the ECHR contains two anti-discrimination provisions, Article 14 of the ECHR and Article 1 of Protocol No. 12 to the ECHR, which prohibit discrimination based on sex (explicitly) and gender (implicitly, based on the wording

³⁴ Human Rights Committee, Concluding Observations on the 4th Periodic Report of Serbia, CCPR/C/SRB/CO/4, 3 May 2024, paragraph 12.

³⁵ Committee on the Elimination of All Forms of Discrimination against Women, Concluding Observations on the 4th Periodic Report of Serbia, CEDAW/C/SRB/CO/4, 14 March 2019, paragraph 47 d).

³⁶ Nadežda Satarić and others, Alternative report on elderly women for the Committee on the Elimination of All Forms of Discrimination against Women, Amity Association and others, Belgrade, June 2018.

³⁷ *Saghindaze and Others v. Georgia*, motion no. 18768/05, judgment dated 27 May 2010, paragraph 103.

“or other status”). The European Court of Human Rights dealt with the issue of equality of inheritance of children born in marriage and out of wedlock³⁸, and took a position on their equality in the area of inheritance. This right is also linked to Article 6 of the ECHR, which guarantees the right to a fair trial, especially the right to access to courts, which must be practical and effective.³⁹ This right is of particular importance for women who are often not sufficiently informed about the consequences of renouncing inheritance, nor are they provided with adequate legal assistance. The case of *Molla Sali v. Greece* is particularly significant, in which the application of Sharia law by domestic courts to probate proceedings against Greek citizens belonging to the Muslim minority, contrary to the testator's will, was put in question. The husband bequeathed the entire property, in accordance with the Greek civil law, to his wife, the heir. The courts considered that the will had no effect because Islamic inheritance law should have been applied, thus depriving the wife of three-quarters of the inheritance. The European Court of Human Rights deemed this to be a violation of the prohibition of discrimination in relation to the right to property, finding that the applicant was exposed to treatment that was not objectively and reasonably justified.⁴⁰

Within the framework of the Council of Europe, the Gender Equality Strategy for the period 2024-2029 was adopted.⁴¹ The Strategy is focused on combatting gender stereotypes, which represent a serious limitation in achieving gender equality and lead to gender-based discrimination. One of the goals is the economic empowerment of women and access to justice for women and girls, which are directly related to the exercise of the right to inheritance. Finally, in addition to the founding treaties and the EU Charter of Fundamental Rights, which guarantee the equality of men and women, the European Commission also adopted the Gender Equality Strategy for 2020-2025.⁴² The priorities are challenges with gender stereotypes, achieving full participation in various industries, as well as reducing the gender gap in wages and salaries and pensions, which are issues of importance for inheritance.

The aforesaid international framework, which binds the Republic of Serbia, proclaims the equality of women and men in inheritance and points to a special problem arising from keeping harmful traditional practices alive, due to which women are still discriminated against. Legally, Serbia is expected to strengthen the implementation of anti-discrimination

³⁸ *Fabris v. France* (VV), Motion No. 16574/07, Judgment of 7 February 2013

³⁹ *Bellet v. France*, Motion No. 23805/94, Judgment of 4 December 1995, paragraph 38.

⁴⁰ *Molla Sali v. Greece*, Motion No. 20452/14, Judgment of 19 December 2018.

⁴¹ The Strategy in English is available at <https://www.coe.int/en/web/genderequality/gender-equality-strategy>.

⁴² The Strategy in English is available at https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy_en.

legislation and to support this by implementing measures and activities from the strategic framework, but also to fully equalise marriages and cohabiting unions.

4. REGIONAL EXPERIENCE

In recent decades, an adequate anti-discrimination framework has been introduced in all countries in the region, which improves the protection and guarantees provided by inheritance laws, which make men and women equal as heirs. According to the legislation in the area of inheritance relations, any person, including a woman, who is related to or married to the testator, can be an heir under equal conditions. Both married men and women can be heirs, and they can also be testators, without restrictions and with equal opportunities and rights. In the case of competition between relatives of the same lineage and the same degree of kinship, both men and women have the same rights and the same inheritance possibilities, and the mutual inheritance rights of married spouses are equal. However, practice shows that there are still traditional norms that cause inequalities and give preference to men during inheritance.

In 2019, a survey was presented in Montenegro on the topic “Property Rights of Women”.⁴³ The survey has shown that younger women increasingly seek and exercise the right to property, but the custom of renouncing inheritance in favour of brothers is still present. Women, regardless of economic status and level of education, believe that it is a family tradition. While 82% of respondents believe that family property should belong to men and women equally, only 25% believe that this is the case in practice. In addition, as many as 70% of respondents believe that society condemns women who do not renounce their property in favour of their brother. Many women do not have information about the right to inheritance and the division of marital property, which is why they accept this established practice as the law. Thus, the survey has shown that it very often happens that in case of divorce or dissolution of a cohabiting union, women do not initiate the procedure for the division of the property they acquired together with their partners while the union lasted. That is why only about half of the respondents believe that this property is divided equally after a divorce, that is, separation. The survey also reveals that the reason for the low

⁴³ Sigurna ženska kuća, *Imovinska prava žena (Property Rights of Women)*, Podgorica, 2019.

percentage of female property owners in Montenegro is tradition, women's lack of information, fear that the property will become the property of another family, and disrespect for women's rights. It should also be emphasised that there is regional disparity, meaning that the majority of women who are property owners are in Podgorica and Kotor (36%), while there are very few in the northern municipalities of Rožaje and Petnjica (below 7%).⁴⁴ The survey has further shown that women often renounce inheritance in favour of brothers. For instance, a female respondent testified that her mother, together with the other six sisters, renounced the inheritance in favour of the three brothers, so that "the folks would not tittle tattle that they "took" a share from a brother." Although during this survey the majority of young women expressed the view that they expect an equal share in inheritance, it should be highlighted that the survey of the attitudes of young people from the year 2024 shows that more than 60% do not think that women and men should share household chores, and that for the well-being of the children, it is more preferable for the man to work, and for the woman to devote herself to the family.⁴⁵ Thus, even today, men believe that women's expectations to share household chores equally with men diminish their masculinity.⁴⁶ This illustrates a return to traditional values among young people and certainly has an impact on the acceptance of harmful inheritance practices for women.

In addition, in Bosnia and Herzegovina, women most often decide not to accept the inheritance, or to gift it to their brother or son after accepting it. The most common reasons for this are lack of knowledge of their rights as heirs, i.e. the attitude that property will bring more burdens than benefits, such as the obligation to pay property tax, especially when it comes to unemployed women, or the unnecessary administrative procedure regarding the registration of property that takes too much time, while they have no time to deal with it because they have to take care of the family.⁴⁷ This attitude is particularly dominant with uneducated women and those who live in rural areas. However, there are also educated women who believe that customs should be respected, and property should be renounced in favour of a brother or son. Women renounce their inheritance because they will be condemned by the family and wider social community if they accept the inheritance. This condemnation includes the rejection of the woman from the family, that is, the formal and

⁴⁴ Predrag Tomović, Nestaje običaj muškog nasleđivanja u Crnoj Gori (Custom of men inheriting property in Montenegro disappearing), Radio Slobodna Evropa, 3 April 2019, <https://www.slobodnaevropa.org/a/pravo-na-imovinu-rod-%C5%BEene-dom/29859105.html>.

⁴⁵ WFD, Youth perceptions and attitudes towards politics in Montenegro, available at: <https://www.wfd.org/sites/default/files/2022-04/Youth%20perceptions%20and%20attitudes%20towards%20politics%20in%20MNE.pdf>.

⁴⁶ UNDP, Are patriarchal values the same as family values?, 20 February 2024, available at: <https://www.undp.org/cnr/montenegro/blog/da-li-su-patrijarhalne-vrijednosti-isto-sto-i-porodicne-vrijednosti>.

⁴⁷ Mirjana Miškić, *Op. cit.*, p. 19.

informal renunciation of kinship with her. The root of this condemnation stems from the times when people used to live in family cooperatives, where the man had power and the woman participated in household chores and agricultural activities, but did not have the right to participate in family decisions.⁴⁸ Therefore, statistical data show that there is a discrepancy between regulations and practice, and although some progress has been made recently, the practice where inheritance is reserved for male relatives still exists.⁴⁹

In Croatia, patriarchal gender norms also influence family and society. According to research, a large number of women move to their husband's family home after getting married, where they live in a house owned by the husband. If they buy an apartment, it is still a widespread practice for the husband to register as the sole owner.⁵⁰ However, this practice is slowly changing, especially in urban areas.⁵¹

In North Macedonia, there are also traditional practices, especially among the Albanian population, which put pressure on women to respect family traditions and expectations, while the legislative framework does not provide for protective measures for women who are forced to renounce their inheritance.⁵² Inheritance renunciation by women affects their economic and social status, particularly considering that the percentage of their inclusion in inheritance is much lower in rural areas. Women in these regions are perceived as economically dependent on their husbands, uneducated and overburdened with family obligations. Thus, one survey shows that as many as 85% of the female respondents stated that tradition played a role in the exercise of their inheritance rights, while 72% believe that it is time for changes. In addition, as many as 73% of the female respondents emphasised that accepting inheritance led to the deterioration of relations with parents and brothers.⁵³ It is particularly interesting that only 38% of the female respondents answered that in the case of inheriting their property, the property would be shared equally between boys and girls.

All the above data illustrate that in addition to a good legislative framework, the role of tradition in societies in the region affects the exercise of women's inheritance rights, and that

⁴⁸ *Ibid*, p. 20.

⁴⁹ *Ibid*.

⁵⁰ WBG, Investing in Opportunities for All, Croatia Country Gender Assessment, 2019, p. 48, available at: <https://thedocs.worldbank.org/en/doc/695541553252905811-0080022019/original/WBCroatiagenderequality22032019.pdf>.

⁵¹ *Ibid*, p. 97.

⁵² Lindita Neziri, Abdulla Azizi, Between Law and Tradition: the Practice of (Non) Participation of Girls from the Albanian Community in Macedonia in the Family Property Inheritance, *European Journal of Interdisciplinary Studies*, vol. 4, no. 1, 2018, p. 63.

⁵³ *Ibid*.

additional measures are required to empower them and change traditional social and cultural patterns that negatively affect gender equality.

5. RELEVANT LEGISLATIVE FRAMEWORK

5.1. Antidiscrimination laws

5.1.1. *Law on Prohibition of Discrimination*

The general antidiscrimination law in the Republic of Serbia is the Law on Prohibition of Discrimination.⁵⁴ The Law is relevant because it governs the general prohibition of discrimination, provides a definition of discrimination, recognises forms and special cases of discrimination and establishes a court proceedings for protection against discrimination, while also introducing an independent body – the Commissioner for the Protection of Equality. The Law defines discrimination as any unwarranted discrimination or unequal treatment, that is, omission (exclusion, limitation or preferential treatment), in relation to individuals or groups, as well as members of their families or persons close to them, be it overt or covert, on the grounds of a real or presumed personal characteristics.⁵⁵ The Law introduces an antidiscrimination clause which is open, but it exclusively recognises a large number of personal characteristics, including sex and gender. The Law recognises also a large number of forms in which discrimination is manifested, including harassment and humiliating treatment, "aiming at or constituting violation of his/her or their dignity, especially if it induces fear or creates a hostile, degrading, humiliating or offensive environment."⁵⁶

The Law regulates special cases of discrimination, and among them also discrimination based on sex and gender.⁵⁷ It means conduct contrary to the principle of gender equality, that is, the principle of observing the equal rights and freedoms of women and men in the

⁵⁴ Law on Prohibition of Discrimination, *Official Gazette of the Republic of Serbia*, no. 22/2009, 52/2021.

⁵⁵ Article 2, paragraph 1 of the Law on Prohibition of Discrimination.

⁵⁶ Article 12, paragraph 1 of the Law on Prohibition of Discrimination.

⁵⁷ Article 20 of the Law on Prohibition of Discrimination.

political, economic, cultural and other aspects of public, professional, private and family life”. In other words, discrimination between men and women in the field of inheritance is prohibited, although this is not specifically mentioned in the law. It is of particular importance that the abovementioned provision prohibits the denying of rights or granting of privileges, be it publicly or covertly, related to sex or gender, as well as belittling, blackmailing and harassment with regard to sex, i.e. gender, as well as public advocacy, support and acting in accordance with prejudices, customs and other social patterns of behaviour that are based on the idea of gender subordination or superiority, i.e. stereotypical gender roles. This provision has its roots in international law. Therefore, the Law on Prohibition of Discrimination guarantees the equality of women and men in the field of inheritance, and although it does not explicitly mention inheritance, it provides protection against discrimination, and in particular prohibits harmful traditional customs that in practice may threaten the equality of inheritance.

5.1.2. Law on Gender Equality

The Law on Gender Equality is a specialised law aimed at identifying policy measures to achieve and advance gender equality.⁵⁸ The Law on Gender Equality that was adopted had limitations, starting from the terminology used in the name of the law itself. This is why, in the process of adopting a new law, several drafts were prepared. For one of these drafts, the Commissioner for the Protection of Equality submitted, back in August 2015, an Opinion concerning certain provisions of the Draft Law on Gender Equality. Among other things, the Commissioner insisted that marriages and cohabiting unions should be completely equalised in all spheres of social relations and that a deadline should be set for harmonising all laws with regard to the equalisation of marriages and cohabiting unions.⁵⁹ However, the adopted Law on Gender Equality did not introduce this equal treatment of marriages and cohabiting unions. The Law defines gender equality in a very comprehensive manner, as “equal rights, responsibilities and opportunities, equal participation and balanced representation of women and men in all areas of social life, equal opportunities for exercising rights and freedoms, use of personal knowledge and abilities for personal and social development, equal opportunities and rights in access to goods and services, as well as achieving equal benefits from work results, taking into account biological, social and cultural differences between men and

⁵⁸ Law on Prohibition of Discrimination, *Official Gazette of the Republic of Serbia*, no. 52/2021.

⁵⁹ Commissioner for the Protection of Equality, Opinion on certain provisions of the Draft Law on the Equality of Women and Men, no. 011-00-35/2015-02, Date: 27.12.2015.

women and different interests, needs and priorities of women and men when making public and other policies and deciding on rights, obligations and law-based provisions, as well as constitutional provisions”.⁶⁰ This definition includes “equal opportunities for exercising rights and freedoms”, meaning the “equal exercise of rights and freedoms of women and men, their equal treatment and equal participation in the political, economic, cultural and other aspects of social life and in all stages of planning, preparation, adoption and implementation of decisions and equal use of their results, without any gender limitations and gender discrimination”.⁶¹ On the other hand, sex-based, that is, gender-based discrimination represents any unwarranted discrimination, unequal treatment, that is to say omission (exclusion, limitation or preferential treatment), in relation to individuals or groups, as well as members of their families or persons close to them, be it overt or covert, on the grounds of sex, sexual characteristics, that is to say, gender, in the: political, educational, media and economic areas; area of employment, professions and labour, self-employment, protection of consumers (of goods and services); health insurance and health care; social insurance and social protection, marriage and family relations; fields of security; ecology; fields of culture; sports and recreation; as well as in the field of public advertising and in other aspects of social life”.⁶² In other words, the definition of gender-based discrimination means any discrimination in family relations and the area of economy, thereby also in the area of inheritance. It is of particular importance that apart from defining “sex”, which represents the biological characteristics based on which people are determined as women or men, the Law also separately defines “gender” as “societally determined roles, opportunities, behaviours, activities and attributes, which a given society considers appropriate for women and men, including the relationships between men and women and the roles in those relationships that are socially determined depending on the sex”.⁶³ The Law also defines gender stereotypes as “ideas formed by and rooted in tradition, according to which women and men are arbitrarily assigned characteristics and services that determine and limit their opportunities and position in society”.⁶⁴

The law further defines vulnerable groups of women, which include women from rural areas, victims of violence, as well as women who, due to their social origin, ethnicity, financial status, gender identity, sexual orientation, age, mental and/or physical disability, based on living in an underdeveloped area or for any other reason or characteristics are in an

⁶⁰ Article 3 of the Law on Gender Equality.

⁶¹ Article 6, paragraph 1, item 4 of the Law on Gender Equality.

⁶² Article 4, paragraph 1 of the Law on Gender Equality.

⁶³ Article 6, paragraphs 1 and 3 of the Law on Gender Equality.

⁶⁴ Article 6, paragraph 1, item 24 of the Law on Gender Equality.

unequal position.⁶⁵ In order to achieve gender equality, the Law stipulates types of measures for achieving and advancing gender equality, which are divided into general and specific measures. While general measures include measures prescribed by law or another act that prohibit discrimination based on sex and/or gender in a certain field, or required appropriate action to achieve gender equality, specific measures represent activities, measures, criteria and practices in accordance with the principle of equal opportunities which provide for equal participation and representation of women and men, especially members of vulnerable social groups, in all aspects of social life, as well as equal opportunities for exercising rights and freedoms.⁶⁶ Specific measures include, among other things, the right to information, as well as the collection of relevant data classified by gender. The measures themselves can be those implemented in cases where there is significant unbalanced representation of the sexes, incentive measures (with which special benefits are provided or special incentives are introduced with the aim of improving the position and ensuring equal opportunities for women and men in all areas of social life), as well as programme measures (which operationalise programmes for achieving and advancing gender equality). However, Part V of the Law, which defines the areas in which general and specific measures are determined and implemented, does not specify the area of inheritance, nor marital and family relations. Among the relevant areas, the Law mentions social protection, stipulating that public authorities are obliged to ensure equal opportunities in providing social protection for all beneficiaries of services and rights, regardless of their sex and/or gender, which refers in particular to equal access to services and rights, especially for persons belonging to vulnerable social groups.⁶⁷

It can be concluded that although the Law does not explicitly mention inheritance, its numerous provisions guarantee the equality of women and men in this area, define gender and gender stereotypes and foresee specific measures, including information and the collection of relevant data classified by sex. These obligations should be insisted upon more in the area of inheritance because they are crucial for changing stereotypical patterns, and thus for improving the equality of men and women in the area of inheritance. However, it must be emphasised that the Constitutional Court, by its decision of 28 June 2024, suspended the provisions of the Law on Gender Equality until it issues a decision regarding several joined initiatives, which led to the initiation of proceedings for the assessment of the

⁶⁵ Article 6, paragraph 2 of the Law on Gender Equality.

⁶⁶ Articles 9-10 of the Law on Gender Equality.

⁶⁷ Article 36, paragraph 1 of the Law on Gender Equality.

constitutionality and legality of the Law.⁶⁸ With this decision, women were left without the protection that should ensure the equality of women and girls.

5.2. Inheritance Law

The Inheritance Law represents a specialised law in this field.⁶⁹ The Law determines the basis for inheritance that can be the law or a will. The second chapter governs inheritance based on the law and determines the circle of legal heirs that includes the children of the testator, his/her adoptees and their descendants, spouse, parents, adoptive parents, siblings and their descendants, grandfathers and grandmothers and their descendants, as well as other ancestors.⁷⁰ The abovementioned article does not recognise extramarital cohabiting partners as heirs. It is completely unclear for what reasons the possibility has not been stipulated that a cohabiting partner of the testator can be an heir. The entire law omits cohabiting partners, except in the provision of Article 113, where the cohabiting partner is mentioned in the context of who cannot be a witness to the drawing up of a will. So, the cohabiting partner can be heir only based on a testament, so-called testament-based heir. If there is no testament, the cohabiting partner can claim a certain part of the joint property gained over the duration of the cohabiting union, but the amount of that part must be proven in litigation proceedings.

The first line of inheritance includes the children and spouse of the testator, who inherit equal shares of the inheritance.⁷¹ In this way, the law proclaims equality between female and male descendants but does not equalise marriage and cohabiting unions. The law further regulates that when the testator's child cannot or will not inherit the property, his/her share is inherited by his/her children in equal shares.⁷² The second line of inheritance includes the testator's spouse, his parents and further descendants. The law stipulates that the spouse inherits half of the inheritance, while the other half is inherited in equal parts by the testator's parents. If the spouse will not or cannot inherit the property, it is inherited by the testator's parents in equal shares.⁷³ The law further regulates what happens if a parent cannot or will not inherit, but even then it proclaims the principle of equality because the property is further

⁶⁸ Constitutional Court, IuZ- 85/2021, 28 June 2024.

⁶⁹ Inheritance Law, *Official Gazette of the Republic of Serbia*, no. 46/95, 101/2003 – Decision of the CC, 6/2015.

⁷⁰ Article, 8, paragraph 1 of the Inheritance Law.

⁷¹ Article, 9. paragraphs 1. and 2. of the Inheritance Law.

⁷² Article, 10. of the Inheritance Law.

⁷³ Article, 12. of the Inheritance Law.

divided among children and further descendants in equal shares. The same principle of equality exists in the next lines of inheritance.

The law further ensures the economic position of the weaker heir, and stipulates that when a spouse does not have the necessary basic means of living, he/she can demand lifelong enjoyment of all or part of the inheritance inherited by the other heirs in the second line of inheritance.⁷⁴ The court then assesses the duration of the marriage, the financial status and earning capacity of the spouse and other heirs, as well as the value of the inheritance. A similar provision applies to the testator's parents who do not have the necessary basic means of living.⁷⁵

The law further stipulates who the compulsory heirs are, also guaranteeing equality among them. The law also recognises gift as any renunciation of rights, including renouncing inheritance in favour of a specific heir, discharge of a debt, what the testator gave to an heir during his/her lifetime as an inheritance share or for the establishment or expansion of a household or business activity, as well as any other free disposition.⁷⁶ A compulsory heir can be excluded from the inheritance only if such an heir wronged the testator by violating some legal or moral obligation, e.g. if he/she treated him abusively or rudely, or has deliberately committed a criminal offence against the testator, the testator's child, adopted child, spouse or parent, or if the compulsory heir has succumbed to idleness and dishonest life.⁷⁷ Exclusion from inheritance can be complete or partial. The testator can also deprive the compulsory heir of a compulsory part of inheritance if he/she is over-indebted or a spendthrift.⁷⁸

Inheritance is also possible on the basis of a will (testament), which is regulated by Chapter 3 of the Law, and which can be in the form of: 1) a hand-written will; 2) a will written in front of witnesses; and 3) an orally uttered will.⁷⁹ In addition to these forms of wills, the Law also recognises wills registered with courts and/or with notaries public.⁸⁰ The testator may not set in the will conditions or order any action or abstinence that is contrary to compulsory regulations, public order or good customs.⁸¹ Such a will is void. The law also regulates the issue of lifelong support contracts, which obliges the recipient of the support to

⁷⁴ Article, 23, paragraph 1 of the Inheritance Law.

⁷⁵ Article 31 of the Inheritance Law.

⁷⁶ Article 50 of the Inheritance Law.

⁷⁷ Article 61 of the Inheritance Law.

⁷⁸ Article 64 of the Inheritance Law.

⁷⁹ Articles 84-85, 110 of the Inheritance Law. It can also come in the form of a consular will, international navigation will and military will.

⁸⁰ Article 86, 111a of the Inheritance Law.

⁸¹ Article 120, 132 of the Inheritance Law.

transfer the ownership over precisely specified property or rights to the provider of support after his/her death, while the provider of support is obligated, as compensation for this, to support and take care of the testator until the end of the testator's life and to bury the testator after his/her death.⁸² At the request of the legal heirs of the support recipient, the court can invalidate the lifelong support contract if, due to the illness or age of the recipient of the support, the contract did not represent any certainty for the provider of the support.⁸³

Heirs in probate proceedings can either accept the inheritance, or they can transfer their share in the inheritance to another person or renounce the inheritance. With the death of a testator, e.g. by pronouncing a person deceased, the inheritance of that testator opens.⁸⁴ The inheritance passes by force of law to the testator's heirs at the moment of his/her death, and at the same moment the heirs acquire the right to renounce the inheritance.⁸⁵ Pursuant to the Law, an heir can renounce her/his inheritance until the end of the first-instance probate proceedings by declaring that he/she renounces the inheritance before a court.⁸⁶ If this is not done until that deadline, it is deemed that the heir has accepted the inheritance. It is considered that an heir that has renounced her/his inheritance has never even been an heir⁸⁷ and such a declaration is irrevocable, unless it is a consequence of coercion, threat, fraud or misrepresentation.⁸⁸ The Law also recognises inheritance renunciation in favour of a certain heir, which represents a statement with which the heir acknowledges the receiving of an inheritance with the simultaneous transfer of the inherited part to another person and in such a case, it is considered to be a gift. The Law also includes a provision by means of which an heir who has lived or worked in a union with the testator is recognised the right, in case of a justified need, to be bequeathed certain things or groups of things or rights that would otherwise be given as an inheritance part to other heirs, whereby such person must then compensate the value of these things or rights in money to the other heirs within a deadline determined by the court based on the given circumstances.⁸⁹ Also, household objects of a larger value for everyday use of the testator's spouse and heir who has lived with the testator in the same household shall be left to him/her at his/her own request, and their value will be calculated as part of that heir's inheritance share. If the value of these objects exceeds the value of the inheritance share, the heir to whom these objects were bequeathed will pay the

⁸² Article 194 of the Inheritance Law.

⁸³ Article 203, paragraph 1 of the Inheritance Law.

⁸⁴ Article 206 of the Inheritance Law.

⁸⁵ Article 212 of the Inheritance Law.

⁸⁶ Article 213, paragraph 1 of the Inheritance Law.

⁸⁷ Article 213, paragraph 3 of the Inheritance Law.

⁸⁸ Article 214, paragraphs 3 and 4 of the Inheritance Law.

⁸⁹ Article 232, paragraph 1 of the Inheritance Law.

difference to the other heirs in money, within a deadline determined by the court based on the given circumstances.⁹⁰

It can be concluded that the Inheritance Law equalises men and women and that it contains certain provisions that may be of importance to the spouse. However, the Law does not treat equally marriages and cohabiting unions and does foresee the possibility for a cohabiting partner to be an heir. Also, the Law does not contain gender-sensitive provisions that guarantee equal exercise of the right to inheritance in practice, because customary law, i.e. tradition prevails. It is very important to stress this, because over 200,000 people live in cohabitation in Serbia, and they most often regulate the distribution of their property by means of a will. If they don't do that, they have to claim their rights in court, which puts them in a disadvantageous position compared to married partners.⁹¹ Also, according to some data, 44% of women renounce their inheritance in favour of male family members, and such a decision has numerous consequences for the women and her family.⁹² This practice is especially widespread in rural areas where women are left with nothing, and have nowhere to return to if they are living in bad unions.⁹³ If a woman decides not to accept the inheritance, her children get to declare themselves about the inheritance, and they may decide otherwise. However, if she decides to transfer her inheritance to somebody else, that decision is final, both for the woman and her heirs, and has legal consequences. Thus, the Inheritance Law should introduce a provision that will equalise marriages and cohabiting unions, and also introduce a provision that will guarantee the principle of equality based on sex, that is, based on gender (even if this is guaranteed in the Law on Prohibition of Discrimination) and the right to information concerning the consequences of inheritance renunciation.

5.3. Law on Social Protection

The Law on Social Protection⁹⁴ governs the activity of social protection, its objectives and principles, rights and services. The Law stipulates that everybody is obliged, with their own work, income and property, to prevent, remove or mitigate his/her own social isolation,

⁹⁰ Article 234 of the Inheritance Law.

⁹¹ Kosana Beker, Biljana Janjic, Andrijana Covic, Izveštaj o pravima žena i rodnoj ravnopravnosti u Srbiji za 2023. godinu (Report on rights of women and gender equality in Serbia for 2023), FemPLatz, p. 117.

⁹² See, for example, the Inheritance Law: customary law beats the law, Paragraf, 26.12.2023, <https://www.paragraf.rs/dnevne-vesti/291223/291223-vest9.html>.

⁹³ Žensko udruženje Kolubarskog okruga, Koliki je moj deo- Uticaj rodni uloga na položaj žena u prosecima nasleđivanja imovine u Srbiji (What is my share – Influence of gender-based roles on the position of women regarding property inheritance in Serbia), ŽUKO, 2023.

⁹⁴ Law on Social Protection, "Official Gazette of the RS", no. 24/2011 and 117/2022 – Decision of the CC.

as well as the social isolation of members of their family. It is also stipulated that the beneficiary of rights or services of social protection are individuals or families facing obstacles in the satisfaction of their needs, due to which they cannot achieve or maintain a certain quality of life or who do not have sufficient funds to cover their own life needs, and cannot cover them with their own work, income from property or from other sources.⁹⁵

The Law also includes a provision that is directly relevant for inheritance. Namely, Article 82 of the Law defines the general requirements for claiming the right to financial social assistance and stipulates that an individual, i.e. family member, loses the right to social assistance if he/she has sold or gifted immovable property or has renounced the right to inherit immovable property over the period during which she/he could have secured assistance from the market value of the immovable property that she/he has sold, gifted or renounced the right to.⁹⁶ Article 82, item 1, paragraph 2 says: (financial social assistance can be claimed by an individual/family member), “if an individual, or family member has not sold or gifted immovable property or renounced the right to inherit immovable property or if the period has expired during which she/he could have secured assistance from the market value of the immovable property that he/she has sold, gifted or renounced the right to inherit, within the meaning of this law”. In other words, a person who has renounced their inheritance or gifted an inheritance to others does not have the right to financial and social assistance during the period in which he/she could have supported himself/herself from the value of the property that that person has renounced or gifted to somebody else.

The basis for the application of this provision are inheritance renunciation, inheritance renunciation in favour of a co-heir or acceptance of inheritance and transfer of inheritance to some of the co-heirs in the favour of another heir, because in all these situations rules on gifts are applied, which are stipulated in Article 50 of the Inheritance Law. The goal of the mentioned provision is to protect the budget of the Republic of Serbia, without taking into account social norms and the formal or informal pressure on the heir to renounce inheritance, which puts them into an unequal position, especially taking into account that these are mostly economically weaker parties. However, it should be emphasised that the consequences of the renunciation or transfer of a part of inheritance by women to others leads to the impossibility for them to claim the right to financial social assistance, which further makes it even more difficult for them to claim other rights (e.g. free legal aid, and access to justice for disadvantaged groups of women).

⁹⁵ Article 41 of the Law on Social Protection.

⁹⁶ Article 82, paragraph 2 of the Law on Social Protection.

The Law also stipulates that the costs of the social protection services are shared by the beneficiary, the relative that has the legal obligation and possibility to support the beneficiary, persons who assumed the obligation to pay the costs of service provision and the Republic of Serbia, autonomous province, i.e. local self-government unit, in accordance with this law.⁹⁷ It further stipulates that a beneficiary of a home accommodation participates in the housing costs with all his/her income, revenues and property, and a beneficiary of a foster home also participates in the housing costs with all his/her income, revenues and property, apart from income such as children's allowance, parents' allowance, allowance for the home help service and increased allowance for the home help service, allowances for bodily injury, benefits based on awards and severance pay for retirement, as well as benefits based on pupil and student standards.⁹⁸ When the beneficiary's revenues and income are insufficient to cover the accommodation costs, the accommodation costs are covered from the beneficiary's immovable property.⁹⁹ Also, the law stipulates that local self-government units are responsible for granting the right to one-time financial aid, as well as that it is within their competence to define detailed requirements and the method for applying for one-time financial aid, as well as for determining the amount of the one-time aid. This also refers to the provision of other types of material aid (public kitchens, subsidies, etc.)¹⁰⁰ In local self-government units, the exercise of these rights mainly depends on whether a person or family are in an extremely difficult situation at a given moment, which they cannot overcome on their own.

It can be concluded that Article 82 of the Law on Social Protection foresees a harsh sanction in case of renunciation of inheritance and that the loss of this right should be mitigated or made impossible. The consequences of renouncing or transferring part of the inheritance by women to others leads to the impossibility for such women to claim financial social assistance, which further significantly complicates the exercise of other rights, such as the right to free legal aid, which is why the "renunciation of the right to inherit immovable property" should be deleted from Article 82, item 1, paragraph 2 of the Law on Social Protection. Alternatively, the Law on Social and Child Protection of Montenegro can serve as a model,¹⁰¹ which stipulates that the right to material security can be exercised by an individual, i.e. a family member, who has not alienated or renounced the right to inherit

⁹⁷ Article 212, paragraph 1 of the Law on Social Protection.

⁹⁸ Article 212, paragraphs 3 and 4 of the Law on Social Protection.

⁹⁹ Article 212, paragraph 5 of the Law on Social Protection.

¹⁰⁰ Articles 110 and 111 of the Law on Social Protection.

¹⁰¹ Law on Social and Child Protection, "Official Gazette of Montenegro", no. 27/2013, 1/2015, 42/2015, 47/2015, 56/2016, 66/2016, 1/2017, 31/2017 – decision of the Constitutional Court, 42/2017, 50/2017.

property (business premises, apartment/residential building, construction and agricultural land), unless at least three years have passed since the sale or bestowment of a property or renunciation of inheritance. This expiration of the deadline can significantly mitigate the consequences of the loss of financial security due to the renunciation of inheritance.

5.4. Law on the Basis of Ownership and Proprietary Relations

The Law on the Basis of Ownership and Proprietary Relations¹⁰² is an old law that was adopted back during the Socialist Federal Republic of Yugoslavia (SFRY). It regulates the question of right to ownership and ownership relations over movable and immovable property. The Law guarantees this right to natural persons, which can be acquired based on the law itself, by means of a legal transaction, through inheritance or based on a decision of some state authority.¹⁰³ The right of ownership over property is acquired by inheritance at the moment of the opening of inheritance on the property of the deceased, unless otherwise stipulated by law.¹⁰⁴ The heir becomes the holder at the moment of the opening of the inheritance, regardless of when the holder acquired the de facto authority over the property.¹⁰⁵ The heir becomes a conscientious holder from the moment the inheritance is opened, even in the case when the testator was an unconscientious holder, but the heir did not know this or could not have known this, and the prescription begins to run from the moment the inheritance is opened.¹⁰⁶

Owners can hold their property, use it and dispose of it within the limits set by the law.¹⁰⁷ Also, any person is obliged to refrain from infringing the property rights of another person.¹⁰⁸ This right is broadly interpreted because the right to immovable property refers to residential buildings, apartments, commercial buildings and premises, agricultural lands and other immovable properties. The only limitation refers to natural resources that are owned by the state and limited to individual goods in general use.¹⁰⁹ Although the law does not contain a provision guaranteeing equality and prohibiting discrimination, this obligation results from the Law on Prohibition of Discrimination. The general anti-discrimination law applies to it, and its provisions equalise men and women legally also in terms of rights of ownership.

¹⁰² Law on the Basis of Ownership and Proprietary Relations, *Official Gazette of the SFRY*, no. 6/80, 36/90, *Official Gazette of the FRY*, no. 29/96, *Official Gazette of the Republic of Serbia*, no. 115/2005 – other law

¹⁰³ Articles 1 and 20 of the Law on the Basis of Ownership and Proprietary Relations.

¹⁰⁴ Article 36 of the Law on the Basis of Ownership and Proprietary Relations.

¹⁰⁵ Article 73 of the Law on the Basis of Ownership and Proprietary Relations.

¹⁰⁶ Article 28, paragraph 5 of the Law on the Basis of Ownership and Proprietary Relations.

¹⁰⁷ Article 3 of the Law on the Basis of Ownership and Proprietary Relations.

¹⁰⁸ Article 3, paragraph 2 of the Law on the Basis of Ownership and Proprietary Relations.

¹⁰⁹ Article 9 of the Law on the Basis of Ownership and Proprietary Relations.

Natural persons can also be co-owners, when the law assumes that it is about equal co-ownership parts, if such parts are not specified.¹¹⁰ Co-owners have the right to jointly manage the property, to dispose of their own part and to demand division of the property at any time, unless it is to the detriment of other co-owners.¹¹¹

Finally, the right of ownership of a certain person ends when another person acquires the right of ownership over that property.¹¹² In this way, the Law does not differentiate between men and women in terms of rights of ownership and proprietary relations on movable and immovable property. However, data from the Statistical Office of the Republic of Serbia show that women are the owners of immovable property in a significantly smaller percentage. Thus, according to the available data for the year 2022, it is evident that women were owners of apartments and shops in 23.84% of cases, and co-owners with men in 14.74% of cases; house owners with a land parcel in 23.26% and co-owners in 24.73% cases, and house owners without land parcels in 23.72% and co-owners in 16.88% cases.

5.5. Law on the Procedure of Registration in the Real Estate Cadastre

The Law on the Procedure of Registration in the Real Estate Cadastre and the Infrastructure Cadastre¹¹³ governs the rules for registration in the cadastre, as well as the registration of joint property of spouses and property acquired by inheritance. The primary goal of this law is to establish and maintain accurate and complete records on immovable property with the interest to preserve the security of the legal order.¹¹⁴ Several principles of real estate are recognised, among which are the principle of officiality, i.e. conducting the registration procedure ex officio, the principle of clarity, i.e. that the data are public and that anyone can request the right to view them, as well as the principle of legality, i.e. checking the conditions for registration, except when the change is made on the basis of a court judgment or a notarial and other public document.¹¹⁵

Real and other rights on real estate are entered in the real estate cadastre. It can be ownership, co-ownership and joint property. The provision on the registration of joint

¹¹⁰ Article 13 of the Law on the Basis of Ownership and Proprietary Relations.

¹¹¹ Article 16 of the Law on the Basis of Ownership and Proprietary Relations.

¹¹² Article 45 of the Law on the Basis of Ownership and Proprietary Relations.

¹¹³ Law on the Procedure of Registration in the Real Estate Cadastre and the Infrastructure Cadastre, "Official Gazette of the RS", no. 41/2018, 95/2018, 31/2009, 15/2020, 92/2023.

¹¹⁴ Article 2, paragraph 1 of the Law on the Basis of Ownership and Proprietary Relations.

¹¹⁵ Article 3 of the Law on the Basis of Ownership and Proprietary Relations.

property acquired during marriage, based on information provided by the parties in question, notary public or court, is particularly significant, unless there is no information about the existence of a marriage or if both spouses submit statements that in that specific case it is not joint property, but separate property of one of the spouses, or if the spouses acquire co-ownership with certain shares, as specified in the relevant deed.¹¹⁶ These regulations guarantee joint ownership for spouses, but cohabiting partners are exempt from this rule, because a certificate from the marriage register is required to confirm the existence of the marriage. Exceptionally, matrimonial property is not registered in the cadastre in the case of acquisition by inheritance and unencumbered legal transaction, or if the spouses have regulated the issue of joint or separate property acquisition differently in the marriage contract, which can also be a basis for manipulations.¹¹⁷ Also, it is very likely that in practice a woman will for patriarchal reasons allow or initiate a statement that a property is not joint ownership, but sole ownership of the husband, which should be further investigated. Research would shed light on the scale of the problem, and thus on possible legal and practical interventions.

The aforementioned provisions are very important, and in 2017, the Commissioner sent an Opinion to the then Ministry of Agriculture and Environmental Protection, as well as to the Republic Geodetic Institute, pointing out regulations that affect equal treatment of women and men in registration procedures in the Cadastre, as well as in the Register of Agricultural Holdings, and indicating that they should not limit the right of independent disposal of joint and separate property, which is guaranteed to spouses by law.¹¹⁸ The Commissioner pointed out that women in rural areas are much more burdened with unpaid work on the farm and in the household, and the situation that, in addition to aggravating factors, they cannot even dispose of their property independently, which makes their position even more difficult and economically dependent. It was also pointed out that the houses in which women live in the countryside are owned by men in 88% of cases, that women do not own land in 84% of cases, and that they have almost no means of agricultural production. Women make up 55% of the unemployed rural population and 74% of unpaid helping members of agricultural holdings.

¹¹⁶ Article 7, paragraph 4 of the Law on the Basis of Ownership and Proprietary Relations.

¹¹⁷ Article 7, paragraph 7 of the Law on the Basis of Ownership and Proprietary Relations.

¹¹⁸ Commissioner for the Protection of Equality, Opinion concerning the Draft Law on Registration in the Cadastre, 07-00-215/2017-02, 14 June 2017; Opinion concerning the Draft Law on the Procedure of Registration in the Cadastre of Real Estate and Utilities, no. 011-00-52/2017-01, 22 September 2017; Opinion concerning the Draft Law on the Procedure of Registration in the Cadastre of Real Estate and Utilities, no. 011-00-67/2017-02, 20 December 2017.

Bearing in mind the importance of registration, parties to the registration procedure include the person in whose favour the registration is decided, the registered predecessor, as well as a third party whose rights, obligations or legal interests may be affected by the outcome of the registration procedure. This procedure also ensures the possibility of reviewing the decision, so that the Cadastre Service as an internal unit of the Institute decides in the first instance, and the Republic Geodetic Institute decides in the appeal procedure.¹¹⁹

The Commissioner for the Protection of Equality submitted an initiative to the Constitutional Court for the evaluation of the constitutionality and legality of certain provisions of this law.¹²⁰ In this initiative, it is emphasised that citizens are denied the possibility of contacting the Cadastre Service directly by coming to the counter or by post, because contact via the e-counter is insisted upon, while the correctness of the documentation is first checked by lawyers and geodetic organisations, which costs clients over 20,000.00 dinars. According to the Commissioner's opinion, this provision puts poor citizens and those with lower incomes, people with disabilities, elderly people, citizens living in less developed and rural areas, Roma, as well as people who do not have technical capabilities and digital skills, at a disadvantage. Although this opinion does not indicate the gender dimension, it is important to emphasize the fact that women who come from the mentioned groups are in an even more unfavourable position and exposed to discrimination to a greater extent, which is why these provisions should be changed. After this initiative, the Commissioner for the Protection of Equality addressed the Ministry of Construction, Transport and Infrastructure, pointing out the large number of citizens who addressed the above-mentioned problem, as well as the fact that the Cadastre Service was rejecting citizens' requests sent via regular mail, referring to the provisions of Articles 18 and 22 to 25 of the Law on the Procedure for Registration in the Real Estate Cadastre and Infrastructure Cadastre.¹²¹

It can be concluded that the Law on the Procedure for Registration in the Real Estate Cadastre and Infrastructure Cadastre has not equalised marital and cohabiting unions and makes it impossible for citizens to have direct contact with the Cadastre Service by coming to the counter or by regular mail, which significantly reduces the possibilities for exercising this right, especially when the fee for checking the correctness of the documentation is added to

¹¹⁹ Article 16 of the Law on the Basis of Ownership and Proprietary Relations.

¹²⁰ Commissioner for the Protection of Equality, 18 April 2024, available at: <https://ravnopravnost.gov.rs/rs/predlog-za-ocenu-ustavnosti-pojedinih-odredaba-zakona-o-postupku-upisa-u-katastar/>.

¹²¹ Commissioner for the Protection of Equality, Initiative for the amendment of Articles 18 and 25 of the Law on the Procedure of Registration of Property in the Real Estate Cadastre and Infrastructure Cadastre, no. 011-00-11/2024-02, 14 May 2024.

this. Due to their position in the family, women are often forced to issue a statement that the property in question is not joint property, and the Law did not recognize this as a problem and did not provide a deadline for women to withdraw the statement they made, especially after considering in detail the consequences of such a statement.

6. PROBATE PROCEEDINGS

Two laws are relevant for the inheritance procedure: the Law on Extra-Judicial Proceedings¹²² and the Law on Notaries Public.¹²³ What emerges from practice is that during the probate proceedings, both when sending motions for the probate hearing and at the hearing itself, heirs should be warned of the consequences of renouncing or transferring the inheritance to someone else, especially bearing in mind the consequences this has for claims related to financial social assistance and other benefits and/or services from the social protection system, which are regulated by the Law on Social Protection.

6.1. Proceeding at the probate court

The probate proceeding is originally a court proceeding, and the competent courts act in accordance with the Instruction for the Implementation of provisions from Articles 30a and 110a of the Law on Extra-Judicial Proceedings,¹²⁴ which governs the rules based on which courts act and decide on personal, family, property and other legal matters that are resolved in extra-judicial proceedings. Chapter seven refers to the inheritance hearing procedure, during which the heirs of the deceased are determined, but also what is the inheritance and what rights pertain to the heirs.¹²⁵ The competent court is determined based on the place of residence of the testator at the time of death or based on the territory where the majority of the estate subject to inheritance is located, if the testator did not have a place of permanent or temporary residence in the territory of Serbia at the time of death.

The procedure itself is initiated ex officio as soon as the court learns that a person has died or has been declared dead.¹²⁶ The registrar is competent to register the death in the register of deaths and to submit the extract from the register of deaths to the probate court

¹²² Law on Extra-Judicial Proceedings, "Official Gazette of the RS", no. 25/82, 48/88, " Official Gazette of the RS ", br. 46/95 – other law, 18/2005 - other law, 85/2012, 45/2013 - other law, 55/2014, 6/2015, 106/2015 - other law, 14/2022.

¹²³ "Official Gazette of the RS", no. 31/2011, 85/2012, 19/2013, 55/2014 - other law, 93/2014 - other law, 121/2014, 6/2015, 106/2015.

¹²⁴ Instruction for the implementation of provisions of Articles 30a and 110a of the Law on Extrajudicial Proceedings, "Official Gazette of the RS", no. 25/1982, 48/1988, 46/1995, 18/2005, 85/2012, 45/2013, 55/2014, 6/2015, 106/2015.

¹²⁵ Article 87 of the Law on Extra-Judicial Proceedings.

¹²⁶ Article 89 of the Law on Extra-Judicial Proceedings.

within 30 days after the registration of the death.¹²⁷ The law contains a guarantee that the declaration of inheritance renunciation cannot be recorded by a judge's assistant, but only by a judge.¹²⁸ As to the data that must be entered in the death certificate, the Law stipulates that the permanent or temporary residence of the deceased's spouse and children born in and out of wedlock must be named, which means that the law equalises children born in marriage and out of wedlock, but not spouses and non-marital partners.¹²⁹

The inheritance is discussed at the hearing, and in the summons to the hearing, the court warns the interested parties that they can give a statement to the court whether they accept or renounce the inheritance until the end of the procedure.¹³⁰ If interested persons do not come to the hearing, or do not make a statement, it is legally assumed that they do accept the inheritance. Then the court decides on their rights according to the data it has. The court will specifically warn the interested parties that declarations on partial inheritance renunciation and declarations on conditional inheritance renunciation will not produce legal effect. At the hearing, the court will discuss all issues related to the inheritance, especially the right to inheritance and the size of the inherited portion, based on the statements of the interested parties.¹³¹ A particularly relevant provision is the one that stipulates that during the inheritance hearing, interested parties can give declarations without the presence of other interested parties, and it is not necessary in every case that the absent parties be given the opportunity to declare themselves about the statements of other interested parties.¹³²

Once a party receives an inheritance, or renounces it, he/she or his/her representative must sign a declaration, which must also be verified. When somebody gives a declaration on the renunciation of an inheritance, the court has the obligation to warn the heirs that they can renounce the inheritance only in their own name,¹³³ but the court does not have the obligation to warn the parties of all consequences that follow the inheritance renunciation and this is something that must be introduced into the Law. Judges should receive additional training to learn more about the reasons why heirs renounce their inheritance, as well as about the information that should be provided to parties in order to warn them adequately about all consequences of such a declaration.

¹²⁷ Article 92, paragraph 1 of the Law on extrajudicial proceedings.

¹²⁸ Article 90 of the Law on extrajudicial proceedings.

¹²⁹ Article 95, paragraph 1 of the Law on extrajudicial proceedings.

¹³⁰ Article 115, paragraph 3 of the Law on extrajudicial proceedings.

¹³¹ Article 117, paragraph 2 of the Law on extrajudicial proceedings.

¹³² Article 117, paragraph 4 of the Law on extrajudicial proceedings.

¹³³ Article 118, paragraph 5 of the Law on extrajudicial proceedings.

When the court determines which persons have the right to inherit, it will announce those persons as heirs with a decision on inheritance.¹³⁴

6.2. Procedure before notaries public

The Law on Extra-Judicial Proceedings stipulates that when the probate court receives the extract from the register of deaths, it issues a decision entrusting the notary public with drawing up the death certificate (in the area where the last place of permanent or temporary residence of the testator was located, i.e. where the estate or its major part is located) and to deliver it to the court within 30 days of receiving the decision.¹³⁵ A notary public performs an inventory and assessment of the property of the deceased based on a court decision, or without a court decision if requested by the heir.¹³⁶ The notary public submits the record of the inventory and valuation of the property to the court and to each participant in the proceedings.¹³⁷ The court can also issue a decision entrusting the implementation of the probate procedure to the notary public who prepared the death certificate.¹³⁸ In 2021, public notaries were entrusted with 118,446 probate proceedings, in 2022, that number amounted to 121,380, while in 2023, 102,445 probate proceedings were entrusted to notaries public, based on decisions of competent courts.¹³⁹

If entrusted with conducting the probate procedure, the notary public has the following tasks:

- identifying heirs of the deceased,
- determining the competence for inheritance law,
- determining the right of every heir to the decedent's inheritance,
- checking the validity of signatures, documents and declarations given by heirs,
- informing heirs about the implications of accepting or renouncing inheritance,
- drawing up a notary act on inheritance.

The actions of notaries public, their working method and working conditions are regulated by the Law on Public Notaries. Public Notaries are services of public trust.¹⁴⁰ The

¹³⁴ Article 122, paragraph 1 of the Law on Extra-Judicial Proceedings.

¹³⁵ Article 92 of the Law on Extra-Judicial Proceedings.

¹³⁶ Article 96, paragraphs 1 and 2 of the Law on Extra-Judicial Proceedings.

¹³⁷ Article 99a, paragraph 1 of the Law on Extra-Judicial Proceedings.

¹³⁸ Article 110a of the Law on Extra-Judicial Proceedings.

¹³⁹ Chamber of Notaries Public of Serbia, Commissioner for the Protection of Equality, no. 2240-2-VII/2024, 22 July 2024.

¹⁴⁰ Article 2, paragraph 1 of the Law on Public Notaries.

notary public, among other things, compiles, certifies and issues public documents on legal transactions, statements and facts on which rights are based, and performs also tasks that can be entrusted to him by law based on court decisions.¹⁴¹ Due to the importance of the work they perform, notaries public cannot perform a function or job that is not in accordance with the reputation, independence, autonomy and public trust of the notary public.¹⁴² The public notary has the duty to perform his activity in accordance with the regulations and the principle of conscientiousness and integrity.¹⁴³ A notary public is not a representative of a party, but a person authorised to perform transactions as defined by the law.¹⁴⁴ One of the reasons for denying to take action is when the notary public becomes aware of facts that some party does not have the serious and free will to conclude a certain deal.¹⁴⁵ Even the European Court of Human Rights noticed that the role of the notary public is similar to the role of a judge, and has emphasised that the rules that regulate the notary public's behaviour clearly result from their specific role of "extrajudicial judges", which reflects their hybrid nature of independent professionals and public services.¹⁴⁶

The notary public has the obligation to explain to the parties the meaning of a legal transaction, to point to its consequences and to check whether that legal transaction is allowed, that is to say, that it is not contrary to compulsory regulations, public order and good customs. If the notary public determines that this is not the case, the notary public will issue a rejection decision, by means of which he rejects to confirm the document.¹⁴⁷ In other words, the public notary has the obligation to inform the parties of their basic rights and obligations, including a warning about the consequences of giving a declaration on inheritance, but it should be emphasised that this is done in a general way, which means that citizens do not understand all the consequences of giving a declaration on inheritance. Also, the law stipulates that the notarial record contains a statement that the parties, and when necessary, other participants, have been instructed about the content and legal consequences of the legal transaction, will (testament) or declaration, as well as that the parties have been warned if their statements are unclear, incomprehensible or ambiguous, as well as if they kept the same statements even after such a warning.¹⁴⁸ The Code of Ethics of Notaries Public stipulates that

¹⁴¹ Article 4 of the Law on Public Notaries.

¹⁴² Article 5 of the Law on Public Notaries.

¹⁴³ Article 9, paragraph 1 of the Law on Public Notaries.

¹⁴⁴ Article 52. stav 1. of the Law on Public Notaries.

¹⁴⁵ Article 53. stav 4. of the Law on Public Notaries.

¹⁴⁶ European Court of Human Rights, *Ana Ionita v Romania*, motion no. 81270/12, judgment dated 10 January 2017, paragraph 47.

¹⁴⁷ Article 93 d. of the Law on Public Notaries.

¹⁴⁸ Article 84, paragraph 1, item 8 of the Law on Public Notaries.

the notary public is obliged to inform the parties about the legal consequences of making such a notarial record.¹⁴⁹

The basic principles of the work of public notaries are expertise, including professional training, decency and moderation, the duty of legal and conscientious action, impartiality and independence, readiness, conscientiousness and responsibility, autonomy and incompatibility with conflicting functions.¹⁵⁰ The notary public is obliged to determine the true intention of the parties, to clarify the true factual situation, to teach the parties about the legal scope of the legal transaction they undertake in the form of a notarial document.¹⁵¹ In addition to the importance of all principles, it is especially necessary to emphasise respect for human rights, which implies the prohibition of discrimination on any basis, respect for dignity, as well as the prohibition of actions that endanger persons and their economic development, as well as actions that are harmful to parties.¹⁵² Therefore, all the mentioned provisions require that citizens are informed in more detail, especially about the consequences of renouncing inheritance, and the notary public must create such an atmosphere and enable everyone, especially particularly vulnerable parties, to make an autonomous and informed decision without external pressure. In the case of renunciation of inheritance, this primarily means informing that the decision on renunciation is irrevocable and refers to the entire property of the testator. The notary public must determine whether such a statement was made voluntarily and whether the heir understands the consequences of signing such a declaration. If there is reason to suspect that the statement was not freely made or is made without proper understanding of the consequences of the decision, the notary public should allow sufficient time for the heir to reconsider her/his decision. Some jurisdictions even allow a certain period of time during which the heir can withdraw her/his declaration of renunciation of inheritance, so this possibility should be considered in our legal system too. Furthermore, there are other risky situations: if the deceased was married or was in a cohabiting union, in a regime of joint ownership or co-ownership, and if the surviving partner was not registered as joint or co-owner, there is a risk that this part of the property will not be taken out of the inheritance; another risky situation is that the surviving spouse loses the right to the home after the division of the inheritance; in such a case, it is possible to propose some solutions such as assigning the family home to the spouse/partner or at least the right to use the family home. Unfortunately, there is no more information about the actions of notaries public in such

¹⁴⁹ Article 25 of the Code of Ethics of Notaries Public, „Official Gazette of the Republic of Serbia“, no. 28/2023.

¹⁵⁰ Articles 3-6, 8-10 of the Code of Ethics of Notaries Public.

¹⁵¹ Article 25, paragraphs 3 and 4 of the Code of Ethics of Notaries Public.

¹⁵² Article 7 of the Code of Ethics of Notaries Public.

situations, apart from the belief of the Chamber of Notaries Public that notaries approach each probate procedure carefully and that they thoroughly consider the circumstances of each individual case, in the sense that they provide an oral explanation and that they enter a warning in the document itself about the consequences of giving a declaration on inheritance.

In 2023, the Commissioner for the Protection of Equality sent an initiative to the Chamber of Notaries Public of Serbia, based on opinions of several civil society organisations as well as individuals, indicating that women often consciously renounce their property rights, especially when it comes to inheritance, in favour of male family members (specifically brothers and/or their male children). The reasons given for this are mainly to preserve peace in the family, as well as because of the fear that they will be excluded from all family activities if they dare to point out that they have the same rights as male family members. In particular, the Women's Association of the Kolubara District addressed the Commissioner for the Protection of Equality on behalf of the Coalition for Fair Inheritance. In this letter, it was stated that research shows that a large number of women in Serbia (44% of women against 0.5% of men) give up their inheritance by renouncing it, thereby leaving it indirectly to male heirs, or directly, by accepting the inheritance, and then transferring their share of the inheritance to brothers or male descendants of the testator (or by renouncing the inheritance in their favour). Also, the association "Forum žena Prijepolje" stated that this situation is particularly pronounced in smaller, patriarchal environments, and that women are brought up for generations to keep property "in the family" and that they will acquire theirs through marriage. Because of this customary law, they are often put in a situation where they have no assets, making them economically dependent on their partners or other family members. If they do decide to accept the property, it can put them in a situation where they are at "war" with other family members, such as one female citizen who addressed the Commissioner for the Protection of Equality, claiming that after accepting her inheritance after her father's death, she was prevented from coming into possession by the mother and brother who didn't want to accept that she did not renounce the inheritance in favour of the brother. On the other hand, economic dependence itself increases the risk of experiencing some form of discrimination, as well as violence. Bearing this in mind, the association turned to the Chamber of Notaries with proposals for amending the Notaries Public' Rules of Procedure, for organising trainings for notaries and notary assistants in the field of inheritance and active cooperation with civil society organisations. The Notaries Public Rules of Procedure were adopted in 2016 and have been amended several times.¹⁵³ The

¹⁵³ Rules of procedure of Notaries Public, "Official Gazette of the RS", no. 62/2016, 66/2017, 48/2018, 54/2018, 151/2020, 59/2020.

consequences of such stereotypes and prejudices lead to the fact that the houses in which women live in the countryside are owned by men in 88% of cases, in 84% of cases they do not have land and they have almost no means for agricultural production, as well as that women make up 55% of the unemployed rural population and 74% of unpaid farm helpers.¹⁵⁴ Notaries public must be informed about this, so that they could properly warn women about the consequences of renouncing inheritance. It is particularly interesting that, based on a research from 2022, it was found that 50% of respondents prefer to go to women notaries, than to men, while the remaining 50% have no preference in this sense.¹⁵⁵ Therefore, even 1/2 of the respondents prefer to go to women notaries public, but in practice it has not been observed that women notaries are more aware of the challenges underlying the renunciation of inheritance and that they pay due attention to providing adequate information to their clients. Also, the same survey showed that a large number of respondents do not think that public notaries contribute to better access to justice (43% think they contribute moderately and 12% think they contribute only a little, compared to 30% of those who think that they contribute significantly), or that they contribute to the protection of the weaker party (28% think that they contribute moderately and 14% think they contribute only a little, compared to 34% of those who think that the contribution is significant, while even one fifth of respondents do not have a clear position on this topic). This certainly illustrates best that adequate information, further instructions related to helping and supporting the weaker party and continuous training are of key significance in this area. Also, although the Chamber of Notaries Public does not have the obligation to keep records about the number of women who have renounced their inheritance, the obligation to record gender-based data results from the Law on Gender Equality and this should be a binding obligation.

6.3. Law on Free Legal Aid

The Law on Free Legal Aid¹⁵⁶ was adopted in the Republic of Serbia seven years after the working group for the drafting of the law has been formed, in order to collect and compare regional and comparative law practices and legal frameworks. The application of the Law started on 1 October 2019. And yet, despite all expectations, the law has not managed to

¹⁵⁴ NALED, *Nekretninu poseduje tek svaka šesta žena na selu* (Only every sixth woman in rural areas owns a real estate), 31. maj 2020, at: <https://www.naled.rs/vest-nekretninu-poseduje-tek-svaka-sesta-zena-na-selu-3631>.

¹⁵⁵ Nenad Tešić, *Procena uloge javnih beležnika i javnih izvršitelja u Republici Srbiji u ostvarivanju vrednosti i ciljeva navedenih u Pregovaračkom poglavlju 23 sa EU, Aneks II „Rodna ravnopravnost“*, (Assessment on the roles of public notaries and public bailiffs in the Republic of Serbia for achieving the values and objectives stated in the EU Negotiation Chapter 23, Annex II „Gender equality“), 2022 (still unpublished).

¹⁵⁶ Law on Free Legal Aid, "Official Gazette of the RS", no. 87/2018.

establish an efficient system and has limited largely both beneficiaries as well as providers of free legal aid. The Law recognises beneficiaries of the right to financial social assistance as beneficiaries of legal aid. This is proven by owning a document from the centre for social works, as well as by belonging to one of the special categories of citizens, which does not include persons who should protect their rights recognised by law.¹⁵⁷ Although the Law recognises – as some of the general principles – the promotion of provision of general legal information and counselling about the use of the right to free legal aid, this obligation is almost not implemented at all in the Republic of Serbia.¹⁵⁸ Also, lawyers and legal assistance services in local self-government units are recognised as providers of free legal aid, but neither do all LSGs have such services, nor are legal professionals adequately trained to provide free legal aid. On the other hand, free legal support is provided by intermediaries, law schools and notaries public, when it consists of drawing up a notarial document, but at the same time it also includes providing information on “the legal position of the beneficiary on a specific legal matter, the subject and the way of deciding on an individual right, obligation or interest based on the law”.¹⁵⁹

Based on the annual reports on the implementation of the Law, it can be concluded that in 2020 there were 17 notaries public who were registered providers of free legal aid and support, to which 192 requests were sent and 76 of them were approved.¹⁶⁰ It is also interesting to note that in civil proceedings, free legal aid is most often sought for divorce, alimony and child custody, which has to do with challenges in the implementation of gender equality.¹⁶¹ The same number of notaries public were recorded in 2021.¹⁶² Reports were submitted by 10 notaries, whereof only two provided free legal aid.¹⁶³ In that year, free legal aid was provided in 39 cases. During 2022, the same number of public notaries registered in the Register of Free Legal Aid Providers was recorded, of which 10 submitted a report, and only one provided free legal aid.¹⁶⁴ Also, it is important to note that only 2.63% (40) of the cases covered the area of inheritance law. Finally, in 2023, the situation did not change

¹⁵⁷ Article 4 of the Law on Free Legal Aid.

¹⁵⁸ Article 10, paragraph 1, item 5 of the Law on Free Legal Aid.

¹⁵⁹ Article 11, paragraph 2 of the Law on Free Legal Aid.

¹⁶⁰ Ministry of Justice, Report on the Implementation of the Law on Free Legal Aid, March 2021, <https://www.mpravde.gov.rs/files/Godisnji%20izvestaj%20BPP%20mart%202021.pdf>.

¹⁶¹ Ibid.

¹⁶² Ministry of Justice, Report on the Implementation of the Law on Free Legal Aid, March 2022, <https://www.mpravde.gov.rs/files/Godisnji%20izvestaj%20o%20pruzanju%20besplatne%20pravne%20pomoci%202021.pdf>.

¹⁶³ Ibid.

¹⁶⁴ Ministry of Justice, Regular Annual Report on Oversight of the Implementation of the Law on Free Legal Aid, March 2023, <https://www.mpravde.gov.rs/files/Редован%20годишњи%20извештај%20%20о%20надзору%20над%20спровођењем%20закона%20о%20бесплатној%20правној%20помоћи%20за%202022.%20годину---.pdf>.

significantly. Thus, the number of registered public notaries remains the same, which once again confirms that campaigns and cooperation with the Chamber of Notaries Public aimed at familiarising both citizens and notaries public about the public interest related to their role have not been implemented adequately. However, the number of cases concerning inheritance law increased significantly to 8.87% (70 cases). It should also be emphasised that a large number of local self-government units has only one legal expert who performs also other legal tasks, which is why the efficiency of this mechanism is called into question. In the same way, only one civil society organisation – Grupa budi jedan – emphasised that it has provided free legal assistance for 227 beneficiaries over the last year, in the form of general legal information and filling out forms for them, including in matters related to the inheritance law. Also significant is the information that only 7 notaries public submitted regular annual reports while emphasising that the competent authorities did not refer beneficiaries to them. All of the above points to the fact that free legal aid in the area of inheritance in the form of protection of gender equality is still of minor relevance and there are no classified data based on which it could be concluded whether there were cases in which women were warned of the consequences of renouncing inheritance.

7. RELEVANT STRATEGIC FRAMEWORK

Numerous strategic documents have been adopted in the Republic of Serbia, which allow to identify and implement measures and activities in order to improve the legislative framework and practices in specific fields of social life.

1. *Strategy for Gender Equality for the period from 2021 to 2030* identifies comprehensive measures to improve gender equality.¹⁶⁵ The Strategy deals with the gender gap in economy and points to the unequal position of women and men on the labour market, gaps in the amounts of salaries, pensions and income, differences in entrepreneurial activity, participation in informal economy, differences in ownership of real estate and land and in decision-making in economy. However, the Strategy does not point at all to the problem of inheritance renunciation, which is a consequence of gender stereotypes. What is also not considered is the position of women who are in a cohabiting union, in a union where the partner is still married to another woman, situations in which women live in illegal buildings, as well as all other circumstances that lead to women being vulnerable. Such a position of women requires appropriate intervention in the area of ownership and property relations.

2. *The Strategy for Prevention and Protection Against Discrimination for the period from 2022 to 2030*¹⁶⁶ represents a general public policy document aimed at combatting discrimination and protecting from discrimination. The Strategy only mentions that LGBTI+ persons, among other things, do not have the inheritance issue regulated. In contrast to the previous strategic document, which was divided into groups, the new Strategy identifies priority areas in order to comprehensively assess the problem and formulate adequate measures and activities in which the situation can be improved. However, they do not include the area of inheritance, nor the economic aspect of inequality, except for work and employment.

¹⁶⁵ Strategy for Gender Equality for the period from 2021 to 2030, "Official Gazette of the Republic of Serbia", no. 103/2021.

¹⁶⁶ Strategy for Prevention and Protection against Discrimination for the period from 2022 to 2030, "Official Gazette of the Republic of Serbia", no. 12/2022.

3. *The Strategy of Agriculture and Rural Development of the Republic of Serbia for the period 2014-2024* ¹⁶⁷ indicates that gender inequalities in the domain of economic participation are very pronounced among the rural population. There is less economic participation of active persons among women, fewer women employees and fewer women who work outside of agriculture, than among men. From the perspective of regional differences, it can be observed that in AP Vojvodina the participation of unemployed persons is slightly lower among women than among men, which does not mean that their economic position is better, since fewer women than men are employed in the non-agricultural sector, women are less engaged in agriculture and there are significantly more women who are inactive in general. According to all indicators, the position of women is significantly less favourable in Southern and Eastern Serbia, where gender differences are strongly manifested in all segments of the labour market. In addition to women, rural youth also face high risks of exclusion from the labour market. Young people aged 15-24 are employed in non-agricultural sectors in only 21% of cases." All these factors point to the great economic dependence of women on male family members, which is additionally aggravated by women renouncing their inheritance on behalf of male family members.

¹⁶⁷ Strategy of Agriculture and Rural Development of the Republic of Serbia for the period 2014–2024, "Official Gazette of the Republic of Serbia", no. 85/2014.

8. CONCLUDING CONSIDERATIONS AND RECOMMENDATIONS

A very solid legislative framework has been established in the Republic of Serbia, which guarantees the equality of men and women, including in the area of inheritance, although certain legal ambiguities, i.e. incomplete provisions have been observed, which can lead to discrimination in practice. In particular, it should be noted that as many as 55 out of 160 countries still have laws that discriminate against women in the area of inheritance, and that since 2009, only five countries have equalised male and female heirs: Ivory Coast, Ecuador, Mali, East Timor and Togo.¹⁶⁸ The tradition of equalising male and female heirs has existed in Serbia for the last eight decades. However, practice shows that significant differences still exist. These differences stem from gender stereotypes that encourage and maintain harmful practices. The analysis shows that there are almost 25 million registered immovable properties in Serbia, including rural and urban areas, whereby women own some share or own 100% in 6.43 million of them. At the national level, women are registered as sole owners of 13.95% of real estate, and as co-owners in around 12%. The legal framework in Serbia that governs property and inheritance relations treats women and men equally, however, patriarchal norms and patterns of inheritance are most often to the detriment of women and to the benefit of male relatives.

Also, although the Inheritance Law of Serbia stipulates that all children have equal rights to their parents' property, some studies show that the practice of women renouncing their inheritance in favour of male relatives is still widespread, and that in almost 44% of cases, sisters will leave their share of inheritance to their brothers, due to traditional norms and gender stereotypes in the area of inheritance, but also due to insufficient information in this area.¹⁶⁹ Making information available and raising awareness about inheritance is of key importance, given that this topic is insufficiently represented in the public, and answers to specific legal questions can usually only be obtained at a probate hearing, with the presence

¹⁶⁸ Renee Giovarelli, Elisa Scalise, Evidence Brief, Do Inheritance Reforms Work for Women?, Resource Equality, 2020, available at: https://landwise-production.s3.amazonaws.com/2022/03/Giovarelli-Scalise_Evidence-Brief-Do-Inheritance-Reforms-Work-for-Women_2020-1.pdf.

¹⁶⁹ Natalija Bogdanov i drugi, Pristup žena i dece uslugama u ruralnim oblastima Srbije i predlog mera za unapređenje stanja (Access to services for women and children in rural areas and proposal of measures for the improvement of the situation), SeCons, 2011, available at: <https://www.unicef.org/serbia/media/6411/file/Pristup%20žena%20i%20dece%20uslugama%20u%20ruralnim%20oblastima%20Srbije%20.pdf>.

of other family members. In order to inform all social stakeholders, and especially citizens, the Commissioner prepared the Guideline "*Right to inheritance - equal for all*" as well as a leaflet, which provide a concise overview of the most common questions and answers related to the right to inheritance, explanations of basic concepts in inheritance law and the consequences of inheritance renunciation, along with information on who to turn to for legal help and advice. At the end of 2023, a national conference was organised where these educational materials were presented and the public was introduced to the challenges of inheritance for women in Serbia.

In order to make decisions and fully understand the legal consequences of decisions, women must be made aware of their rights. For example, when they renounce their inheritance, their own descendants permanently lose their right to inherit, even though they are also potential heirs by law. Women often realise too late that they need to be financially empowered. It is only then that they consult with lawyers to revoke the given declaration of renunciation, which is legally impossible, and they are then permanently left without property. Information and legal advice are particularly unavailable to women in rural areas, persons with a weaker financial status, persons with disabilities, digitally illiterate persons, etc. It is more difficult for women without property to start their own business. Bank loan applications will be rejected due to the lack of funds to guarantee the repayment of the loan, etc. Likewise, the Law on Social Protection in Serbia stipulates that a person who renounces her/his inheritance does not have the right to social welfare in the period in which she/he could have supported herself/himself if she/he had not renounced the property. All these examples point to certain legal incoherences that do not provide a comprehensive way of regulating the issue of inheritance and the consequences of inheriting, without discrimination. The government formed the Commission for the Drafting of the Civil Code, precisely with the aim of creating a coherent system of civil law in Serbia, but although the working text with alternative proposals was published at the end of May 2015, the Draft Civil Code has not yet been adopted.

For all of the abovementioned reasons, it is necessary to advocate the following changes:

1. Although the Law on Gender Equality does not explicitly mention inheritance, its numerous provisions guarantee the equality of women and men in this area, define gender and gender stereotypes, and foresee special measures, including information and collection of relevant data classified by sex. These obligations should be insisted upon more in the area of

inheritance because they are crucial for changing stereotypical patterns, and thus for improving the equality of men and women in the area of inheritance. In order to achieve this, it is necessary to undertake further activities in order to improve the position of women in this area, especially by applying special measures that are recognised in the law and by identifying challenges and measures in the field of inheritance in planning acts.

2. A provision should be introduced in the Law on Inheritance to equalise marriage unions and cohabiting unions, and to explicitly mention cohabiting partners as legal heirs in Article 8 of the Law. Also, it is necessary to introduce a provision that will guarantee the principle of equality based on sex and gender (although it is guaranteed by the Law on Prohibition of Discrimination) and the right to information related to the consequences of renouncing inheritance.

3. In the Law on Social Protection, the part of Article 82, item 1, paragraph 2, where the renunciation of the right to inherit immovable property is cited as one possible reason to deny financial social assistance should be deleted. The consequences of renunciation or transfer of some part of the inheritance by women leads to the impossibility of claiming the right to financial social assistance, which then makes it much more difficult to exercise other rights (e.g. free legal aid, and thus access to justice for vulnerable categories of women). Alternatively, the Law on Social and Child Protection of Montenegro can serve as a model, which stipulates that the right to material security can be claimed by an individual, i.e. a family member, who has not alienated or renounced the right to inherit property, unless at least three years have passed after the alienation was executed by sale, gift or by renunciation. This expiration of the deadline can significantly mitigate the consequences of losing material security due to inheritance renunciation.

4. It is necessary to amend the Law on the Procedure for Registration in the Real Estate Cadastre and Infrastructure Cadastre so that it equalises married and cohabiting partners, as well as to enable direct contact of citizens with the Cadastre Service by coming to the counter or by mail, and to review the amount of the fee for checking the completeness and accuracy of the documentation submitted. Also, it is necessary to further investigate the extent to which women allow or initiate the giving of a statement that a property subject to registration is not joint property of the partners, but only property of the male partner, and if necessary, supplement the provision and give women a deadline in which they can withdraw the statement they made.

5. Based on the Law on Extra-Judicial Proceedings, the court has the obligation to warn the heirs that they can renounce the inheritance only in their own name, but the court has no obligation to warn the party of all the consequences of inheritance renunciation. It is necessary to supplement the provision of Article 118, paragraph 5 of the Law, as well as to conduct continuous training for judges in extra-judicial proceedings.

6. It is necessary to conduct training for public notaries about the practice in the Republic of Serbia concerning the renunciation of inheritance by women, so that they can inform women adequately and properly warn them of the consequences of inheritance renunciation, because the declaration of renunciation is irrevocable. The notary public must determine whether such a declaration was made voluntarily and whether the heir understands the consequences of signing such a declaration. If there is reason to suspect that the declaration is not made freely or is made without proper understanding of the consequences of such decision, the notary public should allow sufficient time for the heir to reconsider her decision. In some jurisdictions, a certain period of time is even allowed in which the heir can withdraw the declaration of renunciation, so this possibility should also be considered in our Law on Inheritance in the part that regulates the issue of inheritance renunciation. Also, bearing in mind the powers of the Chamber of Notaries Public resulting from Article 119 of the Law on Notaries Public, as well as the important role of notaries public in probate proceedings, it is necessary to consider sending e.g. instructions, guidelines, etc. to public notaries on how to act when taking declarations from heirs. In this way, in addition to the obligations prescribed by law, they should be obliged in each specific case to additionally explain and point out to clients what are the consequences of giving an heir's declaration, especially when giving a negative heir declaration. This would contribute to improving gender equality by changing gender stereotypes that affect the exercise of the rights of heirs and the giving of heir's declarations, as well as the influence of the inheritance declaration on the exercise of rights and services in the field of social protection.

7. The implementation of the Law on Free Legal Aid should be further improved, especially with regard to further training and capacity building of employees in legal aid services in local self-government units, as well as by strengthening cooperation with the Chamber of Notaries Public and through greater inclusion of notaries among registered providers of free legal aid.

8. The strategic framework of the Republic of Serbia regarding gender equality should be improved in order to identify specific measures and activities related to solving the problem

of renunciation of inheritance by women in favour of male relatives and descendants. This would also include research into the position of women who are in cohabiting unions, in unions where the partner is still married to another woman, situations in which women live in illegal buildings, as well as all other circumstances that lead to their vulnerability because there are no adequate legal interventions. In addition to legislative changes, measures and activities would also refer to raising awareness among women, informing the public about the consequences of renouncing inheritance, as well as training employees in local self-government units, judges in extra-judicial proceedings and notaries public.