
Gender Diversity in Corporate Governance in Serbia: Legal Issues and Potential Remedies

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Article Information*

Review Article • UDC: UDK:305-055.1/.2:334.72.021(497.11)

Volume: 19 Issue: 4, pages: 46–64

Received: October 26, 2022 • Revised: November 12, 2022

Accepted: November 16, 2022

<https://doi.org/10.51738/Kpolisa2022.19.4r.46udm>

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We have no known conflict of interest to disclose.

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*Cite (APA):

Uzelac, O. N., & Dukić Mijatović, M. S. (2022). Gender diversity in corporate governance in Serbia: Legal issues and potential remedies. *Kultura polisa*, 19(4), 46–64.

<https://doi.org/10.51738/Kpolisa2022.19.4r.46udm>



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Abstract

The status of gender diversity in corporate governance (i.e., women's right to be part of corporate bodies) is a very important issue worldwide, including in Serbia. The paper examines women's rights from a historical perspective to address the problem of their social under-representation, especially when it comes to their social role outside the family. Additionally, we investigate the EU and Serbian legal framework for encouraging women's participation on corporate boards, including their status in the Serbian banking and insurance industry. Retrospection, compilation, deduction and induction methods were used in the paper. An in-depth analysis shows that women constitute at least one-third of the membership (at least in one executive board), in the majority of Serbian banks and insurance companies. We notice that the Serbian Gender Equality Act does not encourage greater women's participation in corporate boards. Thus, there is a need for immediate legal action to mandate women's representation on corporate boards, and to require additional explanation if this legal provision is violated. The traditional understanding of the position of women in society has remained unchanged, but it is noticeable that the accessibility of corporate management to women is improving, although perhaps not enough and equally in all countries and industries.

Keywords: equality, discrimination, women's rights, corporate governance

Gender Diversity in Corporate Governance in Serbia: Legal Issues and Potential Remedies

Throughout history, women's rights have evolved from the complete negation of their existence, through the restriction to exclusively "female rights", derived from the "natural division" of work in the original community based on the biological nature of women as a partner who was responsible for the enlargement of the genus and tribe, and later, the family in society, until today when women are, formally and legally, equal in rights with the other sex. In some ancient societies, this reflected on a woman's legal position so that her husband could expel her if she did not give birth to his children, with the obligation to return her dowry (Code of Hammurabi, Art. 138). However, chronologically speaking, historical epochs in the development of human society do not reflect the consistent movement of the legal position of women in human society with the simplified conclusion "the-older-the-epoch, the-worse-the-women's-legal-position". For example, women in the Mesopotamian states of Sumer and Babylon enjoyed several legally guaranteed rights such as property ownership, inheritance, and participation in business activities (Kramer, 1963, p. 78; Code of Hammurabi, Art. 39). Consistent with the above, even in ancient Rome, women were born as free citizens (*cives*), but they did not have the right to vote or to discharge political functions. Such a situation has existed since the time of early Rome, which was a military democracy of the clan system, in which the most important decisions were made exclusively by adult men at the Curiate Assembly (*comitia curiata*) (Maškin, 1987, p. 79; Stojčević, 1985, p. 19).

In the multi-millennia duration of ancient Egypt, the existence of traditional and social obstacles for women to perform ruling duties would be an unrealistic and idealistic explanation of the relations in the ruling dynasties of that time. In reality, women came to the throne and privileges through the struggle for power with a good knowledge of religious rules, marital relations and inheritance. Of those about which there are written traces, the first was Sobekneferu from the 12th dynasty (1806-1802 BC), and later Hatshepsut from the 18th dynasty (1479–1458 BC) who ruled equally with Thutmose III, who at the time of his official coming to power was about two years old, and Cleopatra of the Ptolemaic dynasty (51-30 BC) (Wilkinson,

2010). In order to understand the circumstances under which Hatshepsut ruled Egypt, it should not be overlooked that Thutmose III was the only son that Thutmose II had with Isis, one of his wives (or concubines), in addition to Hatshepsut who was his stepmother and the main wife of Thutmose II.

Since their inception, different religions, as a rule, have been based on the gender division of roles and meanings of the two sexes in social relations and hierarchy, and in Christianity, this is more visible in the Catholic and Orthodox Christian traditions than in Protestantism (Beattie, 2005). On the other hand, the emergence of capitalism brought new economic relations in society, but not a change in the subordinate position of women. The general sociocultural setting of the patriarchal-oriented society also contributed to that. While pre-capitalist subordination of women is associated with socially insurmountable natural roles, these constraints were articulated with the advent of capitalism through socially prescribed roles (Davis, 2000, p. 157). In that sense, it is worth mentioning one of the first works of feminist literature published in 1792 in England as a result of the enterprising and analytical skill of Mary Wollstonecraft, who was a translator and writer. In her work "A Vindication of the Rights of Woman", she pointed out that the education system of her time deliberately educated women to be reckless and incompetent, and that improving women's status could be achieved through political change such as radical reform of national education systems (Britannica, 2022).

The theoretical basis for women's rights was established through the institute of human rights, which crystallized during the period of the Enlightenment philosophy of Montesquieu and Rousseau. Women's rights inevitably developed through declarations that had a revolutionary character in relation to the social relations that existed before their adoption. Although the term human rights first mention was in the Bill of Rights 1689 in Great Britain, in The Virginia Declaration of Rights 1779, and then in the French Revolutionary Declaration of Rights of a man and citizen (*Déclaration des droits de l'homme et du citoyen*) 1789, none of these documents regulates the (basic) legal position of women. The attempt of the Frenchwoman Olympe de Gouges to influence the direction of the French Revolution with her Declaration of the Rights of Woman and the Citizen (*Déclaration des droits de la femme et de la citoyenne*) in 1791, that they should have the

same civil rights ended with her arrest and execution, albeit not only because of the above but also because of her overall political commitment (Beauchamps, 2016, p. 944; Cokely, 2018).

Modern theory points out that the traditional division of labour by gender has remained unchanged and that this has led to distorted emancipation as its essential opposite (Uhde, 2016, p. 401). The extent to which the traditional understanding of the position and role of women in the way certain business organizations have been represented in their centuries-long duration is also shown by the fact that the Lloyd's of London Corporation accepted women as underwriters only 1970, and in 1973 allowed them to work in the underwriting room (Flower, Wynn Jones, 1987, p. 186). This may be a consequence of the fact that maritime trade and maritime insurance have been businesses for centuries, exclusively or customarily, by men. Progress in achieving gender equality in Lloyd's corporate structure is evident today, but while women hold important positions in Lloyd's management and other organizational units, serving as CEO and chief underwriter at Lloyd's Europe, no woman has served as President of the Lloyd's of London. On the other hand, conservative political populism can also lead to stagnation or decline in the achieved standards of gender equality and non-discrimination and violation of women's rights, which has been stated in various international documents (In-Depth Analysis PE 603.489, 2020).

Research on the Features for Which Women Should Be Included in Corporate Governance

In addition to the traditional understanding of the role of women, their position in society may further deteriorate during major social and economic changes. Then women may be disproportionately more affected than men by the negative consequences of structural adjustment of the economy and the operation of market laws: loss of jobs, acquired rights and benefits from the previous period, increased living costs, unemployment, and poverty, reduced salary and difficult access to health services, social protection, education and resources (Dokmanović, 2006). The explanation of why the globalization of developed capitalism is the cause of the distortion of women's emancipation was given by Ms. Uhde, a member of the Czech

Academy of Sciences (Uhde, 2016), while one of the specific reasons for women's inequality, some authors see in the economy based on general mobility of the labour force as a contradiction with the geographical connection of women with the care of children and family (Dokmanović, 2006).

Women perform a variety of jobs, but for them, according to the International Labor Organization, there are still obstacles to advancement in the workplace, and especially towards higher levels of management (Berry & Franks, 2010, pp. 2–3; ILO, 2019, p. 30).). In addition, there are still problems of unequal treatment regarding the volume of expected work of women for advancement in relation to men and the difference in remuneration between the two sexes in the same positions (Garača & Vukosav, 2020, p. 533). Despite the proclaimed equality of remuneration of men and women for the same job in these international agreements, in modern companies, the differences are retained (Lloyd, 2010, p. 6).

Although studies on gender differences provide different explanations for their greater or lesser ethics, they all agree that women are far more moral than men and can reduce corporate risks of corruption, fraud and other types of scandals (Krambia-Kapardis, 2016, pp. 83; Abouzaid, 2017; Lloyd, 2010, pp. 158–159). Yet, as Warren Buffett, a major U.S. investor and owner of influential companies, explained, most CEOs are men and women who would each like to be guardians of their children or neighbours, but at one point, they went astray for their lucrative reasons, and this is not because of inadequate laws, but because of the (authoritarian) atmosphere in the boards due to which someone would not be a member of the board if he did not always vote “for” CEO’s decision (Buffett, 2013, p. 55; Jovanović, 2013, p. 172; Krambia-Kapardis, 2016, pp. 83–84).

Several related studies on the impact of women in management positions in EU banks have confirmed that business risks have been reduced and that growth-oriented measures have been taken by banks (Díaz et al., 2018, p. 191). According to the experience of a UK state banker, enterprising women, due to their intuitiveness, better assess the person’s character and are less burdened by their own status than men eager to advance (Lloyd, 2010, p. 153). However, in situations where social relations are such that men are expected to react or make a decision, women will certainly accept a

masculine attitude or approach to solving a problem and vice versa (Lloyd, 2010, p. 160).

Business ethics as an essential issue in corporate business is often associated with the ability to implement cultural change, with the English literature citing the representation of women on boards of directors as the best example (Wearing, 2005, p. 20). Although Ms Tyson, dean of the London Business School, stated in her 2003 Report that the full diversity of non-executive directors on company boards could lead to weaker cohesion and less trust, she also stressed that a fundamental business justification for both sexes on the board should be to be a desire to find and hire the best talent (Tyson, 2003, p. 7), with which some other authors also agree (Jourová, 2016, p. 1; Berry & Franks, 2010, p. 7). In the same vein, several other studies confirmed that companies with high participation of women in top management positions achieved better organizational and financial indicators (Jourová, 2016, p. 1). The International Labor Organization suggests that firms need to identify the reasons affecting the retention rate of female staff, create an inclusive business culture that encourages women to stay in the firm, and design incentives to attract new female talents. This is because their number is constantly increasing, while their skills and knowledge are comparable to men's managerial qualities (ILO, 2019, p. 25).

Legal Framework for the Possibility of Women's Membership in Corporate Boards in Europe and Serbia

The European Union (hereinafter: the EU) in its Single European Act [SEA] of 1987 prescribed the obligation of Member States to continue to apply the principle that men and women *should* receive the same pay for the same work during the first period of the transitional period of building a common market (Art. 119). It was a provision that is in principle clear, but with a relatively non-binding disposition – an order that derives from the use of the word “should”, which left the possibility to deviate from the stated principle. Its effect is, in the stated manner, mitigated in relation to the binding manner of the provision of Art. 2 of the International Labor Organization Convention on Equal Remuneration of 1951. The very notion of “equal remuneration” should not be limited to pay for work in a particular

job, but also to rewards, bonuses, severance pay, and other benefits based on employment. The mentioned EU regulation did not prescribe elsewhere equality of men and women in relation to opportunities in the labour market and treatment in the workplace. This came about by concluding the Treaty on European Union in Maastricht in 1992, which also provided for an incentive provision empowering Member States to enact (or maintain existing) regulations guaranteeing certain benefits to women so that they could more easily pursue their professions. The mentioned Treaty also aimed at the prevention of negative outcomes, making it difficult or impossible for women to advance in business careers and introducing an obligation to provide certain compensation in the event of negative outcome consequences.

Together with the principle of equality between men and women, the Treaty on the Functioning of the European Union 2012 has provided for the obligation of the EU to consider the goals related to encouraging high employment rates, guarantees of adequate social protection, and combating social exclusion and a high level of education, training and protection of human health. In addition, it is the obligation of the EU, the Member States and its institutions and bodies to combat discrimination based on sex, racial or ethnic origin, belief, age or sexual orientation (TEU, 2012, Art. 10).

As one of the means of the fight for gender equality and against discrimination on any grounds, starting from Art. 21 and 23 of the Charter of Fundamental Rights of the EU and its other documents, the European Institute for Gender Equality was established in early 2007 with the aim of contributing to and strengthening gender equality, combating discrimination based on sex and to provide technical assistance to the EU institutions and Member States in this regard (Regulation /EC/ No 1922/2006).

To encourage and further improve gender equality in the Member States, the EU has been adopting four-year Action Plans on Gender Equality since 2010, and the last one for the period from 2020 to 2025. Nevertheless, despite some progress, the under-representation of women in decision-making positions in European companies and industries persists. The statistics of this Institute show that men made up over 70% of the persons in the positions of president, board members and employee representatives in the largest joint stock companies in seventeen EU Member States

(European Institute for Gender Equality [EIGE], 2022). This is in line with the previously established 23.3% of women in leading positions in the EU's largest joint stock companies (Jourová, 2016, p. 6).

In the EU Gender Equality Strategy, which was adopted before the last Action Plan, and in order to increase women's participation in the work of boards of joint stock companies, the European Commission committed to insisting on adopting a proposal for a Directive on improving gender balance in corporate boards (*Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures*) with the aim that a minimum of 40% of non-executive members of the underrepresented sex be appointed to the boards of joint stock companies (Communication COM/2020/152, p. 13). It should be borne in mind here that the proposal of the said directive contains a solution that positively discriminates the gender that is in the minority in a corporate board, and not exclusively women. This also follows from the EU Charter of Fundamental Rights (Art. 23, para. 2), according to which the principle of gender equality is applied in such a way that it must not prevent the maintenance in force or the adoption of new rules regulating certain advantages in favour of the underrepresented sex. In addition, the European Commission also called on the European Parliament and the Council to adopt regulations to promote gender representation at all levels of their management and leadership positions. It also called on Member States to implement the Directive, once adopted, and to establish and implement strategies to increase the number of women in decision-making positions in politics and in policymaking (Communication COM/2020/152, p. 16).

In the Republic of Serbia, gender equality was proclaimed by a provision of the 2006 Constitution, according to which the state guarantees equality between women and men and develops a policy of equal opportunities (Narodna skupština Republike Srbije [Narodna skupština], 2006, Art. 25), in all areas of public and private life (Radovanović, 2020, p. 96). Act on Gender Equality regulates in detail the guarantees of equal treatment and protection of the sexes in the exercise of rights and obligations and protection in cases of discrimination. When it comes to gender representation in management and supervisory boards, this law

obliges a balanced representation of the sexes in public authorities (2021, Art. 26). We believe that this provision should not be limited only to management bodies in public services, but that it should also be applied to joint stock companies. The law limited the obligation of private employers to take into account gender balance only if it has more than 50 employees and work engagement persons, in which case it is obliged to adopt a plan of measures to eliminate or mitigate gender inequality. On the other hand, the Code of Business Ethics of the Serbian Chamber of Commerce 2006 does not mention or regulate the equal representation of women in the management bodies of joint stock companies.

In comparative law, different solutions have been applied in terms of the percentage of representation and the minimum number of employees in a joint stock company as a limit above which there are obligations related to gender equality and sanctions for non-compliance. In Belgium and Italy at least 33% must be appointed, and the under-represented sex of the total number of board members of the firm. In France, at least 40%, and in Germany, 20% of all board members of the company must be female. Unlike these countries, the Netherlands applies cumulatively established conditions: all joint stock companies with over 250 employees must have at least 30% women on the company's boards. When it comes to sanctions, in Italy and Norway there are fines for violating legal obligations, while the Netherlands, Romania, Great Britain, and Switzerland provide for only the obligation to explain the reasons for non-implementation of the law, while Norway prescribed consequences such as refusal to register a company or compulsory liquidation based on a court decision (ILO, 2019, p. 127). There are also EU Member States (Austria, Finland, Luxembourg) that have left the representation of women on company boards to corporate self-regulation in the form of recommendations in business codes (Jourová, 2016, p. 7).

Representation of Women in the Corporate Governance of Banks and Insurance Companies in the Republic of Serbia

Using data from the National Bank of Serbia website, the authors conducted an analysis of the representation of women in corporate bodies of banks and insurance companies in Serbia. Another purpose of the analysis was to look at the geographical distribution of their headquarters

to determine the chances of highly educated and specialized female staff to become a member of a management body in banking and insurance (List of the banks, 2022). The authors drew the following conclusions based on the data on the mentioned facts.

At the beginning of 2021, twenty-six banks operated in the banking sector of Serbia, of which six in 2019, originating from Italy, Hungary, and Austria, with a share of more than half in the total balance sheet, had a dominant share on the banking services market (NBS, 2019, p. 4). This is certainly a consequence of the privatization of almost all domestic banks with foreign capital in the previous period, which is a kind of example of the globalization of the Serbian banking sector. To better understand the issue of women's representation in bank management bodies, it is necessary to keep in mind that the Law on Banks stipulates that bank management bodies are the bank's board of directors and executive board. The bank's board of directors consists of at least five members, including the president, whereas the bank's executive board consist of at least two members, including a president who also represents the bank (Narodna skupština, 2005, Art. 70, 71, and 75). Of all banks, only one bank has no women as a part of any board; in half of them, women are members of only one board, while slightly less than half of the banks have appointed women on both boards that make up corporate governance entities. At the time of conducting this analysis, no bank in Serbia had a woman president of the board, while in eight banks women held the position of president of the bank's executive board. In one bank with a two-member executive board, both members are women, while in three banks women made up two-thirds of the executive board members, with a woman as president. This thing can be analysed based on some geographic criteria. Namely, three-quarters (precisely, twenty banks or 76.9%) of bank headquarters are located in the capital, while slightly less than one-quarter of bank head offices are located in the three largest cities of the Republic of Serbia.

There were sixteen insurance companies and four reinsurance companies operating in the Republic of Serbia at the end of the third quarter of 2020 (NBS, n.d.). The insurance companies are also mostly privatized with foreign capital, which is why, according to the ownership structure, out of a total of twenty companies, fifteen of them are majority foreign-owned with

a predominant share in the insurance market both in terms of total premium and by a number of employees (NBS, 2020, 4). The Insurance Law prescribes the organization of the corporate administration of insurance and reinsurance companies, so each company is obliged to appoint a supervisory board and an executive board as management bodies. The supervisory board must have a minimum of three members together with its president, whereas the executive board, whose president represents the company, must have at least two members (Narodna skupština, 2014, Art. 50, 54, and 57). For the purposes of this paper, both types of companies (insurance and reinsurance) are treated as insurance companies. Based on available data, one-third of insurance companies do not have women as members of any corporate board. Of the insurance companies in which women participate in the work of corporate bodies, slightly less than half (nine) have women on one board, while women are represented on both corporate boards in only a quarter (five) of insurance companies. In eight insurance companies, women were members of the supervisory board, and in three they also served as presidents (two insurance companies and one reinsurance company). Women were members of the executive board of eleven insurance companies, two of which also served as chairmen. They were the most represented in one insurance company and one reinsurance company, making more than half of the members in the supervisory and executive boards, with a woman as the chairman of those boards. In terms of territorial accessibility in relation to the possible residence of women, the largest number of insurance companies, seventeen of them, have their head office in the capital, while only two insurance companies and one reinsurance company are located in the second largest city in Serbia.

Conclusion

The traditional understanding of the position of women in society has remained unchanged, but it is noticeable that the accessibility of corporate governance to women has been improving, although not sufficiently and evenly across all countries and activities. Women's rights to membership in corporate boards are regulated by numerous international documents. The rights of women to be part of corporate governance established by national laws are in some cases protected by severe

sanctions, while in others they are most often declaratory, in the form of recommendations that do not guarantee their realizations. The Serbian legal system do not make women to be appointed in the governing bodies of joint stock companies as a mandatory provision. In our opinion, this should be corrected by mandating responsible bodies (and their members) to offer reasonable explanations for non-compliance to get more insight into the problem of underrepresented groups in this branch of corporate law in Serbia. Sometimes, it is simply not possible to find a suitable person that meets certain professional standards. As a forward-looking guideline, we think that the rule of one-third of women in public service management bodies would be a good solution for joint stock companies (including banks and insurance companies). Based on this proposal, more than half of all banks and insurance companies would meet the standard since women are currently represented in this proportion.

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Rodna raznolikost u korporativnom upravljanju u Srbiji: pravni problemi i potencijalna rešenja

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Sažetak

Rodna ravnopravnost u korporativnom upravljanju je veoma važno pitanje u svetu i u Srbiji. U radu se istražuju prava žena kroz istoriju i glavni razlozi za neprihvatanje njihove veće društvene uloge van porodice. Takođe, rad istražuje pravni okvir EU i Srbije koji podstiče veće učešće žena u korporativnim odborima, naročito zastupljenost žena u korporativnim odborima u sektoru bankarstva i osiguranja u Srbiji. Analiza je pokazala da žene čine najmanje jednu trećinu od ukupnog broja članova (najmanje u jednom odboru), u više od polovine srpskih banaka i društava za osiguranje. Takođe je utvrđeno da srpski Zakon o rodnoj ravnopravnosti nije podsticajan za veće učešće žena u odborima. Dakle, potrebna je promptna pravna akcija kojom bi se učešće žena u korporativnim odborima uspostavilo kao pravna obaveza, kao i neophodnost za dodatno pojašnjenje ukoliko nije ispunjen ovaj pravni zahtev.

Ključne reči: ravnopravnost, diskriminacija, prava žena, korporativna uprava