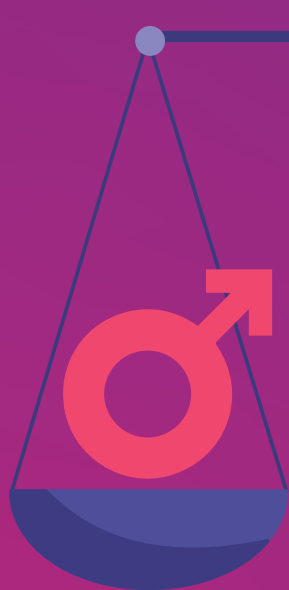


EUROPEAN UNION - BRAZIL DIALOGUES:

on exchanging experiences
and good practices to promote
gender equality in the judiciary



Study
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Authors	Filippo Romoli and Michele Bravos
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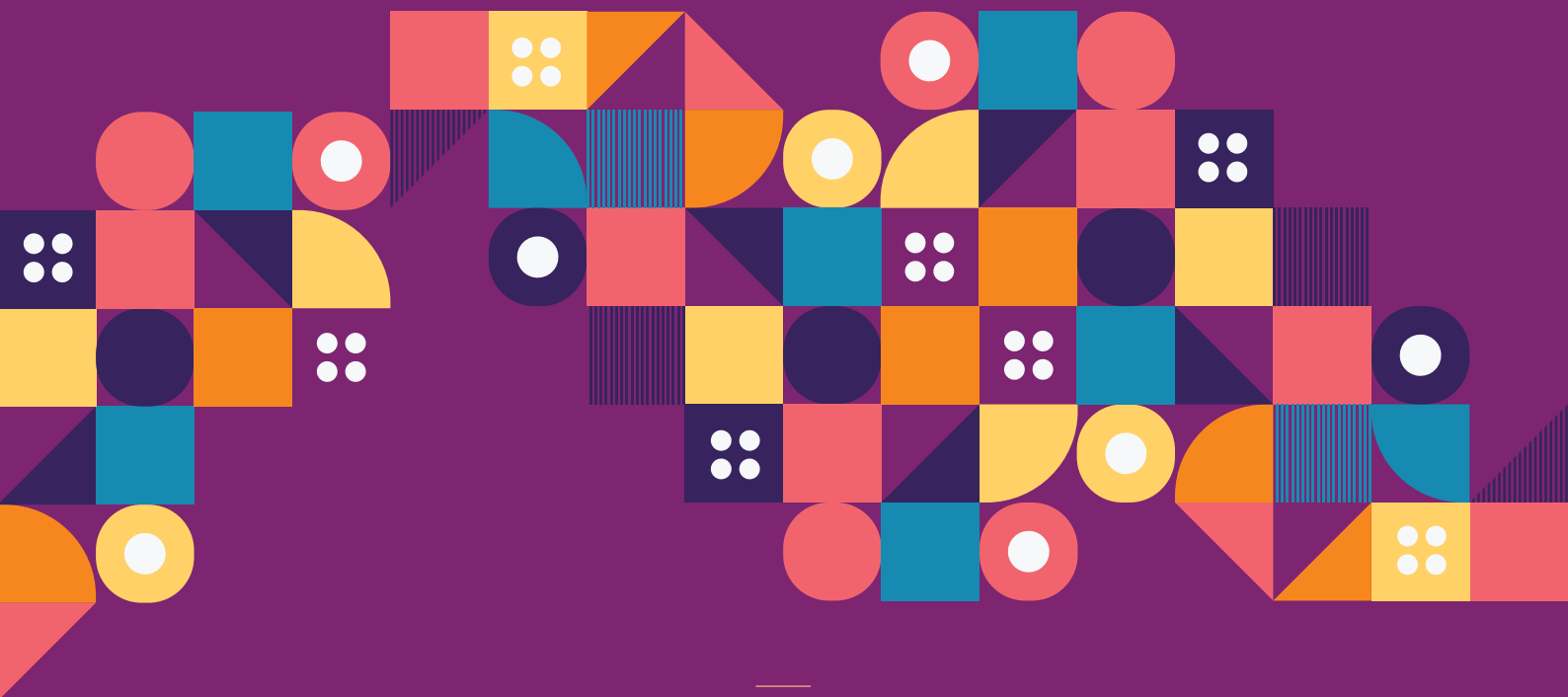
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Main acronyms and abbreviations

AMB	The Association of Brazilian Magistrates
CCJE	Consultative Council of European Judges
CENDOJ	Centro de Documentación Judicial (Spanish Center for Judicial Documentation)
CEPEJ	European Commission for the Efficiency of Justice
CGPJ	Consejo General del Poder Judicial (Spanish General Council of the Judiciary)
CNJ	Conselho Nacional de Justiça/ National Council of Justice
CoE	Council of Europe
CSM	Consiglio Superiore della Magistratura (Italian High Judicial Council) / Conseil Supérieur de la Magistrature (French High Judicial Council)
DELBRA	The Delegation of the European Union to Brazil
EC	European Commission
EIGE	European Institute for Gender Equality
EU	European Union
EWOB	European Women On Boards
FdJ	Femmes de Justice
GDI	Gender Diversity Index
HJC	High Judicial Council
ICJ	International Commission of Jurists
IDLO	International Development Law Organisation
MEP	Member of European Parliament
MS	Member States
OECD	Organization for Economic Cooperation and Development
OSCE	Organization for Security and Co-operation in Europe
PJE	Poder Judicial España (Spanish Judiciary)
STF	Supremo Tribunal Federal/ Supreme Federal Court
STJ	Superior Tribunal de Justiça/ Superior Court of Justice
STM	Superior Tribunal Militar/ Superior Military Court
TJ	Tribunal de Justiça/ Court of Justice
TJM	Tribunal da Justiça Militar/ Military Courts of Justice
TRE	Tribunal Regional Eleitoral/ Regional Electoral Court
TRF	Tribunal Regional Federal/ Regional Federal Court
TSE	Tribunal Superior Eleitoral/ Superior Electoral Court
TRT	Tribunal Regional do Trabalho/ Regional Labor Court
TST	Tribunal Superior do Trabalho/ Superior Labor Court
ToR	Terms of Reference



EXECUTIVE SUMMARY



Executive Summary

The aim of this study, commissioned by the Delegation of the European Union to Brazil (DELBRA), is to support the Association of Brazilian Magistrates (AMB) to promote gender equality within the Brazilian Judicial Branch.

Guided by DELBRA's orientations, this study had two initial aims:

1. to map and analyze associations of judges in the EU to identify good practices and strategies implemented to promote gender equality in the judiciary, and
2. to map good practices and initiatives to promote gender equality in the Brazilian Judicial Branch, starting with a wide perspective about Brazil and then focusing specifically on the judiciary.

To better define the lines of this study, AMB's Team suggested a study more focused on highlighting the problem of women's low representation in higher positions in the Brazilian Judicial Branch.

Regarding AMB's intention to play an important role in advocacy, the cause of women's representation in the field would be aligned to the association's interest and also with judiciary movements in a direction of more representativeness. To exemplify, it can be mentioned the important measures being established by the National Council of Justice as the Resolution 255/2018 (related to strengthening women's presence within these institutions) and the affirmative action of racial parity targets set in 2015, by the Resolution 203/2015.

To achieve these goals, this study is divided in 4 parts:

I. EU Perspective:

- A. A research presenting the European Union perspective about gender equality in the EU Member States' Judiciary through historical overview, data and case studies from Italy, Spain and France.

II. Brazilian Perspective:

- A. A research presenting the Brazilian perspective about gender equality in the Brazilian Judicial Branch, through historical overview, data and initiatives promoted by the Judicial Branches' bodies.

III. Arguments and Recommendations:

- A. Chapter 1 of this part presents arguments about why it is so important to have more women in higher positions in the Brazilian Judicial Branch, with an approach for three main reasons: diversity and representation; institutional cultural change; humanistic judgements.
- B. Chapter 2 of this part analyzes the information presented in previous parts and proposes a critical interpretation about it. The chapter also points out contributions in order to achieve another level of promotion on gender equality in the Brazilian Judicial Branch as also to accomplish specific targets according to adaptation related to brazilian SDG 5 indicators.

IV. References

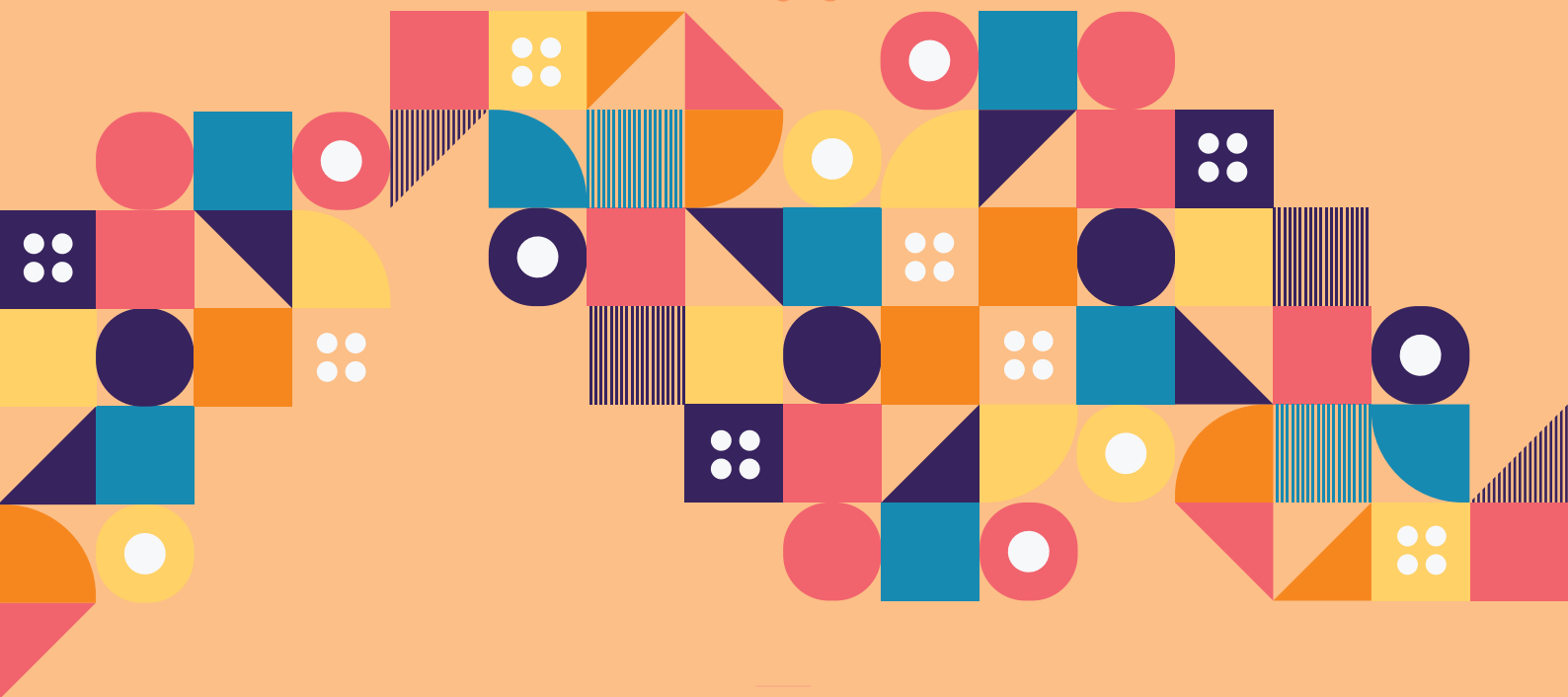
- A. In this part is presented a list with all the references consulted to elaborate the EU and de Brazilian Perspective Studies.

Both studies question and propose some answers about the reason why women are more numerous in entry positions than in higher positions within judiciary institutions and what is being done to change this scenario.

Regarding AMB's mission to address this discussion within the magistrates but also within other institutions, aiming to develop advocacies campaigns, this study also presents concepts, current data, historical context, analyses and arguments that can be helpful for an advocacy purpose.

Assuming that the starting point must necessarily be the existence of a strong political will, so that gender equality is a priority in the political agenda, the report provides 7 recommendations to enhance gender equality in the judiciary. Such recommendations relate to the introduction of gender parity targets, transparent and fair selection/nomination/promotion processes, mentoring and support networks for women judges, continuing judicial education on gender equality and more flexible working conditions to make the highest positions in the judiciary equally accessible for women and men.

EUROPEAN UNION PERSPECTIVE



1. Introduction

The aim of this study, commissioned by the Delegation of the European Union to Brazil, is to support the Association of Brazilian Magistrates (AMB) to promote gender equality within the Brazilian judiciary. Thus, the overall objective of the research is to provide a picture of good practices and experiences from the EU Member States, as well as EU and specialized institutions.

Gender Equality is one of the European Union's founding values, but, despite the efforts of the EU to achieve gender equality at all levels, women remain significantly under-represented in decision-making roles, with only a minority reaching the highest positions. Major achievements in certain Member States are encouraging, but progress is still slow and uneven, as numerous Member States do not have adequate measures to address this matter. The EC Gender Equality Strategy 2020-2025 supports Member States and stakeholders in developing and implementing effective strategies that include political dialogue, dissemination and sharing of data on trends, awareness raising activities, and other good practices.

The recent directive on gender balance on corporate boards represents a significant step to ensure a balanced participation of women and men in economic decision-making positions.

For what concerns the judiciary, the latest European Union report on gender distribution in legal professions points out that higher positions see the lowest proportion of women compared to lower ones. In this respect, seniority cannot be considered as the only reason for that, as initial selection and career advancement methods have surely played a crucial role in consolidating such uneven composition.

The presence of a glass ceiling for the highest positions in the judiciary is common to the three countries investigated in the study, even though women judges have been the majority for several years, especially in France, where the *féminization* of the judiciary has been discussed for more than a decade.

When it comes to good practices, in 1991 the Italian High Judicial Council (CSM) established the Committee for Equal Opportunities in the Judiciary which represented a turning point in the



increase of the judiciary's self-awareness on gender issues. In 1996, the Committee anticipated the legislator and pushed the work of the CSM in promoting innovative measures in defense of gender equality, with recommendations to organize workloads and schedules of judges who are either pregnant or have children under the age of three. The Equal Opportunities Committee also suggested the introduction of the function of 'district judge/prosecutor', to replace the judges and prosecutors in case of temporary absence, e.g., due to maternity or illness leave. Moreover, the Equal Opportunities Committee proposed the creation of decentralized Equal Opportunities Committees to perform consultative functions and formulate proposals. The self-government of CSM allows it enough independence to pave the way to gender equality measures in the political and legislative scene, thus stimulating gender equality at the national level. For this reason, the issue of gender equality within the CSM is being continuously raised and interesting proposals have been presented, so far to no avail.

Electoral gender parity targets and gender-balance clauses have been introduced in the Italian National Association of Magistrates (ANM), founded in 1909 with the aim to protect the independence and prestige of the judiciary and participate in the public debate for the reforms deemed necessary to ensure a better justice service. Since 2000, a Committee for Equal Opportunities was also established within the ANM.

In Spain, the Law on Equality between Men and Women of 2007 has had a huge impact on gender equality, compelling all the public and private structures to promote the participation of women as full actors within the society, and to effectively integrate the constitutional principle of equality in all spheres of public and private life. This law has affected all national and regional regulations, and the composition and structure of public bodies and agencies at all levels. Consequently, several new structures to foster gender equality in the institutions have been created. In the General Council of the Judiciary, the Commission of Gender Equality was created in October 2007, with the aim of assessing the Council on the best measures to implement the principle of equality on its competencies and on the judicial career. The establishment of the Equality Commission, unfortunately, did not bring remarkable results in top-level positions, so that, to correct such misrepresentation, the Commission of Equality provided a gender-sensitive assessment containing several proposals on selection criteria, such as limitation the seniority criterion, reduction of the requirement of previous participation in governance bodies, introduction of gender parity targets to ensure balanced representation and inclusion, in each appointment decision, of a specific chapter related to how gender was taken into account. The Spanish Equality Commission's actions include meetings, awareness raising initiatives, and a range of activities to develop and execute the 2nd Judicial Career Equality Plan for "promoting real equality between men and women within the judiciary, combating all continuing manifestations of discrimination, and removing persistent obstacles and social stereotypes".

In France, the access of women to the judiciary occurred almost 20 years earlier than in Spain and Italy. The process of feminization is more advanced, with women representing 6.273 out of

9.090 judges. The presence of women in the judiciary is due to a plurality of factors, which include the feminization of law studies and the lack of interest of male candidates to become judges and prosecutors. While women now make up 69% of the body, they are only 36% in the post of senior president and 38% in the post of first president. Overall, they are more numerous as the position is less important and prestigious. Against this backdrop, several measures are in place to ensure a better gender balance in decision-making positions. The Ministry of Justice, in coordination with the High Officer for Gender Equality, is committed to implement the Agreement on professional equality between women and men within the Ministry of Justice, signed in 2020. Such agreement constitutes an important stage for gender equality in France and contains actions to deconstruct stereotypes of the professions in the Ministry of Justice, encourage diversity in the exercise of legal professions, collaboration with the Ministry of National Education to better guide the choices of school students and other initiatives to promote a culture of professional equality between women and men and a better balance of personal and professional life.

The High Judicial Council (CSM) is also engaged in several activities to promote gender equality, such as meetings, public debates, and the preparation of reports on attractiveness of the judiciary.

The association Femmes de Justice is an independent association that has been very active in the promotion of gender equality within the Ministry of Justice and the judiciary for almost a decade. Through an approach based on the involvement of the different actors of the justice system and men who are equality-sensitive, the association cultivates a transversal reflection on work-life balance, on construction of career paths and on unconscious biases. The association's initiatives include monitoring of appointments to ensure that gender balance is respected, mentorship for professionals, including judges, working in the justice field, organization of workshops, preparation of studies and reports about equality and a constant dialogue with relevant institutions, including the Ministry of Justice and the CSM.

Overall, the findings of this study suggest that there is much to do in terms of gender equality in the judicial professions across Europe, but also that some good practices are in place at different levels, including ministries, high judicial councils, and association of judges.



2. Methodological Approach

The objective of the study is to present good practices and success strategies for promoting a holistic approach to gender equality in the judiciary and provision of policy guidance. Experiences from three EU Member States (France, Italy, Spain) have been selected as they may be used as valuable examples in the Brazilian perspective. Such concrete initiatives, in line with the EU standards on gender equality, cannot be considered out of the context in which they have been developed, which implies a reflection on those factors – historical, social, legal – that play a pivotal role in the pursuit of gender equality. The final objective of the study is an exchange of knowledge and best practices between Brazil and the EU on the promotion of gender equality in the judiciary, enhancing the understanding of strategies and actions to increase gender equality.

The study provides an overview of the current measures for gender equality adopted in the EU, including the Gender Equality Strategy 2020-2025 and the new directive on gender balance on corporate boards. Despite not being applicable to the judiciary, they represent a valuable example of action to break the glass ceiling in top-level positions.

The choice of the good practices presented in this study follow most of the criteria developed by the European Institute for Gender Equality (EIGE). One of the peculiarities of our choice is that the measures are selected based on their potential, even when they are not applied specifically to the judiciary, as in the case of EU legislation for gender balance in decision-making positions. The good practices described include different tools, such as gender training, awareness-raising, monitoring, and other activities that can serve as an example for the Brazilian context, considering the specificity of each system.

The main criteria that have been used are the “working-well” and transferability.

A practice is considered good if it “works well”, meaning that it meets the following requirements:

- I. **Relevance:** objectives are consistent with beneficiaries' gender-equality needs and priorities.
- II. **Efficiency:** the minimum necessary number of resources/inputs (funds, expertise, time, etc.) are used to produce results.
- III. **Effectiveness:** gender equality objectives initially set for the intervention have been achieved and intended beneficiaries are able to take advantage of the changes.
- IV. **Impact:** it can be demonstrated that a significant increase in gender equality took place.
- V. **Sustainability:** regarding both the intervention's continuation and the permanence of the results it has produced after the end of the initiative.

The “transferability” requirement is met when the practice can be replicated in another context, even with some adaptations. In the field of GE this requirement is generally easy to meet as the examples come from countries with shared values of democracy and rule of law.

The methodology used in this study is descriptive and analytical in its nature, using documental analysis techniques, some of the most prominent studies and literature on the topic and opinions of the members of judicial associations and scholars in France, Italy, and Spain.

The documents considered include, among others, reports from European Commission and European Parliament, European Institute for Gender Equality (EIGE), Council of Europe (CoE), Consultative Council of European Judges (CCJE), European Network of Councils for the Judiciary (ENCJ), International Development Law Organisation (IDLO), European Network of Legal Experts in the Field of Gender Equality, Organisation for Economic Cooperation and Development (OECD), Office for Democratic Institutions and Human Rights (OSCE/ODIHR), International Commission of Jurists (ICJ).



3. Gender equality **in the EU**

Equality between women and men is one of the European Union's founding values, going back to 1957 when the principle of equal pay for work of equal value became part of the Treaty of Rome¹. Notwithstanding the presence of this principle for more than 60 years, the path towards gender equality has been rich with obstacles and inequalities still exist. Over the last decades, however, the EU has made significant progress, working on a wide range of topics, with a focus on equal treatment legislation, gender mainstreaming (integration of a gender perspective into all policies) and specific measures for the advancement of women. The higher number of women in the labor market and their progress in securing better education and training can be considered as positive trends, but women are still over-represented in lower paid sectors and in decision-making positions, where they are under-represented due to the glass ceiling that will be described more in detail below².

3.1 Recent developments on Gender Equality in the EU

In March 2022, the European Commission published the 2022 Report on Gender Equality in the EU³ with the purpose, inter alia, of monitoring the implementation of the European Commission's Gender Equality Strategy 2020-2025. This Gender Equality Strategy, which will be explained more in detail in an ad hoc paragraph, frames the European Commission's work on gender equality and sets out the policy objectives and key actions for the period 2020-2025⁴. The objective of the Strategy is to achieve a gender equal Europe where women and men, girls and boys, in all their diversity⁵ are equal, free to pursue their chosen path in life, with equal opportunities

1. [Treaty establishing the European Community](#). Last visited 15 November 2022.

2. EC, [Gender Equality Strategy, Achievements and key areas for action](#). Last visited 15 November 2022.

3. EC, [2022 report on gender equality in the EU](#). Last visited 15 November 2022

4. Following the Commission's 2016-2019 strategic engagement for gender equality.

5. The expression 'in all their diversity' is used in this strategy to express that, where women or men are mentioned, these are heterogeneous categories including in relation to their sex, gender identity, gender expression or sex characteristics. It affirms the commitment to leave no one behind and achieve a gender equal Europe for everyone, regardless of their sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation.

to thrive, equally participating in and leading the European society. The EC report analyzes the main initiatives to promote equality between women and men in 2021 in the different areas of the Strategy, including “leading equally throughout society”, which is the most relevant for the purposes of this study⁶.

The year 2021 was the second year of its implementation and the second year of the COVID-19 emergency. Since its breakout in 2020, the pandemic hit the women the hardest, with severe job-losses in women-dominated professions, increased work-life balance pressures, and rise in domestic violence without adequate support measures for the victims⁷. At the same time, the pandemic served as a reminder of society's reliance on women and their work, and its continued undervaluation. In 2021, the disproportionate impact of the COVID-19 crisis on women continued, threatening to erase the progress on gender equality achieved in the past decades. The main factors of such threat are represented by the greater care burden brought by lockdowns, the lost income and heightened precariousness, and the steep increase in domestic violence⁸.

Notwithstanding these obstacles, crucial European legislative developments were made and major consequences for gender equality are expected. Such developments concern women's pay, violence against women, hate speech and decision-making positions.

A few months after its presentation in March 2021, the European Commission's proposed directive on pay transparency secured a general agreement in the Council, paving the way for negotiations with the European Parliament and final adoption. This directive should help to tackle pay discrimination at work and contribute to closing the gender pay gap⁹. It aims to empower workers to enforce their right to equal pay for equal work or work of equal value between men and women through a set of binding measures on pay transparency. Indeed, lack of pay transparency has been identified as one of the key obstacles to closing the gender pay gap which remains at around 14% in the EU. This means that women earn on average 14% less than men per hour. The pay gap has a long-term impact on the quality of women's life, on their risk of exposure to poverty and on the persisting pension pay gap, which is at 33% in the EU¹⁰.

6. The key areas of the Gender Equality Strategy 2020-2025 are:

- Being free from violence and stereotypes.
- Thriving in a gender-equal economy.
- Leading equally throughout society.
- Gender mainstreaming and funding; and
- Promoting gender equality and women's empowerment across the world.

7. EIGE, [Covid-19 derails gender equality gains](#). Last visited 15 November 2022.

8. The Global Institute for Women's Leadership, [Essays on Equality. Covid-19 edition: Global & intersectional perspectives](#). Last visited 15 November 2022.

9. The text of the proposal is available at [eur-lex.europa.eu](#). Last visited 9 November 2022.

10. Council of the EU, [Pay transparency in the EU](#). Last visited 15 November 2022.



Similarly, the directive on adequate minimum wage was adopted by the Council on 4 October 2022. The directive establishes procedures for the adequacy of statutory minimum wages, promotes collective bargaining on wage setting and enhances the effective access to minimum wage protection for those workers who are entitled to a minimum wage under national law. Member states have two years to transpose the directive into national law¹¹.

Violence against women was another area addressed by several initiatives in 2021 within the EU. On 4 October 2022, the Council formally adopted the proposal of Digital Services Act¹², which would help to remove illegal content and protect women users online¹³. This proposal seeks to ensure the best conditions for the provision of innovative digital services in the internal market, to contribute to online safety and the protection of fundamental rights, and to set a robust and durable governance structure for the effective supervision of providers of intermediary services.

Furthermore, the EC, on 8 March 2022, tabled a directive proposal on combating violence against women and domestic violence¹⁴. The directive aims to effectively combat violence against women by proposing measures in the following areas: the criminalization of and sanctions for relevant offenses; protection of victims and access to justice; victim support; prevention; coordination and cooperation. With this legislation, the EU expects to enhance the prevention of violence, strengthen the protection and support of victims, and facilitate their access to justice. Finally, the Commission proposed that the Council adopt a decision to include hate speech and hate crime in the list of EU crimes.

On 4 March 2022, the Council examined the proposal for a Council decision to add hate speech and hate crime to the list of "EU crimes" included in the Treaty on the Functioning of the European Union. A very broad majority was in favor of this initiative. Combating hate speech and hate crime is a major priority for the European Union, and work on this proposal will continue with a view to reaching the required unanimous agreement as soon as possible¹⁵. Once agreed by the Council, this would allow the Commission to propose legislation criminalizing all forms of hate speech and hate crime, both online and offline and on all prohibited grounds of discrimination, including sex or gender.

11 [Council adopts EU law on adequate minimum wages](#). Last visited 15 November 2022.

12 EC, [Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services \(Digital Services Act\) and amending Directive 2000/31/EC](#). Last visited 15 November 2022.

13 EC, [The Digital Services Act: ensuring a safe and accountable online environment](#). Last visited 15 November 2022.

14 Ibidem.

15 Council of the EU, [Justice and Home Affairs Council, 3-4](#), March 2022. Last visited 15 November 2022.

3.2 Women representation in decision-making positions in the EU

Despite the efforts of the EU to achieve gender equality at all levels, women remain significantly under-represented in decision-making positions, with only a minority reaching the highest positions. Remarkable achievements in certain Member States are encouraging, but progress is still slow and uneven, as numerous Member States do not have significant measures to address this matter and the gap between Member States continues to increase¹⁶.

The EU has come only halfway towards gender equality in decision-making positions in major political, economic, and social institutions. Barriers to women's representation and participation still play a major role. The Gender Equality Index 2021¹⁷, published by the European Institute for Gender Equality (EIGE), shows that the domain of power is the one showing fastest progress, although it remains the lowest of all domains, with a score of 55 points (out of 100).

The under-representation of women is linked to several causes, such as traditional gender roles and stereotypes, unequal sharing of household and care responsibilities, as well as political and working cultures favoring long working hours that clash with care responsibilities traditionally assigned to women. Women can also be subject to harassment and bullying in the workplace, with the emergence of online violence as an increasing concern. These aspects, even if not directly linked to decision-making positions, are a deterrent to women's participation in politics and public life, and ultimately hinder gender equality in decision-making positions.

Even feminized sectors continue to be affected by lack of gender balance in decision-making positions, as made clear during the pandemic. Despite making up 70% of health professionals and 80% of health associate professionals in the EU¹⁸, this majority does not carry over into leadership positions in the healthcare sector. During the pandemic and until March 2021, only 1 in 4 EU health ministers and 4 out of 10 junior ministers or vice-ministers were women¹⁹. A study carried out by EIGE on decision-making during the pandemic highlights that, in 2021, women accounted for 31.6% (18 out of 57) of national government ministers and 45.6% of members of parliamentary committees dealing with COVID-19 or health²⁰.

16 EC, [2022 report on gender equality in the EU](#), p. 28. Last visited 15 November 2022.

17 EIGE, [Gender Equality Index 2021 – Health, 2021](#). Last visited 15 November 2022.

18 EIGE, [Study and work in the EU: set apart by gender](#), 2018. Last visited 15 November 2022.

19 EIGE, [Gender Equality Index 2021 – Health, 2021](#). Last visited 15 November 2022.

20 EIGE, Data on COVID-19 decision-making, 2022, forthcoming.



Such limited number of women in decision-making positions or as experts in key roles had an impact on the composition of national task forces to tackle the pandemic, with the consequence of women being more likely not to be involved in strategies to face the emergency²¹. Such gender gaps in decision-making strengthen unequal power structures and potentially weaken Covid-19 responses, since health and health problems vary by gender²².

In this context, the beneficial effects of gender equality and diversity in decision-making are clear. According to a variety of studies, the involvement of both women and men in decision-making broadens perspectives, boosts creativity and innovation, increases competitiveness and productivity, diversifies the pool of talents and skills, improves the process of decision-making, and may better represent various shareholders²³.

Therefore, gender balance in management and leadership functions contributes to improving the lives of people living in the EU. Against this backdrop, the European Commission has made gender balance in decision-making one of the three main pillars of the 2020-2025 EU gender equality strategy. Various measures of the strategy help achieve this goal, including tackling the gender pay gap, promoting better work-life balance for parents and carers, and combating gender-based violence.

Gender Parity within the European Commission

The EC is firmly committed to gender parity for all its own management levels. At the beginning of President von der Leyen's mandate, in December 2019, women in senior management accounted for 36.6%, with the share in middle management being 41.5%. By 1 January 2022, this figure had increased by 6.7 percentage points at senior management level (43.3%) and by 4.2 percentage points at middle management level (45.7%): women in all management positions within the Commission account for 45.2%. The Commission has also promoted a 50% target for women managers in executive agencies by 2024. Furthermore, when it comes to its staff in decentralized agencies, the Commission shows the same commitment to respect gender balance criteria in the shortlists for senior managers.

Despite having one of the highest shares of women in leadership positions of all public administrations worldwide, the Commission keeps adopting additional measures, aiming at reaching gender parity by the end of the current mandate²⁴.

21 K.R. van Daalen, C. Bajnoczki, M. Chowdhury, S. Dada, P. Khorsand, A. Socha, I. Torres, Symptoms of a broken system: the gender gaps in COVID-19 decision-making, *BMJ Global Health*, 5(10), e003549, (2020).

22 S. Davies, and B. Bennett, A gendered human rights analysis of Ebola and Zika: locating gender in global health emergencies. *International Affairs*, 92(5), (2016), pp. 1041-1060.

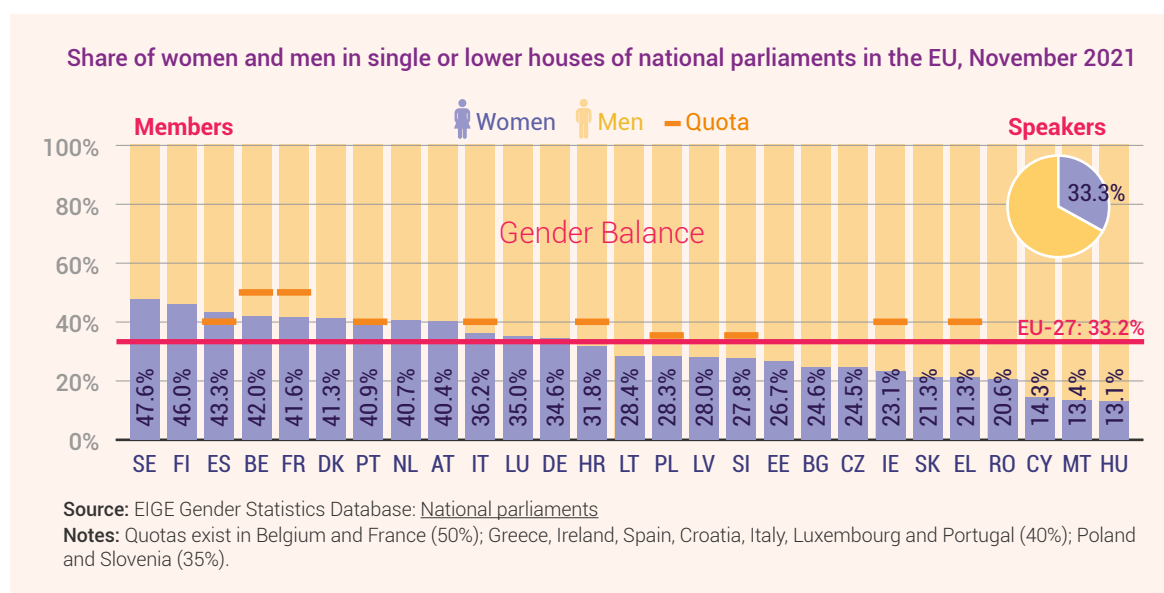
23 See C. Rose, Does female board representation influence firm performance? The Danish evidence, *Corporate Governance. An International Review*, Vol. 15, n° 2, (2007), pp. 404-413; N. van der Walt, C. Ingle, Board Dynamics and the Influence of Professional Background, Gender and Ethnic Diversity of Directors, *Corporate Governance*, Vol. 11, n° 3, 2003, pp. 218-234; and P. Profeta, Gender Equality in Decision-Making Positions: The Efficiency Gains', Vol. 52, n° 1, *Intereconomics*, 2017, pp. 34-37.

24 EC, [2022 report on gender equality in the EU](#), p.29. Last visited 15 November 2022.

3.2.1 Women and political decision-making in the EU

One of the most serious obstacles to gender parity in the EU is the under-representation of women within the political institutions. This is a major deficit as gender parity in representative politics is not only required to uphold social justice and women's rights but is also an important condition of effective democracy and good governance that strengthens and enhances the democratic system.

Despite the recent improvement in several member states, the 2021 EIGE report shows alarming data: two out of every three members of parliaments and governments are men: on average across the EU²⁵, women account for 33% of members of national parliaments²⁶ and 32% of senior²⁷ ministers in governments. Furthermore, only 26% of leaders of major political parties are women²⁸.



In November 2021, the combined members of single or lower houses of national parliaments in Member States comprised 66.8% men and 33.2% women.

At the top of the ranking are Sweden, Finland, Spain, Belgium, France, Denmark, Portugal, Netherlands, and Austria, where the share of each gender represented in parliament is at least 40%. At the other end of the spectrum, women account for only one in seven members or fewer in the parliaments of Cyprus, Malta, and Hungary, as shown in the figure above. Nine Member States

25. [EIGE statistics database](#). Data updated in October 2021. Last visited 15 November 2022.

26. Lower or single houses.

27. Ministers that have a seat in the cabinet.

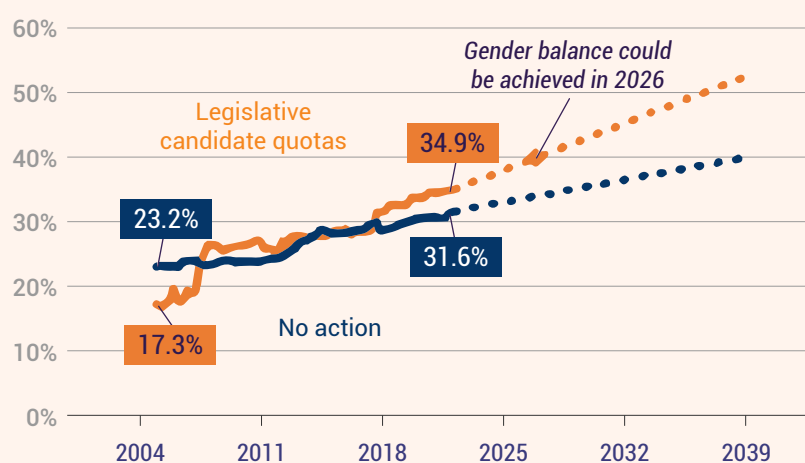
28. Major political parties are those with at least 5 % of seats in any national level parliament.

currently have a woman speaker or chair of the single or lower house of parliament. However, another nine have not had a woman in this role since data were first collected in 2003²⁹.

Ad hoc legislation can play a pivotal role to achieve gender parity and legislative gender parity targets requiring a gender-balanced list of candidates have been introduced in 11 Member States³⁰. France, Portugal, Ireland, and Luxembourg foresee financial penalties for the political parties that do not meet the gender parity target requirements. Nevertheless, translating compliant candidate lists into electoral results requires rules to guarantee equal visibility of women and men candidates within the electoral system.

Despite the difficulties mentioned above, since 2004, the proportion of women members of parliament in countries with legislative candidate gender parity targets has doubled from 17.3% to 34.9%. Countries without such a measure started from a higher base (23.2%) but ended lower (31.6%) (Figure 2)³¹. If both groups continue at this pace, countries with legislated gender parity targets will achieve gender balance (i.e., at least 40% of each gender) in 5 years (2026). The no action group will take closer to two decades (2038)³².

Share of women in single or lower houses of national parliaments by type of action, EU-27, 2004-2039



Source: EIGE's own calculations based on data from its Gender Statistics Database: [National parliaments](#)

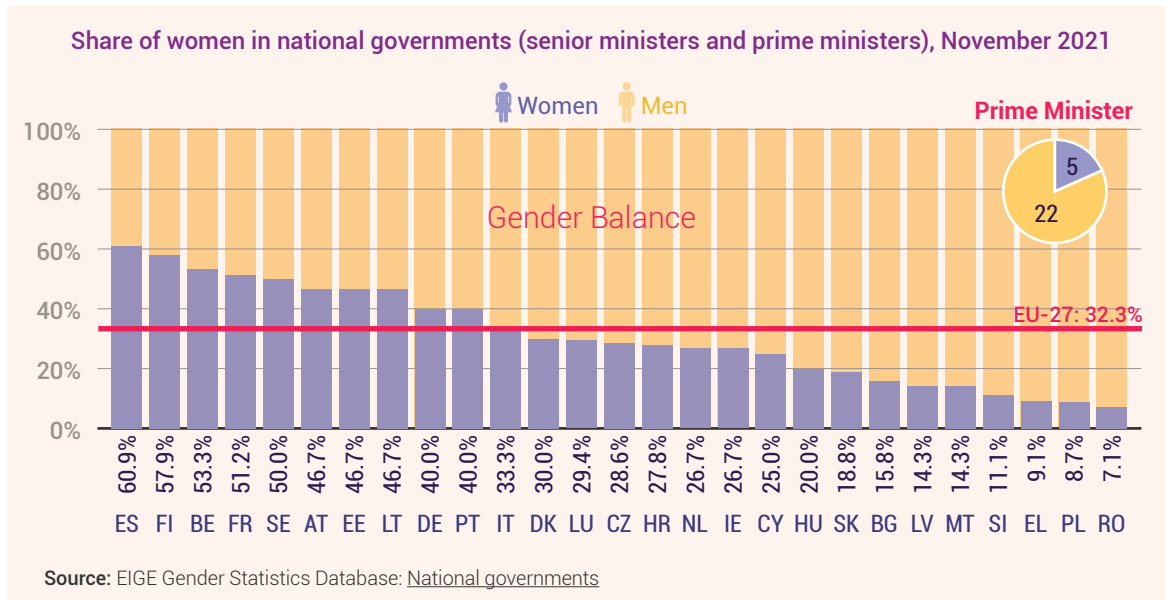
29. EC, [2022 report on gender equality in the EU](#), p. 30. Last visited 15 November 2022.

30. In chronological order: France (50%, 2000); Belgium (50%, 2002); Portugal (33%, 2006); Slovenia (35%, 2006); Spain (40%, 2007); Greece (33%, 2008); Croatia (40%, 2008); Poland (35%, 2011); Ireland (30%, 2012); Italy (40%, 2017). Luxembourg introduced a gender parity target (40% in 2016) but did not fully implement it in the 2018 elections (to be considered in next election expected in 2023).

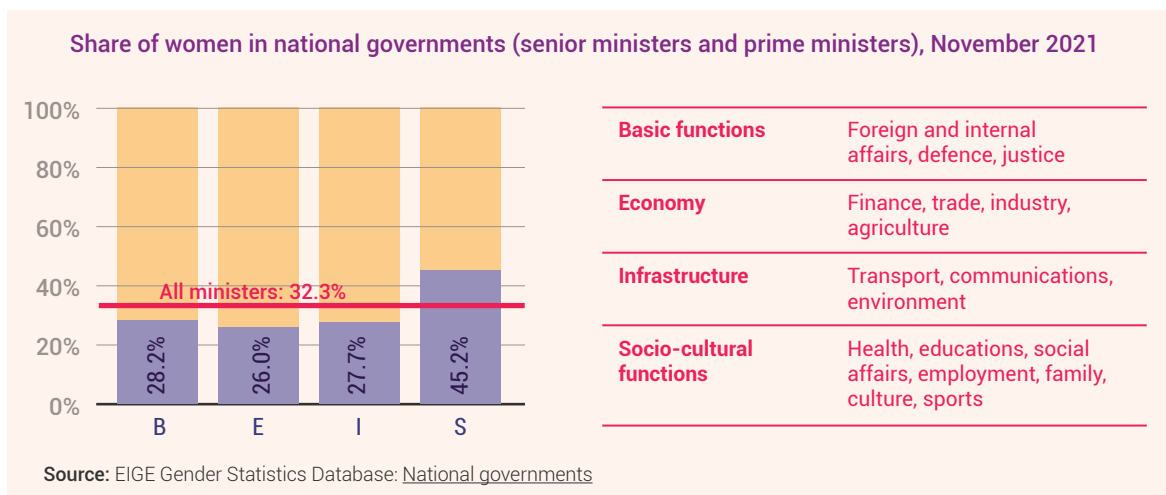
31. In Luxembourg, a 40% gender parity target was introduced in 2016 but will not be fully applied until the next elections (expected in 2023). Therefore, Luxembourg was included in the "no action" group.

32. EC, [2022 report on gender equality in the EU](#), p. 31. Last visited 15 November 2022.

Looking at the situation in governments, Estonia and Sweden elected their first-ever women prime ministers in 2021³³. Italy in 2022. To date, only 6 Member States have a woman prime minister (Finland, Lithuania, Denmark, Estonia, France, and Italy). To date, only 13 out of 27 Member States have had a woman prime minister since 2004.



The picture concerning senior ministers and even more ministers receiving portfolios with high political priority is quite similar, implying that women have fewer opportunities to really affect the political scene³⁴.



33. See The Guardian, [Estonia's first female PM sworn in as new government takes power](#) and Politico, [The long wait for Sweden's first female prime minister](#). Last visited 15 November 2022.

34. EC, [2022 report on gender equality in the EU](#), p. 34. Last visited 15 November 2022.

Moreover, according to a 2018 study by the Inter-Parliamentary Union and the Parliamentary Assembly of the Council of Europe, 85.2% of interviewed women parliamentarians had experienced psychological violence during their terms in office³⁵. Half of the respondents – 46.9% – reported having received death threats or threats of rape and beatings directed against themselves or against their children and other family members. These were mainly delivered through social media and e-mail. Gendered disinformation, i.e., deliberately misleading information that relies on negative depictions of women, and misogynistic narratives, i.e., representing women either as enemies or as weak victims, are used to question women decision-making capabilities³⁶.

The project “Gender Matters?” in Finland

In Finland, the project Gender Matters? (2019-2021), funded under the EU's Rights, Equality and Citizenship programme, helped to promote gender equality in the media, politics, and the corporate sector. It provided training sessions and information for journalists on elections and decision-making. The project also aimed to promote a more inclusive and intersectional understanding of gender³⁷.

“Gender and Politics”, “Skills”, and “Political Involvement and Readiness” seminars in Cyprus

In Cyprus, the National Machinery for Women's Rights and the office of the Gender Equality Commissioner launched a series of educational seminars in December 2021. The seminars continued on a regular and systematic basis during the first semester of 2022. The aim of the educational seminars were to increase women's participation and to strengthen and empower women's participation in politics in decision-making bodies. This should strengthen democracy and promote equality. The target group were young women who were interested in getting involved in the political sphere and who were active in a political party, a trade-union, voluntary spheres, or society. The seminars were entitled “Gender and Politics”, “Skills”, and “Political Involvement and Readiness”³⁸.

3.2.2 Women and economic decision-making in the EU

Women's representation in corporate leadership is another relevant area of inequality within the EU, with slow progress³⁹ and notable differences between Member States. In 2021, around 30% of board members of the EU's largest publicly listed companies were women. Such figure, despite

35 IPU, [Sexism, harassment and violence against women in parliaments in Europe](#). Last visited 15 November 2022.

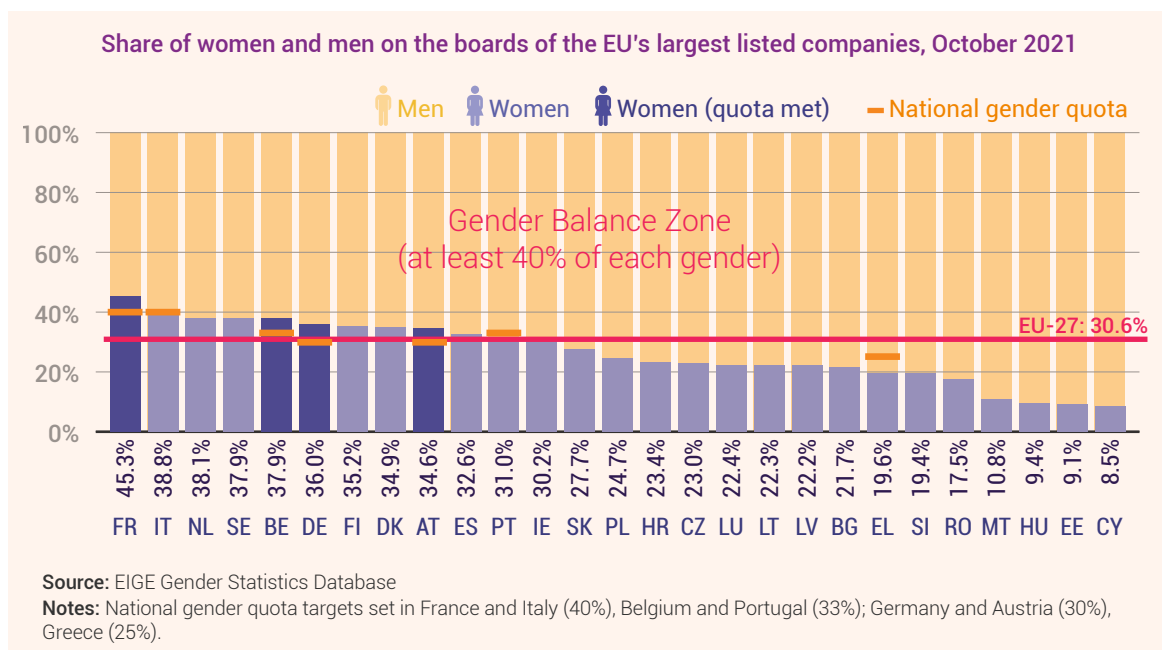
36 M. Sessa, [Misogyny and Misinformation: An analysis of gendered disinformation tactics during the Covid-19 pandemic](#), DisinfoLab, 2020. Last visited 15 November 2022.

37 EC, [2022 report on gender equality in the EU](#), p. 34. Last visited 15 November 2022.

38 Ibidem.

39. [EIGE statistics database](#). Data updated in October 2021. Last visited 15 November 2022.

being an all-time high, is the lowest annual increase since 2010, as confirmed by EWOB's Gender Diversity Index (GDI) 2021⁴⁰. The overall GDI score across the 668 companies in the survey by European Women on Boards has improved by only 5%, from 0.56 in 2020 to 0.59 in 2021⁴¹. Among the EU MS, France is the only one with at least 40% of each gender on companies' boards, with Italy (38.8%) and the Netherlands (38.1%) following. In 2021, women account for at least a third of board members also in Sweden, Belgium, Germany, Finland, Denmark, and Austria. In seven countries, however, women still account for less than a fifth of board members.



Measures for a more gender-balanced representation in corporate leadership can be either 'soft', when encouraging companies to act independently, or 'hard', if sanctions for not complying with companies are foreseen. According to the latest data from EIGE⁴², national gender parity targets (from 25 to 40%) currently apply to the boards of listed companies in eight Member States⁴³.

It is worth mentioning that also in this case legislative action is having a deep impact on improving gender equality. In October 2021, women accounted for 36.4% of the board members of the largest listed companies in countries with national gender parity targets, compared with 30.3% in

40. EWOB, [What gets measured gets done](#). Last visited 15 November 2022.

41. A company with a score of 1 will usually have around 50% of women in leadership— sometimes a little more, sometimes a little less. An average company with a GDI of 0.59 points has the following share of women in leadership roles: 30% of all leadership positions (board, executive level, and board committees) are held by women; 35% of board members are women; 19% of executives are women; and 36% of committee members are women.

42. [EIGE statistics database](#). Data updated in October 2021. Last visited 15 November 2022. In the report the number of countries with national gender parity targets does not include the Netherlands whose lower and upper houses of the parliament have recently approved a law introducing a 33% parity target, which entered into force in January 2022.

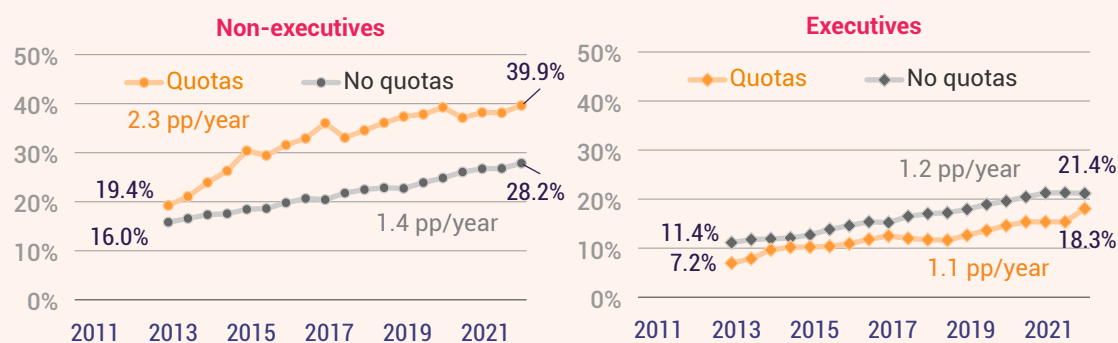
43. France, Italy, Belgium, Portugal, Germany, Austria, Greece, and Netherlands.

countries with soft measures, and just 16.6% in countries that have taken no action at all. Gender parity targets have more than tripled the rate of change from 0.8 to 2.9 percentage points per year. Progress in countries without legislative measures (i.e., with soft measures or no action) lingers at just 0.7 percentage points per year⁴⁴.

Likewise for the ministers in EU MS governments, women tend to be given less power to have a strong influence on the companies, as gender parity targets apply to boards but not to executive positions⁴⁵. This negatively affects the pace of progress towards gender parity, with very few women reaching top positions in large companies (1.0 percentage points per year compared with 1.5 percentage points per year among non-executives since 2016)⁴⁶.

After having been blocked in the Council for ten years, the final text of the directive on gender balance on corporate boards was finally adopted on 17 October 2022. The new EU rules, which will have to be transposed into national law, promote a more balanced gender representation on the boards of listed companies throughout the EU.⁴⁷ This directive should ensure improvement of gender balance in corporate boards of listed companies across the EU and will be addressed more specifically in an ad hoc paragraph. It goes without saying that the directive will be a big step on the road to effective gender equality in the EU, conveying the message that the EU economy makes the best use of its talents⁴⁸.

Share of women among executives and non-executives of the largest listed companies in the EU-27 by type of action at national level, October 2012 to October 2021



Source: EIGE's own calculations based on data from its Gender Statistics Database

Notes: The quota group progressively includes Member States with national gender quotas based on the year of adoption: Belgium, France, and Italy since 2011; Germany since 2015; Austria and Portugal since 2017; Greece since October 2020.

44. EC, [2022 report on gender equality in the EU](#), p. 36. Last visited 15 November 2022.

45. Women now account for a third (33.3%) of non-executives but only for around one fifth (20.2%) of senior executives.

46. [EIGE statistics database](#). Data updated in October 2021. Last visited 15 November 2022.

47. [Council approves EU law to improve gender balance on company boards](#). Last visited 15 November 2022.

48. Financial Times, [Von der Leyen expects EU deal on rules for women in boardrooms](#). Last visited 15 November 2022.

Gender parity targets in supervisory board of state-affiliated companies in Austria

On 3 June 2020, the Austrian Council of Ministers adopted a resolution to increase the proportion of women on the supervisory board of state-affiliated companies. The proportion should increase from 35% to 40% over the course of the current legislative period, which ends in 2024. State-affiliated companies include all companies with a federal share of at least 50%. Annual progress reports monitor the situation. They showed an average proportion of women of 45.3% by the end of 2020⁴⁹.

“Gender ranking” of the companies in the French Market index (SBF120)

In France, the conference on economic and professional equality (Assises de l'égalité économique et professionnelle) produces a yearly ranking of the companies in the French Market index (SBF120) based on women's representation in their governing bodies. The ranking compares the 120 largest French companies' commitment to increasing the share of women in their management bodies and more broadly to achieving professional equality between women and men. The ranking is based on figures provided by companies on a voluntary and declarative basis⁵⁰.

3.3 The EC Gender Equality Strategy 2020-2025

The Gender Equality Strategy of the European Commission certainly is relevant, within the scope of this study, for its implications on decision-making positions. The Strategy and the directive on gender balance on corporate boards, do not refer to the judiciary – and to top-level position within the judiciary – but the similarities are obvious and could serve as a model, properly adapted, in different contexts.

After European elections in 2019, gender equality was put on top of the political agenda. The first-ever female Commission President, Ursula von der Leyen, indicated in her political guidelines for the European Union, that “equality for all and equality in all its senses”⁵¹ was one of the major priorities of her Commission, and Helena Dalli became the first Commissioner for Equality.

49 EC, [2022 report on gender equality in the EU](#), p. 37. Last visited 15 November 2022.

50 Ibid, p. 38.

51 EC, [Political Guidelines for the Next European Commission 2019-2024](#). Last visited 15 November 2022.



On 5 March 2020, the European Commission published “A Union of Equality: Gender Equality Strategy 2020-2025”⁵² aiming at “achieving a gender equal Europe where gender-based violence, sex discrimination and structural inequality between women and men are a thing of the past. A Europe where women and men, girls, and boys, in all their diversity, are equal.”

The EU Gender Equality Strategy delivers on the von der Leyen Commission's commitment to achieving a Union of Equality. The Strategy presents policy objectives and actions to make significant progress by 2025 towards a gender-equal Europe. The goal is a Union where women and men, girls, and boys, in all their diversity, are free to pursue their chosen path in life, have equal opportunities to thrive, and can equally participate in and lead our European society”⁵³.

The strategy is structured around six key objectives:

1. Being free from violence and stereotypes
2. Thriving in a gender-equal economy
3. Leading equally throughout society
4. Gender mainstreaming and an intersectional perspective in EU policies
5. Funding actions to make progress in gender equality in the EU
6. Addressing gender equality and women's empowerment across the world

For the purpose of the present study, the objective of achieving gender balance in decision-making is the most relevant. A balanced participation of women and men in decision-making is continuously encouraged by The European Commission, with Member States and stakeholders being supported in developing and implementing effective strategies. The most relevant actions are:

- raising awareness
- political dialogue
- mutual learning and exchange of good practices including through the Mutual Learning Programme in Gender Equality and the Platform of Diversity Charters
- funding projects to develop and support strategies and tools for positive change
- disseminate data and analysis of trends and good practice on women and men in decision-making positions in cooperation with the European Institute for Gender Equality.

52 EC, [A Union of Equality: Gender Equality Strategy 2020-2025](#). Last visited 15 November 2022.

53 EC, [Gender Equality Strategy. Achievements and key areas for action](#). Last visited 15 November 2022.

By the end of 2024, the Commission aims to reach gender balance of 50% at all levels of its management, thus leading by example. Supporting measures will include quantitative targets for female appointments and leadership development programmes. The Commission will also increase efforts towards reaching a larger share of female managers in EU agencies and will ensure gender balanced representation among speakers and panelists in its conferences⁵⁴.

3.4 Directive on gender balance on corporate boards

In November 2012, the EC proposed a legislation to improve gender balance in corporate decision-making positions in the EU largest listed companies⁵⁵. On 7 June 2022, a political agreement was reached between the European Parliament and the Council on the Commission proposal⁵⁶ and a few months later, on 17 October 2022, the Council adopted the final text of the directive on gender balance on corporate boards⁵⁷.

On 23 November, the European Parliament has formally adopted the new EU law on gender balance on corporate boards. By 2026, companies will need to have 40% of the underrepresented sex among non-executive directors or 33% among all directors⁵⁸. Once published in the Official Journal, the Directive will enter into force 20 days after publication and Member States will have two years to transpose its provisions into national law. They will have to ensure that companies strive to meet the 40% target for non-executive boards, or 33% for all board members, by 30 June 2026⁵⁹. The Directive should ensure that gender balance in corporate boards of listed companies is improved across the EU, while allowing for flexibility for Member States that have adopted equally effective measures, allowing for the suspension of the procedural requirements set out in the Directive⁶⁰.

54 EC, [EU action to promote gender balance in decision-making](#). Last visited 15 November 2022.

55 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012PC0614&from=EN>

56 EC [Press release](#), 13 May 2022. Last visited 15 November 2022.

57 Council of the EU [Press Release](#), 17 October 2022. Last visited 15 November 2022.

58 EC [Statement](#), 22 November 2022. Last visited 23 November 2022.

59 Ibidem.

60 The flexibility clause that was introduced into the text during earlier discussions (see Article 4b) would allow Member States to pursue the aims of the Directive by means of their own choosing and to suspend the Directive's procedural requirements, provided that they had already taken equally effective measures or attained progress coming close to achieving the quantitative objectives set in the Directive.



3.4.1 Background of the Directive

At the EU level, increasing women's labor market participation is considered as a precondition for boosting growth and for tackling the Union's demographic challenges.⁶¹ As described above, gender representation on corporate boards shows very low involvement of women in top-level business decision-making⁶². As Europe has a large pool of highly qualified women, with 60% of current university graduates being female, this human capital must be used more efficiently.

Despite evidence of the beneficial impact of gender balance on companies themselves and the economy in general, and despite the existing legislation against sex discrimination and Union-level actions in favour of self-regulation, women are still under-represented in the highest decision-making bodies of companies. In the private sector and especially in listed companies, this gender imbalance is particularly significant and acute.

The Commission tabled the proposal on gender balance in company boards in November 2012. It aimed at improving transparency in the selection of board directors in the largest publicly listed companies. While the European Parliament adopted its position in 2013, the Council could not reach an agreement on the file for almost ten years, with some Member States considering that binding measures at the EU level were not the best way to pursue the objective.

In her political guidelines, President von der Leyen committed to building a majority to unblock the Directive on women on boards. Finally, on 14 March 2022, the Council was able to adopt its general approach, unblocking the file. On 23 March 2022, the European Parliament reconfirmed its position, thereby paving the way for negotiations between the two co-legislators.

Against this backdrop, the Directive sets a target for EU companies listed on the EU stock exchanges to accelerate the reach of better gender balance, setting a goal of 40% of the under-represented sex among non-executive directors and 33% among all directors. These companies must ensure that board appointments procedures are clear and transparent, and that applicants are assessed objectively based on their individual merits, irrespective of gender.

National legislation and the state of gender balance in economic decision-making vary across Member States. France, Italy, Belgium, Portugal, Germany, Austria, Greece, and the Netherlands have adopted national gender parity targets. Ten other Member States have opted for softer non-binding measures, and nine have no substantial legislation on the issue.

61 The [Strategy](#) set a headline target of reaching an employment rate of 75 % for women and men aged 20 to 64 years by 2020. Last visited 15 November 2022.

62 According to the most recent available data, women accounted for an average of 31.6 % of the members of boards of directors in the largest publicly listed companies and only 8 % of chairpersons. See June 2022 [EIGE survey of the largest publicly-listed companies in the EU](#). Last visited 15 November 2022.

With this directive, the EC acknowledges that legislative action to address gender imbalance is the most effective tool to drive progress as gender imbalance is more much more severe in countries that have taken no substantial action against countries that introduced measures⁶³. Countries with national gender parity targets have the highest share of women sitting as board members of listed companies. However, to this day only one Member State has achieved effective gender balance (40%) on corporate boards. It is worth noticing that this Directive does not aim to harmonize national laws on the selection process and qualification criteria for board positions in detail. The objective is to introduce minimum standards for listed companies without balanced gender representation, compelling them to select candidates for election or appointment to the posts of non- executive directors based on an objective comparative assessment of their qualifications in terms of suitability, competence, and professional performance. The directive is important and marks a critical step in gender equality because companies listed on stock exchanges have a particular economic importance, visibility, and impact on the market. These companies set standards for the wider economy and their practices can be expected to be followed by other types of companies. The public nature of the listed companies justifies their being regulated to a greater extent in the public interest.

3.4.2 Main elements of the Directive

The main elements of the Directive are the following:

- At least 40% of the underrepresented gender must be represented in non-executive boards of listed companies or 33% among all directors. Member States must ensure that companies strive to achieve this objective. Those companies that do not achieve those objectives must apply transparent and gender-neutral criteria in the appointment of directors and prioritize the underrepresented sex where two candidates of different sexes are equally qualified.
- Clear and transparent board appointment procedures with objective assessment based on merit, irrespective of gender. The selection procedure of non-executive directors will need to comply to the following binding measures:
- Where two candidates of different sexes are equally qualified, preference shall be given to the candidate of the underrepresented sex, in companies where the target for gender balance is not achieved.

63 EC, [Commission welcomes political agreement on Gender Balance on Corporate Boards](#). Last visited 2 November 2022.



- Companies must disclose their qualification criteria should the unsuccessful candidate request it. Companies are further responsible to prove no measures were transgressed, if there is suspicion that an unsuccessful candidate of the underrepresented sex was equally qualified.
- Companies must undertake individual commitments to reach gender balance among their executive directors.
- Companies that fail to meet the objective of this Directive must report the reasons and the measures they are taking to address this shortcoming.
- Member States' penalties for companies that fail to comply with selection and reporting obligations must be effective, proportionate, and dissuasive. They could include fines and nullity or annulment of the contested director's appointment. Member States shall also publish information on companies' that are reaching targets, which would serve as peer-pressure to complement enforcement ("faming" provision).⁶⁴

3.5 Gender equality in the judiciary in the EU

Despite the mentioned progress in gender equality within the EU and even though in many European countries women judges are the majority, they are often still underrepresented in leading positions. Such under-representation is due to historical difficulties and to the glass ceiling barrier that prevent women from accessing the higher hierarchical levels, similarly to what happens with political and economic decision-making positions.

64. The President of the European Commission, Ursula von der Leyen, said: "Diversity is not only a matter of fairness. It also drives growth and innovation. The business case for having more women in leadership is clear. After ten years, since the European Commission proposed this directive, it is high time we break the glass ceiling. There are plenty of women qualified for top jobs: they should be able to get them."

The Vice-President for Values and Transparency, Věra Jourová, said: "The first time the Commission put the issue of women in economic decision-making high on the agenda was in 2010. Since then, women on boards have risen by 17 percentage points, mainly due to legally binding initiatives implemented in some Member States. This remains a painfully slow progress. With this Directive, we will collectively accelerate our efforts to strive for gender equality and better balance in economic decision-making."

Commissioner for Equality, Helena Dalli, said: "Today's agreement on Gender Balance on Corporate Boards takes our Union another step towards stronger and fairer societies. Talent has no gender and women's leadership skills and vision matter. Yet, entrenched selection patterns of corporate board members continue to largely overlook women candidates. Change in this sector only materialised in countries that set parity targets by law or policy. It is time for women and men to be equally represented on company boards EU-wide. Beyond the moral reasons for diversity and inclusion, there are ample benefits of this Directive for companies, including greater creativity and increased productivity."

3.5.1 A brief historical overview

The path of women judges has been very difficult, and for what concerns their access to the highest levels of the judiciary, still is. In Europe, women had been excluded from taking law degrees, entering practice as lawyers, and being admitted to the judiciary in most countries till well into the 20th century: in France in 1946, in Italy in 1965, in Spain in 1966.⁶⁵

This process took place at a slow pace in most Civil Law countries in Western Europe, while in former communist countries the increase of women in the judiciary and in prosecution had started earlier due to the more pronounced gender equality dogma in these countries. In many countries women meanwhile make the majority of judges and prosecutors and such imbalance is perceived as problematic. In France and the Netherlands, for instance, measures are taken to achieve a better sex-balance by hiring more men. This contrasts sharply with the situation in Common Law Countries where selection traditionally was based on a form of self-reproduction of older male members of the profession. Although the procedure for choosing candidates for the judiciary has changed, the participation of women in the judiciary still lags behind and the number of women judges only rises slowly.⁶⁶

Women jurists in Civil Law Countries prefer the judiciary to other fields of legal work as it provides the advantages of the civil service with maternal and parental leave, gender-neutral remuneration and the possibility to work part-time. In Civil Law Countries this has been possible for some forty years, in England and Wales this step was taken as late as 1997. An additional appeal of the judiciary is that it offers a relatively elevated position even if no career steps are taken, a moderate or at least plannable workload, and little competitive pressure. Career options are limited for both women judges and women public prosecutors. The higher the position the lower in almost all countries is the proportion of women. Less of them are presiding judges of chambers, hold positions at appeal courts and in supreme courts. In the British Supreme Court there has been throughout its history only one woman. Presidents of Supreme Courts are overwhelmingly male.

Feminisation is another process that has created a new situation and, consequently, new challenges, as explained more in detail in the case studies. The European study "Mapping the representation of women and men in legal professions across the EU" (2017) highlights that in Italy feminisation has led to structural change and to the disappearance of hierarchies so that seniority, not merit, is now crucial for promotion decisions. In France, the judiciary has for some time suf-

65 U. Schultz & T. Masengu, Women and judicial appointments, *International Journal of the Legal Profession*, 27:2, (2020), pp. 113-117.

66 K. Malleon, Prospects for Parity: The Position of Women in the Judiciary in England and Wales. In: U. Schultz and G. Shaw: *Women in the World's Legal Professions*. Oxford: Hart, (2003), pp. 175-190 and K. Malleon, Gender Quotas for the Judiciary in England and Wales. In: U. Schultz and G. Shaw, eds. *Gender and Judging*. Oxford: Hart, (2013), pp. 481-499.



ferred from a loss of image brought about by feminisation and other factors that include declining prestige, poor pay, lack of adequate facilities and unattractive office environment. Recruitment problems have resulted from young men increasingly choosing other fields of law, especially commercial legal practice, leaving the judicial field largely to women⁶⁷.

3.5.2 The Glass Ceiling in the Judiciary

The global phenomenon of feminisation of judicial functions has indeed a limit, highlighted in CEPEJ (European Commission for the Efficiency of Justice) reports since 2014, that the higher the hierarchical level, the more the number of women (and thus the percentage) decreases.

This barrier is known as the **glass ceiling**⁶⁸ – a metaphor for the obstacles that women face when striving to move upward in the workplace. Despite the catalogues of competencies, qualities, and abilities by which applicants to the highest positions in the judiciary are to be measured, problems of the choice of these criteria, the subjective assessments of their fulfillment, and the tendency towards system self-replication, result in men being preferred for managerial positions.

The latest European Union report on gender distribution in legal professions points out that in all EU Member States higher positions see the lowest proportion of women compared to lower ones. In this respect, seniority cannot be accounted to be the only reason for that, as initial selection and career advancement methods have surely played a crucial role in consolidating such uneven composition⁶⁹. It is worth noticing that civil law systems featuring a civil-service-like career system usually have a more gender-balanced composition than traditionally co-opt-based common law judiciaries⁷⁰. However, the latest available European Commission for the Efficiency of Justice (CEPEJ)⁷¹ statistics on gender distribution in Council of Europe member States clearly indicate that much is still to be done, especially in apex courts. The 2020 CEPEJ Report confirms that, despite the number of women judges and prosecutors increasing, the glass ceiling remains firmly in place for managerial positions, meaning that the higher the hierarchical level, the more the number of women drops. Despite many differences between countries and in their selection

67 Policy Department for Citizens' Rights and Constitutional Affairs, Directorate General for Internal Policies of the Union, [Mapping the Representation of Women and Men in Legal Professions Across the EU](#), August 2017, p. 26. Last visited 15 November 2022.

68 The term "glass ceiling" was coined by the writer and consultant Marilyn Loden in 1978 at the Women's Exposition in New York. The term "Glass ceiling barriers" first appeared in an article in the Wall Street Journal in 1986 in the United States and was used to describe the invisible barriers qualified women face in the development of their professional careers. Ever since, it has been frequently used in labor sociology studies and women's sociology to analyze the obstacles women must sort out to take a position of responsibility in public and private institutions.

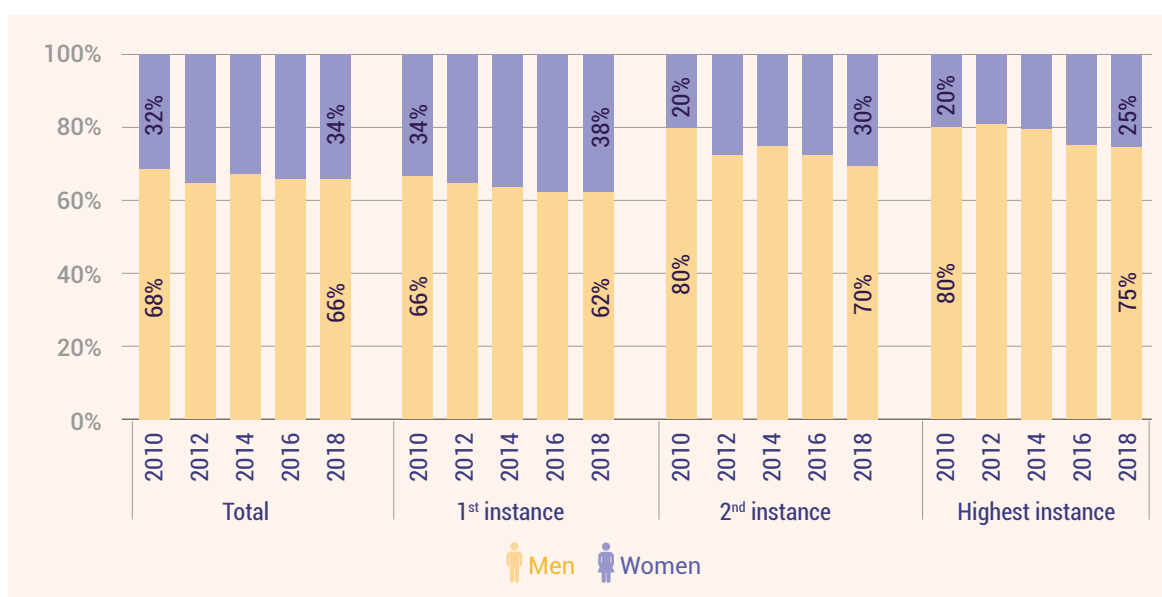
69 S. Cocchi, M. Guglielmi, [Gender Equality in the Judiciary: Experiences and Perspectives from Italy](#), The Italian Law Journal, n° 2, 2020, p. 39. Last visited 15 November 2022.

70 Policy Department for Citizens' Rights and Constitutional Affairs, Directorate General for Internal Policies of the Union, [Mapping the Representation of Women and Men in Legal Professions Across the EU](#), August 2017, p. 25. Last visited 2 November 2022.

71 European judicial systems – [CEPEJ Evaluation Report](#) – 2020 Evaluation cycle (2018 DATA), p. 65. Last visited 15 November 2022.

process, women remain clearly under-represented at the highest levels of the judiciary.⁷² Female professional judges and prosecutors are over-represented at first instance, but their number decreases dramatically at second and highest instance. However, regarding the increased overall percentage of women among judges and prosecutors and the duration of career progression, it is possible that progress in gender equality may only become noticeable with a time lag. The CEPEJ report shows that the proportion of women among second instance judges in 2014 (48,3%), 2016 (49,9%) and 2018 (50,8%) roughly matched the percentages that had been reported for the ratio of women among all professional judges four years earlier (48,3% in 2010, 49,2% in 2012 and 51,3% in 2014) and that 2010's overall average ratio of women among prosecutors (45,9%) was reached in 2018 among second instance prosecutors (47%). The increase in the proportion of female judges and prosecutors at the highest instance between 2010 and 2018 was stronger than the increase in the proportion of women among the total numbers of judges and prosecutors in the same period. While the proportion of women among all judges and prosecutors only increased by 11,6% and 14,4%, respectively, the proportion of female judges and prosecutors at the highest instance increased by 16,8% and 16,5%, respectively.

The diagram below shows the distribution of court presidents by instance and by gender between 2010 and 2018, with women being still significantly underrepresented as court presidents.



72 M. García Golder (2020) The glass ceiling at the highest levels of the Spanish judiciary, *International Journal of the Legal Profession*, 27:2, 189-202.

The average proportions of women among court presidents in 2018 have not reached the corresponding average proportion of women among professional judges (even those from 2010), either in total or in individual instances. Notwithstanding these negative figures, developments between 2010 and 2018 have been remarkable and the average ratio of female heads of second instance courts has increased by 10 percentage points, thus more strongly than the average ratio of female second instance judges (5 percentage points)⁷³.

73 European judicial systems – [CEPEJ Evaluation Report](#) – 2020 Evaluation cycle (2018 DATA), p. 65. Last visited 15 November 2022.

4. Case studies

The selection of the country for the purposes of this study has been suggested by the variety of systems, problems, measures, and proposals that Italy, Spain and France have presented in the last decades. These countries are not necessarily a model in terms of gender equality in the judiciary, but the variety of challenges, both at the social, institutional, and political level, make them valuable in terms of potential “transferability” in the Brazilian context. Nevertheless, it should be reminded that Italy, Spain and France are part of the EU that is seriously committed to achieve gender equality, as described in the previous paragraphs.

4.1 Italy

According to EIGE⁷⁴, Italy ranks 14th in the EU on the Gender Equality Index, with 65.0 out of 100 points. Its score is 3.6 points below the EU’s score.

Since 2015, women represent the majority of judges in Italy⁷⁵. This situation, however, does not mean that gender equality has been achieved when it comes to top-level positions, including managerial positions in courts and Public Prosecutors Offices and the composition of judicial self-governing bodies (Consiglio Superiore della Magistratura, High Council for the Judiciary, CSM, in particular).

An historical overview is presented here to explain the long path of women in the Italian judiciary, thus putting the current measures – good practices – in a proper context, also to properly understand their potential in terms of transferability, as explained in the methodological approach.

⁷⁴ EIGE, [GDI](#). Last visited 15 November 2022.

⁷⁵ CSM, [Ufficio Statistico, Distribuzione per genere del personale di magistratura](#), March 2022. Last visited 15 November 2022.



4.1.1 A brief history of Women's access to the judiciary in Italy

The entry of women into the judiciary in Italy dates to 1963, when Law n° 66 allowed women access to all public offices, professions, and positions, including the judiciary⁷⁶. In the same year the first competitive examination for the selection of judges open to female candidates was launched, and eight candidates out of 187 were found suitable (the competitive examination was for 200 posts)⁷⁷. Article 2 of Law n° 66/1963 repealed Article 7 of Law n° 1176 of 17 July 1919 that allowed women to practice the professions in public office, but expressly excluded them from the judiciary. According to Article 7, women were allowed to practice all professions and to fill all public positions on an equal footing with men, excluding only, save where expressly permitted by law, those entailing public judicial authority or the exercise of political power and rights, or those relating to the military defense of the State in accordance with the specification that will be made by appropriate regulations⁷⁸. A woman could graduate in Law, she could join the Bar, but could not become a judge or a prosecutor. Additionally, in 1941, the statute on the judiciary by the Fascist regime specified that only men, who were of 'Italian race' as well as members of the National Fascist Party, could pursue a career in the judiciary (Art. 8)⁷⁹.

In 1947, after the fall of fascism and the end of the Second World War, there were strong debates within the Constituent Assembly on the opportunity to recognise women's right to pursue the activity of judge. Many contributions to the debate revealed deeply rooted prejudices:

"A woman must remain the queen of the house; the further away she is from the family the more it crumbles. With all due respect to the intellectual capacity of women, I have the impression that they are not suitable for the difficult art of judging. This requires great balance and sometimes this balance is lacking in them for physiological reasons. This is my opinion: women should stay at home."⁸⁰

Such an opinion reflected a culture that identified women with their bodies and their reproductive functions. Indeed, suspicion and prejudice surrounded women's participation in the exercise of judicial functions in the Constitutional Assembly, too, where mixed feelings, or even strong objections, were expressed even by the most prominent jurists⁸¹.

Notwithstanding such prejudices and the limited number of women members (only 4%), the Assembly decided not to intervene on this specific issue, establishing in Article 51 that "Any citizen

76 Law n° 66 of 9 February 1963, Ammissione della donna ai pubblici uffici e alle professioni.

77 T. Addabbo et al, *Le donne nella magistratura italiana: 1960-1990*, Università di Modena e Reggio Emilia, Dipartimento di Economia "Marco Biagi" Working Paper Series, no 14. Last visited 15 November 2022.

78 Art. 7 Law n° 1176 of 17 July 1919.

79 S. Cocchi, M. Guglielmi, *Gender Equality in the Judiciary: Experiences and Perspectives from Italy*, The Italian Law Journal, n° 2, 2020, p. 386. Last visited 15 November 2022.

80 A. Romano, in his intervention at the Constitutional Assembly, session of November 11, 1947.

81 I. Stolzi, *Donne e magistratura*, in C. Consolo et al (eds.), *Storia della magistratura*, Rome, 2022, p. 98..

of either sex is eligible for public offices and elected positions on equal terms, according to the conditions established by law"⁸².

This decision was the result of a compromise that was reached only when the Assembly, after rejecting the proposed amendment in favor of allowing women to join the judiciary, "looking forward and fearing that this position could in the future be interpreted as an intention to bar women's access to the judiciary", decided not to decide, deferring the choice to future laws⁸³.

These provisions are accompanied by Art. 37, stipulating that working women shall enjoy equal rights and equal pay as men, and Art. 106, according to which "judges are appointed through competitive examinations". All provisions on equal rights are linked to the all-encompassing principle of formal and substantive equality enshrined in Art. 3, which stipulates:

"All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions. It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic, and social organization of the country".

The entry into force of the Constitution did not imply an immediate change in the overall regulatory context and women's full access to the judiciary. On the contrary, the transition from a long-standing authoritarian regime to a new constitutional framework based on democracy and the rule of law, required a long process to upgrade the existing legislation. Discussions in this regard continued for over ten years, but a dramatic change occurred at the beginning of the 1960s, when the Constitutional Court struck down Art. 7 of Law 17 July 1919 n° 1176, excluding women from public offices implying the exercise of political rights and authorities⁸⁴.

Finally, in 1963, fifteen years from the entry into force of the Constitution, the Parliament approved the law that allowed women access to all public offices, professions, and positions, including the judiciary. Its Art. 1 stipulates that women may have access to any offices, professions, and civil service positions, including the judiciary, in all roles, careers and categories, without any limitations and provided that the requirements prescribed by the law are fulfilled.

In May of the same year, the first public competition for the selection of judges to be open to women took place, and eight qualified out of 186 selected⁸⁵. Women had been excluded from the

82 Op.cit., p. 93. The text of the Italian Constitution is available at https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.

83 P. Di Nicola, *La Giudice. Una donna in magistratura*, Ghena, Rome, 2004, p. 51.

84 Corte Costituzionale 13 May 1960 no 33, *Giurisprudenza costituzionale*, 33 (1960).

85 T. Addabbo et al, *Le donne nella magistratura italiana: 1960-1990*, Università di Modena e Reggio Emilia, Dipartimento di Economia "Marco Biagi" Working Paper Series, no 141, p. 13. Last visited 9 November 2022.



first sixteen competitive examinations for the selection of judges, a gap that will require more than twenty years to be filled. In 1965, the first 2 women entered the ranks of the judiciary, representing six per cent of persons recruited. From then on, the presence of women in the Italian judiciary has constantly increased.

In 1987, the number of female winners in the competition for the selection of judges, for the first time, exceeded the number of male winners. Nevertheless, this result did not have immediate consequences on the mentality behind it. On the contrary, the president of the selection board commented the historic result, noting that women “while not excelling in brilliance of intellect” presented all the same “gifts of intelligence and tenacity of application,” “useful for memorizing a notional exam⁸⁶”. The trend of women outnumbering men in competitions for the selection of judges has continued ever since, with competition-winning females reaching sixty-one per cent in the latest selection procedure. Moreover, since 2015 the presence of women in the judiciary has outnumbered that of men in general terms⁸⁷.

As of 2 March 2022, CSM statistics report that, out of 9.576 members of the judiciary, 5.283 are women (fifty-five per cent), which is certainly a significant achievement. Among these, there are one thousand seventy-two 1.072 prosecutors (i.e., 48% of prosecutors), while three thousand nine hundred thirteen 3.913 women (making up for 58% of judges) exercise judicial functions. Additionally, one hundred fifteen women (76 judges and 39 prosecutors) hold managerial positions⁸⁸, while 325 (292 judges and 33 prosecutors) exercise semi-managerial functions.

Interestingly, the most recent CSM statistics also highlight that the presence of women judges and prosecutors in the various Districts of Court of Appeal (the key unit according to which the geographical distribution of courts is organized in Italy) varies with no pattern. In a few Northern and Southern districts alike women judges or prosecutors range between 52 and 64%⁸⁹, in contradiction with the prejudice about the role of women in Southern Italy⁹⁰.

Unfortunately, the balance disappears when we look at managerial. Men hold almost three quarters (72%) of the managerial positions within the Italian judiciary, while a slightly higher score applies to semi-managerial ones⁹¹, where women hold 45% of them. The percentage of women in managerial positions rises if we look only at judging offices (31%), while, as far as pro-

86 A. Rossi Doria, F. Tacchi, Eva Togata, Turim, 2009.

87 CSM, [Ufficio Statistico, Distribuzione per genere del personale di magistratura](#), March 2022. Last visited 15 November 2022.

88 These include 1st level managerial positions (such as Court President, Surveillance Court President, Court Prosecutor, etc.) and 2nd level managerial positions (such as Court of Appeal President, Court of Appeal Prosecutor, etc.).

89 CSM, [Ufficio Statistico, Distribuzione per genere del personale di magistratura](#), March 2022, pp. 6-7. Last visited 15 November 2022.

90 S. Cocchi, M. Guglielmi, [Gender Equality in the Judiciary: Experiences and Perspectives from Italy](#), The Italian Law Journal, n° 2, 2020, p. 390. Last visited 15 November 2022.

91 Semi-managerial positions include 1st level semi-managerial positions (such as Court Section President, Adjunct Court Prosecutor, etc.) and 2nd level semi-managerial positions (such as President of Court of Appeal Section, etc.).

secuting offices are concerned, only in 22.3 % of cases does a female magistrate have command responsibilities. This imbalance also applies to semi-managerial positions, which are assigned to women in 48% of cases among the judges, and only about 29% of the time in the prosecuting positions⁹².

The apex positions in the machinery of justice are no exception to this trend: in the past twenty years, no woman has ever held the position of General Prosecutor, President of the Court of Cassation, National Anti-Mafia Prosecutor, nor Vice-President of the CSM, where – by the way – women members are currently six out of the twenty four elected members. However, on 15 July 2020, the CSM appointed Margherita Cassano as the first-ever woman Vice-President of the Court of Cassation by unanimous vote.

No better news come from the political-institutional side, with only two women out of seven Ministers of Justice in the past twenty years, with the first one to be ever appointed (Paola Severino) taking office only in 2011. A quick but significant off-topic comment: only six women judges have been appointed to the Italian Constitutional Court since it became operational in 1956, the last of whom in September 2020. On 11 December 2019, Professor Marta Cartabia was elected President of the Constitutional Court, thus becoming the first woman in Italy to hold this position. She ceased to hold office on 13 September 2020. Three male presidents were in charge after Professor Cartabia. Another woman, Professor Silvana Sciarra, elected on 20 September 2022, is currently President of the Constitutional Court.

Amongst the figures shown above, the stunning one is the percentage of women judges and prosecutors holding managerial and semi-managerial positions. Although in recent years the tendency seems to be pointing to a gradual convergence of the relevant disaggregated data, with percentages getting closer and closer all along the past decade, it is still striking that only one out of four managerial positions is held by women, with less encouraging percentages as far as prosecutors are concerned (one out of five)⁹³.

The relatively lower average age (49) of women members of the judiciary compared to that of men (52)⁹⁴, might suggest that oftentimes women are still a bit ‘too young’ (on average) to access positions that are generally attained also on grounds of seniority⁹⁵. A Constitutional Court decision of 2003 provided a more convincing explanation by framing the picture within a broader context and connecting such inequalities to ‘the persistence of the historical effects of a time when

92 CSM, [Ufficio Statistico, Distribuzione per genere del personale di magistratura](#), March 2022, p. 7. Last visited 15 November 2022.

93 S. Cocchi, M. Guglielmi, [Gender Equality in the Judiciary: Experiences and Perspectives from Italy](#), The Italian Law Journal, n° 2, 2020, p. 390. Last visited 15 November 2022.

94 CSM, [Ufficio Statistico, Distribuzione per genere del personale di magistratura](#), March 2022, p. 1. Last visited 15 November 2022.

95 S. Cocchi, M. Guglielmi, [Gender Equality in the Judiciary: Experiences and Perspectives from Italy](#), The Italian Law Journal, n° 2, 2020, p. 391. Last visited 15 November 2022.



women were denied or had limited political rights and to the persistence today of well-known economic, social and moral obstacles that can hinder the participation of women in the political organization of the Country⁹⁶.

Another cross-cutting issue that clearly emerges from the statistics above lies with under-representation of women in the Italian judiciary's self-governing body, i.e., the High Council for the Judiciary, with a quite recent history of women's presence and a still low number of women members from 1981 to present days (29). Until recently, women judges or prosecutors holding auxiliary positions at the CSM (e.g., in the Secretariat or the Research Department) are still very few compared to their male counterparts.

The 2019 report of the Organisation for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) has stressed the need for justice sector professionals to attain a more conscious perception of both direct and indirect gender-based biases affecting their everyday working environment and career. Moreover, the relevant needs assessment study highlighted that gender-based barriers hamper career advancements and consequently proportional representation of women in senior management positions even in those contexts where there are no striking gender imbalances. This ultimately shows how a gender-sensitive approach to the performance of judicial functions leads (at least partially) to an increased representation of women judges in managerial positions and even self-governing bodies⁹⁷.

The situation described so far shows that the so-called 'glass ceiling' is still far from being broken. Nevertheless, measures have been adopted and are still being elaborated to achieve gender equality in the judiciary. These measures consist in a combination of regulatory instruments and practices aimed at redressing gender-based inequalities in accessing the judiciary, especially the top-level positions.

4.1.2 Good practices

The entry into force of Law 10 April 1991 n° 125, aimed at realizing equal opportunities in the work environment through the design and enactment of affirmative actions, was the cornerstone of a set of gender equality-based measures and interventions designed to specifically protect and promote women. To increase the effectiveness of the policy approach underlying the new law, in 1992 the CSM established the **Committee for Equal Opportunities in the Judiciary**⁹⁸. Such Com-

96 Corte Costituzionale 10-13 February 2003 no 49, para 4 '[considerato in diritto](#)'. Last visited 15 November 2022.

97 OSCE, Office for Democratic Institutions and Human Rights (ODIHR), [Gender, Diversity and Justice. Overview and Recommendations](#), 2019, p. 7. Last visited 15 November 2022.

98 CSM, [Committee for Equal Opportunities in the Judiciary](#). Last visited 15 November 2022

mittee was followed, in 2000, by the establishment of another **Committee for Equal Opportunities within the National Association of Judges and Prosecutors (ANM)**⁹⁹.

4.1.2.1 The Committee for Equal Opportunities in the Judiciary

The Committee for Equal Opportunities in the Judiciary represented a real turning point in the increase of the Judiciary's self-awareness on gender issues¹⁰⁰. According to Art. 17 para 1 of the CSM Rulebook¹⁰¹, the Committee has the task of formulating, to the competent Commissions, opinions and proposals aimed at removing the obstacles that prevent the full realization of equal opportunities between men and women in the work of judges as well as promoting positive actions.

The Committee is chaired by the President of the 6th CSM Commission, which is competent on issues related to the overall organization of the judiciary, with a function of advice and proposal. The Committee is composed of two members of the CSM, six ordinary judges or prosecutors appointed by the associations of the Judiciary and two external experts appointed by the Committees dealing with gender issues within the Ministry of Labour and the Prime Minister's Office.

The Committee anticipated the legislator and pushed the work of the CSM in promoting innovative measures in defense of gender equality. This was the case with order no 160/96, recommending the managers of judicial offices to organize workloads and schedules of those judges and prosecutors who are pregnant or have children under the age of three without intervening on the 'quantitative' aspects, but making them compatible with the duties of assistance bestowed upon women workers¹⁰².

Only four years later, through Law 8 March 2000 n° 5, Parliament extended those guarantees to all female workers; six more years were necessary for the legislator to approve the Code of Equal Opportunities (legislative decree 11 April 2006 no 198) which contains protective measures and affirmative actions for the achievement of gender equality.

This can be taken as an example of the potential of the judiciary, thanks to its independence due to the self-government of the CSM, to pave the way to gender equality measures in the national political and legislative landscape. The measures proposed by the committee produce effects that go well beyond the provision of gender perspective within the CSM but can play a pivotal role in stimulating gender equality at the national level.

99 ANM, [Committee for Equal Opportunities within the National Association of Judges and Prosecutors](#). Last visited 15 November 2022.

100 S. Cocchi, M. Guglielmi, [Gender Equality in the Judiciary: Experiences and Perspectives from Italy](#), The Italian Law Journal, n° 2, 2020, p. 394. Last visited 15 November 2022.

101 CSM, [Regolamento interno](#). Last visited 15 November 2022.

102 S. Cocchi, M. Guglielmi, [Gender Equality in the Judiciary: Experiences and Perspectives from Italy](#), The Italian Law Journal, n° 2, 2020, p. 394. Last visited 15 November 2022.



The Equal Opportunities Committee also suggested the introduction of the function of 'district judge/prosecutor', assigned to the Courts of Appeal to replace the judges and prosecutors serving in the district in case of temporary absence, e.g., due to maternity or illness leave¹⁰³.

Moreover, the Equal Opportunities Committee proposed the creation of decentralized Equal Opportunities Committees that were established within the judicial councils of every District of Court of Appeal (Consigli giudiziari)¹⁰⁴ and within the judicial council of the Court of Cassation (Consiglio direttivo), respectively in 2008¹⁰⁵ and 2009¹⁰⁶, to perform consultative functions and formulate proposals.

The CSM decision specifies that Local Equal Opportunities Committees are chaired by a member of the Judicial Council appointed from among the elected magistrates and that its members are:

- two or four (depending on the size of the districts) magistrates, of which at least half are women (preferably practicing functions diversified between them, namely civil, criminal and prosecutors).
- a female lawyer, designated by the Equal Opportunities Committee at the Council of the Bar Association.
- the Regional Assembly Delegate for Equal Opportunities.
- a woman representative from the district's administrative staff.

The CSM decision of 9 April 2008 stipulates that local Committees perform their functions regarding internal organizational matters, evaluation criteria and procedures, initial and on-the-job training of judges and prosecutors, awareness-raising measures on equal opportunities and the available regulatory options for maternity and paternity leaves, as well as to counter gender stereotypes that may affect adjudication and prosecution.

As these committees are local, their inputs must consider the significant differences between the different local contexts.

Choosing a member of the local Judicial Council as chairperson of the committee ensures a strong connection with the local judiciary's self-governing body. Also, the presence of a member from the local Bar and from the local administrative staff equal opportunities committee makes the exercise of the Equal Opportunities Committee's functions in each District very inclusive, while

103 Op.cit.

104 The Judicial Councils (Consigli Giudiziari) work as consultative bodies of the High Judicial Council.

105 CSM [Decisão de 9 de abril de 2008](#). Last visited 15 November 2022.

106 CSM [Decisão de 11 de fevereiro de 2009](#). Last visited 15 November 2022.

the broad composition of local Committees fosters a more comprehensive 'cultural sharing' of gender equality among legal professionals¹⁰⁷.

In July 2007, the CSM signed a Constitutive Charter of the Network of Equal Opportunities Committees of the legal professions. The Charter intends to connect all the Equal Opportunities Committees of the ordinary, administrative, accounting, military and tax administration judges, prosecutors, and magistrates as well as the Bar Equal Opportunities Committees, to identify and pursue shared objectives in the different judicial sectors¹⁰⁸.

4.1.2.2 Gender equality issues in the High Judicial Council

As of today, the CSM remains the only constitutional body not to include any gender balance measures in its electoral law.

The introduction of gender parity targets in Italy has been debated for several years. Article 51 of the Constitution was amended in 2003 by a constitutional law that provides that the Republic promotes with specific measures equal opportunities between women and men¹⁰⁹. A further decision of the Constitutional Court¹¹⁰ was necessary to bring the new article 51 back to the principle of substantial equality, confirming that positive actions in electoral matters are not only allowed, but explicitly prescribed by the Constitution¹¹¹.

Notwithstanding Article 51 of the Constitution, the introduction of gender parity targets in the election and appointment of CSM members have been repeatedly debated in recent years, and the consistent amendment of the existing legislation debated in an ad hoc ministerial commission. In this respect, the Association of Employees of the Ministry of Interior (Associazione Dipendenti Ministero dell'Interno) contributed to drafting the CSM electoral law amendment bill¹¹² proposed by the President of the Justice Committee of the Chamber of Deputies and fifty-seven Members of Parliament at the end of the XVII legislature and introducing "first affirmative actions to redress gender inequalities". They featured alternation between female and male candidates in the electoral lists as well as compulsory double gender preference vote, in which each voter can indicate two preference votes which must go to candidates of different sex.

107 S. Cocchi, M. Guglielmi, [Gender Equality in the Judiciary: Experiences and Perspectives from Italy](#), The Italian Law Journal, n° 2, 2020, p. 395. Last visited 15 November 2022.

108 CSM, [comunicado de imprensa em 18 de julho de 2007](#). Last visited 15 November 2022.

109 Law of 30 May 2003 n° 1.

110 Sentence n° 4 of 2010.

111 D. Ferranti, [La rappresentanza di genere nel CSM](#), 2020. Last visited 15 November 2022.

112 Chamber of Deputies Bill no 4512/2017.



Although the proposed measures entailed mechanisms to be applied in the preliminary phases of the elections rather than envisaging the attainment of a perfectly gender-balanced composition of the CSM, they were deemed incompatible with the principle of judicial autonomy and self-government.

4.1.2.3 The National Association of Magistrates of Italy

The National Association of Magistrates (ANM), founded in 1909, includes 9149 magistrates out of a total of 9657 magistrates. The ANM aims to protect the independence and prestige of the judiciary and participates in the debate in society for the reforms necessary to ensure a better justice service. Against this backdrop, the ANM elaborates documents and organizes seminars and study conferences¹¹³. Since 2000, a Committee for Equal Opportunities was also established within the ANM.

In 2011, the internal regulation and electoral system of the ANM has been modified¹¹⁴ to introduce a gender balance clause (50%) for the composition of electoral lists as well as a mechanism of seat distribution ensuring that each gender has at least 30 % of the plenum¹¹⁵.

This example should be carefully considered, as it shows that the most valuable solutions can stem from the internal discussion of those who will be directly affected by them. Electoral gender parity targets and gender-balance clauses seem to be the mechanisms that self-government bodies (and Parliament) should consider when reflecting upon possible corrections to the under-representation of women in national and local institutions, and in the CSM in particular¹¹⁶.

4.2 Spain

According to EIGE¹¹⁷, Spain ranks 6th in the EU on the Gender Equality Index, with 74.6 out of 100 points. Its score is 6.0 points above the EU's score.

In Spain gender parity targets have been adopted in different domains and their expansion to the legal field is discussed. Observing a very low representation of women in the High Courts, the

¹¹³ <https://www.associazionemagistrati.it>.

¹¹⁴ ANM *Assemblea Generale*, 22 October 2011. Last visited 15 November 2022.

¹¹⁵ For an extensive account of the various proposals in this respect, see C. Lendaro, *Representação de gênero nas instituições. Ferramentas de reequilíbrio. Observações introdutórias* (2017), p. 4. Last visited 15 November 2022.

¹¹⁶ S. Cocchi, M. Guglielmi, *Gender Equality in the Judiciary: Experiences and Perspectives from Italy*, *The Italian Law Journal*, n° 2, 2020, p. 397. Last visited 15 November 2022.

¹¹⁷ EIGE *GDI*. Last visited 15 November 2022.

Commission of Equality of the General Board of the Judiciary¹¹⁸ brought forward a number of proposals with regard to reforming the selection criteria of judges, including “to introduce a system of gender parity targets to ensure balanced representation, to be applied in cases where candidates have the same level of merits and capacity”.¹¹⁹ This recommendation was however not put into practice by the government.

In Spain, the number of female judges at the highest levels of the judiciary is very low, despite the approval of two Strategic Plans for Equality in the Judicial Career (2013 and 2020). This situation does not seem to differ from other European countries, according to the data offered by CEPEJ¹²⁰ (2018). The end of tokenism has not yet arrived, and for that reason, an analysis of the main probable causes for this glass ceiling is carried out in this paper. A greater effort must be made to overcome this situation and achieve a better representation of female judges at the highest levels of the judiciary system.

4.2.1 A brief history of Women's access to the judiciary in Spain

In Spain, the entry of women into the judiciary – and into public life in general – was very difficult. For what concerns legal professions, even for those women who had access to an equal education, having access to studying law was extremely complex. One of the oldest normative bodies, Las Siete Partidas (13th century, in force until the 19th century) expressly forbade women practicing the profession of law and, tacitly, the profession of judges¹²¹. This law established that “women cannot be judges... because it would not be a good thing for them to be among the multitude of people litigating”¹²². By establishing this limitation and in the same place, the law extended the prohibition to the insane, minors, blind, deaf and dumb, comparing them in some way to women, even if only for the purposes of this prohibition.

Many centuries later, during the second Spanish Republic (1931–1936), the Spanish Constitution of 1931 was approved, the fundamental milestone of which was to recognise the right to vote for women¹²³. Despite the formal prohibition of sex discrimination, serious obstacles for women attempting to access the judiciary and the prosecution remained. The Minister of Justice, through the Order of November 16, 1934, denied women's access to the prosecution, the judiciary, and the

118 PJE [Objetivos](#). Last visited 15 November 2022.

119 S.I. Novo Canto, [The Glass Ceiling in the Spanish Judiciary](#). Last visited 15 November 2022.

120 European judicial systems – [CEPEJ Evaluation Report](#) – 2020 Evaluation cycle (2018 DATA), p. 65. Last visited 15 November 2022.

121 M. Otero Parga, [Una mujer juez. A propósito del Plan 14/02/2013 de Igualdad de la Carrera Judicial](#), *Dereito: revista xurídica da Universidade de Santiago de Compostela*, (2013), 22, p. 445. Last visited 15 November 2022.

122 Partida III 4-4.

123 C. Collado Mateo, [Mujeres, poder y derecho, Feminismo/s](#), 8, (2006) p. 30. Last visited 15 November 2022.



judicial secretariat, arguing that the exercise of these functions required conditions that education and nature gave only to men. The end of the Spanish Civil War (1936–1939) meant the yearning for legal equality that had arisen for women during the Republican period and one of the first repressive measures from the Francoist regime was to suspend the exercise of the few women who had entered the practice of law¹²⁴.

Spanish women were expressly prohibited from entering the judiciary until Law 96 of 28 December 1966. Said law partially modified a previous one from 1961 on political, professional, and labor rights of women¹²⁵. The preamble to Law 96 stated that sex alone cannot motivate a different legal treatment. With these simple words, it was affirmed that the sexual differences between men and women cannot be a reason for discriminatory treatment. A part of the path had been started but it would be difficult and laborious to travel it. Law 96 was a milestone not only because it changed women's rights, but also because it explained why:

"The reasons for the protection that the Law wanted to dispense to the feelings of women must be estimated overcome by the social reality itself and because women who want to exercise the judicial function will satisfy their vocation, which will compensate them for the afflictions that may come their way".

The first woman to become judge was Concepción Carmen Venero in 1971, five years after Law 96 was passed, but her work was limited to the family law field¹²⁶. One year later, the then president of the Supreme Court was still affirming that "judging was an essentially masculine profession that could collide with feminine sensibilities." These words reflected the Spanish mentality in the 1970s. Although the President of the Supreme Court could not ignore the law and the free access of women to the judicial career, he had not really accepted it, like the rest of the society. Indeed, the law needed more time to be fully recognised. On January 23, 1978, Josefina Triguero took possession of her position in the Naval Moral de la Mata court in Badajoz, thus becoming the first female judge in Spain as we understand this function today¹²⁷.

In 1984, Spain signed and ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by the United Nations in 1979. The Law on Equality between Men and Women, passed in 2007¹²⁸, has had a deep impact in the country, forcing all the public and private structures to promote the participation of women as full actors within the

124 M. García Golder The glass ceiling at the highest levels of the Spanish judiciary, *International Journal of the Legal Profession*, 27:2, (2020), p. 192.

125 M. Otero Parga, [Una mujer juez. A propósito del Plan 14/02/2013 de Igualdad de la Carrera Judicial](#), *Dereito: revista xurídica da Universidade de Santiago de Compostela*, (2013), 22, p. 444. Last visited 15 November 2022.

126 M. García Golder The glass ceiling at the highest levels of the Spanish judiciary, *International Journal of the Legal Profession*, 27:2, (2020), p. 192.

127 M. Otero Parga, [Una mujer juez. A propósito del Plan 14/02/2013 de Igualdad de la Carrera Judicial](#), *Dereito: revista xurídica da Universidade de Santiago de Compostela*, (2013), 22, p. 462. Last visited 15 November 2022.

128 [Ley Orgánica 3/2007, de 22 de marzo, para la Igualdad Efectiva de Mujeres y Hombres](#). Last visited 15 November 2022.

society, and to effectively integrate the constitutional principle of equality in all spheres of public and private life. The Law has affected all national and regional regulations, and the composition and structure of public bodies and agencies at all levels.

According to the latest report on the Demographic Structure of the Judicial Career, of the 5,320 active judges and magistrates in Spain, 2,918 are women, which represents 54.85 percent of the total. This makes the Judiciary the only state power made up mostly of women¹²⁹.

As the number of female judges has not stopped growing, scholars started to use the word “feminisation” to describe the situation of Spanish judiciary¹³⁰. However, the high presence of female judges is only seen at the lowest levels of the Spanish judiciary, confirming the existence of the glass ceiling barrier.

In the current Spanish legal system, the Constitution enshrines, in its article 14, the right to equality and non-discrimination based on sex. In addition, article 9.2 establishes the obligation of the public powers to promote the conditions so that the freedom and equality of the individual and of the groups in which they are integrated are real and effective, and to remove the obstacles that prevent or hinder their fullness and facilitate the participation of all in political, economic, cultural, and social life¹³¹. This article is extremely close to article 3 of the Italian Constitution¹³².

The development of these rights has materialized in the approval of numerous laws aimed at achieving equal treatment and opportunities between women and men, among which it is worth to mention:

- Law 39/1999, of November 5, to promote the conciliation of family and work life of working people.
- Law 30/2003, of October 13, on measures to incorporate gender impact assessment in the regulatory provisions drawn up by the Government.
- Organic Law 1/2004, of December 28, on comprehensive protection measures against gender violence.

129 PJE 8-M: [Mujeres pioneras en el Poder Judicial](#). Last visited 15 November 2022.

130 C. Gómez Bahillo, C. Elboj Saso, C. Marcén Muñío, [The feminization of the Spanish judiciary](#), *Convergencia: revista de ciencias sociales*, (2016), 70, p. 17. Last visited 15 November 2022.

131 Art. 9.2 and 14 of [the Spanish Constitution](#). Last visited 15 November 2022.

132 Art. 3 of the Italian Constitution stipulates: “All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions. It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country”.



4.2.1.1 Organic Law 3/2007

However, the most outstanding of all the national regulatory provisions aimed at making the principle of equality between women and men effective is Organic Law 3 of 22 March 2007¹³³, for Effective Equality of women and men, whose article 15, under the title "Transversality of the principle of equal treatment between women and men" stipulates that "The principle of equal treatment and opportunities between women and men will inform, with a transversal nature, the action of all the Public Powers", so that Public Administrations are required to integrate it in the adoption and execution of their regulatory provisions, in the definition and budgeting of public policies in all areas and in the development of all their activities.

To make gender mainstreaming effective, article 4 establishes that "Equal treatment and opportunities between women and men is an informing principle of the legal system and, as such, it will be integrated and observed in the interpretation and application of the legal norms".

According to article 51.,

"Public Administrations, within the scope of their respective powers and in application of the principle of equality between women and men, must:

- a) Remove the obstacles that imply the persistence of any type of discrimination to offer conditions of effective equality between women and men in access to public employment and in the development of a professional career.
- b) Facilitate the reconciliation of personal, family and work life, the fight against any type of discrimination based on sex, prevention, and protection against situations of special risk or vulnerability, and the use of a non-sexist language in the judicial sphere".

4.2.2 Good practices

The Law on Equality between Men and Women has had a huge impact, compelling all the public and private structures to promote the participation of women as full actors within the society, and to effectively integrate the constitutional principle of equality in all spheres of public and private life¹³⁴. The Law has affected all national and regional regulations, and the composition and structure of public bodies and agencies at all levels. Consequently, several new structures to

133 [Organic Law nº 3/2007, of 22 March, for the Effective Equality Between Men and Women](#). (Ley Orgánica 3/2007, de 22 de marzo, para la Igualdad Efectiva de Mujeres y Hombres). Last visited 15 November 2022.

134 The provisions of the Organic Law 3/2007 have been reinforced and expanded through Royal Decree Law 6/2019, of March 1, on urgent measures to guarantee equal treatment and opportunities between women and men in employment and occupation, which introduces important legislative advances in terms of applying the principle of equality to business organizations and public administrations through equality plans, in terms of measures of co-responsibility and reconciliation of personal and family life and professional training of workers in both the private sector and the Public Administration, and in terms of promoting equal pay between men and women.

foster gender equality in the institutions have been created. In the General Council of the Judiciary (Consejo General del Poder Judicial, CGPJ), the Commission of Gender Equality¹³⁵ was created in October 2007¹³⁶, with the aim of assessing the Council on the measures needed to implement the principle of equality on its competencies and on the judicial career.

4.2.2.1 The Equality Commission

On 23 October 2007, in compliance with the legal mandate, the first Equality Commission was formally constituted to develop and promote the actions necessary to achieve gender equality. More specifically, the Commission is given the task of “advising the Plenary – composed of all the members of CGPJ – on the necessary or convenient measures to actively integrate the principle of equality between women and men in the exercise of the powers of the CJPJ, as well as preparing preliminary reports on the gender impact of the regulations and improving the parameters of equality in the Judicial Career”¹³⁷.

According to the third additional Provision of Organic Law 3/2007, Art. 136 bis, modifying Organic Law 6 of 1 July 1985, “The Plenary Session of the CGPJ shall elect annually, from amongst its Members, with a majority of three fifths and ensuring a balanced presence of men and women, the components of the Equality Commission, which shall include five members”.

In its third paragraph, the Article 136 bis indicates that “The Equality Commission shall advise the Plenary Session on the required or appropriate measures to actively integrate the principle of equality between men and women in performing the duties of the General Council of the Judiciary and, in particular, it shall draw up prior reports on the gender impact of regulations and improve the equality parameters in the judicial profession”.

The competences of the Commission can be found on the CGPJ’s website, in the gender equality section. Such competences are:

- Consolidate the institutional weight of the Equality Commission by intensifying its promotion within the legal profession (a priority), institutions, public powers and society and publicizing its legal duties, goals, and importance.

In what specifically pertains to the Organic Statute of the Judicial Career, two Organic Laws approved in December 2018 should finally be highlighted:

a) [Organic Law 4/2018](#). Last visited 9 November 2022. Reforming the Organic Law on Judicial Power 6/1985, which introduces some important advances in terms of equality, included in articles 326 (adaptation of discretionary appointment proposals to the provisions of Organic Law 3/2007) and articles 371 and 373 (adaptation of the permits and licenses of the Judicial Career in matters of co-responsibility and conciliation to the general statute of the General State Administration);

b) [Organic Law 5/2018](#). Last visited 2 November 2022. Reforming Organic Law 6/1985, of July 1, on the Judiciary, on urgent measures in application of the State Pact on gender-based violence, which introduces important advances in terms of training in equality, prosecution with a gender perspective and gender violence, articles 310, 312.3 and 433 bis, section 5.

135 [PJE, Equality Commission](#). Last visited 15 November 2022.

136 The current Commission was reorganized in 2007 pursuant to the Law on Equality, based on a previous Commission of Equality created in 2005.

137 [PJE Área de Igualdad del Consejo General del Poder Judicial](#). Last visited 2 November 2022.



- Generate stable collaborative relations with groups, associations and institutional and public decision-makers that deal with the same issues as the Commission (Ministry of Equality, Autonomous Ministries of Equality, parliamentary leaders, political parties, professional associations, universities, etc).
- Initiate international exchange, reflection and collaboration activities with other European countries and Latin America.
- Monitoring and analysis of up-to-date information regarding representation of women in the different categories of the legal profession (Supreme Court judges and magistrates), discretionary appointment policies and governing or management responsibilities within the legal profession.
- Continuous updating of statistical studies of the representation of women based on age and professional posts. Monitoring of services activity in application of the Equality Act (Art. 20).
- Implementing the transversality of the Equality Commission in all the activity of the CGPJ, its realization in all commissions and activity areas of the General Council of the Judiciary and all regulatory activity, as well as in selection and training of the judiciary.
- Remove the lack of balanced presence of women in discretionary appointment positions made by the Council, educational activities directed at the legal profession and international relations of the Council. Achieve the objective of 40-60% balanced presence.
- Deepen measures of conciliation of professional and family life in the legal profession.
- Achieve full application of gender-neutral criteria in administrative language and internal and external documents of the Council¹³⁸.

The establishment of the Equality Commission, unfortunately, did not allow to achieve gender equality in top-level positions, with the Spanish media showing concern about this evident glass ceiling at the judiciary¹³⁹.

The statistics contained in the tables below show that the concern is well-motivated when it comes to the high-level positions appointed by discretionary nomination¹⁴⁰.

138 PJE, [Objetivos da Comissão de Igualdade](#). Last visited 15 November 2022.

139 El País, [Las juezas, contra el techo de cristal: son mayoría, pero no tocan poder](#). Last visited 15 November 2022.

140 PJE [Cargos discrecionales en la Carrera Judicial desagregados por género](#), April 2022. Last visited 15 November 2022.

TRIBUNAL SUPREMO	Hombres	%	Mujeres	%	Total
- VICE PRESIDENCIA					
- PRESIDENCIAS DE SALA	4	80,00%	1	20,00%	5
- SALA CIVIL	7	87,50%	1	12,50%	8
- SALA PENAL	12	80,00%	3	20,00%	15
- SALA CONTENCIOSO-ADMINISTRATIVO	20	76,92%	6	23,08%	26
- SALA SOCIAL	6	60,00%	4	40,00%	10
- SALA MILITAR	4	80,00%	1	20,00%	5
TOTAL	53	76,81%	16	23,19%	69

AUDIENCIA NACIONAL	Hombres	%	Mujeres	%	Total
- PRESIDENCIA	1	100,00%			1
- PRESIDENCIA SALA PENAL			1	100,00%	1
- PRESIDENCIA SALA CONT. ADMINISTRATIVO	1	100,00%			1
- PRESIDENCIA SALA SOCIAL	1				1
- RESTO MAGISTRADAS V MAGISTRADOS	41	60,29%	27	39,71%	68
TOTAL	44	61,11%	28	38,89%	72

TRIBUNALES SUPERIORES DE JUSTICIA	Hombres	%	Mujeres	%	Total
- PRESIDENCIAS	15	88,24%	2	11,76%	17
- PRESIDENCIAS SALAS CIVIL V PENAL	16	80,00%	4	20,00%	20
- PRESIDENCIAS SALAS co, ADNONISTRATIVO	13	68,42%	6	31,58%	19
- PRESIDENCIAS SALAS SOCIAL	10	50,00%	10	50,00%	20
- RESTO MAGISTRADAS Y MAGISTRADOS	271	60,49%	177	39,51%	448
TOTAL	310	61,14%	197	38,86%	507

AUDIENCIAS PROVINCIALES	Hombres	%	Mujeres	%	Total
- PRESIDENCIAS	34	80,95%	8	19,05%	42
- RESTO MAGISTRADAS Y MAGISTRADOS	543	57,34%	404	42,66%	947
TOTAL	577	58,34%	412	41,66%	989

To correct such misrepresentation, the Commission of Equality of the General Board of the Judiciary provided a gender-sensitive assessment of the Regulation 1/2010, of 25 February that rules the procedure of discretionary appointments¹⁴¹.

¹⁴¹ PJE [Informe de impacto de género al proyecto de Reglamento 1/2010, del Consejo General del Poder Judicial, por el que se regula la provisión de plazas de nombramiento discrecional en los órganos judiciales](#). Last visited 15 November 2022.



Such assessment contained several proposals concerning the selection criteria:

- Establish maximum periods of experience for each jurisdictional order, so that further years of experience beyond those stated should not be considered. The criterion of seniority without any reasonable limit systematically favors men and is considered an indirect form of discrimination.
- Include the criteria of continuing training and specialization as an alternative to the practice of jurisdictional activities out of the Judiciary. As mentioned before, the balance of work and family life makes it difficult for women to engage in other activities out of working hours.
- Introduce the appraisal of organizational capacities demonstrated by participation in task forces, groups of analysis within the Board of the Judiciary, or judicial associations.
- Lessen the weight of the requirement of previous participation in governance bodies. Since it is almost exclusively men who sit in the governance positions, this requirement is an indirect form of discrimination.
- Introduce a system of gender parity targets to ensure balanced representation, to be applied in cases where candidates have the same level of merits and capacity.
- Include in the singular motivation of each decision of selection a specific chapter related to how gender was considered to assess merits and capacities of the candidates.

On the one hand, the regulation recognizes its commitment to the principle of equality and formally foresees the further development of measures which foster the balanced representation of women in line with the principles of merit and capacity, the final draft has not clearly included the measures proposed by the Commission of Equality. On the other hand, it states that in the calls for single appointments it will determine the concrete merits and capacities that candidates should meet in a way that ensures concurrence in conditions of equality to all applicants; and regarding the motivation of the decision, it should include the necessary elements to assess whether any discrimination on the grounds of gender has occurred within the selection procedure. This implies that the responsibility to introduce positive actions to the further single calls for each appointment¹⁴².

EQUALITY COMMISSION ACTIVITIES

The activities of the Equality Commission in 2021 were:

- **Meetings:** Since the beginning of the mandate of this Council, the Equality Commission has been meeting fortnightly on a regular basis, an activity that has been maintained throughout

142 S.I. Novo Canto, [The Glass Ceiling in the Spanish Judiciary](#). Last visited 15 November 2022.

the year 2021. In this way, the number of meetings of the Equality Commission during the year 2021 has increased to a total of 26, having slightly increased the level of work of previous years. The minutes of all the meetings of the Commission can be consulted on the [website](#).

- **Dissemination activities of the main regulatory instruments and studies prepared by the Equality Commission:** The Commission focused on the dissemination of documents aimed at favoring the application of the principle of equality between women and men in the Judicial Career and the gender perspective in prosecution and the development of specific actions to ensure their effective dissemination, knowledge, and execution. These documents include, inter alia:
 - The II Plan for Equality in the Judicial Career.
 - The Guide to criteria for judicial action in matters of shared custody. This presentation was carried out through an online training activity organized by the CGPJ Continuing Training Service.
 - The Protocol against all forms of harassment and violence in the Judicial Career. A set of training activities was delivered by Equality Commission's representatives for different institutions like the Complutense University of Madrid, the Secretary of State for Public Function, and the Ministry of Science.
 - Conciliation Plan of the Judicial School. The plan was published in paper format and distributed among School's teachers and students.
- **Activities for the development and execution of the II Judicial Career Equality Plan.** Against this backdrop, a variety of activities have been implemented, such as:
 - Elaboration of the Action Protocol for Equality Delegates, which stipulates that the equality delegates act as direct collaborators of the Equality Commission for the execution of the II Equality Plan of the Judicial Career in the territorial area to which Activities of development and execution of the II Plan of Equality of the Judicial Career.
 - Gender impact reports. In execution of what is established in Axis II of the II Equality Plan for the Judicial Career, in all appointments of a discretionary nature attributed by Law to the Plenary of the CGPJ - both for judicial positions and for internal personnel of the CGPJ - the Equality Commission, after analyzing the specific position, the body in which it is integrated, and the candidacies presented, has been issuing a report on the way in which the appointment may affect the principles of equality and balanced participation of men and women. These reports must be taken into consideration by the Council at the time of making the appointment in question. In 2020, the Equality Commission has issued 20 gender impact reports to discretionary appointments, which represents a notable reduction in the number of reports compared to previous years, due to the limi-



tation of the powers attributed to the Plenary of the CGPJ in matters of appointments operated by Organic Law 4/2021.

- Training in equality of the Judicial Career. In execution of the provisions of Axis I of the II Gender Equality Plan regarding the initial training of candidates to enter the judiciary, they have been incorporated into the Teaching Plan of the 71st promotion of the Judicial School (year 2021) the following specific content:
 - Seminar on detecting and overcoming gender stereotypes in the exercise of jurisdiction and another on prosecution with a gender perspective.
 - Seminar on gender-based violence in all its manifestations in accordance with the Istanbul Convention, addressing the matter from a gender and human rights perspective; A simulation of statements by victims of domestic violence and victims of gender violence in any of its manifestations.
 - Workshop on critical statements, also approached from a gender and human rights perspective and focused on avoiding secondary victimization.
 - Seminar on trafficking in human beings.
 - Seminar on European standards of Article 6 of the ECHR.
 - Seminar on transsexuality.
- Continuing training to judges on:
 - Equality, the fight against gender-based violence in all its dimensions, and prosecution with a gender perspective (10 monographic online courses).
 - "Justice with a gender perspective", prepared by the Continuing Training Service, in collaboration with the Observatory against Domestic and Gender Violence and the Equality Commission of the CGPJ (monographic distance training module, lasting 50 hours).
 - Cross-cutting training: Since 2017, the Continuing Training Service has been introducing content on equality, prosecution with a gender perspective and the fight against gender-based violence in all its manifestations in a cross-cutting manner throughout the entire State Plan (more than 30 training activities).
 - Application of conciliation and co-responsibility measures: In execution of the measures contained in Axis IV of the II Equality Plan for the Judicial Career, the Equality Commission has been firmly and decisively promoting the application of measures aimed at improving the reconciliation of personal, family and professional life of members of the Judicial Career, and promote co-responsibility in assuming the tasks of care and attention to the family, in the terms required by European Directives, and the Strategy of the (European) Union for gender equality 2020-2025.

- Implementation of the Protocol against all forms of harassment and violence in the Judicial Career.
- Judge with a gender perspective: In execution of measure 4 of Axis XVIII of the II Equality Plan, during the year 2021 the Equality Commission has begun, in direct collaboration with the Centre for Judicial Documentation (Centro de Documentación Judicial, CENDOJ), the work for the creation, within the Documentary Fund published by it, of a specific collection that includes the judgments issued on all matters related to the application of the principle of equality between women and men, classified by jurisdictional orders, including those issued by single-person bodies.
- **International activity of the Equality Commission.** The Equality Commission, faithful to its firm commitment to the protection of Human Rights, in particular the right to equal opportunities between women and men and the principle of non-discrimination, maintains constant and stable collaboration with the International Relations service in all those activities related to these material areas, highlighting the following activities carried out throughout the year 2021:
 - Ibero-American Judicial Summit; Permanent Commission on Gender and Access to Justice. The Member Clara Martínez de Careaga García, President of the Equality Commission, is one of the six commissioners that make up the Permanent Commission on Gender and Access to Justice of the Ibero-American Judicial Summit, of which the Chief Lawyer of the Equality Section, in the capacity of technical secretary. During the year 2021, the Commission has presented a report on sentences with a gender perspective, in which an analysis and study of various sentences of the Judicial Powers that make up the Ibero-American Judicial Summit is carried out using the methodology suggested by the **Guide for the application systematic and informatic model of the incorporation of the gender perspective** in judgments approved by the Commission itself, in order to assess its degree of knowledge and implementation. To this end, a total of 23 sentences selected and sent to the Commission by 12 of the Judicial Powers that make up the Summit have been analyzed¹⁴³.
 - During 2021, there has also been a renewal in the composition of the Permanent Gender Summit, which is currently made up of Commissioners Andrea Muñoz Sánchez, Minister of the Supreme Court of Justice of the Republic of Chile, who has assumed the presidency of the Commission, Clara Martínez de Careaga y García, Magistrate of the Supreme Court of Spain and Member of the CGPJ, Maite D. Oronoz Rodríguez, Judge President of the Supreme Court of Puerto Rico, Yazmin Esquivel Mossa, Minister of the Supreme Court of Justice of Mexico, Martha Cristina Díaz Villafañá, Presiding Judge of the Civil and Commercial Chamber of the Court of Appeals of San Francisco de Macorís, Dominican Republic, Rufina de la Caridad Hernández, Minister of the People's

143 The report can be viewed on the [website](#) of the Cumbre Judicial.



Supreme Court of Cuba and Roxana Chacón Artavia, Minister of the Supreme Court of Costa Rica.

- **Fight against human trafficking.** Since the signing of the Framework Protocol for the protection of victims of trafficking in human beings, the CGPJ has shown a determined and active commitment in the fight against trafficking in human beings, a commitment that has resulted in the participation of representatives of its Commission of Equality in numerous international activities:
 - Participation of the President and Secretary of the Equality Commission in the 21st Atlantic Alliance against human trafficking organized by the OSCE, and which, because of health conditions, had to be held in virtual format.
 - Preparation of a report on the contributions of the CGPJ to the new European Strategy against Trafficking in Human Beings.
 - Preparation of the report on the questionnaire for the third round of evaluation of Spain by the Group of Experts on the Fight against Trafficking in Human Beings (GRETA) of the Council of Europe.
 - Participation of a representative of the Equality Commission in the working group created by the OSCE to design a unified training activity on trafficking in human beings that can be offered to the Judicial Schools and Academies of all the Member States.
- **Participation in the twinning project that the CGPJ has carried out in Turkey** to strengthen the initial training system for candidates to enter the Judiciary and the Prosecutor's Office: Throughout the year 2021, the Equality Commission has participated in the twinning project that the CGPJ has been developing in Turkey to strengthen the initial training system for candidates to enter the Judiciary and the Prosecutor's Office, participation that has consisted of teaching of 20 online seminars for candidates to enter the Turkish Judiciary and Prosecutor's Office, on the protection of victims, restorative justice and the conduct of trials, hearings and court appearances.
- **Other activities:**
 - Resolution of queries: The Equality Commission regularly receives and resolves queries formulated by various institutions, related to matters within its area of competence (granting of permits and licenses related to the reconciliation of family and professional life of members of the Judicial Career, resolution of conflicts related to the Protocol against all forms of harassment and violence in the Judicial Career, appointment and functions of the Equality Delegates of the Superior Courts of Justice, issues related to the use of inclusive language in documents court, etc...).
 - National Action Plan against forced labor: During the year 2021, a representative of the Equality Commission of the CGPJ has been participating in the multidisciplinary working group that has examined and validated the National Action Plan against compulsory

labor and other forced human activities, prepared by the Ministry of Work, Migrations and Social Security.

- National Strategic Plan against Trafficking in Human Beings (PENTRA): During 2021, a representative of the CGPJ Equality Commission has participated in the multidisciplinary working group in charge of examining and validating the National Strategic Plan against trafficking in human beings prepared by the Intelligence Centre against Terrorism and Organized Crime (CITCO) of the Ministry of the Interior.

4.2.2.2 Gender Equality Plans

In line with the mandate of Law 3/2007, to provide a stronger framework to develop the principle of equality within the Judiciary, the Commission of Gender Equality has published two Gender Equality Plans for the Judiciary, adopted in 2013¹⁴⁴ and 2020¹⁴⁵, with the objective of “promoting real equality between men and women within the judiciary, combating all continuing manifestations of discrimination, and removing persistent obstacles and social stereotypes”.

I GENDER EQUALITY PLAN (2013)

Special emphasis is made on the access to judicial career and career advancement within the judiciary. To that end a comprehensive diagnosis is being made to analyze the obstacles and further opportunities to foster the promotion of women in the process of appointing government posts.

The reconciliation of work and family life is another area of paramount importance to achieve this goal. Special attention is given, among other issues, to the adoption of measures of co-responsibility, and on guaranteeing that the right to reconciliation would not be an obstacle for professional advancement.

The Plan provides a wide range of measures to mainstream gender into the Judiciary, articulated around 11 main lines, as follows:

1. Access to Judicial Careers
2. Career advancement within the Judiciary
3. Vocational training and awareness-raising
4. Reconciliation
5. Occupational health and safety

144 CGPJ [Plan de Igualdad de la Carrera Judicial \(2013\)](#). Last visited 15 November 2022.

145 CGPJ [Plan de Igualdad de la Carrera Judicial \(2020\)](#). Last visited 15 November 2022.



6. Non-sexist language
7. Remuneration
8. Inspection procedure
9. International relations
10. New technologies
11. Information and participation.

To assess its functionality and provide any revision or proposal needed to fulfill its objectives, the Plan foresees the creation of a Monitoring Commission. Besides, the Equality Commission elaborates annual reports on all matters covered by the Plan to analyze the improvements achieved.

II GENDER EQUALITY PLAN (2020)

The **II Strategic Plan for Equality in the Judicial Career**¹⁴⁶ has been approved in 2020 and considers a series of measures in twenty different areas of action. In addition to the eleven previously considered areas, the plan also considers the following nine:

1. Territorial stability
2. Harassment and violence
3. Age management
4. Equality networks
5. Equality cross-cutting
6. Judging with a gender perspective
7. Annual report
8. Monitoring
9. Review and execution of the Equality plan.

Six years after the approval of the **First Gender Equality Plan**, it evaluates the degree of implementation of the various measures incorporated, to analyze the way in which the principle of equality between women and men is being applied in the different areas of action of the CGPJ in line with the national legal framework, defining the necessary measures to continue advancing in this area¹⁴⁷.

¹⁴⁶ Op.cit.

¹⁴⁷ CGPJ [Plan de Igualdad de la Carrera Judicial \(2020\)](#), p. 12. Last visited 15 November 2022.

The analysis carried out about the changes seen over the last few years highlights that the progress has been overall insufficient¹⁴⁸.

The main advancement in gender equality concerns access to the judiciary. Based on the data, it is affirmed that the necessary conditions are currently in place for a true and efficient equality of opportunity between women and men in terms of access to the Judicial Career.

The picture changes when it comes to high-level positions within the Judiciary. Compared to the data at the date of approval of the Equality Plan (February 2013), several relevant improvements in the participation of women in these positions have occurred.

Among such improvements, it is worth to mention:

- the entry of women in every one of the Chambers of the Supreme Court for the first time in history, particularly in its Second Chamber, which has gone from having no women in 200 years to having three women today.
- parity between women and men in one of the Chambers of the Supreme Court (Fourth Chamber, for Social Matters), also for the first time in history.
- the significant increase in the number of women in the Chambers of the High Courts of Justice, which has gone from having no women in 200 years to having three women today.
- the significant increase in the number of women in the Chamber Presidencies of the High Courts of Justice, which has gone from 6 women (10.2%) occupying a Chamber Presidency in February 2013 to 19 women (45.2%) occupying a position of this category in November 2019, which places the Chamber Presidencies within the parameters of balanced participation established by the Organic Law 3/2007.

Nonetheless, although progress on this point is perceptible, it is still insufficient.

The explanation contained in the II Gender Equality Plan refers to four different deficiencies:

1. the overall increase in the presence of women in the Supreme Court continues to be lower than desirable, having gone from 10 women (12.3%) in 2013 to 16 women (20.8%) as of today, which means an increase in overall female participation in the Supreme Court of only 8.5%.
2. the presence of women in the Presidencies of the National Court has increased from zero to one woman occupying a Chamber Presidency, which represents an increase from 0% to 25% of female presence in the total number of Presidencies of the body, a percentage that is far from the percentages required by Organic Law 3/2007.

¹⁴⁸ M. García Golder (2020) The glass ceiling at the highest levels of the Spanish judiciary, *International Journal of the Legal Profession*, 27:2, p. 190.



3. the presence of women in the Presidencies of the High Courts of Justice has increased by only one in these years, with two women (11.8%) at the head of a High Court of Justice compared to 15 men (88.2%).
4. the presence of women in the Presidencies of Provincial Courts has not increased at all in these years, with 10 women (20%) occupying one of these positions both in February 2013 and in November 2019, compared to 40 men (80%).

In short, there has been a substantial improvement in the presence of women in the Chamber Presidencies of the High Courts of Justice, but progress has been more limited in all other positions of discretionary appointment and the goal of the minimum percentages of balanced presence of women and men required by the Organic Law 3/2007 (40%-60%) is still far away.

4.3 France

According to EIGE¹⁴⁹, France ranks 5th in the EU on the Gender Equality Index, with 75.1 out of 100 points. Its score is 6.5 points above the EU's score.

In France the vast majority of magistrates are women, although the situation is reversed at the top of the profession. The existing gender imbalances led the Conseil Supérieur de Magistrature (CSM) to establish a 'parity group' to analyze the issue and prepare recommendations and commissioned a study¹⁵⁰ on the matter. Both the CSM parity group and the study discuss the prospects of applying the already existing gender parity target regulation (so called "Sauvadet law") to the magistrature but come to different conclusions. The 2011 Sauvadet law imposes progressive gender parity targets of up to 40% to corporate boards of publicly listed companies, public bodies, public administration, and several civil society institutions¹⁵¹. While the authors of the study recommend positive action in the form of gender parity targets, the CSM parity group considers their adoption problematic. They claim that the status of the magistrature is different from other state domains in a way that it would not allow for the broad pool of candidates necessary for an effective application of gender parity target tools. Instead, they give preference to measures aimed at improving geographical mobility, working conditions, and increasing the attractiveness of the magistrature.¹⁵²

149 EIGE [GDI](#). Last visited 15 November 2022.

150 CSM, [La parité dans la magistrature \(2012\)](#). Last visited 15 November 2022.

151 Directorate General for Internal Affairs, [The Policy on Gender Equality in France. In-depth analysis for the FEMM Committee](#). 2015, p.8. Last visited 15 November 2022.

152 CSM, [Rapport d'activité 2012](#), p. 196. Last visited 15 November 2022.

4.3.1 The “early” access of women to the judiciary in France

Compared to the examples of Italy and Spain, in France women entered the judiciary almost 20 years in advance. Women were first allowed to enter legal professions as lawyers by law in 1900¹⁵³, but it took almost half a century for them to obtain the right to become judges. Meanwhile, however, they became eligible as non-professional judges for the industrial tribunals in 1908, and for the commercial courts under the same conditions as men in 1931. It was the exceptional circumstances of the Liberation that made it possible for women to have full political capacity and to become judges¹⁵⁴, in April 1946, with the Law n° 46 of 11 April 1946, stipulating that any Frenchman of either sex who meets the legal requirements may be appointed to the judiciary¹⁵⁵. After the entry into force of this law, women entered the judiciary in increasing numbers while men abandoned it. Suddenly it was the feminization of the judiciary that became a problem. During the 1950s, the number of male candidates decreased impressively. From 1970 onwards, with the arrival of the post-war generations and the recruitment of large classes of magistrates, the feminization of the profession resumed, inexorably; in 1976, the number of female candidates in the competitive examination exceeded the number of male candidates, a situation that has only increased to the present day.

4.3.1.1 The feminization of the judiciary

This feminization is essentially attributable to the feminization of law studies. It is reinforced by the relative decrease in the number of male candidates to the judiciary, particularly from 1953 onwards. Today, although competition for entry into the profession has increased considerably, the under-representation of men in the judiciary is greater than their under-representation in law school. According to the last report on Gender Equality published by the Ministry of Justice¹⁵⁶, women represent 69% of judges (6.273 out of 9.090).

Several reports try to find the reasons to explain why women choose the judiciary¹⁵⁷, referring also to social and political processes. The feminization of the judiciary is the consequence of the feminization of legal studies and the disinterest of male lawyers in the judiciary¹⁵⁸.

From the 1970s onwards the study of the law became a female affair, leaving science to be the first option of men. This feminization of legal studies led women to enter all the legal and judicial

153 A.L. Catinat, « Les premières avocates du barreau de Paris », Mil neuf cent, n° 16, 1998.

154 A. Boigeol, [De la difficile entrée des femmes dans la magistrature à la féminisation du corps](#), in : Femmes et justice pénale : XIXe-XXe siècles [online], Rennes : Presses universitaires de Rennes, (2002), p. 309. Last visited 15 November 2022.

155 [Loi 46/643 du 11 avril de 1946](#). Last visited 15 November 2022.

156 Ministère de la Justice, [Baromètre Égalité femmes-hommes 2021](#), p. 36. Last visited 15 November 2022.

157 MdJ, [La Féminisation des métiers du Ministère de la Justice](#). Last visited 15 November 2022, Y. Demoli, L. Willemez, [Les magistrats : un corps professionnel féminisé et mobile](#), INFOSTAT JUSTICE, avril de 2018, n° 161. Last visited 15 November 2022.

158 A. Boigeol, Les magistrates en France : des stratégies particulières ? in A. Devillé, O. Paye, (Eds.), Les femmes et le droit : Constructions idéologiques et pratiques sociales, Presses de l'Université Saint-Louis, (1999), p. 150.



professions. Thus, the feminization of the judiciary does not constitute an isolated phenomenon specific to this body but is part of a general movement which concerns all the legal professions, with different intensity and timing. The feminization of the judiciary is also linked to the advent of a meritocratic recruitment of the judiciary, with the establishment of a National Judicial School (ENM), which is accessed by competitive examination.

The fast feminization of the judiciary is also due to the lack of interest of male candidates to become judges or prosecutors. The explanation of this tendency is linked not only to the evolution of the relative place of law studies in the system of higher education but also to the internal reorganizations of the legal field, with private law becoming more and more attractive in terms of remuneration and prestige. Compared to the income of a business lawyer, the judicial career started to appear poorly paid and unattractive¹⁵⁹. On the contrary, for women, the judiciary represents access to a position of power and responsibility, with remuneration which, considering the female labor market, is generally deemed acceptable¹⁶⁰. Women represent 69% of magistrates, but their presence varies depending on the age, so that the older generations of magistrates are those with the highest concentration of men, while the younger generations are overwhelmingly female¹⁶¹. According to the last Gender Equality Barometer, the average age of women is now 45.4 versus 49.7 of men¹⁶².

4.3.1.2 Glass ceiling in the French Judiciary

While women now make up 69% of the body, they are only 36% in the post of senior president, 38% in the post of first president. They are only 2 out of 12 in the position of president outside the hierarchy of the first group and are more numerous as the position is less important and prestigious: 50% in the position of president Bbis (proportion reached very recently in 2020). As remarked by the CSM, 37% of men wanted to become president of a court, against only 24% of women¹⁶³.

It has been noted, on data relating to the staff made available by the management of the judicial services, a “male advantage in access to the highest rank “ and calculated a glass ceiling index making it possible to demonstrate that “with an equivalent career, in terms of seniority

159 D. Soulez-Larivière, *Les juges dans la balance*, Paris, Ramsay, 1987.

160 A. Boigeol, *Les magistrates en France : des stratégies particulières ?* in A. Devillé, O. Paye, (Eds.), *Les femmes et le droit : Constructions idéologiques et pratiques sociales*, Presses de l'Université Saint-Louis, (1999), p. 151.

161 MdJ, *Baromètre Égalité femmes-hommes 2021*, p. 36. Last visited 15 November 2022.

162 Y. Demoli, L. Willemetz, *L'âme du corps. La magistrature française dans les années 2010 : morphologie, mobilité et conditions de travail*, Université Versailles St Quentin Laboratoire PRINTEMPS, (2019), p. 22. Last visited 15 November 2022.

163 FdJ, *L'attractivité des fonctions de présidente et de première présidente*, Contribution adressée au Conseil Supérieur de la Magistrature Septembre 2021. Last visited 15 November 2022.

in the body, age and mode of entry into the magistracy, men have a better chance of reaching highest ranked positions"¹⁶⁴.

4.3.2 Good Practices

The good practices presented in the following paragraphs are selected among those implemented by the Ministry of Justice, through the High Fonctionnaire for Gender Equality, by the High Judicial Council (Conseil Supérieur de la Magistrature, CSM) and by Femmes de Justice, an independent association that has been very active in the promotion of gender equality within the Ministry of Justice and the judiciary. This choice is aimed at providing two different perspectives to highlight their potential, especially if combined.

4.3.2.1 Ministry of Justice's good practices

A wide range of measures are foreseen within the frame of Gender Equality Policy in France. Their implementation was initiated and coordinated by the High Officer for Gender Equality, as part of the action plan resulting from the "Accord relatif à l'égalité professionnelle entre les femmes et les hommes au Ministère de la Justice" (agreement on professional equality between women and men in the Ministry of Justice)¹⁶⁵ signed on 20 January 2020 by the Minister and the quasi-unanimity of the trade union organizations represented within the Ministry of Justice. This agreement, comprising 60 actions and subject to a monitoring committee, is a landmark for the implementation of Gender Equality Policy in France.

A specific Axis is devoted to ensuring effective equality between women and men in the career paths of the Ministry of Justice. The following actions are foreseen:

Action 18. Develop knowledge of the professions of the ministry of justice to expand the pools with a view to a greater mix of professions

Action 18.1. Deconstruct the stereotypes of professions in the Ministry of Justice through fun media: Awareness of the professions of the Ministry of Justice is necessary to deconstruct the stereotypes and prejudices anchored among the public. The media image conveyed on the professions of the Ministry of Justice is linked to current events and is generally undervalued. For this, means of communication accessible to all ages such as comic strips, fun games, videos will be used.

Action 18.2. Collaborate with the Ministry of National Education to better guide the choices of middle and high school students: The orientation of the pupils is

164. Y. Demoli, L. Willemez, [Les magistrats : un corps professionnel féminisé et mobile](#), INFOSTAT JUSTICE, avril de 2018, n° 161. Last visited 15 November 2022.

165. MdJ, [Égalité femmes-hommes : Un engagement à tous les niveaux et sur l'ensemble des territoires](#). Last visited 15 November 2022.



built from the sixth year and throughout their schooling. Teachers, educational advisers, school management, psychologists are privileged interlocutors in the choice of this orientation. Also, it seems essential to make them aware of the professions of the Ministry of Justice which are often misunderstood.

Action 18.3. Establish or continue partnerships with colleges, high schools, and universities: Through partnerships with colleges, high schools and universities, the ministry will ensure that young people receive internships and work by ministry staff in these educational establishments.

Action 18.4. Intervene or continue interventions in career forums to broaden the pool of candidates for the various competitions: These interventions will contribute to the attractiveness of the professions of the Ministry of Justice and to the development of knowledge of the professions of the Ministry of Justice. The Ministry of Justice is committed to mobilizing staff from its schools as well as students, trainee civil servants but also tenured staff, and magistrates to lead intervention campaigns on ministry professions with high school students and students.

Action 18.5. Develop communication during recruitment campaigns: The recruitment process is a high point when it comes to promoting diversity in the professions. Thus, one of the measures taken is to improve recruitment campaigns for neutral communication of jobs offered so that it is aimed equally at women and men. There is a need to continue to make ministry jobs accessible and attractive to both women and men.

Action 18.6. Create a team of inter-directional referents likely to represent the professions of the ministry: In close collaboration with the directorates, a team of referents dedicated to representing the ministry will be created. It is, in fact, proposed to constitute a pool of experts representing each specific sector of the ministry so that they take on the role of “ambassadors” to talk about the content of their profession.

Action 18.7. Study the recommendations of the National Law Council: The Minister of Justice, in collaboration with the Minister of Higher Education, has commissioned a study from the National Law Council on the diversity of legal professions. This study covers all the legal professions and should offer additional lines of thought to reintroduce gender diversity in the professions of the ministry. The National Law Council is due to publish its study in early 2020. The Ministry will study the recommendations made and will start work on the methods of their implementation and their application in its services.

PROMOTE A CULTURE OF PROFESSIONAL EQUALITY BETWEEN WOMEN AND MEN

- **Initial and Continuing trainings within schools for legal professions:** National Judicial School (ENM) - National School of Clerks - National School of Prison Administration - National School of Judicial Protection of Youth. The High Officer for Gender Equality has established partnerships with the schools since 2018, taking part in meetings, conferences, and workshops.
- **Support for local initiatives:** several proactive and educational actions, in which the High Officer for Gender Equality took part, were carried out in the regions. These initiatives include:
 - Awareness day on equality and the fight against sexism, organized by the interregional directorate of prison services in Dijon, bringing together all the directors of prisons and of integration and probation services.
 - Awareness-raising action with signature of the commitment text for non-sexist speech¹⁶⁶ (see below) by the heads of establishments and directors of integration and probation services, organized by the head of the overseas penitentiary services mission, in July 2019.
 - Support for the creation of a newsletter "The seasons of equality" initiated by the Inter-regional Directorate for the Judicial Protection of Youth, in January 2021.
 - Professional equality days initiated by Interregional delegation of the General Secretariat of the Ministry of Justice of Toulouse, organized in 2019 and 2020.
 - Support for the initiative of the Besançon judicial court, relating to a poster competition against sexual and gender-based violence, launched with school students, for 8 March 2021.
- **The appointment of gender equality referents throughout the national territory¹⁶⁷:** To promote gender equality actions developed by the Ministry of Justice, a referent has been appointed to each court of appeal, and to each of the interregional directorates of prison services, judicial protection of Youth and the General Secretariat.

PREVENT AND FIGHT AGAINST SEXIST BEHAVIOR AND ACTS

- **The establishment of ALLODISCRIM:** set up by the Ministry of Justice, ALLODISCRIM is a system for reporting acts of violence, discrimination, harassment and sexist acts for victims and witnesses of such acts within the Ministry, regardless of the position held by the civil

¹⁶⁶ MdJ, [Égalité femmes-hommes : Un engagement à tous les niveaux et sur l'ensemble des territoires](#). Last visited 15 November 2022.

¹⁶⁷ Premier Ministre, [Circulaire du 30 novembre 2019 relative à la mise en place de référents Égalité au sein de l'État et de ses établissements publics](#). Last visited 15 November 2022.



servant. The system is managed by a group of lawyers, service providers of the Ministry¹⁶⁸. ALLODISCRIM was recently extended to victims of violence of extra-professional origin but detected in the workplace.

- **The signing of the commitment "Texte d'engagement pour une parole non sexiste" (text for non-sexist speech)**¹⁶⁹: produced on 8 March 2019 by the Ministry of Justice, and then signed by the directors of the central administration as well as by the Inspector General of Justice, it was then ratified by heads of courts and jurisdictions and by directors of decentralized departments of the Ministry of Justice. This text, drawn up within the gender equality committee led by the High Officer for Gender Equality, in conjunction with the association Femmes de justice, includes a series of recommendations, setting the example to speak and invite people to act in a non-sexist way.

BETTER BALANCE OF PROFESSIONAL AND PERSONAL LIFE

- **The charter for work-life balance**¹⁷⁰: Signed on 8 March 2021 by the Minister of Justice and the representatives of the trade union organizations that signed the Agreement on Professional Equality¹⁷¹, this charter includes 8 commitments relating to:
 1. The investment of the management
 2. The perpetuation of a good organization of work
 3. The good use of the email
 4. The good use of the IT tools
 5. The optimization of the meetings
 6. The adjustments in the event of difficulties in the family sphere
 7. Compliance with and application of legislation concerning pregnant women or women benefiting from assisted reproduction
 8. The guarantee of particular attention to the work cycles of civil servant couples working in the same department.

Other actions related to maternity and paternity leave or to a support guide in family matters are in progress.

¹⁶⁸ UNSA, [Discrimination et harcèlement: Allo Discrim, dispositif de signalement](#). Last visited 15 November 2022.

¹⁶⁹ MdJ, [Égalité femmes-hommes : Un engagement à tous les niveaux et sur l'ensemble des territoires](#). Last visited 15 November 2022.

¹⁷⁰ MdJ, [Charte pour l'équilibre des temps de vie](#). Last visited 15 November 2022.

¹⁷¹ MdJ, [Accord relatif à l'égalité professionnelle entre les femmes et les hommes au Ministère de la Justice](#). Last visited 15 November 2022.

ENCOURAGE DIVERSITY IN THE EXERCISE OF LEGAL PROFESSIONS

The roadmap created by the High Officer for Gender Equality includes the mission of “first thinking about ways to reintroduce gender diversity in the judiciary”¹⁷².

An experiment was conducted to this end with the Versailles Court of Appeal and the University of Versailles Saint-Quentin-en-Yvelines via an agreement providing for interventions by magistrates at the law faculty, to present their profession, and students the second and third year of the law undergraduate course to then do an internship in the court or tribunal as part of their Personal Student Project.

Other actions will be delivered with the ENM and the universities, based on the recommendations of the report “Attractiveness and diversity of legal studies and professions”¹⁷³, submitted on 27 January 2020 by the National Council for the Law of Minister of Justice and the Minister of Higher Education.

4.3.2.2 CSM's good practices

The CSM is engaged in a set of activities to promote gender equality which include meetings¹⁷⁴ and public debates¹⁷⁵. Below are presented two reports addressing two topics that have been the center of public debate for more than a decade: attractiveness of judiciary and mobility.

REPORT ON THE ATTRACTIVENESS OF THE HIGHEST JUDICIAL POSITIONS

At the end of the first year of exercise of the current mandate, the CSM wished to enrich the reflection that it leads over the appointments on the question of gender in the mobility and development of the careers of magistrates. While it is common ground that the Board intends to make its choices solely based on the qualities of the candidates submitted to it, regardless of gender, it seemed useful to establish a few statistical elements drawn from its activity in terms of appointments.

This first assessment constitutes a modest contribution to the particularly complex question of gender in the careers of magistrates. It took place in parallel with the exchanges that the Council was able to have in January 2020 with the researchers Laurent Willemez and Yoann Demoli, during the presentation of the results of their research, supported by the law & justice research mission, entitled “L' body soul. The judiciary in the 2010s: morphology, mobility and working conditions”.

172 MdJ, [Haute-fonctionnaire à l'égalité femmes-hommes, Mission](#). Last visited 15 November 2022.

173 CND, [Attractivité et mixité des études et des professions du droit](#). Last visited 15 November 2022.

174 CSM, [Rencontre avec l'association Femmes de justice](#). Last visited 15 November 2022.

175 CSM, [Projet de réforme constitutionnelle](#). Last visited 15 November 2022.



This meeting indeed allowed the Board to feed its reflection, especially the place of women and the issue of feminization¹⁷⁶.

As the judiciary is now predominantly female, it is essential to question the attractiveness of the highest judicial positions specifically for women. The issue of parity and equal access to management positions arises once again in the light of the drop in applications for the positions of heads of courts and jurisdictions.

REPORT ON JUDGES' MOBILITY

The Superior Council of the Judiciary published two studies in 2017 and in 2020¹⁷⁷ on the mobility of magistrates. Both studies show that the turnover is significant and represents a peculiarity of the judiciary. The CSM decided that this phenomenon required a more precise approach than the existing statistics and commissioned a study to address the contexts, causes, motivations, rhythms, and effects of this mobility.

The mobility is put in relation with the feminization within the judiciary, which has structuring but complex effects on mobility. Less frequent passages but above all less frequent returns to the public prosecutor's office, more regional geographical mobility, more late promotions in the first grade and at headquarters under the effect of several factors, were some of the findings of such study.

4.3.2.3 Femme de Justice's good practices

The association Femme de Justice was born from the observation that, despite the very large number of women working in the justice field, and perhaps precisely because of this, the public policy of professional equality between women within the Ministry of Justice was not satisfactory. A collective effort from the women was perceived as the only way to change this situation. Therefore, in June 2014 "Femmes de Justice" formed an association based on two pillars:

- being inter-directional, thus inviting magistrates, directors of the prisons, directors of registry services and the judicial protection of youth to come together.
- being mixed, by inviting men equality-sensitive to share their thoughts and get involved.

The numerous and enthusiastic participation confirmed that the need to meet was real, and since 2014 the annual general meetings have allowed to share experience and create dialogue on gender equality topics.

¹⁷⁶ [Étude sur la parité dans les nominations aux postes de chefs de cour et de juridiction et sur les postes du siège à la Cour de cassation](#). Last visited 15 November 2022.

¹⁷⁷ CSM, [Publication d'une étude sur la mobilité des magistrats](#). Last visited 15 November 2022.

Bringing together category top-level executives from various professional backgrounds, the association cultivates a transversal reflection on the work-life balance, for managers as well as for the “managed” ones, on the construction of career paths and on the unconscious biases.

The association intends to be a lever to propose concrete avenues and design a more inclusive human resources management. FdJ also works against stereotypes, which have a major impact on women.

FdJ monitors both appointments and persisting biases, stimulating the dialogue between decision-makers and justice actors, and raising questions about the application of normative texts. Its numerous actions with members, ministerial cabinets, directors of central administration and other ministries have enabled it to stimulate a constructive dynamic¹⁷⁸.

WORKSHOPS AND MENTORING

FdJ offers to its members a space to share experiences, facilitate networking and contribute to the visibility of women's skills and expertise. Based on the observation that many women feel limited in their professional choices, the association has decided to provide specific support.

A mentoring activity is provided to accompany a professional in the development of competencies that promote personal and professional growth in a framework of confidentiality and mutual respect¹⁷⁹. According to Isabelle Coldefy, the professional in charge of mentoring activities, “Career mentoring is based on a methodology of self-knowledge which, by identifying each person's talents, allows the establishment of an assessment and therefore a professional project; it contributes to helping women break through the glass ceiling.¹⁸⁰”

During the Covid-19 pandemic, FdJ organized several online workshops to facilitate the exchange of experiences between members and with other associations on specific topics, and to share techniques and advice from professional coaches.

In December 2020, FdJ organized the first workshop entitled “Reacting to sexism”, held by Cécile Peyrat, a graduate in criminal law, former director of the prison administration and trained in professional coaching. The goal was to train participants in their responses to sexist attacks through supervised exercises, analyses of videos and discussions.

In June 2020 the workshop “We get up and we speak” was delivered by Béatrice Toulon, specialized in rhetoric. The aim of the workshop was to understand, both in theory and in practice, the interest of public speaking and rhetoric. This workshop took place in the form of practical exercises.

¹⁷⁸ FdJ, [Qui est Femmes de Justice ?](#). Last visited 15 November 2022.

¹⁷⁹ FdJ, [Les ateliers d'accompagnement professionnel](#). Last visited 15 November 2022.

¹⁸⁰ Ibidem.



A cycle of co-construction workshops was set up within the board of the association on the following topics: deconstruction of stereotypes, public policy tools, feminization of titles and glass ceiling.

The workshop entitled “Dare, prepare and project your evolution”, already delivered for several years, was launched in a new format, online and interregional, on October 22 and November 19, 2021¹⁸¹.

MEETINGS WITH INSTITUTIONS

In the last reported year, FdJ had several meetings with different institutions. FdJ met with the director of legal services, the spokesperson for the Ministry of Justice, the director of the ENM, the women of the General Directorate of Public Finances and the plenary session of the CSM. The meeting with CSM, held in November 2021, was the opportunity for FdJ to present findings and proposals concerning the glass ceiling and gender parity targets, the creation of pools of women to strengthen gender equality, the unconscious biases internalized by candidates and selection authorities.

On 8 December 2021, the association signed a three-year agreement with the Ministry of Justice. This agreement will provide FdJ with financial support from the Ministry, to continue and sustain actions within the scope of the associations. The agreement represents a significant institutional recognition for FdJ and its work carried out since 2014. FdJ will be able to continue to deliver workshops and trainings and to implement activities in the country for all the departments of the ministry. The ministry is also committed to ensuring “better visibility of the association's actions and information media in its own communication tools.”¹⁸²

REPORTS AND STUDIES

FdJ is also active in drafting reports on the topic of gender equality and to make relevant documents available.

Following the work of the CSM on the attractiveness of the posts of heads of court and jurisdiction, FdJ questioned her members and exchanged with several women occupying positions at the head office, presidents and first presidents, women recently appointed head of TJ or having on the contrary renounced this path. The association has collected many testimonies on the obstacles to a candidacy for a post of head of jurisdiction.

This contribution is therefore based on the feedback from magistrates of all ages, practicing in mainland France and overseas, for a few months as head of court or on the contrary for several

181 FdJ, [Rapport Annuel 2021](#), p. 11. Last visited 15 November 2022.

182 FdJ, [Rapport Annuel 2021](#), p. 2. Last visited 15 November 2022.

years, who have expressed themselves directly on the issues that may have restricted their choices or slowed down their path.

To raise awareness on problems of professional equality between women and men, FdJ gathers relevant legislation¹⁸³, documents and statistics¹⁸⁴ on the subject. The reports, opinions, guides, or articles are aimed at allowing the reader to understand the systemic obstacles to equality but also to learn more about the methods of action to achieve gender equality.

COMMUNICATION

To increase its visibility and to maintain a dialogue with the public, FdJ has several channels of communication.

Social media represent a valuable resource in this regard, and FdJ is very active on Twitter and LinkedIn, with more than 2.000 and 9.000 followers respectively.

These platforms allow FdJ to stay in touch with the public, promote its initiatives, highlight the situation of women in the justice field. Twitter and LinkedIn also represent an effective tool to put substantive issues on the agenda and disseminate information content to develop a genuine culture of equality.

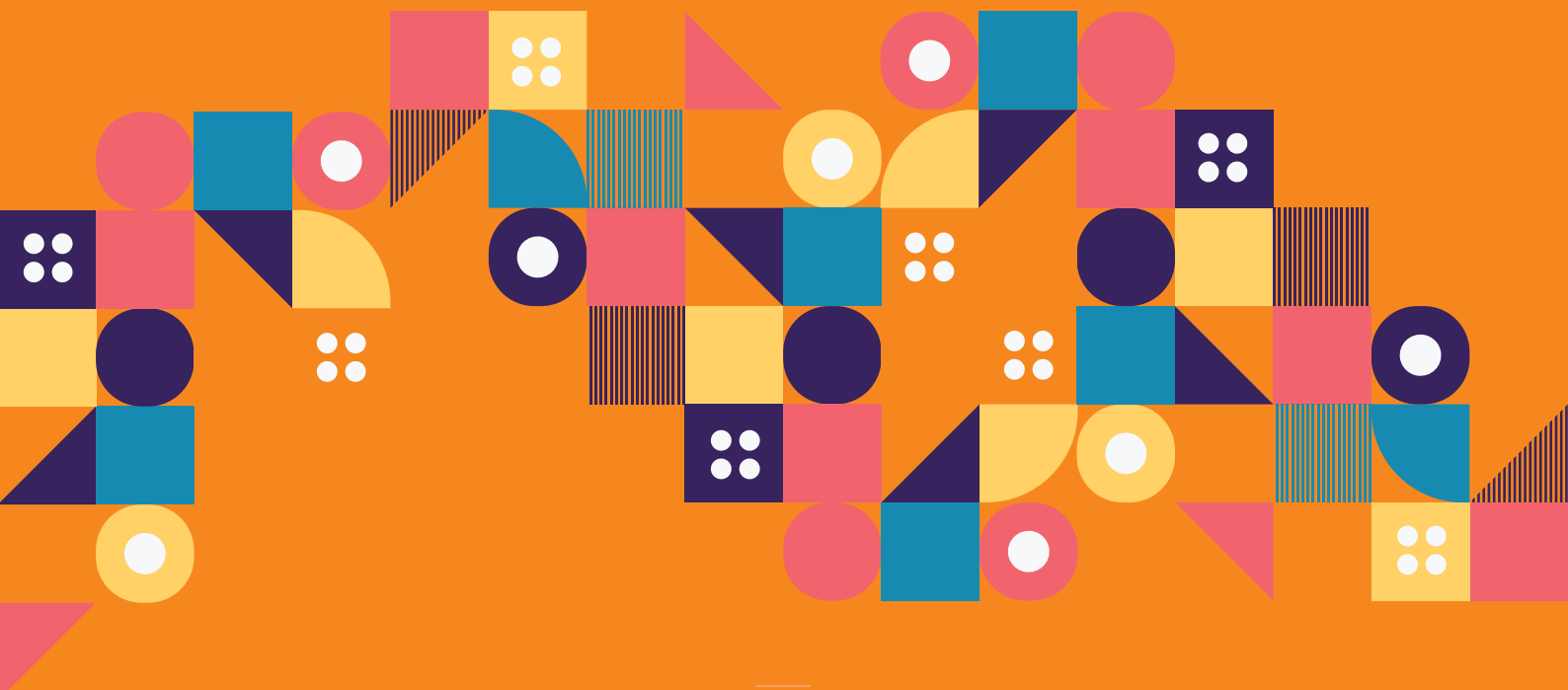
Another communication channel used by FdJ is a quarterly newsletter about the association's activities, inspiring experiences, and example of gender mainstreaming.

183 FdJ, [Textes](#). Last visited 15 November 2022.

184 Ibidem.



BRAZILIAN PERSPECTIVE



1. Introduction

The feminist movement conquered many advances and still is conquering, since the white women fighting for the right to vote and the black women fighting for the right to be – and be free – until now, when women with different self-declared identities are fighting for theirs bodies' rights, fighting for the right to be a mom and a professional at the same time, fighting for the right to occupy places of power and so many others.

The conquest of rights is a process of many fights as it is a process in movement, as the Critical Theory of Human Rights affirms. For this reason, although women had achieved many rights along the time, there are still more to be conquered, considering the change occurring in society, by social-cultural movements, by environmental conditions, by new ways of life.

Thereby a discussion about gender equality in a world rooted in patriarchal patterns can always be a current discussion. Under the program EU - BR Dialogues and oriented by Associação de Magistrados Brasileiros (AMB) – as it will be detailed in the Methodology Chapter – this study will present reflections about the presence of women in places of power, specially their presence in the Judicial Branch, questioning and introducing some answers about the reason why women are more numerous in entry positions than in higher positions within judiciary institutions and also what is being done to change this scenario. Regarding AMB's mission to address this discussion within the magistrates but also within other institutions, aiming to develop advocacies campaigns, this study also presents concepts, current data, historical context, analyses and arguments that can be helpful for an advocacy purpose.

In Brazil, women represent 51.1% of the population¹⁸⁵. Out of this number, 23.4% are black women¹⁸⁶. When it comes to indigenous population, they represent 0.42% of the total Brazilian population. Although women are the majority of the Brazilian population, they are not yet occupying the public space nor the places of power in the same way as men. Considering their presence in the Brazilian Judicial Branch, they represent 38% of the magistrates, a number that decreases in higher positions and Higher Courts and is even lower when analyzed by the lens of race. Unfor-

185. IBGE. Pesquisa Nacional por Amostra de Domicílios Contínua. 2021. Available at: <<https://educa.ibge.gov.br/jovens/conheca-o-brasil/populacao/18320-quantidade-de-homens-e-mulheres.html#:~:text=Segundo%20dados%20da%20PNAD%20Cont%C3%ADnu,51%2C1%25%20de%20mulheres.>>>. Last visited 5 December 2022.

186. IPEA. Retrato das desigualdades – gênero e raça. 2003. Available at: <<https://www.ipea.gov.br/retrato/pdf/primeiraedicao.pdf>>. Last visited 5 December 2022.



Unfortunately there is no data gathering information about gender and race, which makes it difficult to realize how many black women or other racialized women are achieving a career in this sector. Although, there is information about race only, and black people (women and men) represent 18%¹⁸⁷ of the magistrates while the indigenous people are represented by 11 people¹⁸⁸.

A phenomenon that must be highlighted is that the percentage of female magistrates in Higher Courts decreased from 23.6% to 19.6% in the last 10 years¹⁸⁹ as well as the percentage of women's entry in the magistrature. Since the highest positions exist in smaller numbers, what is perceived is that female invisibility increases as the offer of possibilities decreases¹⁹⁰.

In this context, despite the obstacles, the judiciary is achieving important marks, once for the third time in history a woman is in the presidency of the Supreme Federal Court and there are 22 women magistrates occupying the president position in the courts (taking into account the Supreme Federal Court, the Higher Courts and the Lower Courts). The National Council of Justice is also committed to the promotion of gender equality and since 2018, with the Resolution 255, it is leveraging the cause. Although this resolution wasn't the first related to this subject, this one was very explicit in increasing the participation of women in the Judicial Branch and it opened the path to other normative acts that are changing the courts, as it will be shown in this study.

Regarding the National Council of Justice commitment to the promotion of gender equality, it is important to point out some pillars that sustain it.

First of all, the Brazilian Federal Constitution is very clear in expressing its understanding that women and men – and in an expanded interpretation it could be added “every human being” – is equal in rights and obligations. The document also points out that market labor should offer specific protections and benefits to women.

Secondly, based on the Brazilian Constitution, new legislations were approved in order to guarantee women's rights, such as:

- I. **The Lei do Assédio Sexual**¹⁹¹, created in 2001 to define sexual harassment as a crime that can be punished with penalty of detention from 1 to 2 years. It is important to note that, in this legislation, sexual harassment will be considered when the embarrassment occurs specifically in the context of work, where there is a hierarchy and the aggressor uses it to commit the crime.

187. BRASIL. CNJ. Perfil Sociodemográfico dos Magistrados Brasileiros 2018. 2018. Available at: <https://www.cnj.jus.br/wp-content/uploads/2019/09/a18da313c6fdcb6f364789672b64fcef_c948e694435a52768cbc00bda11979a3.pdf>. Last visited 5 December 2022.

188. Ibidem

189. BRASIL. CNJ. Diagnóstico da participação feminina no Poder Judiciário. 2019. Available at: <<https://www.cnj.jus.br/wp-content/uploads/conteudo/arquivo/2019/05/cae277dd017bb4d4457755febf5eed9f.pdf>>. Last visited 5 December 2022.

190. Alves, 2017, p. 354

191. BRASIL. Lei nº 10.224, de 15 de maio de 2001. Portal da Legislação, Brasília, DF, May. 2001. Available at: <http://www.planalto.gov.br/ccivil_03/leis/leis_2001/110224.htm>. Last visited 5 December 2022.

- II. **The Lei Maria da Penha**¹⁹², created in 2006 and already considered one of the three best legislations in the world to combat the violence against women, according to the United Nations¹⁹³. Before this legislation, violence against women (VAW) was considered a crime of minor offensive potential, and the punishment to the offender used to be community service and payment of food baskets. With the Lei Maria da Penha the perception about VAW changed and one of the biggest contributions of this legislation was to address that VAW was a human rights violation and for that it was also a responsibility of the State. For this reason, it was established institutional strategies to combat and prevent this violence, such as: establishment of protective measure; creation of specialized judges and police stations; construction of shelters and reference centers; development of educational programs, including for the offender. The Lei Maria da Penha also expanded the definition of violence against women, describing that it could be: physical, psychological, sexual, patrimonial and moral.
- III. **The Lei do Sinal Vermelho**¹⁹⁴, created in 2021 establishes the Red Signal cooperation program against Domestic Violence and creates the criminal type of psychological violence. In the Red Signal program, women who are victims of domestic violence can discreetly ask for help at any public or private office, just showing a red sign in the shape of an X made in their hand. For the success of the program, the bodies that integrate it (Executive Branch, Judiciary Branch, Public Prosecutor's Office, Public Defender's Office, public security bodies) must carry out information campaigns, professional training and direct communication with the participating private entities, in order to ensure real assistance to women.
- IV. **The Lei de combate à violência política contra mulher**¹⁹⁵, created in 2021 establishes norms to prevent, repress and combat political violence against women, which is defined as “any action, conduct or omission with the aim of preventing, hindering or restricting the political rights of women”. It is worth remembering that Brazilian political rights are: the right to vote and the right to be voted; the right to be appointed to a non-elective position in the public service; the right to join a political party; the right to present a bill of popular initiative. This law also provides for the crimes of disclosing untrue information about candidates during the electoral campaign period.
- V. **The Lei Mariana Ferrer**¹⁹⁶, created in 2021 provides for punishment against acts that harm the dignity of victims of sexual violence during the trial of the case. The legislation is explicit

192. BRASIL. Lei nº 11.340, de 7 de agosto de 2006. Portal da Legislação, Brasília, DF, August. 2006. Available at: <http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/l11340.htm>. Last visited 5 December 2022.

193. INSTITUTO MARIA DA PENHA. Website Instituto Maria da Penha. A lei na íntegra e comentada. Available at: <<https://www.instituto-mariadapenha.org.br/lei-11340/lei-maria-da-penha-na-integra-e-comentada.html>>. Last visited 5 December 2022.

194. BRASIL. Lei nº 14.188, de 28 de julho de 2021. Portal da Legislação, Brasília, DF, July. 2021. Available at: <http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2021/lei/L14188.htm>. Last visited 5 December 2022.

195. BRASIL. Lei nº 14.192, de 4 de agosto de 2021. Portal da Legislação, Brasília, DF, August. 2021. Available at: <http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2021/lei/L14192.htm>. Last visited 5 December 2022.

196. BRASIL. Lei nº 14.245, de 22 de novembro de 2021. Portal da Legislação, Brasília, DF, novembro. 2021. Available at: <http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2021/Lei/L14245.htm>. Last visited 5 December 2022.



in obligating the guarantee of the physical and psychological integrity of the victim, under penalty of civil, criminal and administrative liability, being the responsibility of the judge to ensure compliance in the trial.

In addition, Brazil is signatory of three important conventions:

- I. **Convention on the Elimination of all forms of Discrimination Against Women - CEDAW (1979)**¹⁹⁷: it is the first international treaty that provides broadly on women's human rights. This document is also known as an international bill of rights for women. Based on it, the States Parties have the duty to "eliminate discrimination against women through the adoption of legal, political and programmatic measures", understanding that these obligations apply to all spheres of women's lives, and must protect them of violence in their family, on the street, at work and in institutions.
- II. **Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (1994)**¹⁹⁸: this document is also known as the Convention of Belém do Pará and was signed at the General Assembly of the Organization of American States (OAS). It also represents an international historic milestone, as it is the first treaty of its scope that criminalizes all forms of violence against women, with special attention to sexual violence, in the face of the omission of cases of violence against women during dictatorships in Latin America. The Convention of Belém do Pará provides in its second article that violence against women shall be considered as all violence committed by a family member (spouse, child, father...) or by a stranger in a public space, or even by a civil servant. In other words, it is clear that violence against women will no longer be considered a private problem only, strengthening the principles presented in CEDAW.
- III. **Declaration and Platform for Action of the Fourth World Conference on Women (1995)**¹⁹⁹: this document is also known as the Beijing Declaration and its innovations, in compared to the previous document, concern a broader understanding of gender (no longer limited to biological sex), a notion of empowerment (in which government and society must create conditions for women to take control of their self-development) and an understanding of transversality (encouraging the gender perspective to be part of all public policies).

Lastly, Brazil has been committed to UN Agendas, since the Millenium Development Goals Agenda (2000-2015), that has led to the Agenda 2030, which Brazil is also committed to.

197. UN WOMEN. Convenção sobre a Eliminação de Todas as Formas de Discriminação contra a Mulher. Available at: <<https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>>. Last visited 5 December 2022.

198. COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS. Convenção Interamericana Para Prevenir, Punir E Erradicar A Violência Contra A Mulher, "Convenção De Belém Do Pará". Available at: <<http://www.cidh.org/basicos/portugues/m.belem.do.para.htm>>. Last visited 5 December 2022.

199. ONU MULHERES. Declaração e Plataforma de Ação da IV Conferência Mundial Sobre a Mulher. Available at: <https://www.onumuh.org.br/wp-content/uploads/2013/03/declaracao_beijing.pdf>. Last visited 5 December 2022.

Regarding the Agenda 2030 goals, the public sector, the private sector and national NGOs in the country are very involved with it, promoting communication campaigns, events, prizes, and other initiatives to encourage the implementation of strategies to achieve the goals. It is important to highlight that in order to make this achievement possible, the IPEA²⁰⁰ together with other representatives of the society adapted the Agenda 2030 to the Brazilian context. The adapted version to Sustainable Development Goal (ODS) 5, whose intention is to promote gender equality, points out an explicit direction related to the judicial branch, such as indicators to Target 5.5 as will be presented below.

- I. **Target 5.5 (UN):** Ensure the full and effective participation of women and the equality of opportunities for leadership at all levels of decision-making in political life.
- II. **Target 5.5 (Brazil):** Ensure the full and effective participation of women and equality opportunities for leadership at all levels of decision-making in the public sphere, in its political and economic dimensions, considering the intersections with race, ethnicity, age, disability, sexual orientation, gender identity, territoriality, culture, religion and nationality, especially for women from the countryside, the forest, waters and urban peripheries.
- III. **National Indicator 5.5.4:** Proportion of women among judges occupying a seat in higher courts of justice (Superior Court of Labor – TST, Supreme Federal Court – STF, Superior Court of Justice – STJ, Superior Electoral Court – TSE and Superior Military Court – STM) (Source: National Council of Justice – CNJ. Census of the Judiciary).
 - A. According to IPEA, this indicator is monitored through data provided by the National Council of Justice.
- IV. **National Indicator 5.5.6:** Proportion of women among judges who entered the Judiciary in the last 2 years (Source: Census of the Judiciary/CNJ. Undefined frequency, directly measures one of the dimensions of the goal).
 - A. According to IPEA, this indicator should be monitored through data provided by the National Council of Justice, but it is just partially covered and in IPEA 2019 Report this indicator was presented as “without data”.

Regarding the purpose of this study, it is interesting also to link the findings described here with this specific target and indicator in order to add efforts to the increase of women in the Judicial Branch, specially in higher positions and also Higher Courts.

Considering all the previously mentioned topics, the Brazilian study approaches the main subject by a bibliographical review, through a feminist and Brazilian perspective. For this reason,

200. IPEA. Cadernos ODS - ODS 5. 2019. Available at: <https://repositorio.ipea.gov.br/bitstream/11058/9378/1/Cadernos_ODS_Objeto_5_%20Alcan%C3%A7ar%20a%20Igualdade%20de%20G%C3%AAnero%20e%20Empoderar%20Todas%20as%20Mulheres%20e%20Meninas.pdf>. Last visited 5 December 2022.



Brazilian women researchers were prioritized in the epistemological choices. In addition, documentary research was also used in the study. All the findings are presented in eight chapters, being chapter 1 and 2, Introduction and Methodology respectively, and chapter 8, References. Other chapters will be described in the next paragraphs.

Chapter 3 presents gender equality in Brazil from a wide perspective, showing current data. This chapter also proposes a look at education, labor market and government in Brazil through the lens of gender equality leading to a discussion about the presence of women in public spaces and places of power.

Chapter 4 begins honoring the women who fought to occupy the public space and open the path to others, and the ones who could achieve places of power because of that. It is symbolic that the first name in this list, Esperança Garcia, corresponds to a black woman fighting for a dignified life and who was recently considered the first Brazilian lawyer even without a formal education. In the sequence, it will present a discussion about how long it takes for a woman and for a man to achieve a higher position in the magistrate career, highlighting sexism and gender roles challenges and also that this path is worse for people in minority groups, on account of their race, social class, disability and others. For this reason, this chapter will also try to guide the attention to the importance of an intersectional perspective, in which other markers of identity must be considered, in order to analyze gender equality's targets and goals.

Lastly, chapter 5 presents some initiatives that are being implemented in the Brazilian Judicial Branch to promote gender equality, specially the ones regarding to strengthen the presence of women in the institution and the ones trying to leverage the women's magistrates careers. The chapter shows the findings divided by Supreme Federal Court's initiatives; National Council of Justice's normative acts; Higher Courts' initiatives of its institutions; Lower Courts' initiatives of its institutions; and Draft Bills focused on guaranteeing an increase of women's presence in higher positions of Brazilian Judicial Branch.

2. Methodological Approach

This Brazilian study approaches the main subject, gender equality in the judiciary, by a bibliographical review, through a feminist and Brazilian perspective. For this reason, Brazilian women researchers were prioritized in the epistemological choices. In addition, documentary research was also used in the study.

Regarding the bibliographical review, the search was made in Google Scholar and Scielo, with the key-words and its combinations: "gender equality"; "women"; "magistrates"; "Brazilian Judicial Branch"; "courts". For the search it was also used a filter by time regarding the articles published in the last 10 years. The criteria to select the articles were based on the alignment of the main subject with this study, the year of publication (10 years or less), the researchers' gender and nationality, intentionally choosing Brazilian women researchers, in movement to discuss this study's subject through women's lens. Regarding the year of the article's publication, the ones older were found in pre-selected articles and considering their relevance, they were also references to this study.

Furthermore, the documentary research was applied on chapter 4 and chapter 5.

In chapter 4, it is presented a timeline with pioneer women in the Brazilian Judicial Branch, focusing in Higher Courts, and the research started in Google, searching for the key-words: "first woman lawyer"; "first woman magistrate"; "first woman to lead a Higher Court's courts". The results led to the courts' website, in which the information was searched in the institutional area or history area or presidents' area. From this point, biographical documents found in these areas were accessed. Also in chapter 4, it is presented a table of comparison between women and men magistrates that reached the higher position in the career, achieving a position at the Supreme Federal Court, highlighting how long it took for women and men to achieve this position. It was formulated by research conducted on the Supreme Federal Court's website, mainly in the presidents' area, and related documents as the biographical ones.

In chapter 5, in which is presented some initiatives occurring within the Judicial Branch to promote gender equality, the research started with a search in the website of the following institutions: Supreme Federal Court, National Council of Justice and Higher Court's courts. The search was based on the key-words "gender equality" and "women in leadership". All the results were



found in the institutions' "news area". While searching in the website of the Higher Court's courts, some highlighted news were about initiatives in the respective Lower Court's court linked to that Higher Court's court. For example: while searching on the website of the Superior Electoral Court (a Higher Court's court), it was possible to find initiatives from some Regional Electoral Courts (which are Lower Court's courts). The criteria to select the initiatives were based on the fact if there was an explicit mention of and/or intention in promoting gender equality. In addition, two initiatives listed in the chapter were found by a direct search of them, which is the case of Programa Indira and Recommendation 102/2021, both mentioned in the seminar *Mulheres na Justiça*, organized by the National Council of Justice.

Regarding lexical choices, this study opted to use the words "Judicial Branch" and "judiciary" instead of "judiciary system", once this last term is not common in Brazilian reality and to avoid any misunderstanding with "system of justice". The words "Judicial Branch" and "judiciary", in the Brazilian context, refers to one of the three branches established by the Federal Constitution (Executive Branch, Legislative Branch and Judicial Branch) and also refers to the institutions linked to it, which are: Supreme Federal Court; National Council of Justice; Higher Courts: Superior Court of Justice, Superior Labor Court, Superior Electoral Court, Superior Military Court; Lower Courts: Courts of Justice; Regional Labor Courts; Regional Electoral Courts; Military Courts of Justice.

The organogram presented next facilitates the comprehension.

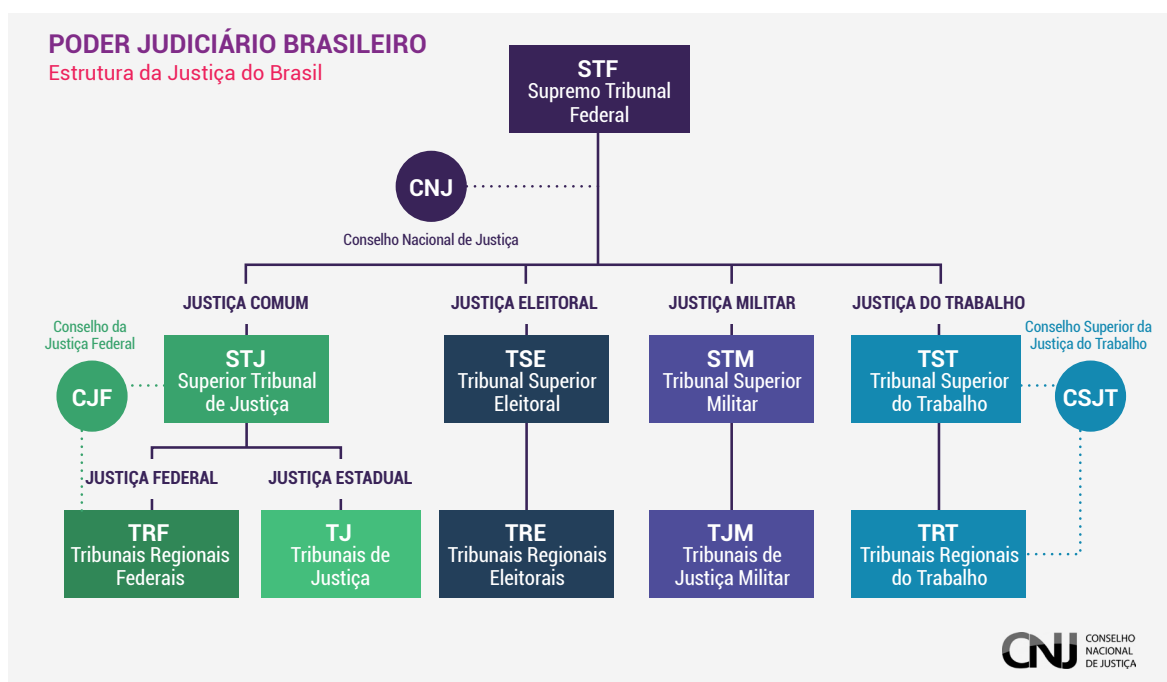


Image 1: Organogram of the Brazilian Judicial Branch

Following AMB's orientations, this study focused on women in higher positions in any court, but with a special attention to women in higher positions in Higher Courts and in the Supreme Federal Court, where they are less represented.

3. Gender Equality in Brazil

Regarding Agenda 2030, gender equality is achieved when girls and women have equal opportunities to develop themselves and occupy either the private and the public space with dignity. When it comes to the public space, the challenges are bigger, once women have to fight against the stereotype of gender that insists that the public space is not for them, women.

For this reason, during the next paragraphs this study will present an overview of gender equality in the public space through focusing on three spheres: education, labor and government. This last one will lead to the discussion of gender equality in the Brazilian Judicial Branch, main subject of this study.

EDUCATION

To think about the presence of women in universities, it is necessary to go back a few years and analyze their journey in basic education. In Brazil, completing high school is what makes a person eligible to apply for a place in higher education.

And here is good news: according to data from Education Overview: highlights from Education at a glance (2020)²⁰¹, in Brazil, the rate of women who completed high school within the expected period or within two years after is 65%. Among men, this rate is 56%.

Even so, it is important to have in mind that these data may vary according to the realities observed. For example, in contexts where there is a high rate of child marriage, girls are more vulnerable than boys to dropping out of school²⁰².

Women, in Brazil, are already the majority in universities, according to the Map of Higher Education in Brazil (2020)²⁰³. They represent 57.2% of students enrolled in undergraduate courses.

201. INEP. Panorama da educação: destaques do Education at a Glance 2020. 2020. Available at: <https://download.inep.gov.br/acoes_internacionais/eag/documentos/2020/Panorama_da_Educacao_2020.pdf>. Last visited 5 December 2022.

202. PLAN INTERNATIONAL. Tirando o véu – estudo sobre casamento infantil no Brasil. 2019. Available at: <<https://plan.org.br/https-plan-org-br-wp-content-uploads-2019-07-tirando-o-veu-estudo-casamento-infantil-no-brasil-plan-international-pdf/>>. Last visited 5 December 2022.

203. SEMESP. Mapa do Ensino Superior no Brasil. 2020. Available at: <<https://www.semesp.org.br/mapa-do-ensino-superior/educacao-10/>>. Last visited 5 December 2022.



Nevertheless, not only in Brazil, but worldwide, the rate of women taking Science, Technology, Engineering and Mathematics courses, where there is high investment in research, is low compared to men. Around 30% worldwide, according to Unesco data (2020)²⁰⁴.

Here it is important to question what influences the choice of course. Social and cultural issues that encourage women to care and expect a certain social gender role from her are related. No wonder, women represent 95% of preschool teachers in Brazil²⁰⁵.

Returning to Brazilian higher education, women represent 45% scholars. Although it is an expressive number, there is a point of attention. In a report made by the organization Gender and Number (2017)²⁰⁶, it was identified that the amount invested in productivity scholarships, in 2017, for women and men was very different: BRL 110.7 million for men; and BRL 57.6 million for women.

Some researchers realize that for a woman to advance in her scientific career, the family environment needs to encourage this path and that academic and research institutions must be committed to supporting them in practice. Some examples are: the division of domestic tasks; and academic and research institutions considering motherhood as a possible step in the path of the female scientist and, therefore, presenting strategies that do not exclude these researchers due to her period of maternity leave.

LABOR MARKET

When looking at previous data on the higher rate of women completing high school, as well as the fact that they are already the majority in universities, one factor that can explain this is the labor market.

The report Education at a glance (2019)²⁰⁷ shows that women with more years of study are more likely to get a job. Among Brazilian women aged 25 to 34 with higher education, the employability rate is 82%. The rate drops to 63% among women with technical education and to 45% among women without such training.

Among men, years of formal education do not seem to make much difference. Among those with higher education, the employability rate is 89%, among those with technical education it is 76% – which is the same rate for those without higher education.

204. UNESCO. Unesco celebra o Dia Internacional das Mulheres e Meninas na Ciência. 2020. Available at: <<https://pt.unesco.org/news/unesco-celebra-o-dia-internacional-das-mulheres-e-meninas-na-ciencia>>. Last visited 5 December 2022.

205. INEP. Panorama da educação: destaques do Education at a Glance 2020. 2020. Available at: <https://download.inep.gov.br/acoes_internacionais/eag/documentos/2020/Panorama_da_Educacao_2020.pdf>. Last visited 5 December 2022.

206. MONERRAT, Alessandra. "Teto de vidro" na ciência: apenas 25% na categoria mais alta do CNPq são mulheres. Gênero e Número, 2017. Available at: <<https://www.generonumero.media/2mulheres-representam-metade-da-producao-cientifica-no-brasil-mas-sao- apenas-25-em-categoria-mais-alta-do-cnpq/>>. Last visited 5 December 2022.

207. OECD. Education at a Glance 2019. 2019. Available at: <https://download.inep.gov.br/acoes_internacionais/eag/documentos/2019/EAG_2019_OCDE.pdf>. Last visited 5 December 2022.

For trans women, the scenario is even more aggravating, as shown in the Dossier on murders against Brazilian transvestites and violence against transsexuals in 2020²⁰⁸:

"We believe it remains current that only 4% of the Trans female population is in formal jobs, with the possibility of promotion and career progression according to data collected by ANTRA. Likewise, we see that only 6% are in informal activities and underemployed. The most worrying data remains: 90% of the population of Transvestites and Transgender Women use prostitution as a source of income".

With this information, it can be seen that the employability rate is different between men and women, and they have more difficulty entering the labor market.

Considering the women who join, it is necessary to observe what their career plans are like and how many of them manage to leadership positions. Some headlines in the last few years prove this situation: "Only 3.5% of companies have women in CEO positions"²⁰⁹; "Higher the position, bigger the inequality: between CEO's, only 0.8% are women"²¹⁰.

Among the obstacles that can be observed is sexism, translated into gender discrimination within the work environment: 1 in 3 women claims to face obstacles in their careers related to gender, age, ethnicity, sexual orientation²¹¹; and the discrepancy in the division of household tasks, in which women spend almost twice as many hours on household chores compared to men²¹², overwhelming them and making it difficult for women to dedicate themselves to their careers.

GOVERNMENT

Looking at the Federal Executive Branch, Brazil stands out – along with five other²¹³ Latin American countries – for having already had a woman as president. This is a great achievement for countries in which these representative positions are elected by the population, as was the case.

Furthermore, the year 2022, with the federal and state elections, was significant for the increase in female representation in politics throughout Brazil, especially talking about the Federal Legis-

208 BENEVIDES, Bruna G.; NOGUEIRA, Sayonara Naider Bonfim. Dossiê dos assassinatos e da violência contra travestis e transexuais brasileiras em 2020. São Paulo: Expressão Popular, ANTRA, IBTE, 2021. Available at: <<https://antrabrasil.files.wordpress.com/2021/01/dossie-trans-2021-29jan2021.pdf>>. Last visited 5 December 2022.

209. MEIRELLES, Alexa. Apenas 3,5% de grandes empresas têm mulheres como CEO, aponta pesquisa. CNN Brasil, 2021. Available at: <<https://www.cnnbrasil.com.br/business/apenas-3-5-das-grandes-empresas-tem-mulheres-como-ceo-aponta-pesquisa/>>. Last visited 5 December 2022.

210. FUTEMA, Fabiana. Quanto mais alto o cargo, maior a desigualdade: entre CEOs, só 0,8% são mulheres. 6 minutos – UOL, 2020. Available at: : <<https://6minutos.uol.com.br/economia/quanto-mais-alto-o-cargo-maior-a-desigualdade-so-08-dos-ceos-sao-mulheres/>>. Last visited 5 December 2022.

211. Índice de Inclusão Kantar. 2019. Available at: <<https://www.kantar.com/campaigns/inclusion-index>>. Last visited 5 December 2022.

212. IBGE. Outras formas de trabalho. 2018. Available at: <https://biblioteca.ibge.gov.br/visualizacao/livros/liv101650_informativo.pdf>. Last visited 5 December 2022.

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lative Branch. For example, the number of women elected to the Chamber of Deputies will be the highest in history: 91, but that only represents 17%, once the total of elected people for this position is 513. It is important to highlight that, for the first time, two trans women, both black, were elected for this Chamber and that the number of women who self-declared indigenous increased from 1 to 4. The percentage of black women will be 32%²¹⁴. So important as the representation is the critical representation, or social perspective, demonstrated by these people to be considered representatives of their minority groups. For this reason there have been reflections about the positioning of some elected people. This subject will be more discussed in chapter 5 when it comes to representation in the Judicial Branch, once in this field it is also noted this problem of numerical representation x critical representation.

The study Eleitas (2020)²¹⁵, by Instituto Update, brings a symbolic sentence to think about the moment in which women find themselves in relation to politics:

" 'Thus, each era has its role, has its responsibility. The women of the past fought for the right to vote, for the right to be voted. I think the role of this generation is to occupy spaces', told us the state representative Jó Pereira, president of the Commission for Children, Adolescents and Women's Rights of the Legislative Assembly of Maceió".

It is in this context that the search for greater representativeness remains necessary. Since Carlota Pereira de Queirós, the first federal deputy in Brazil, in 1934, women still occupy few seats – only 15% – in the National Congress (Senate and Chamber of Deputies), in contrast to the average of 31% in other countries of Latin America and the Caribbean, as shown in the report by Magazine Piauí, based on data from the 2020 Human Development Report, from the United Nations Development Program (UNDP). In Brazil, only in 2018, the first indigenous woman, deputy Joenia Wapichana, was elected to the National Congress.

Women are 51.1% of the Brazilian population, which means they are the majority. One of the guidelines of the feminist movement today is for this fact to also be represented in political spaces, so that the construction of an equity society is designed FOR them and WITH them. As it is said in Eleitas study: "Parity as a path. More women in power, with power". This perspective leads this study to the next chapter, in which it will be discussed the presence of women in the Judicial Branch and in its higher positions.

214. ALVES, Marcus Vinicius Chevitarese; SACCHET, Teresa; GRUNEICH, Danielle. Aumenta diversidade entre mulheres, mas percentual de eleitas segue baixo. Jota, 2022. Available at: <<https://www.jota.info/opiniao-e-analise/artigos/aumenta-diversidade-entre-mulheres-mas-percentual-de-eleitas-segue-baixo-07102022>>. Last visited 5 December 2022.

215. INSTITUTO UPDATE. Eleitas. 2020. Available at: <https://www.institutoupdate.org.br/eleitas/?qclid=CjwKCAiAm7OMBhAQEiwArv-Gi3LAwnRT2tW1N6NijAECaZu6hcxG9wTZQCLkuLYhH9v5vnsjdUHQq2xoCKh4QAvD_BwE#estudo>. Last visited 5 December 2022.

4. Challenges on the way to achieve Gender Equality in the Brazilian judicial branch

Under the premise “Parity as a path. More women in power, with power”, occupy the public space, specifically a space of visibility as the Judicial Branch – no matter in which sphere (Federal or Regional), but mainly in the Federal one or in higher positions – is the synonym of disputing power.

It is important to keep in mind that every interpersonal relationship can be a power relationship. In the policy dictionary of the jurist Norberto Bobbio²¹⁶, there are definitions of power associated with the ability to achieve something, through the authority one exercises.

Philosopher Michel Foucault²¹⁷, in turn, stated that power relations can be analyzed from the perspective of discipline, always supported by surveillance and punishment. Surveillance that knows your steps and implies the idea that if you leave the pre-established order, you will be punished.

For Kay Pranis²¹⁸, a specialist in Restorative Justice, power is an important part of our daily lives and relationships, whether when we have power over others or when we are under the power of others. For her, power guides our decisions and shapes our lives, even if unconsciously. And last but not least important, the notion of power is a social, cultural construction.

These explanations help us comprehend why it is so difficult for women to achieve higher positions in society and, focusing on the main subject of this study, in the judiciary.

216. BOBBIO, Norberto. Dicionário de política. Brasília: Universidade de Brasília/São Paulo: Imprensa Oficial do Estado de São Paulo, 2000.

217. FOUCAULT, Michel. Microfísica do poder. Organização e tradução de Roberto Machado. Rio de Janeiro: Edições Graal, 1979.

218. PRANIS, Kay. Entrevista sobre Poder, com Kay Pranis. Ajuris Justiça Restaurativa. (Youtube), 2018. Available at: <<https://www.youtube.com/watch?v=3odq7DcOrEM>>. Last visited 5 December 2022.



Women presence in the public space subverts the pattern of power, pre-established by a patriarchal and cis-heteronormative²¹⁹ society. Women who achieve the public space and more achieve a higher position in their careers are facing historical, cultural, social obstacles of gender stereotypes.

4.1 A brief historical overview: from Esperança Garcia to Rosa Weber

To honor the fight of these women to occupy the public space, and it's possible to say to occupy spaces of power; and also to try to understand the reason why there are few women occupying positions in the Supreme Federal Court and in the Higher Courts of the Brazilian Judicial Branch, this subchapter will go back in a path in the History of Brazil, trying to understand at what moment women started to be considered as a subject of rights, citizens and, therefore, enabled to fully exercise their rights. As known: **civil rights** (such as having access to justice), **political rights** (such as voting and being voted on), **economic rights** (such as working and being fairly remunerated for that), **social rights** (such as having access to quality education) and **cultural rights** (such as free expression and production of knowledge).

The process of rights's conquest is marked by the word fighting, especially when it comes to minorities' rights. In this perspective, in 2022, the National Attorneys Bar recognised that the first woman lawyer in Brazil was a black woman, who was submitted to scrawization²²⁰. Her name was Esperança Garcia, and even without much knowledge of the Law, she wrote a letter in 1770 to complain about the violences she, other black women, and their children were suffering in their condition. It's important to say that the freedom to black people will only be achieved in 1888.

Advancing in time, and considering that, in contemporary times, the starting point of the magistrate's career is a bachelor's degree in Law, this study goes back to the year 1898, when the first Brazilian white woman graduated from a Law university. This feat was achieved by Myrthes de Campos. It is important to remember that until 1879 women were not allowed to enter such a course.

Myrthes de Campos served as Defender at the Jury Court of Rio de Janeiro, just one year after her graduation and, despite the success of the hearing, she was accepted at the former Institute of the Brazilian Bar Association, a necessary title to be a lawyer, only in the year 1906.

219 In other words a society ruled by men – a white man, biologically male, with a heterosexual orientation which allows him to build a family in a conservative perspective. / DINIZ, Débora, LIONÇO, Tatiana. Homofobia, silêncio e naturalização: por uma narrativa da diversidade sexual. *Psicologia Política*, 8(16), 307-324, 2008. Available at: <<https://repositorio.ufsc.br/bitstream/handle/123456789/131963/Homofobia-Sil%C3%A2ncio-e-Naturaliza%C3%A7%C3%A3o.pdf?sequence=1&isAllowed=y>>. Last visited 5 December 2022.

220. OAB. Esperança Garcia é reconhecida pelo Conselho Pleno como a primeira advogada brasileira. 2022. Available at: <<https://www.oab.org.br/noticia/60503/esperanca-garcia-e-reconhecida-pelo-conselho-pleno-como-a-primeira-advogada-brasileira>>. Last visited 5 December 2022.

The first woman to study law in Brazil died in 1965 and left a legacy recognized for her defense of women's advocacy, right to abortion in cases of rape, and women's suffrage.

During her life, Myrthes saw the female vote be conquered by women in Brazil, in 1932. The conquest made Brazil the first country in Latin America to allow women to vote and be voted on, as long as they were literate. The suffragette movement started at the end of the XIX century and is one of the great milestones of the feminist movement, which will pave the way for other discussions around women's rights.

Thus, it is interesting to establish the correlation between the conquest of the female vote in Brazil, in 1932, with the arrival of the first woman in the Brazilian Judiciary, in 1939. These facts didn't happen by chance, since the conquests for rights occur from processes of struggle and in a time-space favorable to those ideas of change.

Still on the female vote in Brazil, a first achievement in this regard took place a few years before the federal law. In 1927, the state of Rio Grande do Norte, in the Northeast region of the country, approved the state Law 660, which granted women the right to vote and be voted on. In that same state, in 1928, a woman was elected to an executive position for the first time. Alzira Soriano was elected mayor of the city of Lages.

It is in this context of pioneering spirit in the Northeast region that, in the state of Ceará, Auri Moura Costa became the first woman to hold the position of judge in the Brazilian Judicial Branch. The bachelor was appointed to the position of municipal judge of the Termo de Várzea Alegre, belonging at that time to the District of Lavras.

During the next decades, Brazil went through a Dictatorship (1964-1984) and an important political movement to rescue its democracy, culminating in elections (1985) and the promulgation of the Federal Constitution (1988). This document rearranged the national government structure, establishing three branches: the Executive, the Legislative and the Judicial. It is also the Federal Constitution that defines the composition of the Judicial Branch. Regarding what is provided for by law, Brazilian Judicial Branch has a Supreme Federal Court, which is the highest body in the field, plus a National Council of Justice, a Federal Council of Justice, and also Higher Courts and Lower Courts as follows:

Higher Courts:

- I. Superior Court of Justice/ Superior Tribunal de Justiça;
- II. Superior Court of Labor/ Tribunal Superior do Trabalho;
- III. Superior Electoral Court/ Tribunal Superior Eleitoral;
- IV. Superior Military Court/ Superior Tribunal Militar.



Lower Courts:

- I. Regional Federal Courts/ Tribunais Regionais Federais;
- II. Labor Courts/ Tribunais do Trabalho;
- III. Electoral Courts/ Tribunais Eleitorais;
- IV. Military Courts/ Tribunais Militares;
- V. State's Courts and Federal District and Territories' Courts/ Tribunais dos Estados e do Distrito Federal e Territórios.

Considering the focus of this study, in the sequence it will be presented some historical milestones in Brazilian recent History, when women achieved not only a position in the Supreme Federal Court or in Higher Courts, as a minister, but also when they reached the highest position in these places.

Through this brief historical overview, the intention is to understand the path built by these women, understanding that this path started 101 years ago, when the above-mentioned Myrthes de Campos was the first Brazilian woman to graduate in a Law School.

Timeline

Women Magistrate Names	Important Dates	Courts	Trajectories
Eliana Calmon ²²¹	1999	STJ	<p>Eliana Calmon was the first woman to be part of a Higher Court in Brazil. Eliana was nominated to the Superior Court of Justice in 1999, at the age of 55 years old, where she worked as <i>Corregedora Nacional de Justiça</i> (2010 - 2012) and Directress of <i>Escola Nacional de Formação e Aperfeiçoamento de Magistrados – ENFAM</i> (2012 - 2013) until her retirement in 2013.</p> <p>Before entering the Superior Court of Justice, she worked as Federal Judge and as a professor at Federal University of Rio Grande do Norte.</p> <p>She was born in Bahia (Northeast Region), in the year of 1944.</p>
Ellen Gracie ²²²	2000 and 2006	STF	<p>Ellen Gracie was the first woman to become a minister at the highest court in Brazil, the Supreme Federal Court, in the year of 2000, when she occupied the vacancy of Ministro Luiz Octavio Pires e Albuquerque Gallotti, who had retired. Six years after her nomination, she was elected for the presidency of the court (2006-2008).</p> <p>In her career, she worked as a professor, a lawyer and then, by the means of a public examination, she got into the Public Prosecutors Office as <i>Procuradora da República de 3ª categoria</i>. In 1989, she was nominated to join the TRF-4, where she assumed the vice-presidency in 1995 and the presidency two years later.</p> <p>She was born in Rio de Janeiro (Southeast Region), in 1948.</p>

221. BRASIL. Website Supreme Federal Court. Available at: <https://www.stj.jus.br/web/verCurriculoMinistro?parametro=3&cod_matriculamin=0001114&aplicacao=ministros.aposentados.ex-ministros>. Last visited 5 December 2022.

222. BRASIL. Website Supreme Federal Court. Available at: <<https://portal.stf.jus.br/ministro/presidente.asp?periodo=stf&id=35>>. Last visited 5 December 2022.

Women Magistrate Names	Important Dates	Courts	Trajectories
Carmen Lúcia ²²³	2012 and 2016	TSE and STF	<p>Carmen Lucia was the first woman to occupy the vice-presidency (2010-2012) and then the presidency (2012-2013) of Superior Electoral Court, in 2012, at the age of 58 years old. In the same year she was designated to the vice-presidency of the Supreme Federal Court. In this last one, she assumed its presidency in 2016, for the biennium 2016-2018.</p> <p>As president of the Supreme Federal Court, she was president ad interim for four times in 2018. In one of them, between 13 April and 14 April, she signed a decree establishing April 2 as the National Day of Autism Awareness.</p> <p>In 2006, she was nominated to be a minister of the Supreme Federal Court, occupying the vacancy of Nelson Jobim.</p> <p>Before getting into the magistrature, she was a lawyer and got into the magistrate career through a public examination in 1983. She assumed as <i>Procuradora do Estado</i> of Minas Gerais.</p> <p>She was born in Minas Gerais (Southeast Region), in 1954.</p>
Maria Elizabeth Rocha ²²⁴	2015	STM	<p>Maria Elizabeth Rocha was the first woman to be nominated as a minister to the Superior Military Court, in 2007. She also became the first woman to occupy the presidency of this court in 2015, at the age of 55 years old.</p> <p>Her career began as a lawyer and then she was approved in a public examination, assuming the function of <i>Procuradora Federal</i>. After that, she worked in different public bodies and courts, such as: TRT-1 and TSE, until being nominated to STM.</p> <p>She was born in Minas Gerais (Southeast Region), in 1960.</p>
Maria Cristina Peduzzi ²²⁵	2020	TST	<p>Maria Cristina Peduzzi is the first woman to occupy the presidency of the Superior Court of Labor, for the biennium 2022-2024. Before that, she assumed the vice-presidency during 2011-2013. She joined this court as minister in 2001 by the means of Art. 94 of the Brazilian Federal Constitution which orients that 1/3 of court's ministers must be indicated by the Attorneys Bar and Public Prosecutors Office.</p> <p>Before being indicated to this position, she has a renowned trajectory as a lawyer. Besides she worked as <i>Procuradora da República</i> (1984), <i>Procuradora do Trabalho</i> (1992) and professor at University of Brasília.</p> <p>She was born in Rio Grande do Sul (Southern Region), in 1952.</p>

223. BRASIL. Website Superior Electoral Court. Available at: <<https://www.tse.jus.br/o-tse/ministros/ministra-carmen-lucia-antunes-rocha>>. Last visited 5 December 2022.

224. BRASIL. Website Superior Military Court. Available at: <<https://mavencollection.stm.jus.br/pub/stm/index20/?numero=320>>. Last visited 5 December 2022.

225. BRASIL. Website Superior Labor Court. Available at: <<https://www.tst.jus.br/apresentacao/presidente#:~:text=Maria%20Cristina%20Irigoyen%20Peduzzi&text=A%20ministra%20%C3%A9%20a%20primeira,at%C3%A9%20tomar%20posse%20no%20TST.>>. Last visited 5 December 2022.

Women Magistrate Names	Important Dates	Courts	Trajectories
Maria Thereza de Assis Moura ²²⁶	2022	STJ	<p>Maria Thereza Moura was the second woman to be elected for the presidency of the Superior Court of Justice, for the biennium 2022 - 2024.</p> <p>Her indication to this Court occurred in 2006, by the means of the Art.94 of the Brazilian Federal Constitution, which orients that 1/5 of court's ministers must be indicated by the Attorneys Bar and Public Prosecutors Office. Maria Thereza was indicated by the Attorneys Bar, once she had a renowned trajectory as a lawyer, having been part of examining boards of the Attorneys Bar (1989 - 2004). She also worked as a professor at University of São Paulo and wrote three books.</p> <p>She was born in São Paulo (Southeast Region), in 1956</p>
Rosa Weber ²²⁷	2018 and 2022	TSE and STF	<p>Rosa Weber is the current president of the Federal Supreme Court and the third woman to hold the position. She was elected in 2022, eleven years after his appointment to this court in 2011, taking the chair from Ellen Gracie, who at that time had retired.</p> <p>In her career, she also held the vice-presidency (2018) and the presidency of the Superior Electoral Court, during the 2018-2020 biennium.</p> <p>She was born in Porto Alegre (Southern Region), in 1948.</p>

Brazil never had a black or indigenous woman in the presidential position of a Higher Court, which was similar to the Lower Courts until 2022, when the State Court of Rio Grande do Sul (a Lower Court) nominated the first black woman as a president in the History of the Brazilian Judicial Branch, according to AMB. For indigenous women the path is longer, once none of them have yet become a magistrate. It is important to highlight that the first indigenous woman lawyer was Joenia Wapichana, but she pursued a career in the Legislative Branch, being the first indigenous woman to be elected as federal deputy in 2018. And, in January 2023, she was nominated to be the first indigenous woman to lead the Fundação Nacional dos Povos Indígenas (Funai).

In a historical moment, in 2022, the two most important courts of the Brazilian Judicial Branch were being led by two women: Rosa Weber, in the Supreme Federal Court, and Maria Thereza de Assis Moura, in the Superior Court of Justice.

It is also important to say that by the end of 2022, there were 22 women magistrates occupying the president position in the courts (taking into account the Supreme Federal Court, the Higher Courts and the Lower Courts).

226. CONJUR. Lula indica Maria Thereza de Assis Moura para o STJ. 2006. Available at: <https://www.conjur.com.br/2006-jun-08/lula_indica_maria_thereza_assis_moura_stj>. Last visited 5 December 2022.

227. BRASIL. Site Superior Tribunal de Justiça. Available at: <<https://www.stf.jus.br/arquivo/cms/sobreStfComposicaoComposicaoPle-nariaApresentacao/anexo/CurriculumVitaeMinRosaWeberatualizado.pdf>>. Last visited 5 December 2022.

4.2 Women magistrates in higher positions: why is it so difficult?

According to Brazilian academic and scientific research, the trajectory of women in the Judicial Branch has little empirical evidence²²⁸, which already denotes a problem in relation to the promotion of gender equality in the sector. There is no certainty about the factors that lead a woman to be or not invited to assume a leadership position, nor how this position is related to the possibility of occupying the highest positions, whether in lower or higher courts²²⁹.

Since the dominant pattern of the Judicial Branch is still male and white²³⁰, the collection of accurate data on gender and its intersections with other identity markers, such as race, is compromised, sometimes being considered "'a woman's thing', not being relevant to the dominant pattern"²³¹.

Having made these observations, identifying the reasons why it is so difficult for women to reach higher positions in the Judicial Branch involves considering these gaps.

The discussion involving the presence of women in the Judicial Branch began to gain greater visibility in Brazil and Latin America in the 1990's²³², when there was an increase in the number of women entering higher education and the professionalization of the entry into the public career through public examination.

A little earlier, in 1961, Brazil saw an increase in the number of women in universities, starting with LDB 4, a norm that equated Teaching (mostly attended by women) with High School, allowing people who concluded their Teaching to take Bachelor's Entrance Examinations²³³.

228. ALVES, Clara da Mota Santos Pimenta. Gênero, espaço público e poder: uma análise sobre a composição das comissões examinadoras de concurso da magistratura. *Revista Publicum*. Rio de Janeiro, v. 3, nº 1, 2017, p. 352-370. Available at: <<http://www.e-publicacoes.uerj.br/index.php/publicum>>. Last visited 5 December 2022.

229. Ibidem

230. FILHO, Roberto Fragale; MOREIRA, Rafaela Selem; SCIAMMARELLA, Ana Paula de Oliveira. Magistratura e gênero: um olhar sobre as mulheres nas cúpulas do judiciário brasileiro. Open Editions. e-Cadernos. 2015. Available at: <<http://journals.openedition.org/eces/1968>>. Last visited 5 December 2022; KAHWAGE, Tharuell Lima. SEVERI, Fabiana Cristina. Para além de números: uma análise dos estudos sobre a feminização da magistratura. *RIL*. Brasília, a. 56, nº 222, abr./jun. 2019, p. 51-73.

231. BONELLI, Maria da Glória; OLIVEIRA, Fabiana Luci. Mulheres magistradas e a construção de gênero na carreira judicial. *Novos Estudos*. Cebrap. São Paulo, v. 39, nº 1, 2020, p. 143-163. Available at: <<http://dx.doi.org/10.25091/S01013300202000010006>>. Last visited 5 December 2022.

232. BONELLI, Maria da Glória. *Profissionalismo, gênero e diferença nas carreiras jurídicas*. São Carlos: EDUFSCar, 2013.

233. VAZ, Daniela V. O teto de vidro nas organizações públicas: evidências para o Brasil. *Economia e Sociedade*, Campinas, v. 22, nº 3 (49), p. 765- 790; dez. 2013. Available at: <<https://www.scielo.br/j/ecos/a/FSfpH9NQg6qHy3Hky8tCXyt/?format=pdf&lang=pt>>. Last visited 5 December 2022.



However, it was in the 1990s that there was a growth in the offer of Law courses at private colleges²³⁴, enabling people from different social classes to start this course and beginning to be part of an “environment full of masculine traditions”²³⁵.

According to the Map of Higher Education in Brazil (2020)²³⁶, women are already the majority in Brazilian universities. They represent 57.2% of students enrolled in undergraduate courses. The research Census of Higher Education (2021)²³⁷ affirms they are also the majority in the group Business, Administration and Law courses, representing 56.8%.

Although they are the majority of law school graduates and one can speak of a feminization of the judiciary with, until 2018, the progressive entry of women in the area, women magistrates occupy only 38.8% of the Judicial Branch, according to the National Council of Justice²³⁸. This represents 14 percentage points more than 30 years ago²³⁹. In other words, progress has been made. However, it is perceived that this increase in the entry of women into the sector is still not reflected in the leadership of the Judiciary, which reveals how the gender factor operates in the field, making it clear that there are advantages for some and disadvantages for others in the course of their career²⁴⁰.

An important data that must be highlighted is that the percentage of female magistrates in Higher Courts decreased from 23.6% to 19.6% in the last 10 years²⁴¹ as well as the percentage of women's entry in the magistrature.

Maria da Gloria Bonelli and Fabiana Oliveira (2020)²⁴² observe that the State Justice is less inclusive both in the first and in the second instance, in which 11% of its magistrates are judges, being 15% among men and only 5% among women.

Since the highest positions exist in smaller numbers, what is perceived is that female invisibility increases as the offer of possibilities decreases²⁴³. Therefore, a phenomenon called “masculinization of command and feminization of subalternity” occurs.

234. Bonelli, 2013

235. LEITE, Maria Carolina Loss. Gênero, Script Sexuado e Profissões Jurídicas. In: V Semana Discente do IESP-UERJ. Anais eletrônicos. Rio de Janeiro, 2019. Available at: <<http://seminariodiscente.iesp.uerj.br/edicao-2019/anais/>>. Last visited 5 December 2022.

236. SEMESP. Mapa do Ensino Superior no Brasil. 2020. Available at: <<https://www.semesp.org.br/mapa-do-ensino-superior/edicao-10/>>. Last visited 5 December 2022.

237. INEP. Censo da Educação Superior. 2021. Available at: <https://download.inep.gov.br/educacao_superior/centro_superior/documentos/2021/apresentacao_censo_da_educacao_superior_2021.pdf>. Last visited 5 December 2022.

238. BRASIL. CNJ. Diagnóstico da participação feminina no Poder Judiciário. 2019. Available at: <<https://www.cnj.jus.br/wp-content/uploads/conteudo/arquivo/2019/05/cae277dd017bb4d4457755febf5eed9f.pdf>>. Last visited 5 December 2022.

239. Ibidem

240. Bonelli, Oliveira, 2020, p. 148

241. CNJ, 2019

242. Bonelli and Oliveira, 2020, p. 156

243. Alves, 2017, p. 354

"This means that even in spaces conquered by women, the domes of power would still remain within the logic of a patriarchal, male culture. In the judiciary, that's how it still is. At the base of the career, the number of female judges would be significant, whose admission has repeatedly surpassed the number of men, without this change in profile having an impact on higher instances and, in particular, positions filled by appointment, such as, for example, at the CNJ"²⁴⁴

Thus, even when women reach higher positions, it is necessary to analyze the context taking into account the paradigm that governs the sector: that the man must be in a position of power. Perhaps more relevant than the title is the power that a given position has. This power is associated with resources and autonomy. Therefore, when some positions, even those of leadership, lose their prestige, they become less coveted by men and more exercised by women²⁴⁵.

After the Judicial Branch Reform, management positions in the courts had their power factor reduced, causing other positions to have more prestige and, consequently, more association with power, among them: composition of committees, positions in the CNJ, positions in Higher Courts²⁴⁶.

Although women's access to the judiciary is not prevented and their presence has become common in the judiciary, in order to progress in their careers, they face subtle discrimination²⁴⁷, that prevent their full professional development, resulting in "asymmetrical, unequal and hierarchical relationships within the professions"²⁴⁸.

Women who overcome this inequality seem to present exceptional paths, in which an individual will prevails much more to advance and succeed in a male career²⁴⁹ than the institution's willingness to develop mechanisms that enable an equal career progression.

Available research on the subject shows that women and men judges who started the career in the same period had different progression opportunities, demonstrating that there is a disadvantage for women²⁵⁰, which may be related to subtle internal discrimination institutions, representing the existence of the so-called "glass ceiling" in the profession.

This term refers to the subtle discrimination suffered by women who, precisely because they are subtle, become invisible²⁵¹ and, therefore, difficult to eliminate. Those who do not believe in

244. Filho apud Filho, Moreira, Sciammarella, 2015, p. 63

245. Bonelli, Oliveira, 2020, p. 149

246. Ibidem

247. Filho, Moreira, Sciammarella, 2015, p. 61

248. Kahwage, Severi, 2019, p. 53

249. Filho, Moreira, Sciammarella, 2015, p. 58

250. Bonelli, Oliveira, 2020, p. 156

251. Alves, 2017, p. 368



the existence of such discrimination, that is, do not recognize the existence of the glass ceiling that prevents women from rising vertically in the judiciary, claim that women do not reach higher positions simply because they do not want to²⁵², due to the wear and tear that such positions bring, involving geographic displacement and a prioritization of public space over private. This finding places the responsibility for the problem (the low representation of women in higher positions) on the woman herself, ignoring institutional responsibility and even professional colleagues who practice discrimination.

To analyze gender inequality in the sector, it is also important to consider the type of national legal culture: civil law or common law²⁵³.

In the case of Brazil, which has a civil law tradition, entry into the judiciary takes place through a public examination under the terms of CNJ Resolution 75/2009²⁵⁴. People approved in public examinations begin their careers as substitutes and promotion to intermediate and final positions is carried out based on the criteria of seniority and merit²⁵⁵.

It is also important to remember that by the means of Art. 94 of the Brazilian Federal Constitution also orients that 1/5 of court's ministers must be indicated by the Attorneys Bar and Public Prosecutors Office.

The stagnation in the lower positions, however, is not an exclusive fact of civilist countries, it also applies to common law countries²⁵⁶.

In Brazil, Kawage and Severi²⁵⁷ note that it is possible that there are veiled criteria that prevent the progression of women in the career, since each court has autonomy to establish its own promotion rules.

The institutional culture, predominantly male and white, reveals barriers such as²⁵⁸:

- I. **Long working hours:** which makes it difficult to reconcile professional life – including the desire to progress – with personal life;
- II. **Full availability for work:** associating a good evaluation of the professional with continuous and constant work, 24 hours a day and seven days a week;

252. Ibidem

253. Kahwage, Severi, 2019, p. 56

254. BRASIL. Resolução nº 75 de 12/05/2009. CNJ. 2009. Available at: <<https://atos.cnj.jus.br/atos/detalhar/100>>. Last visited 5 December 2022.

255. Kahwage, Severi, 2019, p. 56

256. Ibid., p. 58

257. Ibid., p. 57

258. Ibid., p. 64-65

III. Professional development between the ages of 30 and 40 predominantly: since this is considered the most important period for career advancement, it is in this age group that professionals tend to receive more incentives to acquire experience and skills. This period also usually comprises a phase of greater dedication or propensity to motherhood, meaning that many women are not contemplated with professional development opportunities that, in the future, will be required for higher positions.

These institutional culture barriers listed above: long working hours; full availability for work; and encouragement for professional development associated with the age group are related to a discourse present in legal careers focused on the ideology of professionalism²⁵⁹. This idea elects meritocracy, performance and work commitment as key criteria for career advancement, evoking a neutrality that leaves out gender inequalities and other identity markers. Relying on the ideology of professionalism, the choice for the highest positions takes place according to the framework of the criteria of such ideology, which for Maria Carolina Leite²⁶⁰, in practice, consists of giving preference to men.

Not only do institutional barriers hinder women's career progression, but also personal barriers. Low self-efficacy is one of them²⁶¹, acting both on women's entry into the profession and on their permanence in it. The term refers to "women's personal beliefs regarding their own ability to organize and perform functions and activities, which influences the way they think, feel, motivate themselves and act"²⁶².

This belief can influence both the way institutions manage the presence of women in work spaces, the criteria they establish for their career progression, and also the way women perceive themselves as capable of occupying certain positions, such as of high leadership²⁶³.

The data and analysis of researchers reveal that the problem of the low representation of women in higher positions in the judiciary involves the understanding that: time alone will not be enough to promote the rise of these women, discrimination against women exists within institutions and the debate on gender cannot be detached from other identity factors, especially race, when it comes to an institution that is still predominantly male and white.

259. Leite, 2019, p. 152

260. Ibidem

261. Kahwage, Severi, 2019, p. 68

262. Ibidem

263. Agut Nieto; Martin Hernandez, 2007 apud Kahwage, Severi, 2019, p. 68



4.2.1 It is not a matter of time

There was the hypothesis that it was a matter of time²⁶⁴ for women to occupy leadership positions in the judiciary, since the number of women with law degrees was increasing, as well as their entry into the sector. Scenario that changed in the last 10 years as already mentioned, with the decrease of the numbers.

The 1980 Census of the Brazilian Institute of Geography and Statistics (IBGE) recorded that 24.6% of people with a bachelor's degree in Law were women²⁶⁵, while the 2010 Census showed that this number had almost doubled, and they now represent 46.4% of law graduates²⁶⁶.

Since the number of women surpassed the number of men in Law courses, the expectation was created that in a short time this would be reflected in the judiciary²⁶⁷. However, the Brazilian judiciary is composed of approximately 38.8% of women, according to CNJ (2019)²⁶⁸. Among the substitute judges (entry position), they represent 44%²⁶⁹. This number decreases as positions in the career are higher, being 39% of titular judges, 23% of desembargadoras and only 16% of superior court ministers.

Although entry into public careers is lower compared to other possibilities for exercising the profession, there was also optimism that there would be a more substantial expansion of women in the judiciary²⁷⁰.

The lack of gender parity in the judiciary, which proportionally reduces the chances of women reaching higher positions, is not an isolated case in the sector. According to the Global Gender Gap Report 2022 (GGG)²⁷¹, by the World Economic Forum, it would take 67 years for the Latin American and Caribbean region to reach gender parity²⁷². Considering the international reality and not just from the regional perspective, it would take 132 years²⁷³ for the world to reach this goal – 32 years more than estimated in the 2020 report. Largely due to the effects of the Covid-19 pandemic, in which women were more assigned to unpaid care work, suffered more layoffs and were more exposed to the burden of emotional and mental disorders²⁷⁴.

264. Bonelli, Oliveira, 2020, p. 145

265. Ibidem

266. Ibidem

267. Bonelli, Oliveira, 2020, p. 145

268. CNJ, 2019

269. Ibidem

270. Bonelli, Oliveira, 2020, p. 145

271. WORLD ECONOMIC FORUM. Global Gender Gap Report 2022. Julho de 2022. Available at: <<https://www.weforum.org/reports/global-gender-gap-report-2022/>>. Last visited 5 December 2022.

272. Ibid., p. 6

273. Ibid., p. 5

274. Ibid., p. 7

The index makes its assessment considering the evolution of gender parity in four dimensions (sub-index): economic participation, education, health and survival, and political empowerment. The survey is carried out in 146 countries, which gives it a robust evaluation base.

Although the index is not intended to specifically assess the countries' judiciary, the political empowerment subindex can be a good parameter for the subject of interest in this study, since it assesses the presence of women in positions of power in the public space²⁷⁵.

According to the GGG (2022)²⁷⁶, the biggest gender gap in Latin America and the Caribbean is still with regard to the sub-index of political empowerment. Of the 22 countries in the region, Brazil is at the bottom of the ranking along with Guatemala and Belize. At the top of the list, in turn, are Nicaragua, Costa Rica and Mexico.

Nicaragua even occupies the eighth position in the global ranking, which places it among the top 10 countries out of the 146 evaluated, with the best performance among those who are seeking to reduce the gender gap.

Returning to the Brazilian reality, the hypothesis that the low representation of women in the judiciary, especially in leadership positions and in higher courts would only be a matter of time is deeply discouraging, if taken into account the notes of the GGG report and the Brazilian data mentioned above, such as: the percentage of women who graduated in law in 2010 (46%), the percentage of women who entered the judiciary (44%)²⁷⁷, the percentage of women in higher positions in the courts (23%)²⁷⁸, and the percentage of women in higher courts plus STF (16%)²⁷⁹.

Below there are two comparative tables between the number of years it took women to occupy the presidency position of the Supreme Federal Court (the highest position in the Brazilian Judicial Branch), from the moment they entered the career, in relation to their male colleagues. The table proposes to compare the last presidents since the election of the first woman to the position, Minister Ellen Gracie, in 2006:

275. Regarding political empowerment, the indicators considered for the elaboration of this sub-index are: presence of women in legislative bodies, presence of women in ministerial authorities, years of a woman/man as head of state (last 50).

276. Fórum Econômico Mundial, 2022

277. CNJ, 2019

278. Ibidem

279. Ibidem



Women in the presidency of the Supreme Federal Court (2006 - 2022):

Name	Conclusion Year of the Bachelor degree	Entering Year in the Magistrature	Year of being nominated one of the eleven ministers of Supreme Federal Court	Year of being nominated to the presidency of the Supreme Federal Court	Biennium of mandate	Years from the entering year in the Magistrature to the presidency of the Supreme Federal Court
Ellen Gracie	1970	1973	2000	2006	2006-2008	33
Carmen Lúcia	1977	1983	2006	2016	2016-2018	33
Rosa Weber	1967	1975	2011	2022	2022-2024	47

The STF has so far (2022) only 3 women who occupied its presidency. It took Ellen Gracie and Carmen Lúcia 33 years each to reach the position of president of the STF from the moment they started their careers, while it took Rosa Weber 47 years. Thus, the average number of years it takes these women to reach the highest position in the magistrate career since their entry is 37 years.

Men in the presidency of the Supreme Federal Court (2006-2022):

Name	Conclusion Year of the Bachelor degree	Entering Year in the Magistrature	Year until being nominated one of the eleven ministers of Supreme Federal Court	Year until being nominated to the presidency of Supreme Federal Court	Biennium of mandate	Years from the entering year in the Magistrature to the presidency of the Supreme Federal Court
Gilmar Mendes	1978	1985	2002	2008	2008-2010	23
Cezar Peluso	1966	1967	2003	2010	2010-2012	43
Ayres Britto	1966	1975	2003	2012	2012* retired before concluding the mandate	37
Joaquim Barbosa	1979	1984	2003	2012	2012-2014	28
Ricardo Lewandowski	1973	1990	2006	2014	2014-2016	24
Dias Toffoli	1990	2009	2009	2018	2018-2020	9
Luiz Fux	1976	1982	2011	2020	2020-2022	38

Of the seven male presidents that the STF has had since 2006, three made a very quick journey from the moment they entered their careers to their appointment as presidents, compared to the years required for their female colleagues to reach the same position and even other male colleagues. They are Gilmar Mendes, who took 23 years, Ricardo Lewandowski, who took 24 years, and Dias Toffoli, who took only 9 years. Thus, the average number of years it takes these men to reach the highest position in the career of a magistrate since their entry is 28 years.

Between these women and these men ministries, there is an average difference of 11 years from entering the career to the position of president of the highest Brazilian court. It should be noted not only the number of years it took for one group and another to reach such a position, but the low representativeness. Since its inception in 1824²⁸⁰, the Supreme Federal Court has been chaired by 3 women and 46 men²⁸¹. It is interesting to relate the arrival of these women to such a position with the period in which it occurred, since all of them only occupied this position after 1988, the year of the institution of the Federal Constitution, which restructured the Brazilian government, creating the Judiciary as such what it is today, and establishing equality between women and men.

Similar to what these Supreme Federal Court comparative tables show, the existing scenario demonstrates that the institution needs more intentionality for the Brazilian judiciary to be equal, managing to reduce the obstacles that increase gender inequality in the sector.

Unfortunately, for the researcher Clara Alves²⁸² there are no concrete signs of a future change, since in the last 10 years only three projects have been processed in the National Congress directly related to the subject, as will be detailed in Chapter 5. Two of them were shelved at the end of its author's legislature, as provided for in Article 332 of the Internal Regulations of the Senate²⁸³.

4.2.2 Gender roles and sexism within institutions

The feminization of the judiciary does not seem to be enough to reduce gender discrimination in the institutions that compose it. The male paradigm, predominant in Brazilian society and in the area²⁸⁴, makes women face internal obstacles in institutions in a direct relationship with external obstacles, from the sociocultural point of view, which still considers the judiciary a profession for men.

280. BRASIL. Website Supreme Federal Court. Histórico. Available at: <<https://portal.stf.jus.br/textos/verTexto.asp?servico=sobreStfConhecaStfHistorico>>. Last visited 5 December 2022.

281. BRASIL. Website Supreme Federal Court. Presidentes. Available at: <<https://portal.stf.jus.br/ministro/listarPresidente.asp>>. Last visited 5 December 2022.

282. Alves, 2017, p. 367

283. BRASIL. Website Senate. Regimento Interno. Available at: <https://www.senado.gov.br/comissoes/documentos/SGM/regimentoArt_332.pdf>. Last visited 5 December 2022.

284. Filho, Moreira, Sciammarella, 2015, p. 74



Historically, this profession was exercised by men, and, therefore, the institutional structure still favors them. From a supposedly neutral entering to reaching a higher position in the career, gender discrimination is innumerable.

The public examination for magistracy requires, in addition to technical knowledge, physical and mental health, that the candidate corresponds to a gender stereotype pattern²⁸⁵ associated with modesty and discretion.

Since the examining boards – a space of power and prestige, as previously mentioned – are mostly occupied by men, they reproduce a microcosm of the judiciary as a whole, revealing the immense gender asymmetry²⁸⁶ that still exists.

Commonly, these groups that make up the examining boards are filled by indication coming from the courts, which further exposes gender inequality. Since 1988, women have accounted for approximately 10% of this type of group²⁸⁷.

From a practical point of view, what can be seen is that an examining board mostly or exclusively composed of men reproduce discrimination based on sexist questions. Female candidates often mention that they are subjected to questions under the gender stereotype bias²⁸⁸.

Judge Maria Benice Dias, from the Court of Justice of Rio Grande do Sul (TJ-RS), reports that she was asked about her virginity during her interview, as she told to Carta Forense magazine in March 2006²⁸⁹.

Another magistrate, during an interview with researcher Bonelli²⁹⁰, reports that she was asked how she would deal with a situation in which a lawyer came on to her. She says that the examining board was worried about knowing if she would call the police, if she would solve it alone, or if she would act in a hysterical way.

All these facts reveal that, although the process of entering the judiciary is intended to be neutral, it is strongly marked by sexism. The researchers²⁹¹ note that what is presented as neutral is, in fact, a very masculine and patriarchal pattern, ignoring gender differences.

285. Op.cit.

286. Alves, 2017, p. 355

287. Ibidem

288. Kahwage E Severi, 2019; Bonelli, Oliveira, 2020, p. 154

289. Filho, Moreira, Sciammarella, 2015, p. 72

290. Bonelli, 2013

291. Filho, Moreira, Sciammarella, 2015, p. 72; Bonelli, Oliveira, 2020, p. 147

"This idea of neutrality took as a reference the professionals who dominated the activity during its constitution and consolidation, in this case, the socially favored white men. The posture of authority, the clothing model, the representations of being professional were elaborated as universal, but they were based on particular models that expressed specific gender, race and class"²⁹².

Despite an entry and a path full of discriminatory situations, among women lawyers, public careers are perceived as more egalitarian and viable with regard to reconciling professional and personal life ²⁹³, especially in relation to family care work. However, even if they manage to enter the career, what is perceived in the day-to-day of the profession are environments and positions designed for people without the need to exercise family responsibility, as exemplified by researcher Alves²⁹⁴:

"All of this is reflected in the hours projected as official for work, the chronic lack of day care centers and nurseries on the premises of the Judiciary, the institutional design of promotions and entitlements that, as a rule, cause a permanent change of jurisdiction. There are countless examples and aspects that intensify this perception that the public space of the judiciary is conditioned by a certain model of hegemonic patriarchal and male private life."

Such facts contribute to the fact that the parenting experience is very different between men and women. It is possible to observe that, in comparison with fatherhood, motherhood is less common at the top of the career ladder. Among judges, 96% of men are fathers and 84% of women are mothers. In hierarchically lower positions, this difference is much smaller. Among substitute judges (entry position in the Judicial Branch), for example, the difference is almost zero: 60% of men are fathers and 58% of women are mothers²⁹⁵.

Career progression can also be associated or not with marital relationships. The male judges claim that having a spouse favored their professional advancement. Among women, however, this fact is not seen as relevant. Nevertheless, they point out that what can really be related to their career progression is the way they manage their emotions, which can be considered a "work of emotions"²⁹⁶.

This work of emotions performed by women is related to the range of feelings they need to manage as a result of attacks on their gender subjectivity. Within institutions, they need to face

292. Bonelli, Oliveira, 2020, p. 147

293. Idem, 2020, p. 144

294. Alves, 2017, p. 360

295. Bonelli, Oliveira, 2020, p. 157

296. Hochschild, 2003 apud Bonelli, Oliveira, 2020, p. 158



situations of invisibility, situations where their voices will not be heard, situations where they self-censor, letting only the emotions expected for the workspace shine through²⁹⁷.

In an interview with researchers Roberto Filho, Rafaela Moreira e Ana Paula Sciammarella²⁹⁸, magistrates who reached higher career positions, report that expressing firmness and rigidity were hallmarks of their trajectories. In addition to the need to demonstrate that they were more capable than men – not just as capable as them.

This finding is reinforced in the research by Diego Arguelhes, Juliana Gomes and Rafaela Nogueira²⁹⁹ who analyzed interpersonal relationships, in the professional sphere, between ministers of the Supreme Federal Court. The researchers realized that the female ministers' competence was often put to the test by fellow male ministers. Commonly, the male judges asked to review the legal opinions elaborated by their female colleagues, using their right to request a review. Sometimes, this manifestation took place publicly, causing embarrassment for the female minister, not only among colleagues, but beyond the institution, since some Supreme Federal Court deliberations are televised³⁰⁰.

In addition, researcher Alves³⁰¹ also points out that many developments in a career in the judiciary take place in informal meetings outside working hours, often creating a relationship of “gender-biased fraternity”.

In an attempt to not accept being on the sidelines, a place where these women are often placed in their day-to-day professional activity, most of them tend to annul their gender subjectivities to the point of not publicly acknowledging that they may have suffered discrimination for being women³⁰².

Since there is no legal impediment for women to enter the career, and the idea that “it’s just a matter of time” for them to reach higher positions in the profession still prevails, several magistrates do not identify gender as a factor that makes their permanence or career progression slower. Discrimination – subtle or, to some extent, already naturalized – is camouflaged in the appearance that the judiciary is also fair within its institutions, with equal opportunities for all people³⁰³.

297. Bonelli, Oliveira, 2020, p. 158

298. Filho, Moreira, Sciammarella, 2015, p. 70

299. ARGUELHES, Diego Werneck; GOMES, Juliana Cesário Alvim; NOGUEIRA, Rafaela. Gênero e Comportamento Judicial no Supremo Tribunal Federal: os ministros confiam menos em relatoras mulheres?. Revista Brasileira de Políticas Públicas, v. 8, nº 2, 2018. Available at: <<https://www.rel.uniceub.br/RBPP/article/view/5326>>. Last visited 5 December 2022.

300. Leite, 2019, p. 155

301. Alves, 2017, p. 360

302. O mesmo, 2017, p. 358

303. Bonelli, Oliveira,, 2020, p. 146

Bonelli³⁰⁴ considers that this naturalization – both of discrimination and of the role they play in the institution, mostly far from positions that symbolize power – may be related precisely to the low representation in the sector. Since they do not see themselves represented in the bodies presented there, they need to deal with the absence of those they could call equals, they need to deal with the imposed non-belonging, and the way in which this occurs can be “mimicry of the valued model”, seen as a pattern there.

Given this, the ideology of professionalism that prevails in the judiciary, in which professional excellence is inserted in a supposedly neutral environment, needs to be rethought³⁰⁵. As well as the very notion of neutral in an environment whose current pattern is male and white. The defense of neutrality cannot make discrimination invisible or prevent an unequal distribution of privileges, since to overcome inequality it is necessary to act in an unequal way with those who are different.

Therefore, the biggest current challenge is not in the search for an expansion of the female presence in the judiciary³⁰⁶, but “in the construction of a gender alterity that promotes diversity and heterogeneity in the summits”³⁰⁷ and that recognizes gender differences so that there is a promotion of equity in order to achieve equality.

4.2.3 Women: a heterogeneous group

If, on the one hand, the identity construction of a group depends on the strengthening of what is similar to them, on the other hand, unifying a heterogeneous group can mask problems experienced by parts of this group. Even more attention should be given to groups of political minorities, which may be composed of people who accumulate identity markers that make them even more invisible or excluded from public spaces and spaces of power.

Alves³⁰⁸ points out that given the diversity that describes the “women” group, it is interesting to question whether it is even possible to build an “identity of the female magistrate” and whether it is even necessary for this to be done.

With this question in mind, this subchapter will present some data that demonstrate how the low representation of women in the judiciary, as well as institutional discrimination, are aggravated when it is considered markers of race/ethnicity, social class, disability, among others. It is important to emphasize that each woman experiences gender in a different way³⁰⁹.

304. Bonelli, 2011

305. Bonelli, Oliveira, 2020, p. 146

306. Filho, Moreira, Sciammarella, 2015, p. 74

307. Ibidem

308. Alves, 2017, p. 356

309. PRATT, Carla D. Sisters in law: black women lawyers' struggle for advancement. Michigan State Law Review, [East Lansing, MI], nº 5, p. 1.777-1.795, August 2012. Available at: <<https://www.michiganstatelawreview.org/2012>>. Last visited 5 December 2022.



When thinking of this overlapping of identity markers, it is necessary to be aware of the concept of intersectionality, which emerged from the black feminist movement in the United States and United Kingdom in the 1970's and was systematized in 1989 by Kimberlé Crenshaw.

According to Crenshaw, intersectionality is:

"...a conceptualization of the problem that seeks to capture the structural and dynamic consequences of the interaction between two or more axes of subordination. She specifically addresses the ways in which racism, patriarchy, class oppression, and other discriminatory systems create basic inequalities that structure the relative positions of women, races, ethnicities, classes, and others. In addition, intersectionality deals with how specific actions and policies generate oppressions that flow along such axes, constituting dynamic or active aspects of disempowerment"³¹⁰.

What Crenshaw demonstrates is that one cannot carry out social analyzes of minority groups without taking into account the system of oppression, in other words, oppression of different origins, in which these people find themselves. The origins of sexism are not the same as racism or discrimination by social class and they operate differently, but at some point they intersect and, obviously, oppress most those who are at the crossroads.

It is no different for law professionals who seek to enter the judiciary and later advance in their careers. In this way, the intersection of gender, race and social class forms more obstacles³¹¹ for those who are at the base of the social pyramid in terms of access: black, indigenous and low-income women.

Researchers Tharuell Kahwage and Fabiana Severi³¹² draw attention to the fact that there is few research about the profile of women in the judiciary that deepens towards an intersectional perspective and they denounce that:

"If, on the one hand, there is no lack of statistics on the incarceration of blacks and the violence against them, on the other hand, their voices and existences do not seem to resonate in other areas that are not related to such spaces of subordination and exclusion".

Despite this and considering the available research on the profile of the judiciary, they show that white, heterosexual, middle-class women without disabilities are the universal parameter of women's experience when the subject is "women in the judiciary"³¹³.

310. CRENSHAW, Kimberlé. Documento para o encontro de especialistas em aspectos da discriminação racial relativos ao gênero. Available at: <<https://www.scielo.br/j/ref/a/mbTpP4SFXPnJZ397j8fSBQQ/?lang=pt&format=pdf>>. Last visited 5 December 2022.

311. Bonelli, Oliveira, 2020, p. 151

312. Kahwage, Severi, 2019, p. 60

313. Kahwage, Severi, 2019, p. 59; Bonelli, Oliveira, 2020, p. 150

Therefore, it is important to state that, although black and indigenous women, many from lower classes, are not the majority of female judges, they exist. It is possible to observe an increase in their presence in the judiciary from 2015 onwards³¹⁴, as a consequence of the affirmative actions instituted in 2002, such as the public policies of inclusion in higher education, with the creation of racial gender parity targets (for blacks and indigenous people) and social (for low-income people who have always studied in public schools), in addition to incentives to promote ethnic-racial equality in various areas of society. This context influenced the CNJ to also reserve vacancies in the judiciary, since 2014, in order to bring greater diversity to the composition of the Judiciary. This policy must be in force until 2024³¹⁵.

The researchers Bonelli and Oliveira³¹⁶ observe that race tends to be a greater obstacle for women at the beginning of their careers. Black and indigenous women tend to encounter more hostility than black and indigenous men³¹⁷.

The reservation of vacancies for black/indigenous judges has been more effective for men, reaching 24% of substitute black male judges, while this percentage remains at 16% for substitute black female judges³¹⁸.

However, after entry, career progression for both follows the same pace, in what the researchers call a “perverse equality”³¹⁹ of low representation. There are 18% of female titular judges and 19% of black or indigenous male titular judges; and 12% of *desembargadoras* and 13% of *desembargadores*.

Although there have been advances in the composition of the judiciary, the legal profession remains male and with an institutional culture that pushes people not aligned with the current standard to annul their subjectivities³²⁰, so that they can survive and join the group that, after the public contest, also became part: the select group of magistrates, which is still very homogeneous.

In order to adapt to the little diverse group, Neallani³²¹ observes that racialized people use mechanisms to “become raceless”, as was also observed in the previous subchapter when women naturalize gender discrimination to adapt to the space. Therefore, at this intersection of gender and race, racialized women find themselves in a position of nullifying these two identity markers.

314. Bonelli, Oliveira, 2020, p. 159

315. Ibidem

316. Ibid., p. 160

317. Ibidem

318. Bonelli, Oliveira, 2020, p. 160

319. Ibid., p. 161

320. Kahwage, Severi, 2019, p. 53

321. Neallani, 1992, apud Kahwage, Severi, 2019, p. 67



Among the discrimination experienced by racialized women, those perpetrated by colleagues from the judicial bodies they are part of are the most humiliating³²². Thus, in a hostile environment, these women use strategies that allow them to remain in the profession. Researchers Tomlinson, Muzio, Sommerlad, Webley and Duff (2013) interviewed 68 white, black and ethnic minority women in the legal profession and managed to point out two survival strategies in the legal environment by these groups. One of them is the assimilation strategy, in which there is the “display of behavioral patterns and traits that signaled conformity with the dominant white and male culture”³²³. The second strategy was not to appear “ethnic”, since there is a stereotype that certain minority groups on ethnic-racial grounds have “unrefined” practices, which would be incompatible with the legal environment³²⁴.

What the research presented in this chapter shows is that the feminization of the judiciary does not seem to be enough to guarantee greater representation of women in high positions – a situation aggravated when other identity markers are considered – and it does not even seem to be the case. be enough to change an institutional culture that insists on reproducing subtle gender and race discrimination.

This finding points to the need for a concrete agenda aimed at promoting gender equality, considering: public policies with this bias³²⁵; and also the unveiling of power dynamics³²⁶ and subtle discrimination so that they can be faced.

Therefore, any attempt to understand gender inequality in the judiciary, in order to overcome it, must go beyond counting numbers and presenting percentages. Kahwage and Severi³²⁷ suggest deepening with regard to the impact of feminization for the profession and for the Law, especially from the point of view of judicial deliberative processes ³²⁸ and it is in this sense which will be attempted in the next chapters 5 and 6.

322. Kahwage, Severi, 2019, p. 66

323. Tomlinson; Múzio; Férias de verão; Webley; Duff, 2013, p. 257 apud Kahwage, Grave, 2019, p. 67

324. Ibidem

325. Alves, 2017, p. 367

326. Idem, 2017, p. 369

327. Kahwage E Severi, 2019, p. 52

328. Ibidem

5. Initiatives to overcome challenges and achieve Gender Equality in the Brazilian judicial branch

Aiming to understand better who is the women in the Brazilian magistrature and with this design better policies to foster their participation in the institutions they work in as also guarantee their presence in high level positions, AMB in partnership with *Escola Nacional de Formação e Aperfeiçoamento de Magistrados (Enfam)* elaborated a inedit research entitled *O Perfil das Magistradas Brasileiras: rumo à equidade de gênero nos tribunais*³²⁹. The research is the first one exclusively dedicated to the women magistrate held by AMB in 73 years of its history. The research was idealized and coordinated by the magistrate Eunice Prado (TJ-PE).

1.400 answers were analyzed and one of the questions was about what measures did they consider effective to fight against gender inequality in the judiciary. More than 80% of them mentioned these following initiatives listed below in decreasing order:

- female participation in examination boards for contests;
- female participation in the main panel of events in the judicial schools;
- sufficient opportunities for female judges to take up positions in court administration;
- encouraging female scientific production;
- opportunities for female judges to act as teachers and lecturers in judicial schools;
- the effective performance of committees and study groups to increase female participation in the judiciary;

329. AMB. AMB Mulheres apresenta dez medidas para a concretização da igualdade de gênero no Judiciário. 2022. Available at: <<https://www.amb.com.br/amb-mulheres-apresenta-dez-medidas-para-a-concretizacao-da-igualdade-de-genero-no-judiciario/>>. Last visited 5 December 2022.



- holding events and campaigns to change the institutional culture in the courts;
- training so that more women can assume management positions;
- equal appointment of judges to high-ranking positions in the career with reservation of vacancies;
- and gender parity target policy.

Considering these possible measures presented by women magistrates, this chapter will present some initiatives that are being held in the Brazilian Judicial Branch and that are already aligned to above mentioned measures and also will present other initiatives in course with the intention to promote gender equality in the Judicial Branch.

As the beneficiary of this project is AMB, an association of magistrates whose members serve in the Brazilian Judicial Branch, the research conducted to find these undermentioned initiatives focused on the following bodies: STF, CNJ, Higher Courts and Lower Courts.

It is important to remember that it is also an approach of this research to bring a perspective about women magistrate in higher positions. For this reason the research also focused on draft bills related to this subject.

METHODOLOGICAL APPROACH

The research started with a search on the website of the following institutions: Supreme Federal Court, National Council of Justice and Higher Court's courts. The search was based on the key-words "gender equality" and "women in leadership". All the results were found in the institutions' "news area".

While searching in the website of the Higher Court's courts, some highlighted news were about initiatives in the respective Lower Court's court linked to that Higher Court's court. For example: while searching on the website of the Superior Electoral Court (a Higher Court's court), it was possible to find initiatives from some Regional Electoral Courts (which are Lower Court's courts).

The criteria to select the initiatives were based on the fact if there was an explicit mention of and/or intention in promoting gender equality.

In addition, two initiatives listed in the chapter were found by a direct search of them, which is the case of Programa Indira and Recommendation 102/2021, both mentioned in the seminar Mulheres na Justiça, organized by the National Council of Justice.



5.1 Supreme Federal Court

TRAINING

Talk Mulheres em posição de liderança: uma questão de equidade

As part of the project *Diálogos com o Supremo*, an initiative of the Supreme Federal Court (STF), conducted by *Secretaria de Altos Estudos, Pesquisas e Gestão da Informação (SAE)*, in November, 2022 happened a talk about gender equality and leadership for all the public servants with a live broadcast via YouTube. For the talk, entitled *Mulheres em posição de liderança: uma questão de equidade*, the professor and PhD in Philosophy Gisèle Szczyglak was invited to guide a reflection towards critical thinking, interpersonal relationships, leadership and improvements in the public service – all themes approached by a gender perspective. Professor Gisele is also specialized in supporting institutional transformation, which is necessary when talking about promotion of gender equality within institutions, once it will demand cultural and structural changes³³⁰.

KNOWLEDGE PRODUCTION

*eBook Mulheres em Direito Constitucional*³³¹

This ebook presents 100 bibliographical references written by women authors and researchers. The aim of the ebook is to highlight the female knowledge production in the Law field and, in this case, with focus on Constitutional Law. As the field is historically marked by a patriarchal perspective, a publication like this leverages the discussion about women's presence in this field and also expresses that women are capable of producing content not only about gender issues – although the gender lens will almost always be present. The publication also shows national legislations that promoted Women's Rights along the years, as also women in the magistrature, social inequalities and others³³².

330. BRASIL. STF. STF promove palestra sobre liderança e equidade de gênero. 2022. Available at: <<https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=497078&ori=1>>. Last visited 5 December 2022.

331. BRASIL. STF. Produção de mulheres em direito constitucional [recurso eletrônico]: bibliografia, legislação e jurisprudência temática / Supremo Tribunal Federal. – Brasília : STF, Secretaria de Altos Estudos, Pesquisas e Gestão da Informação, 2022. Available at: <https://www.stf.jus.br/arquivo/cms/bibliotecaConsultaProdutoBibliotecaBibliografia/anexo/Producao_mulheres_direito_constitucional.pdf>. Last visited 5 December 2022.

332. BRASIL. STF. STF publica livro sobre produção de mulheres em direito constitucional. Available at: <<https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=484369&ori=1>>. Last visited 5 December 2022.



Magazine Suprema³³³

The Magazine *Suprema* was released in June, 2021 and since then it has been published six-monthly. It is aligned with the Agenda 2030, mainly because it endorses criteria of gender and race equality as also regional diversity in its Editorial Council composition, in its peer review team, and also in its articles published. As an example that proves this, the last edition of Magazine *Suprema* had 12 articles published of which 2 of them were written exclusively by women and 3 by a pair of a woman and a man. Since the beginning, the publication received more than 9.000 access and downloads, which, according to STF's evaluation, represents a great visibility³³⁴.

5.2 National Council of Justice

NORMATIVE ACTS

Recommendation 42/2012³³⁵

This normative action was the first one related to gender equality in the institution, according to the National Council of Justice (CNJ) search platform. It recommends the use of inclusive language regarding the gender of the public servant by all the courts of the Brazilian Judicial Branch. It is written:

Art. 1 It is recommended to the courts indicated in items II to VII of Art. 92 of the Federal Constitution that:

I) when referring to positions in the Judicial Branch, observe the gender of the occupant, respecting the female or male condition;

II) gender-inclusive language, referring to positions, is observed in official acts of appointments, investitures, designations, functional documents, personal identification badges, license plates, business cards, identification plates, among others aimed at identification

333 Suprema [recurso eletrônico] : revista de estudos constitucionais / Supremo Tribunal Federal. – v. 1, nº 1 (jan./jun. 2021) - . - Brasília: STF, Secretaria de Altos Estudos, Pesquisas e Gestão da Informação, 2021 - . 1 recurso online (v.) Available at: <<https://suprema.stf.jus.br/index.php/suprema/issue/view/3/3>>. Last visited 5 December 2022.

334. BRASIL. STF. Ações institucionais do primeiro ano da gestão do ministro Luiz Fux fortalecem laços do Judiciário com a sociedade. 2021. Available at: <<https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=472787&ori=1>>. Last visited 5 December 2022.

335. BRASIL. Recomendação nº 42 de 08/08/2012. CNJ. 2012. Available at: <<https://atos.cnj.jus.br/atos/detalhar/840>>. Last visited 5 December 2022.

Resolution 255/2018³³⁶

The Resolution 255/2018 was signed by minister Carmen Lúcia, the second woman to occupy the presidency of STF and consequently CNJ. This normative action was the first one more intentional in the perspective of promoting gender equality in the Brazilian Judicial Branch, because it oriented the creation of a national policy about the issue, specifically related to increasing women participation in the field. As it is written in the Resolution 255/2018, its goal is to:

Art. 1 Establish the National Policy to Encourage Female Participation in the Judicial Branch.

Art. 2 All branches and units of the Judicial Branch must adopt measures to ensure gender equality in the institutional environment, proposing guidelines and mechanisms that guide judicial bodies to act to encourage the participation of women in leadership and advisory positions, in examination boards for contests and as panelists at institutional events.

Resolution 270/2018³³⁷

Guarantee the possibility of using the social name for trans, transvestite and transsexual people who use judicial services, magistrates, interns, public servants and other workers of the Judicial Branch.

Recommendation 85/2021³³⁸

It recommends to some Higher and Lower Courts, an special attention for gender parity in the Organizing Committees and Examination Boards of their contests. It is written:

Art. 1 Recommend to the *Tribunais de Justiça dos Estados, Tribunais Regionais Federais, Tribunais Regionais do Trabalho, Tribunais de Justiça Militar dos Estados, Superior Tribunal Militar* that they observe, in the vacancies of their nominations, gender parity composition in the formation of the Organizing Committees and the Examining Boards of their respective public tenders for entry into the judiciary career.

336. BRASIL. Resolução nº 255 de 04/09/2018. CNJ. 2018. Available at: <<https://atos.cnj.jus.br/atos/detalhar/2670>>. Last visited 5 December 2022.

337. BRASIL. Resolução nº 270 de 11/12/2018. CNJ. 2018. Available at: <<https://atos.cnj.jus.br/atos/detalhar/2779>>. Last visited 5 December 2022.

338. BRASIL. Recomendação nº 85 de 12/01/2021. CNJ. 2021. Available at: <<https://atos.cnj.jus.br/atos/detalhar/3670>>. Last visited 5 December 2022.



Resolution 376/2021³³⁹

It determines that all units of the Brazilian Judicial Branch must adopt as an obligation the use of gender inclusive language to nominate the profession of the public servant in all communications as in any other institutional uses, for example department identification signs.

FIGHTING INSTITUTIONAL VAW***Protocolo para Julgamento com Perspectiva de Gênero***

By the means of [Recommendation 128/2022](#)³⁴⁰ CNJ recommends the use of the *Protocolo para Julgamento com Perspectiva de Gênero*, a measure to foster the implementation of the national policy of gender equality established by Resolution 255/2018 (about increasing women participation in the Judicial Branch) and Resolution 254/2018 (about fighting VAW related to the women users of the judiciary). The Protocol must be adopted by all the bodies of the Judicial Branch and it is applicable for outside judgments as much as it is for inside judgments, which means that administrative procedures must be analyzed by its perspective. Considering the women public servants' fear of losing opportunities in the career if reclaiming their rights, this protocol has the intention to mitigate this impression by providing a more equal treatment about gender issues faced within the institution³⁴¹.

Comissões de Prevenção e Enfrentamento do Assédio Moral e do Assédio Sexual

According to the [Resolution 351/2020](#)³⁴², one *Comissão de Prevenção e Enfrentamento do Assédio Moral e do Assédio Sexual* must be established in each court of the Judicial Branch. For Salise Monteiro, CNJ counselor, as a measure to push the courts to implement the Resolution 351/2020, courts that do not attend to it will lose points in the competition for the Prize *CNJ de Qualidade*. She also pointed out that the resolution intend to stimulate the court's training centers to include the main points of the normative action as also information about moral and sexual harassment in the curriculum of the training programs³⁴³.

339. BRASIL. Resolução nº 376 de 02/03/2021. CNJ. 2021. Available at: <<https://atos.cnj.jus.br/atos/detalhar/3765>>. Last visited 5 December 2022.

340. BRASIL. Recomendação nº 128 de 15/02/2022. CNJ. 2022. Available at: <<https://atos.cnj.jus.br/atos/detalhar/4377>>. Last visited 5 December 2022.

341. BRASIL. CNJ. Protocolo para julgamento com perspectiva de gênero [recurso eletrônico] / Conselho Nacional de Justiça. — Brasília: Conselho Nacional de Justiça – CNJ; Escola Nacional de Formação e Aperfeiçoamento de Magistrados – Enfam, 2021. Available at: <<https://www.cnj.jus.br/wp-content/uploads/2021/10/protocolo-18-10-2021-final.pdf>>. Last visited 5 December 2022.

342. BRASIL. Resolução nº 351, DE 28 DE OUTUBRO DE 2020. CNJ. 2020. Available at: <<https://atos.cnj.jus.br/files/original-192402202011035fa1ae5201643.pdf>>. Last visited 5 December 2022.

343. BRASIL. STM. Ansiedade, depressão e suicídio são as maiores consequências do assédio moral e sexual. 2022. Available at: <<https://www.stm.jus.br/informacao/agencia-de-noticias/item/12495-ansiedade-e-depressao-inclusive-com-suicidios-sao-as-doencas-mais-comuns-em-consequencia-de-assedio-moral-e-sexual>>. Last visited 5 December 2022.

Security Measure

By the means of [Recommendation 102/2021](#)³⁴⁴ the Judicial Branch must adopt security measures to prevent and mitigate VAW perpetrated against women magistrates and women public servants of this sector. It is understood as security measures: the distribution of bullet proof vests or the establishment of commissions dedicated to guarantee women's security besides others.

KNOWLEDGE PRODUCTION

eBook *Protocolo para Julgamento com Perspectiva de Gênero*³⁴⁵

As a way to demonstrate how the *Protocolo para Julgamento com Perspectiva de Gênero*, recommended by Recommendation 128/2022, should be put into practice CNJ elaborated an ebook with: concepts related to the gender equality and VAW universe; gender issues more often in each court; and a guide (step by step) directed to the magistrates for the protocol to be implemented.

Booklet *Assédio moral sexual e discriminação – Política de Prevenção e Enfrentamento no âmbito do Poder Judiciário*³⁴⁶

This booklet was elaborated to define the many types of harassment and its consequences. It also presents case studies, measures of prevention, and the responsibilities of the commissions established by Resolution 351/2020 for the purpose of fighting moral and sexual harassment within the Judiciary Branch.

ENCOURAGING WOMEN'S PARTICIPATION

Repositório Nacional de Mulheres Juristas

According to [Resolution 418/2021](#)³⁴⁷ all the courts must create an online repository to systematize information about women magistrates with different expertises aiming to contribute with the implementation of the national policy of gender equality established by "Resolução 255/2018".

344. BRASIL. Recomendação nº 102, de 19/08/2021. CNJ. 2021. Available at: <<https://atos.cnj.jus.br/files/original-12020582021082061200eaa7982d.pdf>>. Last visited 5 December 2022.

345. BRASIL. CNJ. Protocolo para julgamento com perspectiva de gênero [recurso eletrônico] / Conselho Nacional de Justiça. — Brasília: Conselho Nacional de Justiça – CNJ; Escola Nacional de Formação e Aperfeiçoamento de Magistrados – Enfam, 2021. Available at: <<https://www.cnj.jus.br/wp-content/uploads/2021/10/protocolo-18-10-2021-final.pdf>>. Last visited 5 December 2022.

346. BRASIL. CNJ. ASSÉDIO MORAL, SEXUAL E DISCRIMINAÇÃO Política de Prevenção e Enfrentamento no âmbito do Poder Judiciário. 2021. Available at: <<https://www.cnj.jus.br/wp-content/uploads/2021/09/cartilha-assediomoral-aprovada.pdf>>. Last visited 5 December 2022.

347. BRASIL. Resolução nº 418 de 20/09/2021. CNJ. 2021. Available at: <<https://atos.cnj.jus.br/atos/detalhar/4116>>. Last visited 5 December 2022.



The main points about the repository structure and functioning are described in above mentioned normative action, as follows:

Art. 1 Article 2 of “Resolução 255/2018” of CNJ becomes effective, with the addition of §§ 1, 2, 3, 4 and 5:

“Art. 2nd ”

§ 1 The courts must create an online repository for the registration of data from female jurists with expertise in different areas of law, for the purposes of use in actions concerning the National Policy dealt with in this Resolution.

§ 2 The repository referred to in the previous paragraph must be widely publicized, and the courts must promote campaigns that encourage the recognition of women within the scope of the Judiciary.

§ 3 The National Council of Justice will maintain its own repository and publicize the other repositories of women jurists created by the courts.

§ 4 The courts must, whenever possible, carry out a prior consultation with the repository, in order to identify the names of female jurists, to enable their participation in institutional events and actions and the promotion of bibliographic citations, with a view to effecting gender parity.

§ 5 The repository must be updated annually and the information must be sent by the courts to the CNJ.” (NR)

By the means of the [Decree 176/2022](#)³⁴⁸ CNJ instituted the *Repositório Nacional de Mulheres Juristas*. It is a public online repository exclusively dedicated to collecting women's names of magistrates and its area of expertise with the purpose to leverage women's participation in the institution by bringing visibility to them and stimulating more intentional decisions related to: composition of panelists in institutional events; nomination to examination boards and others.

348. BRASIL. Portaria nº 176 de 27/05/2022. CNJ. 2022. Available at: <<https://atos.cnj.jus.br/atos/detalhar/4563>>. Last visited 5 December 2022.

5.3 Higher Courts

5.3.1 Superior Court of Justice

ENCOURAGING WOMEN'S PARTICIPATION

*Programa Equilibra*³⁴⁹ and *Humaniza STJ*³⁵⁰

The Superior Court of Justice (STJ) created the *Programa de Participação Institucional Feminina no Superior Tribunal de Justiça*, named *Programa Equilibra STJ* in March, 2019, ending in February, 2021. This program promoted a series of trainings in different formats (talks, talking circles, debates) about women's health and also moral and sexual harassment. It also created the Ombudsperson Office for Women and published resolutions and instructions to promote gender equality within the institution (as it will be both undermentioned).

According to the [Normative Instruction 16/2020](#)³⁵¹, last regulamentation of Programa Equilibra, it aimed to:

- I – ensure the balance of opportunities between men and women in Court units;
- II – women's valorization policies;
- III – prevention of the occurrence of harassment, violence or discrimination against women;
- IV – encourage female participation in the institutional environment;
- V – promote education and awareness actions on the subject.

After two years of existence, the regulamentation of Programa Equilibra was substituted by another one related to a new program *Programa de Gestão Institucional de Direitos Humanos* named *Humaniza STJ*. This last one has a more intersectional and inclusive perspective about equality in the institution, once it presents goals aligned with the promotion of gender and race equality; the combat of any kind of discrimination (including religious intolerance and ableism).

According to the [Normative Instruction 6/2021](#)³⁵², Humaniza STJ aims to:

349. BRASIL. STJ. Em semana de homenagens à mulher, STJ lança programa Equilibra. 2019. Available at: <https://www.stj.jus.br/sites/portalp/Paginas/Comunicacao/Noticias-antigas/2019/2019-03-11_21-24_Em-semana-de-homenagens-a-mulher-STJ-lanca-programa-Equilibra.aspx>. Last visited 5 December 2022.

350. BRASIL. STJ. STJ regulamenta Programa de Gestão Institucional de Direitos Humanos. 2021. Available at: <<https://www.stj.jus.br/sites/portalp/Paginas/Comunicacao/Noticias/01032021-STJ-regulamenta-Programa-de-Gestao-Institucional-de-Direitos-Humanos.aspx>>. Last visited 5 December 2022.

351. BRASIL. Instrução Normativa STJ/GP nº 16 de 8/10/2020. STJ. 2020. Available at: <https://bdjur.stj.jus.br/jspui/bitstream/2011/147881/Int_16_2020_GP.pdf>. Acesso em 5 de dezembro de 2021.

352. BRASIL. Instrução Normativa STJ/GP nº 6 de 23/02/2021. STJ. 2021. Available at: <https://bdjur.stj.jus.br/jspui/bitstream/2011/151044/Int_6_2021_GP.pdf>. Acesso em 5 de dezembro de 2021.



I – develop actions to give effectiveness, where applicable, to the aspects related to the Human Rights calendar of the National Council of Justice, instituted by Ordinance CNJ nº 284/2020, in particular those concerning:

- a) gender equality and female institutional participation;
- b) elimination of violence against women;
- c) racial equality and institutional participation of blacks, browns and ethnic groups that make up the STJ workforce;
- d) preventing and combating moral harassment and sexual harassment;
- e) combating discrimination of any kind, especially those of gender, race, ethnicity, sexual, religious and persons with disabilities;
- f) promotion of accessibility and inclusion;
- g) promotion of sustainability;
- h) promotion of health, safety at work, sport and quality of life;
- i) promotion of dialogue, peace, tolerance and solidarity;

II – promote the balance of opportunities between men and women; blacks, browns and whites in the Court's units;

III – prevent occurrences of harassment, violence or discrimination;

IV – carry out studies and present diagnoses that lead to the improvement of institutional norms regarding the themes of Human Rights within the scope of the STJ;

V – promote education and awareness actions on issues of Human rights.

Humaniza STJ gathers programs, projects, initiatives in the perspective of promoting Human Rights and fighting any kind of discrimination. For this reason, although *Programa Equilibra* doesn't have its own regulation anymore, it is still happening under the *Humaniza STJ* rules.

FIGHTING INSTITUTIONAL VAW

Ombudsperson Office for Women

This project was released during the Covid-19 pandemic in 2020 and its goal is to promote a space of active listening of women public servants. The Ombudsperson Office for Women has the intention to be a channel where the women public servant will have the chance to report her demands about gender equality within the institution, including more institutional participation and also an institutional position in cases of any kind of violence. For STJ, by the means of the demands, this project also allows the institution to know which policies must be improved.

According to STJ evaluation, during the pandemic in 2020, this project was also considered an important communication channel apart from the institution, once the rate of violence against women raised and most of them were working in a home-office format³⁵³.

NORMATIVE ACTS

Resolution 5/2019³⁵⁴

The Resolution 5/2019 determines that the public servant in maternity or paternity leave will have priority to schedule their vacations for the immediate time after the end of the license.

Resolution 6/2019³⁵⁵

The Resolution 6/2019 determines that nominations for commission positions and positions of trust in the Management and Advisory Groups must, as far as possible, respect the proportionality between men and women.

Normative Instruction 6/2019³⁵⁶

The Normative Instruction 6/2019 determines that the women intern dismissed due to the birth of a child may restart the internship at the court with exemption from participation in a new selection process.

5.3.2 Superior Electoral Court

KNOWLEDGE PRODUCTION

eBook *Participa Mulher*³⁵⁷

The ebook *Participa Mulher* was elaborated by the Superior Electoral Court (TSE) with the intention to inspire the political participation of women in the public arena. One of its sections is dedi-

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353. BRASIL. STJ. STJ institui Ouvidoria das Mulheres, canal de comunicação para as servidoras do tribunal 2020. Available at: <<https://www.stj.jus.br/sites/portalp/Paginas/Comunicacao/Noticias/17082020-STJ-institui-Ouvidoria-das-Mulheres--canal-de-comunicacao-para-as-servidoras-do-tribunal.aspx>>. Last visited 5 December 2022.
354. BRASIL. Resolução STJ/GPN nº 5 de 01/03/2019. STJ. 2019 Available at: <http://www.stj.jus.br/static_files/STJ/Midias/arquivos/Noticias/Resolu%C3%A7%C3%A3o%205.pdf>. Last visited 5 December 2022.
355. BRASIL. Resolução STJ/GPN nº 6 de 01/03/2019. STJ. 2019 Available at: <http://www.stj.jus.br/static_files/STJ/Midias/arquivos/Noticias/Resolu%C3%A7%C3%A3o%206.pdf>. Last visited 5 December 2022.
356. BRASIL. Instrução Normativa STJ/GPN nº 6 de 01/03/2019. STJ. 2019 Available at: <http://www.stj.jus.br/static_files/STJ/Midias/arquivos/Noticias/Instru%C3%A7%C3%A3o%20Normativa%206.pdf>. Last visited 5 December 2022.
357. BRASIL. TSE. #Participa mulher [recurso eletrônico] : por uma cidadania feminina plena : homenagem à Ministra Cármen Lúcia / Tribunal Superior Eleitoral. – Brasília : Tribunal Superior Eleitoral, 2020. Available at: <https://www.tse.jus.br/++theme++justica_eleitoral/pdfjs/web/viewer.html?file=https://www.tse.jus.br/comunicacao/noticias/arquivos/livro-participamulher-por-uma-cidadania-feminina-plena/@download/file/TSE-livro-participa-mulher-por-uma-cidadania-plena-28-05-2020.pdf>. Last visited 5 December 2022.



cated to the pioneerism of women in Brazilian Federal Courts. It is interesting to say that the book was dedicated to Carmen Lúcia, the first woman to occupy the presidency of TSE (2012 - 2013).

5.3.3 Superior Military Court

FIGHTING INSTITUTIONAL VAW

Comissão de Prevenção e Enfrentamento do Assédio Moral e Sexual³⁵⁸

According to the CNJ Resolution 351/2020, the Superior Military Court (STM) established the *Comissão de Prevenção e Enfrentamento do Assédio Moral e Sexual* in 2022. The commission is composed by members of all fields in the institution and led by a woman magistrate. Its main goal is to promote training and foster healthy interpersonal relationships in the workspace³⁵⁹.

TRAINING

Training for magistrates³⁶⁰

The *Comissão de Prevenção e Enfrentamento do Assédio Moral e Sexual* together with *Escola Nacional de Formação e Aperfeiçoamento de Magistrados da Justiça Militar da União (Enajum)* held a Symposium about harassment, VAW within institution, and preventions of these crimes. The training was offered for magistrates and public servants, and presented a multidisciplinary perspective about the subject³⁶¹.

KNOWLEDGE PRODUCTION

Booklet

Elaborated by the *Comissão de Prevenção e Enfrentamento do Assédio Moral e Sexual*, STM released a booklet entitled *Conhecendo a Prevenção e o Combate ao Assédio e à Discriminação na JMU*³⁶².

358. BRASIL. STM. STM institui Ouvidoria da Mulher no âmbito da Justiça Militar da União. 2022. Available at: <<https://www.stm.jus.br/informacao/agencia-de-noticias/item/12496-stm-institui-ouvidoria-da-mulher-no-ambito-da-justica-militar-da-uniao>>. Last visited 5 December 2022.

359. BRASIL. STM. Presidente do STM faz balanço de ações e metas em encontro do Poder Judiciário. 2022. Available at: <<https://www.stm.jus.br/informacao/agencia-de-noticias/item/12498-presidente-do-stm-faz-balanco-de-aco-es-e-de-alcance-de-metas-em-encontro-do-poder-judiciario>>. Last visited 5 December 2022.

360. Ibidem

361. Ibidem

362. Ibidem

5.3.4 Superior Court of Labor

ENCOURAGING WOMEN'S PARTICIPATION

Monitoring for promotion of gender equality

According to the Superior Court of Labor (TST), the institution has a routine of mapping the distribution of positions in the body by a gender perspective. With this constantly updated diagnosis, the institution is able to monitor and to make decisions for the promotion of gender equality. It is important to highlight that TST and other Justice Labor bodies have high rates of women presence in the institution – not only in entry positions (50,4%) but also in higher positions such as *desembargadoras* (41,3%). Considering this, it is interesting to highlight that in 2022 TST elaborated a short list with three names to be elected for a minister position exclusively composed of women. It was the second time in the history of the court that this happened^{363 364}.

Program for women's participation

In 2019, the *Programa de Incentivo à Participação Feminina no âmbito do Tribunal* was released. The initiative aims to guarantee a balanced distribution of positions between women and men. It is also focused on fostering gender policies, mainly the ones related to women participation and prevention of harassment or any other kind of violence against women. The party responsible for its execution is the *Comitê de Participação Feminina*, which must be composed by 60% of women³⁶⁵.

INTERNAL GROUPS

Observatório Excelências Femininas

In a partnership between the TST and the *Escola Nacional de Formação e Aperfeiçoamento de Magistrados do Trabalho (Enamat)*, it was released in 2022 the *Observatório Excelências Femininas*, with the purpose of reflecting on the recognition of women magistrate and also of promoting initiatives for gender equality in the Judicial Branch³⁶⁶.

363. BRASIL. TST. Justiça do Trabalho avança para equilíbrio de gênero na distribuição de cargos. Available at: <https://tinyurl.com/3a6aew89>. Last visited 5 December 2022.

364. BRASIL. TST. TST elege três mulheres para compor lista tríplice. Available at: <https://tinyurl.com/452892e3>. Last visited 5 December 2022.

365. BRASIL. TST. Programa incentiva a participação feminina no TST. Available at: <https://tinyurl.com/5n79vsvy9>. Last visited 5 December 2022.

366. BRASIL. TST. Observatório Excelências Femininas promoverá ações de igualdade de gênero na Justiça do Trabalho. Available at: <https://tinyurl.com/4jy6x3w9>. Last visited 5 December 2022.



Grupo de Trabalho em Estudos de Gênero, Raça e Equidade

TST together with the *Conselho Superior da Justiça do Trabalho* signed the normative act to create the *Grupo de Trabalho (GT) em Estudos de Gênero, Raça e Equidade* in 2022. Its main goal is to suggest policies and programs for the promotion of equality within the institution. It also has a focus in combating any kind of discrimination. Regarding the identity markers of people from minority groups, the GT must follow an intersectional perspective, specially between gender, race and sexual orientation³⁶⁷.

KNOWLEDGE PRODUCTION

Book *Mulheres na Justiça do Trabalho: 80 anos em perspectiva*

The book was idealized by *Observatório Excelências Femininas* and released in 2022. Its aim is to insert a gender perspective in the institution. The publication presents articles written exclusively by women and promotes a discussion about gender and race³⁶⁸.

TRAININGS

Diversidade e Pluralidade no ambiente de trabalho

In 2022, to celebrate the LGBTQ+ month (in June), TST promoted for the first time a training about diversity and inclusion in the workspace. The event was live broadcast on YouTube and reinforce TST commitment to prevent and fight against any kind of discrimination³⁶⁹.

367. BRASIL. TST. Justiça do Trabalho cria grupo para estudos de gênero, raça e equidade. Available at: <<https://tinyurl.com/3jhzyhm>>. Last visited 5 December 2022.

368. PARANÁ. TRT-9. TST lança livro sobre a participação das mulheres na Justiça do Trabalho. Available at: <<https://www.trt9.jus.br/portal/noticias.xhtml?id=8591222>>. Last visited 5 December 2022.

369. BRASIL. TST. Diversidade e Pluralidade no Ambiente de Trabalho. (Youtube), 2022. Available at: <<https://www.youtube.com/watch?v=iW-Rm2PvgHs>>. Last visited 5 December 2022.

5.4 Lower Courts

5.4.1 Regional Federal Courts

ENCOURAGING WOMEN'S PARTICIPATION

Normative Act

Federal Regional Court of 5th regional (TRF-5)

Aiming to guarantee gender equality in higher positions, TRF-5 established the normative act Act 8/2022, that orients the court to observe the alternation between a women judge and a men judge in cases of replacements of *desembargadores*, respecting the requirements established by law.

5.4.2 Courts of Justice

FIGHTING INSTITUTIONAL VAW

Commissions and Ombudsperson Office for Women

In attendance of the Resolution 351/2020 that decided about the creation of one *Comissão de Prevenção e Enfrentamento ao Assédio Sexual e do Assédio Moral* in each court of Brazil, many courts in the country joined the decision and in some cases these commissions has a similar role to an Ombudsperson Office, for example in TJ-PR in the State of Parana and in TJ-RJ in the State of Rio de Janeiro.

Court of Justice of Bahia (TJ-BA) – Commission³⁷⁰

TJ-BA was one of the firsts to positively answer that. By the means of the Decreto Judiciário 873/2020, it was established the *Comissão de Prevenção e Enfrentamento do Assédio Moral, Sexual e da Discriminação* in the State of Bahia Judicial Branch.

Court of Justice of Paraná (TJ-PR) – Commission³⁷¹

In TJ-PR, the commission provides online forms for complaints of moral and sexual harassment. Complaints can be made by anyone who perceives themselves to be the target of harassment or discrimination at work or anyone who is aware of the facts.

370. BAHIA. Tribunal de Justiça. Comissão De Prevenção E Enfrentamento Do Assédio Moral, Do Assédio Sexual E De Todas As Formas De Discriminação. Available at: <<http://www5.tjba.jus.br/portal/comissao-de-prevencao-e-enfrentamento-do-assedio-moral-do-assedio-sexual-e-de-todas-as-formas-de-discriminacao/>>. Last visited 5 December 2022.

371. PARANÁ. Tribunal de Justiça. Comissão de Prevenção e Enfrentamento do Assédio Moral e do Assédio Sexual disponibiliza formulários para denúncias. 2022. Available at: <https://www.tjpr.jus.br/noticias/-/asset_publisher/9jZB/content/comissao-de-prevencao-e-enfrentamento-do-assedio-moral-e-do-assedio-sexual-disponibiliza-formularios-para-denuncias/18319>. Last visited 5 December 2022.



Court of Justice of Rio de Janeiro (TJ-RJ) – *Canal de Escuta*³⁷²

By the means of the national policy of prevention and combat of harassment and any kind of discrimination, TJ-RJ created a channel named *Canal Escuta - Servidoras Protegidas* for reporting of VAW occurring inside the institution. The project provides professionals (linked to the HR's institution - *Diretoria Geral de Planejamento e Administração de Pessoal*) to offer an active listening to the complaints and also means of conflict resolution. All the complaints can be reported by e-mail or telephone.

Security Measure

Court of Justice of Santa Catarina (TJ-SC) – *Programa Indira*³⁷³

Programa Indira: pelas mulheres do PJSC created by TJ-SC is a program that aims to implement an institutional policy of prevention with the promotion of security measures to confront domestic and family violence practiced against women magistrates, women public servants, women interns, women residents, women outsourced workers, women commissioners and other women working in the State of Santa Catarina Judicial Branch.

The program's name honors the public servant Indira Mihara Felski Krieger, 35 years old, victim of femicide.

ENCOURAGING WOMEN'S PARTICIPATION

Court of Justice of Tocantins (TJ-TO) – *Equidade de Gênero*³⁷⁴

In 2020, the Court of Justice of Tocantins created a *Comissão Gestora de Políticas de Equidade de Gênero do Tribunal de Justiça do estado do Tocantins*, based on the orientations given by CNJ Resolution 255/2018. The Commission's goals are: to increase the visibility of statistical data on the participation of women in the judiciary; and convey the message regarding gender equality to the most diverse audiences and segments of society, especially to women and men who are members of the state justice system. In 2021, the Commission announced that it would be organizing a research to continue balancing the participation of women in the state judiciary, once TJ-TO was granted with a CNJ Prize in 2020 in the gender equality category³⁷⁵.

372. https://www.tjpr.jus.br/noticias/-/asset_publisher/9jZB/content/comissao-de-prevencao-e-enfrentamento-do-assedio-moral-e-do-assedio-sexual-disponibiliza-formularios-para-denuncias/18319

373. SANTA CATARINA. TJSC. Emoção marca lançamento do Programa Indira, que combaterá violência doméstica no PJSC. 2022. Available at: <<https://www.tjsc.jus.br/web/imprensa/-/emocao-marca-lancamento-do-programa-indira-que-combatera-violencia-domestica-no-pjsc?redirect=%2F>>. Last visited 5 December 2022.

374. TOCANTINS. Website TJ-TO. Ao anunciar Portaria com foco na Equidade de Gênero, presidente do TJTO ressalta esforço pela valorização da mulher. Available at: <<https://www.tjto.jus.br/index.php/noticias/6953-ao-anunciar-portaria-com-foco-na-equidade-de-genero-presidente-do-tjto-ressalta-esforco-pela-valorizacao-da-mulher>>. Last visited 5 December 2022.

375. TOCANTINS. Website TJ-TO. Desembargadora Etelvina pede participação ativa das mulheres [...]. Available at: <<https://www.tjto.jus.br/index.php/noticias/7598-desembargadora-etelvina-pede-participacao-ativa-das-mulheres-nas-acoes-do-tjto-durante>>

5.4.3 Regional Electoral Courts

ENCOURAGING WOMEN'S PARTICIPATION

Regional Electoral Court of Paraíba (TRE-PB) – *Programa de Participação Institucional Feminina*³⁷⁶

By the means of [Decree nº 392/2019 TRE-PB/TRE/ASPRE](#)³⁷⁷ established by TRE-PB, it was created the *Programa de Participação Institucional Feminina no âmbito da Justiça Eleitoral da Paraíba* which aims to implement an institutional policy of prevention with the promotion of security measures to confront domestic and family violence practiced against women magistrates, women public servants, women interns, women residents, women outsourced workers, women commissioners and other women working in the referred court. .

TRE-PB – *Comissão de Participação Feminina*³⁷⁸

The same normative act mentioned above created the *Comissão de Participação Feminina* which aims to propose policies to value women, aiming at balancing opportunities between women and men in the units of this Court; encourage the participation of women as speakers in institutional events; promote actions to prevent harassment, violence or discrimination against women; promote training and awareness initiatives on the subjecta.

TRE-PB – *Repositório Nacional de Mulheres Juristas*³⁷⁹

In attendance to the [Resolution CNJ nº 418/2021](#)³⁸⁰, TRE-PB joined the *Repositório Nacional de Mulheres Juristas*, created by CNJ with the aim of increasing women's participation in leadership positions, in examining boards and in events.

[-reuniao-da-nova- comissao-gestora-de-politicas-de-equidade-de-genero](#). Last visited 5 December 2022.

376. PARAÍBA. Website TRE-PB. Participação Feminina. Available at: <https://www.tre-pb.jus.br/o-tre/participacao-feminina/participacao-feminina?SearchableText=mulheres>. Last visited 5 December 2022.

377. PARAÍBA. Portaria nº 392/2019 TRE-PB/PTRE/ASPRE. TRE-PB. 2019. Available at: https://sei.tre-pb.jus.br/sei/controlador_externo.php?acao=documento_conferir&codigo_verificador=0532827&codigo_crc=477AAADC&hash_download=293a3d32f8bbd74c-79f1981f031ac1f6ebfde27b6a761b304e66dea25335c69e169bdc6d5da72be1824761d7956c727a37f8282a10d5dd6f15a89f-1537808c61&visualizacao=1&id_orgao_acesso_externo=0. Last visited 5 December 2022.

378. PARAÍBA. Portaria nº 60/2021 TRE-PB/PTRE/ASPRE. TRE-PB. 2021. Available at: https://sei.tre-pb.jus.br/sei/publicacoes/controlador_publicacoes.php?acao=publicacao_visualizar&id_documento=1005120&id_orgao_publicacao=0. Last visited 5 December 2022.

379. PARAÍBA. Website TRE-PB. Participação Feminina. Available at: <https://www.tre-pb.jus.br/o-tre/participacao-feminina/participacao-feminina?SearchableText=mulheres>. Last visited 5 December 2022.

380. BRASIL. Resolução nº 418 de 20/09/2021. CNJ. 2021. Available at: <https://atos.cnj.jus.br/atos/detalhar/4116>. Last visited 5 December 2022.



Regional Electoral Court of Paraná (TRE-PR) – Repositório Nacional de Mulheres Juristas³⁸¹

In attendance to the Resolution CNJ nº 418/2021, TRE-PR created its own repository to joined the *Repositório Nacional de Mulheres Juristas*, established by CNJ with the aim of increase women's participation in leadership positions, in examining boards and in events.

Regional Electoral Court of Santa Catarina (TRE-SC) – Comissão Permanente para Promoção da Igualdade de Gênero³⁸²

It is a responsibility of the commission to propose, promote and disseminate measures to guarantee gender equality in the institutional environment of the Electoral Justice in Santa Catarina, in particular regarding the encouragement of women's participation in leadership positions and advising as well in examining boards and as speakers and instructors at institutional events and training centers.

5.4.4 Military Courts of Justice

TRAINING

Military Court of Justice of São Paulo (TJM-SP) – Talk Mulheres que inspiram³⁸³

The Military Court of Justice of São Paulo promoted in 2022 a talk with Dra. Antônia Marina Aparecida de Paula Faleiros, judge at Court of Justice of Bahia, with the aim to remember the International Women's Day and share a remarkable history of life.

KNOWLEDGE PRODUCTION

Military Court of Justice of Minas Gerais (TJM-MG) – Booklet Identidade de Gênero³⁸⁴

Following the directions of Comissão Permanente de Democratização e Aperfeiçoamento dos Serviços Judiciários established by CNJ, the Military Court of Justice of Minas Gerais elaborated, in 2021, a booklet to share knowledge about gender identity among its public servants.

381. PARANÁ. Website TRE-PR. Repositório Mulheres Juristas. Available at: <<https://www.tre-pr.jus.br/o-tre/escola-judiciaria-eleitoral/repositorio-mulheres-juristas/repositorio-online-para-cadastramento-de-dados-de-mulheres-juristas-com-expertise-nas-diferentes-areas-do-direito>>. Last visited 5 December 2022.

382. SANTA CATARINA. Ata de Reunião – Comissão Para A Promoção Da Igualdade De Gênero de 29/08/2022. TRE-SC. 2022. Available at: <https://www.tre-sc.jus.br/++theme++justica_eleitoral/pdfjs/web/viewer.html?file=https://www.tre-sc.jus.br/transparencia-e-prestacao-de-contas/arquivos_transparencia/comissoes-de-magistrados/atas/comissao-da-igualdade-de-genero-ata-reuniao-29-8-2022/@download/file/Ata%205%20-%2029.8.2022.pdf>. Last visited 5 December 2022.

383. SÃO PAULO. Website TJM-SP. Histórias que inspiram. Available at: <<https://www.tjmsp.jus.br/historias-que-inspiram/>>. Last visited 5 December 2022.

384. MINAS GERAIS. Website TJM-MG. Cartilha sobre identidade de gênero. Available at: <<https://tjmmg.jus.br/tjmmg-lanca-cartilha-sobre-identidade-de-genero/>>. Last visited 5 December 2022.

The booklet presents concepts, reasons why it is important to learn about this subject and some legal boundaries.

5.4.5 Regional Courts of Labor

Regional Court of Labor of 9th regional (TRT-9/PR) – Observatório de Excelências Femininas³⁸⁵

Following the steps of TST, that released the *Observatório Excelências Femininas* with the purpose of reflecting on the recognition of women magistrate and also of promoting initiatives for gender equality in the Judicial Branch, TRT-9 in the State of Parana created its own “Observatório Excelências Femininas”. It is the first regional project based on the national one.

According to minister Morgana Richa, coordinator of the *Observatório Excelências Femininas* in the national scope, the first activities of the national observatory must be related to mapping the advancements and asymmetries about the women's participation in the Labor Justice. Whereas in the regional observatory, the members must try to answer about the increased number of women magistrate in the court, looking back to the first magistrate to enter the court until the first one to occupy its presidency.

Regional Court of Labor of 13rd regional (TRT-13/PB) – Comitê da Equidade de Gênero, Raça e Diversidade do TRT da 13^a Região (PB)³⁸⁶

The Comitê da Equidade de Gênero, Raça e Diversidade do TRT da 13^a Região (PB) which was instituted by normative act “Ato TRT SGP nº 157/2021” plays an important role in terms of creating and monitoring policies related to reducing inequalities. In 2022, TRT-13 in the State of Paraíba approved the “Política de Equidade de Gênero, Raça e Diversidade” by the normative act Administrative Resolution Administrativa nº 002/2022³⁸⁷, which was a proposition presented by the Committee.

This policy's text presented and highlighted important concepts such as equity, diversity, gender, ethnicity, sex, people with disabilities, minorities, prejudice, transversality, aiming to expand the understanding about the subject within the institution.

385. PARANÁ. TRT-9. Justiça do Trabalho paranaense instala versão regional do Observatório de Excelências Femininas. 2022. Available at: <<https://www.trt9.jus.br/portal/noticias.xhtml?id=7160251>>. Last visited 5 December 2022.

386. PARAÍBA. TRT-13. TRT-13 institui Política de Equidade de Gênero, Raça e Diversidade. Available at: <<https://www.trt13.jus.br/informe-se/noticias/trt-13-institui-politica-de-equidade-de-genero-raca-e-diversidade>>. Last visited 5 December 2022.

387. BRASIL. Resolução Administrativa nº 002/2022. TRT-13. 2022. Available at: <<https://www.trt13.jus.br/informe-se/noticias/trt-13-institui-politica-de-equidade-de-genero-raca-e-diversidade/ra-trt-n-o-002-2022-politica-de-equidade-de-genero-raca-e-diversidade-do-tribunal-regional-do-trabalho-da-13a-regiao-docx.pdf>>. Last visited 5 December 2022.



The committee has other responsibilities such as: review and propose updating of this Policy, whenever necessary; and also propose, promote and carry out actions, events and projects focused on the themes related to the above referred Policy.

5.5 Draft Bills

ENCOURAGING WOMEN'S PARTICIPATION

Proposta de Emenda à Constituição (PEC) nº 43, de 2016³⁸⁸

The authorship of this draft bill is from Senadora Vanessa Grazziotin (PC do B – AM). The explanation of the PEC presented in the Senado said:

Establishes a requirement for gender diversity in the composition of the sextuple and triple lists formed for the nomination of members of the Public Ministry and lawyers for the Federal Regional Courts, State Courts, and the Federal District and Territories; the caption of Art. 94 is modified to ensure that the sextuple list drawn up by the bodies representing the classes of lawyers and members of the Public Prosecutors Office has a minimum participation of one third of each of the male and female genders.

The project was shelved in 2018, at the end of the Senator's term, as provided for in Article 332 of the Internal Regulations of the Senate³⁸⁹.

Proposta de Emenda à Constituição (PEC) nº 8, de 2017³⁹⁰

In the next year, Senadora Marta Suplicy (MDB – SP) presented a similar draft bill. The explanation of the PEC presented in the Senado said:

Amends the Federal Constitution to expressly guarantee the participation of people of both sexes in the triple and sextuple lists destined to the choice of members of the judicial courts, the courts of accounts and the General Attorneys of the Public Prosecutors Office.

This project was also shelved in 2018, at the end of the Senator's term, as provided for in Article 332 of the Internal Regulations of the Senate³⁹¹.

388. BRASIL. Proposta de Emenda à Constituição nº 43, de 2016. Senado. 2016. Available at: <https://www25.senado.leg.br/web/atividade/materias/-/materia/126710/pdf>. Last visited 5 December 2022.

389. BRASIL. Website Senate. Regimento Interno Available at: https://www.senado.gov.br/comissoes/documentos/SGM/regimentoArt_332.pdf. Last visited 5 December 2022.

390. BRASIL. Proposta de Emenda à Constituição nº 8, de 2017. Senado. 2017. Available at: <https://www25.senado.leg.br/web/atividade/materias/-/materia/128252>. Last visited 5 December 2022.

391. BRASIL. Website Senate. Regimento Interno Available at: <https://www.senado.gov.br/comissoes/documentos/SGM/regimen>

Proposta de Emenda à Constituição (PEC) n° 6, de 2022³⁹²

In 2022, Senator Soraya Thronicke (PSL - MS) was the one to present a draft bill concerned about gender parity in the judiciary. The explanation of the PEC presented in the Senado said:

Amends Art. 94 of the Federal Constitution, to determine that one in every two of the six-fold lists of nominations for the courts be made up exclusively of nominations by women.

This draft bill is still proceeding.

In March 2022, the NGO *Paridade de Verdade*, founded by lawyer Eclair Nantes, also general-secretary assistant at Brazilian Bar Association of Mato Grosso do Sul, started a movement to address the urgency and importance of gender parity in the judiciary. During the last year, the NGO promoted dialogue with members of the Legislative Branch (from state and federal spheres), State branches of the Brazilian Bar Association and other groups that could strengthen the debate.

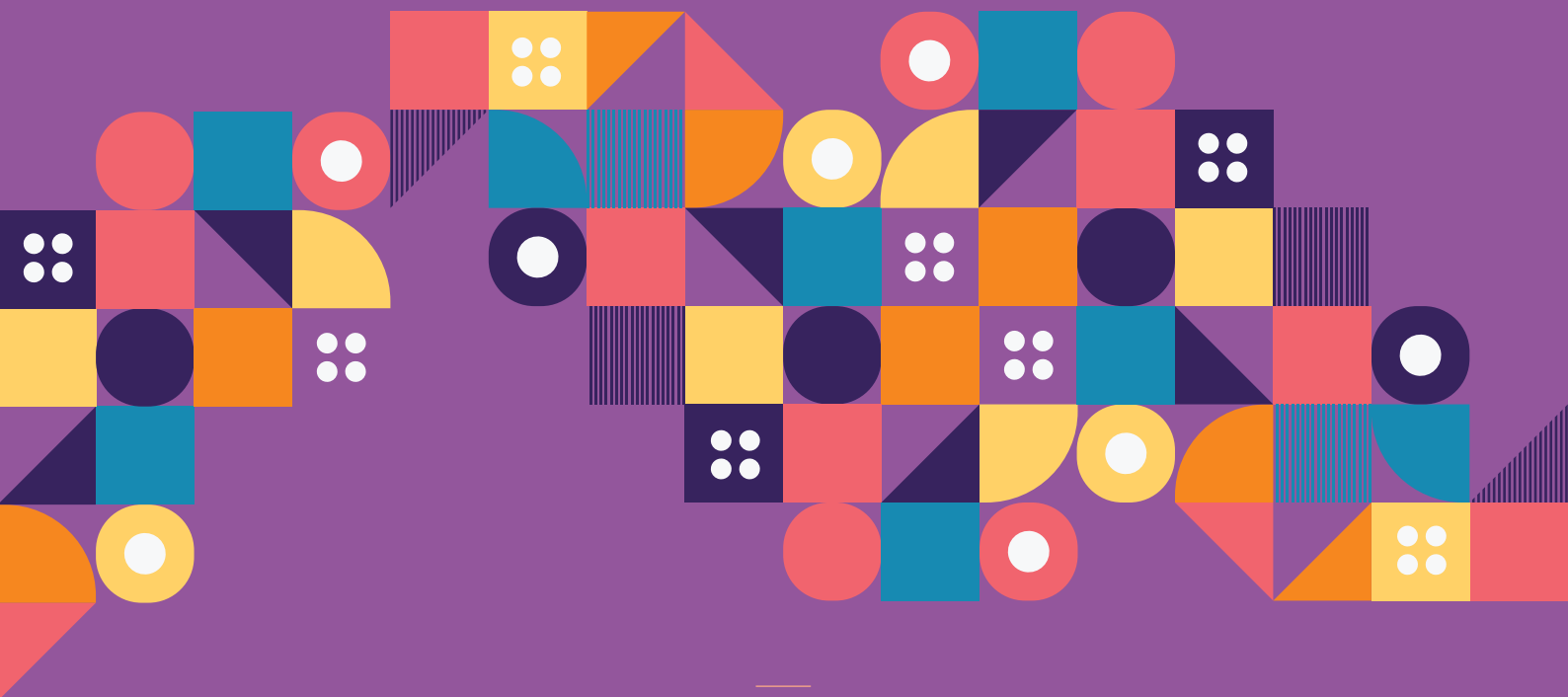
The main goal of *Paridade de Gênero* at this moment is to approve a law that guarantees gender and racial parity in the composition of all triple and sextuple lists destined to lawyers and public servants of the Public Prosecutors Office, as it is allowed by Art. 94 of the Federal Constitution.

[toArt_332.pdf](#)>. Last visited 5 December 2022.

392. BRASIL. Proposta de Emenda à Constituição n° 6, de 2022. Senate, 2022. Available at: <<https://www25.senado.leg.br/web/atividade/materias/-/materia/152157>>. Last visited 5 December 2022.



ARGUMENTS AND RECOMMENDATIONS



1. More (plural) women in the Judiciary and in its higher positions: a chance to other perspectives

1.1 a perspective of diversity and representation

The discussion if the Judiciary must or must not be a representative institution exists. But, once the Judiciary embraces this perspective of being representative, as it is the case of Brazil³⁹³, the identity markers that make the society a plural organism must be taken into account.

Besides the discussion, it is desirable that, in democracies, the State's institutions symbolically reflect as much as possible the diversity of different social segments³⁹⁴. In other words, reflect the composition of the population, who is the one to be using the public services provided by the institutions.

In Brazil, women represent 51,1% of the population³⁹⁵. Out of this number, 23.4% are black women³⁹⁶. When it comes to indigenous population, they represent 0.42% of the total Brazilian population. But in terms of occupying the public spaces women – and women in this intersectionality with race – are not even close to this percentage. In the Judiciary, women are 38% of the magistrates³⁹⁷, a number that decreases in higher positions and Higher Courts. And unfortunately there is no data gathering information about gender and race, which makes it difficult to realize how

393. PEREIRA, Jane. Representação democrática do Judiciário: reflexões preliminares sobre os riscos e dilemas de uma ideia em ascensão Jane Reis Gonçalves Pereira. Revista Juris Poiesis, nº 17, 2014. Available at: <<https://ssrn.com/abstract=2958963>>. Last visited 5 December 2022.

394. Ibid, 2014

395. IBGE. Pesquisa Nacional por Amostra de Domicílios Contínua. 2021. Available at: <<https://educa.ibge.gov.br/jovens/conheca-o-brasil/populacao/18320-quantidade-de-homens-e-mulheres.html#:~:text=Segundo%20dados%20da%20PNAD%20Cont%C3%ADnu,51%2C1%25%20de%20mulheres.>>>. Last visited 5 December 2022.

396. IPEA. Retrato das desigualdades – gênero e raça. 2003. Available at: <<https://www.ipea.gov.br/retrato/pdf/primeiraedicao.pdf>>. Last visited 5 December 2022.

397. BRASIL. CNJ. Diagnóstico da participação feminina no Poder Judiciário. 2019. Available at: <<https://www.cnj.jus.br/wp-content/uploads/conteudo/arquivo/2019/05/cae277dd017bb4d4457755feb5eed9f.pdf>>. Last visited 5 December 2022.



many black women or other racialized women are achieving a career in this sector. Although, there is information about race only, and black people (women and men) represent 18%³⁹⁸ of the magistrates while the indigenous people are represented by 11 people³⁹⁹ and none of them are women.

In this study, it will be considered the concept of descriptive representation, presented by Hanna Pitkin and explained by Jane Pereira⁴⁰⁰. Descriptive representation is related to the idea of an identity representation, regarding gender, race, social class, sexual orientation, disability, religion, age, nationality. Under this perspective, some questions must be addressed, such as:

- I. Does a representative resemble those represented?
- II. Does a representative have interests in common with those represented?
- III. Does a representative share life experiences with those represented?

Linked to this last point, it is important to highlight that not only a representation in terms of appearance is important, but also in terms of the subjectivities these identity markers are frequently related to. For this reason, it must also be considered the experiences of life – linked to one's identity – a magistrate is bringing to their position, in order to provide different points of view in the practice of the profession and, by consequence, in the way the institution will make itself present in the society.

To support this idea of experiences of life one carries and the effects of this in spaces chasing representativeness, Iris Young presents the concept of “social perspective”, which is related to “experience, history, and different social knowledge” a person had in their trajectory. It can also mean the “social platforms, therefore, an experience related to a particular location and a specific knowledge of social processes and consequences” one had access to and thereby developed their world view⁴⁰¹.

These notions described by the concept of descriptive representation and also by social perspective highlights an important reflection about representativeness that must be critical and not only numerical. This reinforces the ideas presented in chapter 4 about intersectionality, reminding that an effective representativeness goes deep in the identity perspective.

398. BRASIL. CNJ. Perfil Sociodemográfico dos Magistrados Brasileiros 2018. 2018. Available at: <https://www.cnj.jus.br/wp-content/uploads/2019/09/a18da313c6fdb6f364789672b64fcef_c948e694435a52768cbc00bda11979a3.pdf> Last visited 5 December 2022.

399. Ibidem

400. Pereira, 2014

401. YOUNG, Iris. Inclusão e democracia. Oxford, Reino Unido: Oxford University Press, 2000. (Oxford Political Theory). DOI: <https://doi.org/10.1093/0198297556.001.000>.

The researcher Raíza Gomes⁴⁰² interviewed eight black women magistrates in Brazil trying to understand what were their impressions about representativeness and racial parity targets. She highlights the magistrate's answers related to a resemblance between the magistrate and the judiciary user and also the symbolic mark that the presence of black women in the public space and places of power represents to their group. She describes the following examples:

Acotirene, who works in criminal justice, thinks she has “the face of the defendant”, who see her like this and recognize themselves in her. Dandara, who also works in a criminal court, but at the federal level, says that sometimes she has heard “an almost welcoming look” from the poorest people being judged, but has observed a greater objection from the most rich defendants.⁴⁰³

Zeferina, in addition, brought the story of Luísa: the nine-year-old girl who had suffered racism at school and heard that she could never be anything in life. She was taken by her parents to meet Zeferina, the judge with skin as dark as hers. Despite the deepening that the discussion about representativeness requires, Luísa and Zeferina's emotion transcends what theories can explain when they get to know each other⁴⁰⁴.

On the other hand, one of the magistrates interviewed pointed out that she didn't experience an identification between her and the judiciary user, because the environment and the situation were very hostile. She also affirmed that, in her opinion, it would be easier for them to find her “made white” than an equal⁴⁰⁵, once the judiciary is still mostly male and white and the population being judged are mostly black.

For the black women magistrates interviewed, racial parity targets are fundamental to increase the representativeness in the judiciary and they highlight some points of attention⁴⁰⁶.

Firstly, racial parity targets must be widely divulgated. “Aqualtune, for example, mentioned a public examination for the judiciary held in her state in which only one person signed up for the parity targets, when there were more vacancies available”.

Secondly, racial parity targets must be a reason to be proud of. Zeferina reported that she has already heard colleagues saying that they would not feel good being approved by the parity targets because it seemed that this would strengthen discrimination, however, she reiterates her desire to one day be approved by the quotas and reaffirm this without any shame.”

402. GOMES, Raíza Feitosa. *Magistradas Negras No Poder Judiciário Brasileiro: representatividade, política de cotas e questões de Raça e Gênero* Dissertação de mestrado (Ciências Jurídicas) – Faculdade de Direito, Universidade Federal da Paraíba. João Pessoa, 2018, 129 f.

403. *Ibid.*, p. 116

404. *Ibid.*, p. 117

405. *Ibid.*, p. 116

406. Gomes, 2018, p. 117



Although there are specificities of each group composing the so-called minority group, the experience with racial parity targets, established in 2015 in the Judiciary, brings to the surface reflections related to strategies to achieve representativeness and parity. For this reason, it can inspire the discussion about strategies to achieve gender parity, taking into account some invisible aspects as previously described, that must be overcome, such as: the lack of divulgation of the affirmative action and the shame – rooted in historical and cultural motifs – involving it.

According to Gomes⁴⁰⁷, pave a way in which each person of the population sees themselves in the judiciary strengthens the democracy and reduces the distance between the people and the institution, which can be positive⁴⁰⁸. Pereira⁴⁰⁹ highlights that the leveraging of representativeness must result in representative work, in which people access the institution equally.

1.2 A perspective of institutional cultural change

It is important to remember that institutions are composed of people and these people shape the institutional culture. Although this type of institution is full of norms and bylaws that must be followed by magistrates, they will always carry with them their experiences of life that cannot be ignored.

Previously, the idea of experiences of life were linked to the ones representing minority groups and how their trajectory could be helpful for the users of the judiciary and the institution. But, people outside minority groups also have experiences of life. Of course these experiences sometimes can figure in different sides.

If, on the one side, these experiences of life can reflect positively in the institution bringing a diversity perspective to the internal interactions and to external relationships (with the users of the judiciary), on the other side it can sometimes reflect negatively, with discriminatory's behaviors and even crimes.

Raiza Gomes⁴¹⁰ described in her research with black woman magistrates that all of them had already been treated with strangeness within the institution, like they were not meant to be in that place of power. These women affirmed they were seen with incredulity when colleagues and users of the judiciary realized they were the magistrates. For Gomes this reveals the naturalization of the absence of women – and, in this case, black women – in this institution.

407. Gomes, 2018, p. 118

408. Pereira, 2014; Gomes, 2018

409. Pereira, 2014

410. Gomes, 2018, p. 116

According to a research elaborated by National Council of Justice⁴¹¹ about harassment and discrimination in the workspace of the Judicial Branch interviewing magistrates, public servants and external employees, this space is not perceived as respectful in the same proportion through the lens of gender. For 52.4% of men the workspace is respectful, however 46.3% of women have this impression.

The research also reveals that women (11.8%) are more victims of these crimes than men (9.3%). In addition, in terms of ethnicity or race, indigenous and black people are the most affected (73.5% and 71.3% respectively). Furthermore, the most common type of harassment in the Judicial Branch was pointed out as the moral harassment being perpetrated by people in hierarchical position in relation to the victim.

As long as the judiciary assumes the compromise of being more representative while acting to mitigate discrimination, and also establishing policies related to parity (gender parity, racial parity), especially in higher positions, the tendency is that this workspace changes – not without tensions –, but that it changes⁴¹².

There can be already perceived changes in the behavior of some magistrates. Black women, for example, realize that their hair aesthetic used to be a problem. While more and more black women are part of the Judicial Branch, there is a chance to highlight this discrimination and to fight against it. Before women started to achieve higher positions, the only skills appreciated for these positions were the ones related to objectiveness, strength, rationality – commonly linked to men. With women's presence in the institution and their perseverance to remain despite the obstacles, other skills are now being valued for higher positions, such as: cooperation and conciliation – commonly linked to women⁴¹³.

Another characteristic associated with women and that is being more appreciated especially in higher positions is the management of time. It is important to say that for many women this skill is shaped by the rules of a sexist society, where women have 2 or 3 journeys of work; where they do all of the care work in their families or communities; where women must be an exceptional professional and an exceptional family member (mom, wife, daughter...) at the same time.

In the women magistrates' perspective Courts led by women are more sensitive, humane, have a more participative management and a better management of time⁴¹⁴.

411. BRASIL. CNJ. Justiça em Números 2022. 2022. Available at: <<https://www.cnj.jus.br/wp-content/uploads/2022/11/justica-em-numeros-2022.pdf>>. Last visited 5 December 2022.

412. Filho, Moreira, Sciammarella, 2015, p. 69

413. Ibidem

414. Filho, Moreira, Sciammarella, 2015, p. 73



1.3 A perspective of humanistic judgements

The practice of the magistrature is oriented by the rules and bylaws of the Judicial Branch, but also influenced by magistrates social perspective⁴¹⁵. In between this intersection raises the judgment and for this reason it is important to highlight the potential benefits caused by a more representative judiciary in the moment that will be necessary to evaluate a judicial case.

If the judiciary is an institution composed by white men in its majority, the people being judged are black young men. According to the Brazilian Public Security Yearbook, out of the total of inmates in Brazil, 67.5% are black and 46.4% are 18 to 29 years old. Although the percentage of women in prison is lower, corresponding to approximately 3% above the total (820.000 people), in this group black women are the majority (62%).

Regarding the research led by Raiza Gomes⁴¹⁶, black women magistrates declared that their own experiences of life influenced the way they practice the magistrature. In general, the researcher realized a more sensitive way to see the person being judged.

One of them stated that her look at and concern for people who are in a situation of vulnerability passes by the fact that she is also part of a group considered vulnerable, although, individually, she is in a different position. It is also important to note the concern beyond the forum of two of the magistrates, Aquilino and Dandara, who brought in their reports their experiences and desires in order to contribute so that other black women can get to the places they want⁴¹⁷.

When it comes to crimes related to sexual harassment, rape, femicide, in which the victims are women, there is a pattern in the judgments commonly creating conditions to the rights of the victim in relation to some subjects as: virginity, provocative behavior, pregnancy, prostitution⁴¹⁸. The researcher Livya Barros also noted a sexist pattern in questions asked by the men involved in the case.

The sexist trial carried by judge Rudson Marcos in the Mariana Ferrer's case exemplifies the discriminatory attitude.

In this case, Mariana Ferrer reported being a victim of rape at a party house in the state of Santa Catarina and during the trial she was offended and humiliated, even having intimate photos of her exposed by the defense of the accused, represented by lawyer Cláudio Gastão da Rosa Filho. The judge carrying the trial, Rudson Marcos, was complicit and didn't intervene in the situation.

415. Pereira, 2014

416. Gomes, 2018

417. Ibid., p. 118

418. BARROS, Livya Ramos Sales Mendes de. Umas e outras: a presença de estereótipos de gênero no Sistema de Justiça Penal e a classificação das mulheres vítimas de crimes de estupro a partir da fala e do comportamento. Encontro da REDOR, 18, 2014. Anais [...], Recife, 2014. p. 1183-1204./ CAMPOS, Ana Carolina Santos. Leituras sobre a reprodução de estereótipos de gênero na atuação judicial. Interfaces científicas – Direito. Aracaju, v. 7, nº 3, 2019, p. 83-92.

Considering the violence perpetrated against her as a victim and the national repercussion of the case, it was established the legislation “Lei 14.245/2021” that predicts punishment for harmful acts against the dignity of victims of sexual violence during a trial. The law modified the Criminal Code and it is more known as “Lei Mariana Ferrer”.

The researcher Barros⁴¹⁹ also realized that some women judge use to go on the same sexist way, which she presents as an alert, considering the fact that some women think they need to ignore their gender perspective to practice the magistrature and embrace a neutral lens, which in fact is a sexist lens, as discussed in chapter 4.

Differently from positions previously described, in another instance, but related to the same subject (rape), it can be highlighted a symbolic judgment in which Ellen Gracie, the first woman to occupy the presidency of the Supreme Federal Court, participated. Ellen Gracie took part in a trial in which her vote was crucial for the Court’s ministers to change their understanding regarding the classification of the crime of “simple rape” and its equivalence with the crime of “violent assault on indecency”. On December 17th, 2001, the Plenary of the Supreme Court decided, by 7 votes to 4, to include the crime of “simple rape” in the list of heinous crimes.

Although there is not a quantitative proof⁴²⁰ that more women and people from other minority groups in the Judicial Branch and in higher positions cause a change in the judgements pattern, the empirical data available points out in this direction.

419. Barros, 2014; Campos, 2019

420. Alves, 2017, p. 368



2. Recommendations

Based on the research and the findings presented previously and also on the experts' empirical experiences, some recommendations were listed below. The intention is to inspire AMB in its continuous work to promote gender equality and point out some possible directions for the association.

It is important to highlight that all the recommendations must consider the intersectionality between gender and other identity markers, such as: race/ethnicity, sexual orientation, class, age, disability, religion and nationality.

POLITICAL WILL

The main recommendation of this study is based on the observation that improvements in women's representation in decision-making positions in the judiciary require a strong political will. Evidence shows that governments' efforts to improve women's participation in the justice sector produce significant results. Commitments may take the form of government targets or even legislative commitments to diversity increase the absolute and proportionate number of women in the justice sector⁴²¹. Therefore, it is crucial to promote the need for gender equality in the judiciary to make it a priority in the political agenda. States should not only fulfill their obligation to address discriminatory employment laws, but also take measures to address gender stereotypes that undermine women's equal participation, including through media campaigns and establishing targets to support women's representation in decision-making roles⁴²².

ADVOCACY INITIATIVES

Gender parity target in the Judiciary | Dialogue with the Legislative Branch

Regarding political will is fundamental to promote and leverage gender equality in the judiciary, advocacy initiatives should be considered. In 2023, with a new Brazilian government, presenting

421. IDLO, [Women delivering justice](#), 2018, p. 27. Last visited 15 November 2022

422 Ibid., p. 35.

itself as more inclusive than the last one, the scenario is more favorable to achieve the goal of gender equality. The new federal government composition, for example, has 11 eleven women ministers out of 37, which means that 30% of the ministries will be led by women. Among these women, there are black and indigenous ones.

Considering that the achievement of higher positions in the judiciary, and specially in Higher Courts is not a matter of time, advocacy initiatives rises as an opportunity to address the problem and also point out a change that could be more effective through the promotion of gender parity programs.

AMB, individually or together with other associations of judges and also CNJ, could lead an advocacy initiative to boost the Legislative Branch to discuss gender parity programs in the judiciary, specially through parity targets in the shortlist and indications phases. It should raise awareness among Federal and State deputies about the need of elaborating draft bills that could push women magistrate's career and promote structural changes.

Gender parity targets are the most effective method to address gender inequalities, as shown in several European contexts⁴²³. The most appropriate model of gender parity targets can be tailored to the needs of different jurisdictions, operating at the application stage of a selection process, the short-listing stage, the appointment stage or all three. Gender parity targets can be set at different levels (whereby 30% is considered the "critical mass" and thus the minimum requirement for an under-represented group to reach to sustain change) or for a limited time. It is recommended that the gender parity target system is designed to maintain its proportionality over time. The system should include:

- time limits
- incremental adoption the application of a gender parity target of lower than 50 per cent, or
- a system which allows for exceptions, for example where there is an insufficient number of well-qualified women in the pool of candidates⁴²⁴.

It is important to highlight the recent creation of the Woman Ministry, led by Cida Gonçalves, which could be an ally to the cause. And also the existence of the NGO Paridade de Verdade, which is fighting for gender parity in the judiciary through advocacy with the Legislative Branch.

423 Policy Department for Citizens' Rights and Constitutional Affairs, Directorate General for Internal Policies of the Union, [Mapeamento da representação de mulheres e homens em profissões jurídicas em toda a UE](#), August 2017, p. 40. Last visited 15 November 2022.

424 G. Bindman e K. Monaghan, [Diversidade Judicial: Acelerando a Mudança](#) (2014) p. 58. Last visited 15 November 2022.



Gender parity target in the Examination Boards | Dialogue with CNJ

Regarding CNJ's engagement with the cause and also its influence in the judiciary, AMB could develop an advocacy initiative to encourage CNJ in the establishment of Recommendations and Resolutions related to gender parity programs to address the presence of women in examination boards.

TRANSPARENT AND FAIR SELECTION, NOMINATION, AND PROMOTION PROCESSES

Transparent rules for the recruitment of judges are of paramount importance to address gender imbalance in the judiciary. As noted above, the "career judgeship" model of civil law countries is considered more transparent and rational than in common law societies, and therefore may favor the promotion of women judges within the judiciary. For the selection and promotion process to be fair, it is vital to ensure gender balance and diversity within the selection/promotion boards. It is also recommended to offer trainings on gender and intersectional bias, diversity, and multiculturalism for selection/promotion boards.

HUMAN RIGHTS AND GENDER EDUCATION

Gender equality in Law School curricula

Continuing judicial education on gender equality and engagement with law faculties and academics is critical to raise gender sensitivity in the judiciary participants. Furthermore, gender sensitivity could be included in the law school curricula⁴²⁵. The creation of a culture of gender equality should be considered an investment in overall justice and democracy.

Continuing Training in Human Rights and Gender Equality

According to this research, there are many initiatives of talks and knowledge production, but to achieve a cultural change in a medium term, it's fundamental to promote a program of Human Rights Education, approaching gender education in a continuous and structural way.

So important as the formation offered to magistrates in the entry positions is the formation along the career and specially to the ones in management and leadership positions, including men.

It's crucial to be closer to the Magistrate's Center of Formation and to the Court's Center of Formations.

425 U. Schultz, *Gênero e Julgamento: Visão Geral e Síntese*. Em U. Schultz e G. Shaw (eds.) *Gênero e Julgamento*, Oxford, Hart (2013).

Not just a theoretical methodology should be used, but a practical one, highlighting real situations of discrimination in the workspace – explicit or not – and how to handle them.

MOTHERHOOD, CAREER AND WORKSPACE

The introduction of more flexible working conditions is particularly relevant for decision-making positions that are oftentimes perceived as requiring full commitment, with long working hours that make the reconciliation of family and professional life extremely hard.

Also, the progression of the career of a magistrate is usually related to many changes, moving in between small cities in the countryside. This pattern moves away women from the higher positions, once this format makes it difficult to conciliate personal and professional life. Advocating for change this pattern could be relevant.

Another important point could be the existence of kindergarten in the institution, to allow women progress even if they are moms and don't have a net of support.

STRENGTHEN CNJ'S RESOLUTIONS AND RECOMMENDATIONS

It was realized during chapter 5 of the Brazilian Perspective the huge respect and compromise the judicial branch's bodies have for CNJ. Although it is a regulatory body in the branch, it's clear that its power of influence is effective and not just pro forma. CNJ's resolutions and recommendations are frequently mentioned by courts. When it comes specifically to gender equality, efforts are being made in all spheres to accomplish the goal, almost always directly mentioning CNJ's normative acts.

Considering this huge respect and influence CNJ has over the courts, AMB should work closer to CNJ to strengthen its resolutions and recommendations related to gender equality and women's participation in the institution.

For example, the initiative *Repositório Nacional de Mulheres Juristas* (Resolution 418/2021) could be leveraged by AMB as a collaborative effort with CNJ. AMB could promote communication campaigns among courts and magistrates associated as also as awareness actions of the importance of such initiative.

The *Repositório de Mulheres Juristas* points out that all the courts must create an online repository to systematize information about women magistrates with different expertises aiming to contribute with the implementation of the national policy of gender equality established by "Resolução 255/2018".



MENTORING AND SUPPORT NETWORKS

Association of judges as a safe place

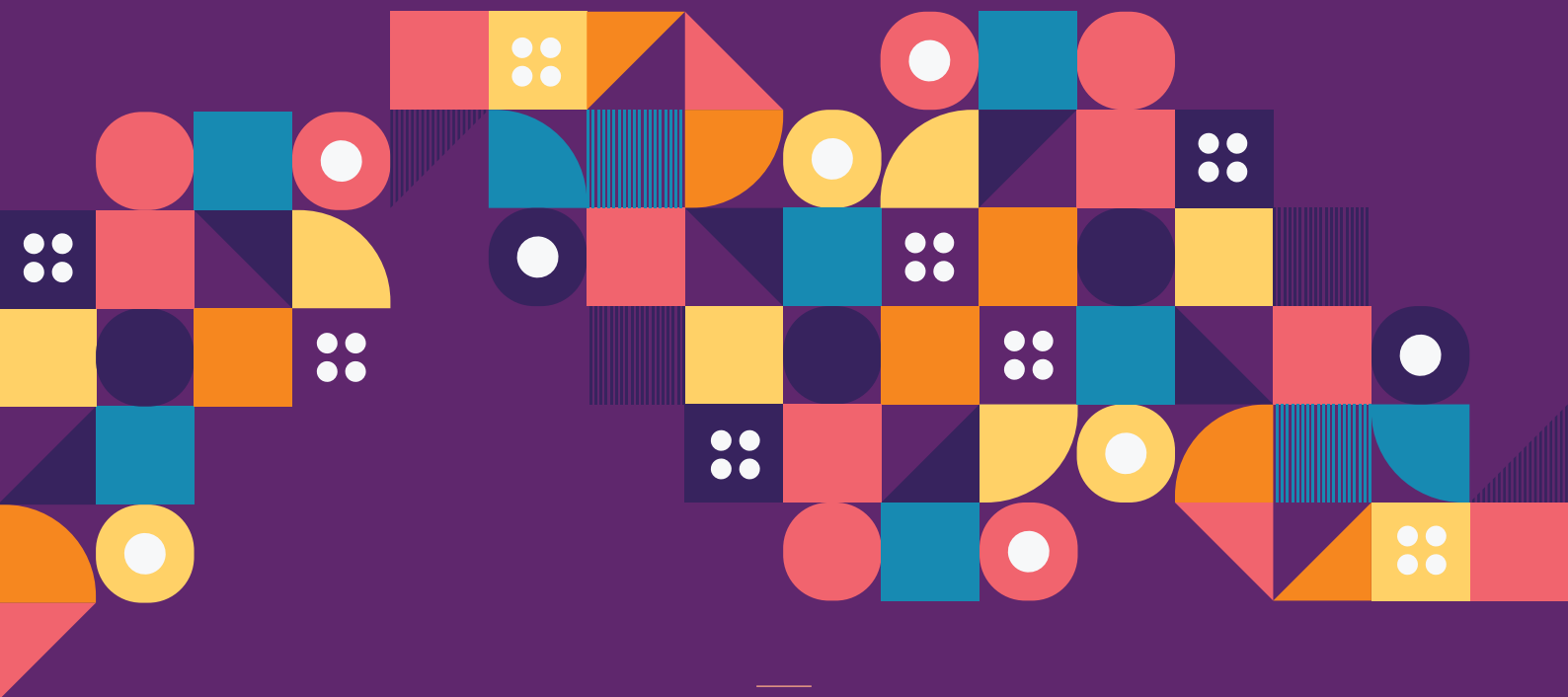
Networks of effective mentors and support can provide practical and psychological support for women that fear to break the glass ceiling in the judiciary. Enhancing the capacity and infrastructure of these associations of women judges is critical to support efforts to advance the role of women within the judiciary. These associations can fulfill a solidarity and support function for individual women and can be a source of training and education. They can also be an important voice in advancing women's full institutional representation. Women judges associations may also be able to raise awareness of judicial vacancies among their members, to encourage applications from female candidates, and to collectively call for or support the nomination of certain candidates. Furthermore, senior women judges and lawyers can encourage their peers and younger women to seek judicial appointment. Similarly, such women networks can provide valuable opportunities for exchange, reflection on challenges faced and the identification of key support needs⁴²⁶.

Psychological Support in the Commissions of VAW prevention

Some courts have already established a *Comissão de Prevenção e Enfrentamento do Assédio Moral e Sexual*, but not all the courts provide psychological support to the victims. It is known that VAW affects the self esteem and, for consequence, the notion of capability of these women, reducing the chances for them to progress in the career. For this reason, an initiative focused on providing psychological support or advocating for it could be relevant.

⁴²⁶ Policy Department for Citizens' Rights and Constitutional Affairs, Directorate General for Internal Policies of the Union, [Mapping the Representation of Women and Men in Legal Professions Across the EU](#), August 2017, p. 26. Last visited 15 November 2022.

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