

CLINICAL LEGAL EDUCATION FOR GENDER JUSTICE IN EUROPE

Zara Saeidzadeh Postdoctoral researcher in Gender Studies, Örebro University, Sweden.

Bojana Cuckovic Associate Professor of Public International Law and Human Rights, University of Belgrade, Serbia.

Dragica Vujadinovic Professor of Political and Legal Theories, University of Belgrade, Serbia.

Abstract

Generated directly from the field, this paper elaborates on the knowledge shared during the process of a research project called LAWGEM (New Quality in Education for Gender Equality – Strategic Partnership for the Development of Master’s Study Program on LAW and GENDER) in an effort to develop a Gender Equality Legal Clinic to sensitise students about gender issues within legal education in Europe. The paper elaborates on the experience of two countries, Sweden and Serbia through discussing the challenges in achieving gender justice. Finally, it introduces Gender Equality Legal Clinic as a learning outcome of LAWGEM project for legal pedagogical purposes.

1. Introduction

This paper is an outcome of a workshop which was organized in May 2022 within the LAWGEM project (New Quality in Education for Gender Equality – Strategic Partnership for the Development of Master’s Study Program on LAW and GENDER). The LAWGEM project was launched in 2019 as a result of collaboration between five European universities including Cadiz University in Spain, LUMSA University in Italy, Europa Institut/Saarland University in Germany, Belgrade University in Serbia and Örebro University in Sweden aimed at building a curriculum for a master of laws program that encompasses legal education and training across subjects among the partner institutions while contributing to the expansion of knowledge on the role and essence of legal professionals and legal clinics. One of the intellectual outputs of the project was to develop a syllabus for Gender Equality Legal Clinic (GELC) which is one of the main components of the curriculum for the master study of Law and Gender. The purpose of the workshop was to understand how legal clinics in the mentioned five European countries have been operating and also to further discuss the implementation of GELC at these universities. Thus, the paper first explains the development of legal clinics within legal education and their benefits. After that, it focuses on the importance of gender in clinical legal education and legal research as an alternative to traditional clinical legal education. In doing so, the paper further examines specificities of differentialities of Sweden and Serbian in the context of

Europe. The paper concludes by outlining the added value of Gender Equality Legal Clinic (GELC).

2. Legal Clinics and Clinical Legal Education

The term legal clinic or law clinic was originally used by Anglo-Saxon legal scholars to allow law students to work on real cases in real life. Legal clinics emerged in early 1900, as a training machinery in a form of non-profit organization to prepare law students for their future legal profession (Bradway, 1927; Uyumaz and Erdogan, 2015).

2.1. From the Early to Recent Developments in Europe: Roles and Benefits of Clinical Legal Education

Clinical Legal Education is used as a term which refers to a learning methodology adopted by law schools. Its pedagogical capacity is based on the experience that students develop their knowledge and understanding of substantive law as well as lawyering activities (Thanaraj, 2016)

Legal clinics emerged in the UK in the 1970s and in Central and Eastern Europe during the 1990s after the fall of communism. In Western Europe, legal clinics only started to develop since 2000. The 1999 Bologna declaration, aimed at the creation of a common European area for higher education, has played a significant role in clinical legal

education. So has the European Network for Clinical Legal Education which was established in 2013 with the aim of strengthening the Clinical Legal Education community through organising conferences and training workshops at the European level. This network initiated and stimulated a very vibrant exchange of ideas among legal experts and rising numbers of students interested in getting additional practically oriented legal education. European Network of Legal Clinics enhances students` mobility and strengthens relationships between universities, scholars and activists in the EU.

In the recent development of legal clinics in countries such as the UK, Germany, Spain, Italy, Portugal, France and Denmark, aside from legal information, students receive research and advocacy training for law reforms (Uyumaz and Erdogan, 2015). Furthermore, legal clinics aim to enhance students` skills to empower those people who are vulnerable, marginalized and disadvantaged in society (Meghdadi and Erfani Nasab, 2011). Moreover, nowadays, legal clinics provide pro bono services to people and if necessary, refer them to appropriate governmental, non-governmental bodies or media outlets for further advocacy on the cases.

Legal clinics are claimed to be “best practice towards social justice” (Maria Concetta Romano 2016:37). It is also proposed to be greatly needed in the current educational programs for the new generations through active personal involvement that is known as “interactive and experiential methodology” (ibid. 39) in education for justice.

Clinical Legal Education programs have been increasing in Europe. One reason is said to be that the traditional legal education is questioned more and more in Europe. Law students, young professors and practitioners are not satisfied with law being taught traditionally, such as abstract legal matters which do not correspond with reality of people's lives. Clinical legal education helps to bridge the gap between law in the books and the law in action. Another reason is that Europe is facing strong social and political challenges. Therefore, the ability and capability of the legal system is being challenged by scholars, students, and social activism. Also, in line with the EU's legal system applicable to all EU member states, anti-discrimination laws and gender equality policies are being adopted.

General benefits attributed to legal clinics are to enhance the quality of university education and to increase interactions between academia, state and civil society. In Europe specifically, legal clinics can enhance attention to fundamental human rights and access to justice through fighting discrimination and inequality while it can promote active citizenship and democratic participation in Europe through students' mobility and relationships between universities in Europe.

According to Clelia Bartoli (2016: 25) "The mission of legal clinic therefore is to show the law as human construct historically determined with limits but able to be refined, the product of time, place, circumstances but also the key to make the reality different. They therefore offer young people the exciting experience of being agents of social change, aimed at building a more equitable and inclusive society, or at least trying to

reduce the impact of an excessively unbalanced distribution of power, resources and rights.”

2.2. Clinical Legal Education and Gender

Clinical legal education with a focus on women’s rights is important as it facilitates a variety of pro bono projects, among which are those with giving direct advice and assistance to women through the law clinics, and sometimes also an assistance before the courts. Women do face gender-based barriers in accessing justice. Governmental schemes for legal aid are not sufficient to support women in most jurisdictions and different countries’ social assistance systems. Women’s legal empowerment is in principle rooted in their knowledge of law and how to use the law to claim rights. However, poverty and lack of education have represented strong barriers in that respect. Insofar, legal aid clinics and clinical legal education have an important role in the knowledge-based empowerment especially in the case of vulnerable groups of women, who do need professional pro bono assistance and help.

Legal aid clinics and clinical legal education contribute differently but cumulatively to combatting gender-based injustice conceived as discrimination, inequality, violence and as not having access to justice. Reasons for ill treatment of women before the law is due to gender insensitive laws – discriminatory laws, male-dominated laws, gender biased laws as well as biased and stereotyped judgments by the judges made in a gender incompetent manner.

3. Two Approaches Towards Using Clinical Legal Education for the Benefit of Gender Equality: Sweden and Serbia

Operating in rather different circumstances and facing diverse legal obstacles, legal clinics in Sweden and Serbia offer fertile ground for a comparative analysis of their features, modes of functioning as well as challenges *en route* to gender justice.

3.1. Sweden: Limited Clinical Legal Education

Following the social democratic welfare regime based on collective equality and universalism, the Nordic countries are reported to be among the countries in Europe which have the highest investment on legal aid providing legal services per inhabitant (European Commission for Efficiency of Justice, 2020). Among 47 countries in Europe, Norway stands first in giving the most legal aid per inhabitant, Sweden is sixth and Denmark is eighth, Finland is tenth and Iceland is eleventh.

Northern European States also have a strong tradition of generous legal aid with a significant budgetary share within the total budget of the judicial system: Ireland (39%), Norway (33%), and Sweden (30%). Also, Norway, Sweden and Iceland, spend more than 25 € per inhabitant per year on legal aid. As a general trend, the Nordic countries and the UK spend proportionally more than the other countries on legal aid, while the less wealthy countries spend proportionally less on legal aids. At the same time, less wealthy countries spend relatively more compared with the richest countries on the prosecution services (European Commission for Efficiency of Justice, 2020).

In Sweden, the Legal Aid Act was the first legislation to provide free legal aid to poor people in 1919. The subsequent legal aid in the 1960 was influenced by the Nordic welfare policy to provide both free litigation aid and legal aid assistance. In 1973 the Legal Aid Act (1972: 429) came into force to equalize access to legal services by enabling everybody in any case legal aid. This was part of the generous welfare policies and programs which was provided to all of the population.

The Swedish Legal Aid Act was described as the most generous and comprehensive scheme until 1990s but after mid 1990s it is described as a limited act in comparison with other Nordic countries.

The Current Swedish Legal Aid Act (1996: 1619) came into force in December 1997 which introduced new eligibility for receiving legal aid and cut out public spending on legal aids in the country (Shoultz 2018: 46).

Based on the current Legal Aid Act in 1997, in Sweden, there are public and private covers for legal aid in civil cases. The private one is the *legal expenses insurance* (Rättsskydd) as part of household insurance and the public is the *legal aid insurance* (Rättshjälp) which is provided under certain conditions: the person earns less than 28000 euros or 260000 SEK a year, have no legal expenses insurance or have no financial means to cover it and this insurance is only available for private individuals. (Shoultz 2018, 43). Furthermore, based on the current Legal Aid Act, most people in Sweden are not qualified to receive legal aid for civil and family court cases. This was a strategy taken up by the government to enable people to resolve their legal matters

without lawyers and outside the courts (Regan 2003). In Sweden everyone is entitled to receive legal aid, but the current Legal Aid Act has made it difficult for people to access legal aid. What is more, clinical legal education was not institutionalized in Swedish universities until 2013. As a result of the current legal aid act, public legal services are less available for people with difficult life situations and those who are disadvantaged in society and those whose legal needs are not even recognized.

In the middle of the 1990s, prior to the reform of legal aid, Sweden had more than one hundred publicly employed lawyers working in twenty-eight bureaus at the county level (Johnsen 1994)). All of these state-financed legal aid bureaus were closed down in 1999 on the grounds that the state should no longer engage in the practice of law. Today, there are no publicly employed lawyers who can provide legal aid in Sweden. Moreover, legal aid is offered by private lawyers called *judicare*. A legal aid counsel does not have to be a lawyer which means no formal qualifications are required. It should be noted that any person can be a legal counselor in Sweden.

Alternatives to these types of legal aid in Sweden are: Swedish Bar Association which gives free legal advice in their spare time on issues like immigration (they are organized within the so-called The Swedish Advice Centre). Voluntary Student Legal Clinic in Sweden appeared during 2005-2013 in Lund and Uppsala where new student initiatives started targeting homeless people or socially disadvantaged. Legal aid research and education is underdeveloped in Sweden, especially in comparison to the neighbouring countries such as Norway in which a very famous legal aid clinic called

Law Buss (Juss-buss) emerged in Oslo during the early 1970s. At Law Buss prestigious legal experts – lawyers and judges gave legal assistance to people in the public transport of Oslo and other major cities (Hammerslev and Ronning 2018).

3.2. Serbia: Long Tradition of Clinical Legal Education Restrained by the Legislator

Though there are differences among universities in Serbia regarding the number of thematic clinical legal education programs offered as well as the sub-area of law covered, main goals intended to be achieved through legal clinics may be divided into two categories. On the one hand, legal clinics are perceived as relevant for the society in general. Namely, they tend to engage universities in the life of the community, enhance professionalism and professional ethics of future lawyers, educate them about the importance of pro bono work and sensitise lawyers for the needs and problems of marginalized and vulnerable groups. On the other hand, legal clinics contribute to students in a number of ways. Perceived as a powerful pedagogical model, legal clinics undoubtedly improve students' practical and analytical skills, they offer students with a valuable opportunity to be guided by professionals and experts in solving cases related to real life stories of fellow citizens, as well as to be trained to establish quality contact with clients.

These diversified goals are achieved through three categories of means. Firstly, although dominantly oriented towards practical work, legal clinics do involve highly specialised training of students. Besides in-depth lecturing delivered by prominent

legal experts and practitioners, students also receive education on legal ethics and successful communication skills, especially on how to conduct interviews and consult with clients. Secondly, interactive teaching methods are used that develop students' analytical and practical skills. These include, but are not limited to, legal case studies, writing of various submissions, legal acts and legal opinions, simulations of proceedings and moot courts. Finally, an important tool used by numerous legal clinics in Serbia is cooperation with relevant partners such as state bodies, international organizations and non-governmental organizations. Established cooperation enables students to engage in various internships, participate in guided study visits, perform field work, attend trials, but also be involved in different kind of practical work at the faculty provided by external experts and practitioners such as judges, prosecutors, lawyers, public notaries, mediators etc.

Dependence of legal clinics in Serbia on partner institutions, as well as reliance on previously mentioned interactive teaching methods, has become one of their main features in 2019 with the commencement of application of the Law on Free Legal Aid of the Republic of Serbia. Namely, before the entry into force of the Law on Free Legal Aid, students worked with real life clients and offered them legal aid. The Law on Free Legal Aid deprived law faculties of a possibility to offer free legal aid and, instead, recognized them only as 'providers of free legal support' (Art. 12). According to the relevant provisions of the Law, legal support does not include offering legal advice which is considered an element of free legal aid (Art. 6). Instead, free legal

support is restricted to providing general legal information, not information relevant for a particular client or his or her concrete legal problem (Art. 11). In addition, legal support includes filling out forms, but only upon official registration and once registered, the provider of free legal support has a duty to annually report to the Ministry of Justice (Art. 16 and 17). Such a legislative solution imposes significant limitations for the functioning of legal clinics in terms of both the opportunities for practical education of students and offering free legal aid to citizens.

This is a general challenge that affects all legal clinics and it is also an important obstacle with regard to clinical legal education related to gender equality. In addition to this, gender equality issues within legal clinics face further challenges due to two main reasons. Not only is there insufficient commitment to issues of gender-sensitive practice in the general education of law students, but the complexity and multidimensionality of gender equality as a social and legal phenomenon also makes it very difficult to deal with all of its various aspects (criminal law, criminal procedure, civil law, civil procedure, family law, labour law, international law, human rights law) through a classical organization of clinical legal education related to a particular field of law. This argument is supported by the current state of affairs since there is a limited number of legal clinics at the universities in Serbia that specialize in gender equality. Women's rights legal clinic operating at the Faculty of Law of the University of Niš is unique in this regard since it covers a comprehensive range of issues. Instead, other existing legal clinics either focus on a single issue such as domestic violence, or,

although oriented towards other fields of law, incidentally, deal with particular aspects of women's rights. As an example of such an approach, the relevance of gender issues in relation to trafficking in human beings has recently been recognized within the Legal clinic on combating human trafficking organized at the University of Belgrade Faculty of Law. In 2022, a workshop was organized on risks of human trafficking and gender-based violence within the population of women and girls' refugees in Serbia. Three young women from Iran, Russia and Nigeria talked to students about their experiences, the reasons why they left their countries of origin and the risks and challenges women face in migration flows. Such an authentic, moving and ultimately startling experience-telling is the best way to sensitise students about the status, real-life and legal problems of this category of women and girls.

Last but not least, the long-running Anti-discrimination law legal clinic operating at the University of Belgrade Faculty of Law regularly focuses in its curriculum on different gender issues such as the legal status of transgender persons, hate crimes and discrimination and domestic violence. In 2021 this legal clinic offered trainings that related to discrimination based on gender, thus demonstrating that the curriculum of existing clinical legal education programs may be adapted to include highly specialised trainings on various gender-sensitive issues despite legislative and practical obstacles. However, a specialised legal clinic dealing with all aspects of gender equality across legal fields would supplement the existing programs and bring valuable complement to developing gender equality through clinical legal education.

4. Conclusion: GELC as an Added Value in Clinical Legal Education

Legal clinics whose primary focus is gender equality issues are still quite rare. The GELC within LAWGEM project aims to promote gender justice and feminist judgments as insofar to train students on how to be conscious about gender inequality and reject different forms of discrimination based on gender and sexuality as well as other multiple grounds of discrimination such as socio-economic status, religion, class, race, ability, and cultural backgrounds. Moreover, the aim of GELC developed within LAWGEM project is to move away from the conventional understanding of legal clinic and adopt an intersectional perspective as how to provide different types of services to diverse groups of people. This means that the course is not limited to law students, which allows students in variety of subjects such as international law, human rights law, humanitarian law, criminology, economic, gender, sexuality and violence to receive training.

The objectives of LAWGEM Gender Equal Legal Clinic training are: 1) to increase students' gender consciousness and knowledge of intersectional perspective in handling cases, 2) to enhance students' abilities to critically analyse structural inequalities and propose constructive changes to the legal and justice system, 3) to develop students' capacities to work with national and international bodies and further cooperate with civil society in their advocacy for gender justice. It is anticipated that the pedagogical outcomes will be: 1) in-depth *knowledge* on the importance of gender and intersectional gender analysis through looking at policies

and practices at national, European, and international levels. 2) necessary *skills* on how to provide advice including legal services to the victims of certain crimes with special attention to social positionality of the victims in relation to gender, sexuality, race, class, ethnicity, (dis)ability, religion, nationality, and age. 3) required ability on *cooperation* with other organizations; NGOs and GOs and practitioners at regional, national, and international levels to advocate for achieving gender justice.

However, due to the outlined differences between the respective normative frameworks on legal aid in Serbia and Sweden, the future GELC will need to use different *modus operandi* in order to achieve the same set of objectives and outcomes.

In Serbia, GELC will not only focus on gender but also will cover wide range of issues in all areas in which women are at risk: employment and labour, education, violence against women, hate speech, sport etc, as recognized by the Serbian National Strategy for Gender Equality for the period 2021-2030. Due to the fact that GELC will not be able to work with real clients, it is important to design appropriate methods that would compensate for the limitations in offering free legal aid introduced by the novel legislative solutions. Thus, within GELC students will be trained to draft summaries and factsheets of international standards on various gender issues, conduct analysis of existing national legislative and judicial practices and their harmonisation with international standards, draft reports to be submitted to relevant international bodies, prepare briefs, legal analysis and opinions for different stakeholders, organise debates on legal problems encountered by specific groups of women and other persons of

concern for GELC (refugees, Roma, women with disabilities, women victims of domestic violence, women victims of human trafficking, migrant workers, transgender persons, ...), provide 'know your rights' info sessions for specific categories of persons of concern for GELC.

In Sweden gender equality is institutionalised at the level of state, activism and academia. Moreover, gender equality measures between men and women have been introduced into multiple policy areas since the 1970s. Such a top-down approach to gender mainstreaming has led to the establishment of Gender Equality Agency (Jämställdhetsmyndigheten) in 2018. Although monitoring and policy evaluation in the implementation of gender equality policies continue to be reinforced in Sweden, a system of gender binary prevails and multiple grounds of inequality is often overlooked in accessing legal aid. Thus, in helping with real clients cases, GELC's aim in Sweden is to focus on not only women, but also on gender and sexually diverse people. Moreover, it focuses on problematising the underlying social categories to see how they reinforce discrimination in society.

References

Bartoli, C. (2016). Legal clinics in Europe: For a commitment of higher education in social justice. *Diritto & Questioni Pubbliche*, 1.

From the Field

Bradway, J. S. (1927). New developments in the legal clinic field. *Louis L. Rev.*, 13, 122.

European Commission for Efficiency of Justice, Report 2020. Retrieved on 9 February 2023: <https://www.coe.int/en/web/portal/-/efficiency-and-quality-of-justice-in-europe-2020-report>

Johnsen, J. T. (1994). Nordic legal aid. *Md. J. Contemp. Legal Issues*, 5, 301.

Hammerslev, O., & Rønning, O. H. (2018). Legal aid in the Nordic Countries. In *Outsourcing Legal Aid in the Nordic Welfare States*, Hammerslev, O., & Rønning, O. H (Eds). pp. 311-328. Springer International Publishing.

Law on Free Legal Aid, *Official Gazette of the Republic of Serbia*, 87/2018.

Legal Aid Act (Rättshjälpslagen1996:1619). Retrieved on February 10, 2023: https://www.riksdagen.se/sv/dokument-lagar/dokument/svenskforfattningssamling/rattshjalpslag-19961619_sfs-1996-1619

Meghdadi, M. M., & Nasab, A. E. (2011). The role of legal clinics of law schools in human rights education; Mofid University legal clinic experience. *Procedia-Social and Behavioral Sciences*, 15, 3014-3017.

Regan, F. (2003). The Swedish legal services policy remix: the shift from public legal aid to private legal expense insurance. *Journal of law and society*, 30(1), 49-65.

Romano, M. C. (2016). The history of legal clinics in the US, Europe and around the world. *Diritto & Questioni Pubbliche*, 16, 27.

Shoultz, I. (2018). Legal aid in Sweden. In *In Outsourcing Legal Aid in the Nordic Welfare State*, Hammerslev, O., & Rønning, O. H (Eds). pp. 43-76. Springer International Publishing.

Strategy for Gender Equality for the period 2021-2030, *Official Gazette of the Republic of Serbia*, 103/2021.

Thanaraj, A. (2016). Understanding How a Law Clinic Can Contribute towards Students' Development of Professional Responsibility. *Int'l J. Clinical Legal Educ.*, 23, 89.

Uyumaz, A., & Erdoğan, K. (2015). Aile Hukukundan Doğan Uyuşmazlıkların Alternatif Çözüm Yolları. *Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi*, 17(1), 119-169.