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Liberal Legal Professions in Kosovo: Participation of Women

Abstract

Effective justice is vital in upholding the rule of law in any democratic society. Justice is offered by judicial institutions and liberal legal professionals. Within different jurisdictions, free legal professions vary. In Kosovo, there are five free legal professions, respectively lawyers, notaries, private enforcement agents, mediators, and bankruptcy administrators. The role of these professions is crucial in delivering justice and protecting human rights.

This paper addresses the liberal legal professions in Kosovo and the participation of women. Specifically, it looks to the challenges that women face entering the professions. The study demonstrates that the gender imbalance persists in the free legal professions in Kosovo due to some barriers that women face.

Keywords: legal system; Kosovo; liberal legal professions; gender diversity; women; difference.

1. Introduction

Within the different jurisdictions, there is a variety of legal professions such as judges, lawyers, notaries, and prosecutors. Members of legal professions do not hold the same titles in all the countries. Their status and role can considerably vary, particularly for the liberal legal professions. The most common free legal professions are advocacy and notary.

The liberal legal professions belong to the group of liberal professions. The European Court of Justice defines liberal professions as “...activities which, inter alia, are of a marked intellectual character, require a high-level qualification and are usually subject to clear and strict professional regulation. In the exercise of such an activity, the personal element is of special importance and such exercise always involves a large measure of independence in the accomplishment of the professional activities.”²

Free legal professions play a critical role in providing effective justice and protecting human rights.³

Nowadays, women comprise more than half of law school graduates in many jurisdictions,⁴ including Kosovo. Yet, a greater number of women studying law on its own does not always lead to a greater number of females in legal professions.⁵

This paper examines the liberal legal professions in Kosovo and the challenges that women face entering the professions. The paper argues that the gender imbalance persists in the free legal professions in Kosovo due to some barriers that women face.

The essay begins with an overview of the liberal legal professions in Kosovo. Then it examines the free professions individually, and women’s participation in such professions. Lastly, it provides reflections on the contentious debate that the participation of women makes a difference in the legal system.

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² ‘Charter for Liberal Professions’ (Council of European Dentists) 3.

³ OHCHR Basic Principles on the Role of Lawyers (1990).

⁴ ‘Mapping the Representation of Women and Men in Legal Professions Across the EU’ Legal and Parliamentary Affairs’ (Directorate General for Internal Policies-Policy Department for Citizens’ rights and Constitutional Affairs 2014) 33.

⁵ *ibid.*

2. Overview of the Liberal Legal Professions in Kosovo

The domestic legislation of Kosovo defines free legal professions the following occupations notaries, lawyers, private enforcement agents (PEAs), mediators, and bankruptcy administrators.⁶

The lawyer profession is a classic nature. Whereas services of notary, private enforcement, mediation, and bankruptcy have been introduced by the legislative and judicial reforms in Kosovo in the past ten years. Hence, such services are considered relatively new. The establishment of these professions has advanced the legal system in the country in line with European standards and increased the public trust in the judicial system.⁷

Each of the liberal legal professions is governed by its organisation. The Ministry of Justice (MoJ) is responsible for drafting the necessary legislation and ensuring the functionality of the free legal professions, except the lawyer profession. The lawyer profession is placed under the chapter of Justice System in the Constitution of the Republic of Kosovo, and is entirely governed by Kosovo Bar Association, a self-governing organisation.⁸

Liberal legal professions play a crucial role in the functioning of the legal system as they provide convenient and efficient services to citizens and ease the burden of court cases.⁹ Each of the professions is governed by a specific law.¹⁰

When it comes to laws regarding women's decision to work and their pay, Kosovo has the most advanced legislation for gender equality in the region.¹¹ It gets a perfect score, respectively 91.9 out of 100.¹² Whereas the maximum average across Europe and Central Asia is 93.8 in Croatia.¹³ Law on Gender Equality obligates legislative, executive and judicial bodies, and other public institutions to ensure equal gender representation of 50 percent for each gender.¹⁴

The governing bodies of the liberal professions promote the entry into the profession of women, and no gender quotas are set. Nonetheless, it is well documented that liberal legal professions tend to be male-dominated.¹⁵ Kosovar women face various challenges in securing employment and growing professionally in the legal field.

2.1. Lawyers

Advocacy is an independent profession regulated by the Law on Bar.¹⁶ According to the law, a lawyer is considered a person who is registered in the Kosovo Bar Association (KBA), has taken an oath and practises law. Lawyers are entitled to provide legal aid to natural and legal persons for the protection of their freedoms, rights, and interests. As such lawyers offer legal advice, represent parties before the court, draft various documents such as lawsuits, complaints, petitions, requests, proposals, etc.

⁶ Ministry of Justice of Kosovo 'Free Legal Professions' (*Ministry of Justice of Kosovo*) <<https://md.rks-gov.net/page.aspx?id=2,27>> accessed 14 December 2021.

⁷ Ministry of Justice of Kosovo, *Strategy on Rule of Law 2021-2026* (2021) 34. [hereinafter *Strategy on Rule of Law*]

⁸ Constitution of Republic of Kosovo (2008).

⁹ *Strategy on Rule of Law* (n 6) 35.

¹⁰ Law No.06/L-009 on Mediation (2018); Law No.06/L-010 on Notary (2018); Law No. 04/L-193 on the Bar (2013); Law No.04/L-139 on Enforcement Procedure (2013); Law No.05/L-083 on Bankruptcy (2016).

¹¹ Law No.05/L-020 on Gender Equality (2015); Law No.05-L021 on the Protection from Discrimination (2015); Law No.03/L-212 on Labour (2010).

¹² 'Women Business and the Law' (The World Bank 2021) 1.

¹³ *ibid.*

¹⁴ Article 5 Law on Gender Equality (n 9).

¹⁵ See 'Mapping the Representation of Women and Men in Legal Professions Across the EU' (n 3).

¹⁶ Law on the Bar (n 8).

Advocacy is a male-dominated profession. In many countries, to become a lawyer practical training is needed.¹⁷ Research shows that men more than women succeed in gaining the training of their choice and subsequently getting a job as a solo lawyer, or in the office sharing law firm through their networks and connections.¹⁸ On the other side, women are likely to be less specialized, and opt to work with family law issues since usually fits into the regular work schedule, and does not require continuous updating training.¹⁹ Whereas working other cases such as commercial cases, often requires working overtime or during the weekend.²⁰

In Kosovo, to become a lawyer a legal degree and a bar exam qualification are needed. According to the Bar's registry, the total number of lawyers in Kosovo is 1152, out of which 254 are women (23%).²¹ Promoting the participation of women in advocacy is essential on the mission of KBA.²² Yet, the number of women lawyers is low considering that females make up most of the law graduates.²³ The proportion of female lawyers has increased significantly in the past few years. For instance, in 2013, women accounted only 12% of licensed lawyers.²⁴ Nonetheless, the number of total lawyers has increased as well.

Similar to other countries, Kosovar women lawyers work as solo-practitioners or in office-sharing firms. Men own most of the law firms, and women lawyers employed in firms work mainly as associates.²⁵ This negatively influences women's financial income. The presence of women at the top levels of law firms remain rather an exception.²⁶

Data shows that in Kosovo most of the female lawyers are solo-practitioners.²⁷ Having their own office makes women have more or less a flexible schedule to combine work and family.²⁸ A study illustrates that more than one-third of all employees today expect to need time away from their jobs for their responsibilities.²⁹ For many a woman lawyer with a flexible schedule is perceived more committed to family than clients.³⁰

The psychologist, Sally Helgesen, states that women lawyers compared to men are better at listening and empathy, and possess advanced negotiation and conflict resolution skills. Thus, women may develop a 'more mediation, less litigation' model in the profession.³¹

2.2. Mediators

¹⁷ 'Mapping the Representation of Women and Men in Legal Professions Across the EU' (n 3) 23.

¹⁸ *ibid.*

¹⁹ See Ulrike Schultz, 'Women in the World's Legal Professions: Overview and Synthesis', *Women in the World's Legal Professions* (Bloomsbury Publishing 2003).

²⁰ *ibid.*

²¹ Kosovo Bar Association, 'List of Lawyers' (*Kosovo Bar Association*) <<https://www.oak-ks.org/sq/lista-e-avokateve>> accessed 16 December 2021.

²² Kosovo Bar Association, 'Mission & History' (*Kosovo Bar Association*) <<https://www.oak-ks.org/en-us/about-us>> accessed 16 December 2021.

²³ 'Education Statistics in Kosovo' (Kosovo Agency of Statistics 2021) <<https://masht.rks-gov.net/uploads/2021/08/statistikat-e-arsimit-ne-kosove-2020-21.pdf>> accessed 18 December 2021.

²⁴ 'Kosovar Lawyer' [2013] *Kosovo Bar Association* 11 <https://www.oak-ks.org/repository/docs/AVOKATI_KOSOVAR_NR.3_173919_539978.pdf>.

²⁵ See 'Kerveshi & Partners Law Firm' <<http://www.kerveshi.com/>> accessed 16 December 2021;

'Hodaj & Partners' <<https://hodajlaw.com/>> accessed 16 December 2021;

'SQ LAW' <<https://sq-law.com/>> accessed 16 December 2021;

'Jupolli & Associates' <<http://jupolli-associates.com/>> accessed 16 December 2021.

²⁶ *ibid.*

²⁷ See Kosovo Bar Association, 'List of Lawyers' (n 19).

²⁸ 'Mapping the Representation of Women and Men in Legal Professions Across the EU' (n 3) 24.

²⁹ See 'Keeping the Keepers II: Mobility of Associates' (The NALP Foundation 2003).

³⁰ See Paula A Patton, 'Women Lawyers, Their Status, Influence, and Retention in the Legal Profession' (2005) 11 *William & Mary Journal of Race, Gender, and Retention in the Legal Profession* 173.

³¹ See Sally Helgesen, *The Female Advantage: Women's Ways of Leadership* (1st edn, Doubleday Currency 1990).

Mediation is a way of resolving disputes in extra-judicial ways. The procedure of mediation is regulated by the Mediation Law and is carried out by a licensed person called a mediator.³² Mediation creates fewer expenses and is less formal than court proceedings.

The parties in a mediation procedure may reach a written agreement resolving the contest between them, that is considered as an enforced document. Although there are no limitations on the number of certified mediators, current statistics show that the total number of practicing mediators in the territory of Kosovo is relatively low. Specifically, there are 181 mediators, out of which 57 are women.³³ Mediators usually have a primary job and mediation remains a secondary one. Public awareness and familiarity with mediation remain low.³⁴ Moreover, the fees of mediators are low and that affects the motivation for being a mediator.³⁵ So far, mediators have been mainly working due to their passion for the profession rather than for financial benefits.³⁶ Therefore, the past few years, various campaigns have been taking place aiming to advance the use of mediation.³⁷

International practices illustrate that the active participation of women in conflict mediation, dialogue, and peacebuilding is critical.³⁸ United Nations Security Councils have found out that peace processes are more durable and last longer when women are involved. Therefore, it has urged member states in increasing women's participation in all decision-making levels.³⁹

For instance, at peace talks in Guatemala in the 1990s, Luz Mendez was the sole female delegate from the Guatemalan National Revolutionary Unity party. She negotiated beyond any party affiliation and managed to advance the gender equality concerns in the country. The outcomes of the talk regarding discrimination against women and their political rights have been unprecedented.⁴⁰

Studies on the effectiveness of mediators show broadly that women bring different mediation styles or experiences to the talks. Both style and gender of the mediator matter. When reaching an initial settlement, females and men are equally effective, but women mediators are better effective at mediating compulsory settlements. This can be seen the most in the implementation of agreement thereafter.⁴¹

The former US Secretary of state Hillary Clinton has stated that “including more women in peace-making is not just the right thing to do, it’s also the smart thing to do”.⁴² On the other hand, Margaret Vogt, a Nigerian diplomat believed that “If you choose the right women to come to the table, as well as if you choose the right men, then they will bring to the table issues that are fundamental.”⁴³

³² Law on Mediation (n 8).

³³ See Kosovo Judicial Council, ‘Mediation’ (*Kosovo Judicial Council*) <<https://www.gjyqesori-rks.org/mediation/?lang=en>> accessed 17 December 2021. [hereinafter Mediation KJC]

³⁴ ‘Report on Kosovo 2021’ (European Commission) 20.

³⁵ Rrustem Qehaja and Valbon Mulaj, ‘Mediation as an Alternative Manner of Dispute Resolution in Kosovo’ (2016) 12 *Acta Universitatis Danubius Juridica*.

³⁶ *ibid*.

³⁷ Mediation KJC (n 30).

³⁸ See Karin Aggestam and Isak Svesson, ‘Where Are the Women in Peace Mediation?’ in Karin Aggestam and Ann E Towns (eds), *Gendering Diplomacy and International Relations* (Palgrave Macmillan, Cham 2018).

³⁹ UNSC Res 1325 (31 October 2000) UN Doc. S/RES/1325.

⁴⁰ ‘Women in Conflict Mediation: Why It Matters’ (International Peace Institute, 2013) 8.

⁴¹ *ibid* 5.

⁴² Hillary Rodham Clinton, ‘Keynote Address at the International Crisis Group’s “In Pursuit of Peace” Award Dinner - World’ (*ReliefWeb*) <<https://reliefweb.int/report/world/keynote-address-international-crisis-groups-pursuit-peace-award-dinner>> accessed 17 December 2021.

⁴³ Interview with Marget Vogt, ‘Democratizing Peace Processes: Women at the Table’ (2013) <<https://css.ethz.ch/en/services/digital-library/articles/article.html>> accessed 17 December 2021.

What has been said about the participation of women in conflict is true for the domestic mediation service. If more women take up the role of mediators, opportunities for better mediation and outcomes increase.

2.3. Notaries

The service of a public notary in Kosovo is exercised through notaries. Notaries are appointed by the Minister of Justice pursuant to the provisions of the Law on Notary.⁴⁴ They are independent and impartial in exercising their duties. The public notary has been entrusted with significant competencies, identical to those established in countries in the region. Some of the duties of a notary are: certify and issue notary deeds; non-contested inheritance proceedings; storing inheritance documents, cash, etc. The profession has an excellent income perspective.

The representation of women in the notary service in Kosovo remains a challenge. The current total current number of licensed notaries in Kosovo is 57, out of which 15 are women.⁴⁵ Contrary to the lawyer profession, the number of notaries is strict. It is designated by the Minister of Justice ensuring at least 1 notary for each municipality (currently Kosovo consists of 38 municipalities).⁴⁶ The strict number of notaries limits options for both men and women to engage in the notarial system. With fewer available positions, fewer women may enter the profession. Additionally, it must be noted that notary is characterised by a culture of total commitment, and that could affect the women's interest in the profession. In this regard, a good example in the region is Slovenia, where the gender balance exists among the notary profession.⁴⁷

In Kosovo, the number of notaries is expected to be increased according to the formula 1 notary to 10.000 inhabitants.⁴⁸ Accordingly, the women representation might advance. Important to note is that the law does not foresee any quota for women, merit is crucial for selection.

Sadly, statistics show that in more than 60% of Kosovar women renounce inheritance.⁴⁹ This questions whether notaries well inform women clients about their legal inheritance rights.⁵⁰ As such, Kosovo has the lowest level of real estate registered to women in Balkan region.⁵¹ The growth of women in the profession might bring a more feminine perspective that could enhance the role and performance of the notary system towards protecting women's inheritance rights and needs.

2.4. Private Enforcement Agents

In 2013, the law on Private Enforcement entered into force in Kosovo.⁵² Comforting to European commitments, this law brought fundamental change to the system of enforcement of the court judgement easing the courts' work.

⁴⁴ 'Law on Notary (n 8).

⁴⁵ Notary Chamber of Republic of Kosovo, 'Notaries' <<https://www.noteria-ks.org/noteret/>> accessed 29 September 2021.

⁴⁶ Article 8 (3) Law on Notary (n 8).

⁴⁷ 'Mapping the Representation of Women and Men in Legal Professions Across the EU' (n 3) 68.

⁴⁸ Article 3 Law on Notary (n 8).

⁴⁹ See 'Women and Inheritance Rights to Real Estate in Kosovo' (European Union Rule of Law Mission Kosovo 2016).

⁵⁰ *ibid.*

⁵¹ *ibid* 5.

⁵² Law on Enforcement Procedure (n 8).

According to the law, PEAs execute enforcement actions such as court decisions, notarial documents executable under the Law on Notary, etc. PEAs cannot enforce decisions on family law issues and the return of civil servants to work and other compensation. A “private enforcement agent” is the natural person appointed by the Minister of Justice for the territory of the Basic Court (7 Basic Courts in Kosovo) for the enforcement of public authorizations entrusted with the execution of permitted enforcement and execution of enforcement actions.

The Minister of Justice is responsible to determine the number of PEAs. For the territory of the Basic Court, a PEA’s position, as a rule, is set at 25.000 inhabitants. The operating of PEAs covers almost all regions in Kosovo. At the present moment, the total number of PEAs in Kosovo is 41, as only 6 of them are females.⁵³ Generally speaking, the law enforcement field is interesting and challenging.⁵⁴ However, the positions limitation imposed by law impend the increase of female participation in the profession, or in general to increase the number of PEAs. From the website of the Chamber of Private Enforcement Agents, we see that there has not been any vacancy for the position of PEAs for a few years now since the positions are occupied.⁵⁵ The level of women’s participation in the profession of private law enforcement is mainly low in the countries in the region as well. For instance, in Albania out of 152 PEAs, only 26 are females.⁵⁶ Whereas in Bulgaria, the profession is very well advanced as well as the gender diversity is balanced.⁵⁷

2.5. Bankruptcy Administrators

Bankruptcy Administrators play a central role in the bankruptcy procedures in Kosovo.⁵⁸ Pursuant to the law, once the process of bankruptcy begins, an administrator is appointed as a representative of the bankruptcy estate. An administrator is appointed to lead the liquidation procedure, respectively to sell or reduce cash assets, all assets, and properties of the company as well as to review claims submitted by the company creditors. Since the administrators take crucial decisions relating to the bankruptcy process, their verdicts are subject to review by the bankruptcy court.

The administrator is appointed from the list of bankruptcy administrators that is maintained by the MOJ. Currently, there are 3 women licensed as bankruptcy administrators out of 18 in total.⁵⁹ The small number of bankruptcy administrators could be due to the low use of the bankruptcy procedures, through bankruptcy administrators.⁶⁰ This especially applies to judges, prosecutors, administrative bodies that can recommend potential users such a service.⁶¹ There is low public awareness on the use of this service, and that might make professionals including females less interested in becoming administrators of bankruptcy. Moreover, we see that females seem to have less interest in subjects related to commercial law compared to other fields of law.

⁵³ Kosovo Chamber of Private Enforcement Agents ‘Private Enforcement Agents’ (*Kosovo Chamber of Private Enforcement Agents*) <<https://opk-rks.org/permbaruesit>> accessed 16 December 2021.

⁵⁴ See Evabel Tenny, ‘Women’s Work in Law Enforcement’ (1953) 44 *The Journal of Criminal Law, Criminology, and Police Science* 239.

⁵⁵ Kosovo Chamber of Private Enforcement Agents, ‘Job Vacancies’ (*Kosovo Chamber of Private Enforcement Agents*) <<https://opk-rks.org/en/job-vacancy>> accessed 17 December 2021.

⁵⁶ Ministry of Justice of Albania, ‘Private Enforcement Agents List’ (*Ministry of Justice of Albania*) <<https://drejtesia.gov.al/lista-e-permbaruesve-gjyqesor-privat/>> accessed 17 December 2021.

⁵⁷ Bulgarian Chamber of Private Enforcement Agents ‘Formation’ (*Bulgarian Chamber of Private Enforcement Agents*) <<https://www.bcpea.org/en/aboutus/establishment>> accessed 15 December 2021.

⁵⁸ Law on Bankruptcy (n 8)

⁵⁹ Ministry of Justice Kosovo, ‘Bankruptcy Administrators’ (*Ministry of Justice Kosovo*) <<https://md.rks-gov.net/page.aspx?id=2,44>> accessed 17 December 2021.

⁶⁰ Strategy on Rule of Law (n 6) 24.

⁶¹ *ibid.*

World Bank Doing Business ranks Kosovo 163 out of 189 countries in resolving insolvency, and that affects Kosovo's business environment.⁶² Special attention must be paid to enhance the implementation of the bankruptcy legislation since that is crucial for building the trust of domestic and foreign investors.⁶³

Concerning the importance of gender diversity, a study shows that European companies with the highest level of gender diversity performed the finest.⁶⁴ The same is true for the legal profession and bankruptcy administrators. According to the American Bar Association, "a diverse legal profession is more just, productive and intelligent because diversity, both cognitive and cultural, often leads to better questions, analyses, solutions, and processes."⁶⁵ Many studies suggest that more women in the legal profession would enhance both the image and the quality of the service.⁶⁶ However, this view has received criticism that is elaborated in the section below.

3. Women Making a Difference

Whether women bring a unique contribution to the legal system is contentious. Numerous studies on this question have been conducted, and as elaborated above, many support the theory that women "make a difference" due to their different life experiences, values, and attitudes.⁶⁷ Research demonstrates the presence of women increases the legitimacy of the legal system.⁶⁸ There is also considerable criticism of this idea. One argument brought forward is that the concept of meritocracy is essential in the legal professions rather than gender diversity.⁶⁹ There exists the perception that "merit is rather a social construct and that what constitutes merit is defined by relatively small elites".⁷⁰

Concerning Kosovo, the presence of women in the legal processes has diversified but it continues to be a challenge.⁷¹ The number of women judges and prosecutors is approximately 33%.⁷² In this regard, many legal professionals share the sentiment that the participation of women in legal professions offers significant value to society.⁷³ Moreover, women's participation strengthens the public trust on the system.⁷⁴ Further arguments to advance the engagement of women in legal professions include the argument that it could lead to promoting gender equality in broader ways, such as the greater appointment of females at senior legal

⁶² See World Bank Group, 'Doing Business Economy Profile 2016: Kosovo' (World Bank 2015). <<https://openknowledge.worldbank.org/handle/10986/23290>> accessed 17 December 2021.

⁶³ 'Policy Spotlight: Law on Bankruptcy' (American Chamber of Commerce Kosovo, 2020) 6.

⁶⁴ See 'Women Matter: Gender Diversity, a Corporate Performance Driver' (McKinsey & Company 2007).

⁶⁵ See 'Diversity in the Legal Profession: The Next Steps' (American Bar Association 2010).

⁶⁶ See Lucy Greenwood and C Mark Baker, 'Is the Balance Getting Better? An Update on the Issue of Gender Diversity in International Arbitration' (2015) 31 *Oxford Academic* 413.

⁶⁷ 'Women Delivering Justice: Contributions, Barriers, Pathways' (International Development Law Organisation) <<https://www.idlo.int/sites/default/files/pdfs/publications/IDLO%20-%20Women%20Delivering%20Justice%20-%202018.pdf>> accessed 17 December 2021.

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⁶⁹ 'Mapping the Representation of Women and Men in Legal Professions Across the EU' (n 3) 32.

⁷⁰ *ibid.*

⁷¹ European Union Rule of Law Mission in Kosovo, 'Women in the Rule of Law' (*EULEX*) <<https://www.eulex-kosovo.eu/?page=2,26&offset=10>> accessed 18 December 2021.

⁷² American Chamber of Commerce in Kosovo 'Gender Equality Increases Trust in the System of Justice Institutions in Kosovo' (*AmCham Kosovo November 2021*) <<https://www.amchamksv.org/gender-equality-increases-trust-in-the-system-of-justice-institutions-in-kosovo/>> accessed 17 December 2021.

⁷³ *ibid.*

⁷⁴ See Rosemary Hunter, 'More than Just a Different Face? Judicial Diversity and Decision-Making' (2015) 68 *Current Legal Problems* 119.

levels, changing attitudes towards the societal role of men and women, etc.⁷⁵ Nonetheless, this subject is a never-ending debate.

Conclusion

The legislative and judicial reforms in Kosovo in the past ten years introduced the service of notary, private enforcement, mediation, and bankruptcy. Whereas the profession of lawyer has been part of the judicial system consistently.

It is well documented that women are underrepresented in Kosovo's five free legal professions to various extents. This underrepresentation cannot be attributed to an individual factor, but instead to different elements. Many obstacles are indirect, and they include the philosophy of total commitment and a culture of long hours, as well as the low awareness on the importance of liberal legal professions. Some difficulties are direct such as underpayment and posits' number limitations imposed by laws.

Several studies illustrate that the contribution of women in the legal profession is substantial. Moreover, the literature suggests that gender diversity in the legal profession signals to society that their legal system is fair and equitable. Nonetheless, this idea is not left without criticism.

⁷⁵ 'Mapping the Representation of Women and Men in Legal Professions Across the EU' (n 3) 30.

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