

Gender Equality in the Judiciary: Experiences and Perspectives from Italy

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Abstract

Today, women represent more than a half of the Italian judiciary. However, despite the increasing number of women judges and prosecutors holding managerial positions in courts and Public Prosecutors Offices a closer look at the gender distribution of top-level offices and to the composition of judicial self-governing bodies (the High Council for the Judiciary, HJC, in particular) shows that the so-called ‘glass ceiling’ is far from being broken. By combining a detailed historical background with updated facts and figures, this article seeks to explore the path that women judges and prosecutors had to walk (and are still walking) to achieve full equality with their men colleagues, highlighting prominent achievements (eg the institution of the HJC Committee for Equal Opportunities and of local equal opportunity committees) and current challenges. Additionally, through continuous references to key international documents, the Italian experience is put in a wider international context with a view to show how the attainment of gender equality in the judiciary has now acquired unprecedented global relevance.

I. Introduction and Historical Background

The history of women’s presence in the Italian judiciary is a fairly recent one. It takes the moves from the framework provided by the Constitution enacted in 1948 and develops through laws and regulations as well as through continuously evolving practices. Its different phases are characterised by initial doubts, slow-paced reforms, sudden leaps forward and work-in-progress debates. Also, it is a history having its own birth date: 1963, when the first law allowing women to exercise all judicial functions entered into force. Much has happened since the first women joined the ranks of the Italian judiciary, and much is still to be done to achieve full gender equality and representation in the judicial branch as well as in its self-governing bodies (the High Council for the Judiciary in the first place). These will be subjects for the second part of this article. Before that, and just like in any modern-day saga, in order to understand how the Italian experience has evolved, it is worth giving a glimpse to its prequel, ie the way this

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issue was debated in the Constitutional Assembly, and provide the reader with short historical background notes up to 1963.

In January 1947, while Sub-Commission II was discussing the main lines of the ‘constitutional organisation of the State’, women were not allowed to exercise judicial functions. Pre-Fascist legge 17 July 1919 no 1176 expressly excluded them from those professions and civil service positions ‘implying (the exercise of) public jurisdictional powers’. 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).¹

Women’s participation in the exercise of judicial functions was surrounded by suspicion and prejudice in the Constitutional Assembly, too, where even some of the most brilliant intellectuals and prominent jurists of that time expressed mixed feelings towards it. In some cases, they strongly objected to even granting women any access to the judiciary at all. Women should not be allowed to join the judiciary because of their physiological lack of objectivity; they would not be fit to adjudicate in trials concerning ‘crimes of passion’ (this very argument will resurface in the discussion concerning the participation of women in juries); women are too emotional and do not possess the necessary ‘temperament, strength, firmness, and ability to think critically’ to perform judicial functions.² If allowed, women’s contribution to the exercise of judicial functions should have been restricted to family law issues and juvenile criminal matters only.³

These are just a few examples of those biased views, as drawn from the Assembly’s proceedings. However, the most conservative opinions did not prevail: the reference to further law provisions specifying the cases of women’s access to judicial functions, originally included in the final draft,⁴ was removed from the

¹ For more background information, see: G. Di Federico and A. Negrini, ‘Le donne nella magistratura ordinaria’ 2 *Polis*, August 1989, 179; C. Latini, ‘*Quaeta non movere*. L’ingresso delle donne in magistratura e l’art. 51 della Costituzione. Un’occasione di riflessione sull’accesso delle donne ai pubblici uffici nell’Italia repubblicana’ *Giornale di storia costituzionale*, 143 (2014).

² See MP. Mannironi’s speech at the Constitutional Assembly, Sub-Commission II, 10 January 1947, available at <https://tinyurl.com/ydglm7nz> (last visited 27 December 2020), 114.

³ See MP Calamandrei’s speech at the Constitutional Assembly, Sub-Commission II, 10 January 1947, available at <https://tinyurl.com/ydglm7nz> (last visited 27 December 2020), 113.

The views expressed by the mentioned MPs were largely part of a longstanding and widely shared trend according to which women were largely considered unfit to perform judicial functions and even to access legal professions at large. An interesting account of those views can be found in 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, available at <https://tinyurl.com/yafv7nbn> (last visited 27 December 2020), 18.

⁴ According to Art 98 of the final draft Constitution, ‘(t)he members of the judiciary are appointed by decree of the President of the Republic, upon designation of the High Council for the Judiciary, based on a public competition and a subsequent traineeship. Women might be appointed, too, in cases envisaged by the legislation on the judicial system’ (Authors’ translation).

text approved in December 1947. Today, the Italian Constitution does not contain any similar provision. Much to the contrary, its Art 51 stipulates that ‘Any citizen of either sex is eligible for public offices and elected positions on equal terms, according to the conditions established by law’.⁵ These provisions are complemented by Art 37, stating that working women shall enjoy equal rights and equal pay as men, and Art 106, according to which ‘judges are appointed through competitive examinations’. Additionally, it is grounded upon the all-encompassing principle of formal *and* substantive equality enshrined in Art 3.

That being said, one might be inclined to think that, once the Constitution came into force, the regulatory context for women’s participation in the exercise of judicial functions would change overnight and become immediately conducive to granting women full access to the judiciary. Easy enough to imagine, that was not the case. In any post-conflict legal order transitioning from a longstanding authoritarian regime to a new constitutional framework based on democracy and the rule of law, the existing legislation undergoes a painstaking upgrading process, (hopefully) resulting in its full alignment to the new constitutional values and architecture. That was also the case of Italy. Against the backdrop of still hostile scholarly and political opinions, the path leading to the approval of legge 9 February 1963 no 66, granting women full access to civil service, including the judiciary, was not a straightforward one. On the one hand, timid attempts were made to involve women in the exercise of judicial functions: legge 27 December 1956 no 1441 allowed women to serve as honorary judges in juvenile courts and lay members of the Courts of Assizes (though no more than three per panel). On the other hand, in 1957, the Council of State declared manifestly ill-founded (and therefore did not refer to the then recently established Constitutional Court) a question of unconstitutionality concerning the aforesaid Art 8 of the law on the judiciary of 1941 and specifically referring to the discriminatory presence of ‘male sex’ as a requirement for entering the ranks of the judiciary.⁶ Significantly, the grounds for this decision – ie until a new law amends the existing legislation, the old law remains into force even though contrary to the Constitution – serve as a clear example of the then-raging debate concerning the Constitution as *lex superior* or mere *lex posterior*. The Constitutional Court itself was very cautious in striking the allegedly discriminatory legislation down. This attitude clearly emerges from a decision dating back to 1958,⁷ stating that provisions limiting the number of women allowed to sit in *Corte d’Assise* as lay judges are not unconstitutional, as they aimed at ensuring the good functioning of the panels, on grounds of the different attitudes of men and women.

⁵ All English translations of the Italian Constitution quoted in this text are taken from the *Constitution of the Italian Republic* edited by the Italian Senate and available at <https://tinyurl.com/y8lkmyfg> (last visited 27 December 2020).

⁶ An in-depth account of those preliminary steps can be found in G. Di Federico and A. Negrini, n 1 above, 6-8.

⁷ Corte Costituzionale 29 September 1958 no 56, *Giurisprudenza italiana*, 1313 (1958).

This state of play was to change dramatically at the beginning of the 1960s. A Constitutional Court decision dating back to 1960 struck down Art 7 of legge 17 July 1919 no 1176, excluding women from public offices implying the exercise of political rights and authorities.⁸ Legge 9 February 1963 no 66 took care of repealing the remaining part of that article, the one excluding women from the exercise of judicial functions. 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 1963, the first public competition for the selection of judges to be open to women took place, and eight qualified out of one hundred eighty six selected.⁹ In 1965, the first twenty seven 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. Nonetheless, criticalities and open issues remain, as we are going to discuss in the following pages.

II. Women in the Italian Judiciary: The State of Play

Since the 1970s, at a slow but steady pace, the presence of women in the Italian judiciary became more and more significant thanks to the interaction between several factors. Among them are the overall increase of university attendance, the growing percentages of female students in universities and in law schools in particular.¹⁰ Between 1971 and 1981, women's presence in the judiciary increased from three per cent to ten per cent, but, not surprisingly, women were still extremely underrepresented in higher courts, as they obviously did not possess the length of service necessary for career advancements.¹¹

While in the 1960s and 1970s women were mainly attached to civil sections of first instance courts or to juvenile courts¹² (thus seemingly confirming the largely common views recalled above), throughout the 1980s the presence of women in the judiciary – ie in courts as well as in prosecutors' offices – became more evenly spread. Fostered by an additional increase in the number of female students attending law schools, in 1987 competition-winning women outnumbered their men counterparts: out of three hundred new members of the judiciary,

⁸ Corte Costituzionale 13 May 1960 no 33, *Giurisprudenza costituzionale*, 33 (1960).

⁹ 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, available at <https://tinyurl.com/yacysd8g> (last visited 27 December 2020), 13.

¹⁰ As *Mapping the Representation of Women and Men in Legal Professions Across the EU* points out, in those years 'law within a couple of decades became a highly feminised subject' all across Europe, 20.

¹¹ Statistics on the 1970-1980 decade are provided by T. Addabbo et al, n 9 above, 15-22.

¹² *ibid* 15.

one hundred fifty six were women.¹³

Despite their growing presence and excellent performance in the public competitions, at the end of the 1980s women in the judiciary amounted to seventeen point four per cent and those holding managerial position were still very few.¹⁴ Gender unbalances were hard to overturn in the judiciary's self-governing body, too: there was no representation for women in the High Council for the Judiciary (HJC) until 1981, when Parliament elected two university professors, and it took until 1986 to have the first woman judge to be elected as HJC member by her colleagues.

How about today? Since the mid-1990s, competition-winning women have always outnumbered their men counterparts with growing percentages, striking a remarkable sixty five per cent in the latest selection procedure, and since 2015 the presence of women in the judiciary has outnumbered that of men in general terms.¹⁵ As of 9 February 2020, HJC statistics report that, out of nine thousand seven hundred ninety one members of the judiciary, five thousand three hundred eight are women (fifty four per cent), which is certainly a significant achievement. Among these, there are one thousand thirty two prosecutors (ie forty six per cent of prosecutors), while three thousand eight hundred eleven women (making up for fifty seven per cent of judges) exercise judicial functions. Additionally, one hundred twenty five women (eighty seven judges and thirty eight prosecutors) hold managerial positions,¹⁶ while three hundred twelve (275 judges and thirty seven prosecutors) exercise semi-managerial functions. A total of one hundred four women judges currently serve as Court of Cassation judges and twenty three are assigned to the *Ufficio del Massimario*, ie the Court's office entrusted with the task of extracting, collecting and classifying the principles of law (maxims) laid out in the Court's decisions. Additionally, 16 women exercise managerial functions, as they preside over a Court's Chamber, while none of the twenty three women who serve as Deputy Prosecutors-General at the Court of Cassation currently hold managerial positions (such as *Procuratore Generale*, *Procuratore Generale Aggiunto*, *Avvocato Generale*).

Interestingly, the most recent HJC 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 organised in Italy) varies with no particular pattern. In a few Northern and Southern districts alike women judges or prosecutors range between fifty two

¹³ Consiglio Superiore della Magistratura, Ufficio Statistico, *Distribuzione per genere del personale di magistratura*, March 2019, available at <https://tinyurl.com/y8nd8nsh> (last visited 27 December 2020), 4. All statistics and data in this article are updated to July 2020.

¹⁴ T. Addabbo at al, n 9 above, 21-22.

¹⁵ See n 13 above, 4.

¹⁶ 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).

and sixty four per cent,¹⁷ thus contradicting another longstanding Italian commonplace. However, a closer look at the figures concerning managerial positions¹⁸ reports a much less triumphant situation. Men hold almost three quarters (seventy two per cent) of the managerial positions within the Italian judiciary, while a slightly higher score applies to semi-managerial ones,¹⁹ where women hold forty per cent of them. In both cases, women judges hold more managerial (thirty three per cent) and semi-managerial (forty two per cent) positions than women prosecutors (twenty two per cent and twenty seven per cent respectively). Percentages are generally higher in Courts of Appeal and lower in first instance court. When it comes to the Court of Cassation, percentages are strikingly lower, with women amounting to thirty five per cent.

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 HJC, where – by the way – women members are currently six out of the twenty four elected members.²⁰ However, on 15 July 2020, the HJC 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.

The most crucial (though probably not unexpected) fact emerging from the data discussed above is the still very limited 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). The relatively lower average age (forty eight) of

¹⁷ See n 13 above, 6-7.

¹⁸ *ibid* 8-10.

¹⁹ These 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).

²⁰ The High Council for the judiciary includes two *ex officio* members, represented by the First President of the Court of Cassation and the General Prosecutor in the same Court; according to Art 104 of the Constitution, it is chaired by the President of the Republic, who generally exercises his functions through the Vice-President elected among the lay members.

women members of the judiciary compared to that of men (fifty two)²¹ might suggest that oftentimes women are still a bit ‘too young’ (on average) to access positions that are generally attained also on grounds of length of service. However, while this argument could have weighted more in the 1970s or to some extent in the 1980s, nowadays the delay in granting women full access to the judiciary can shed light on the issue only to a limited extent. As the first woman judge to be ever elected to the Italian HJC by her peers (and the only woman to be ever elected President of the National Association of Judges and Prosecutors, ANM), Elena Paciotti, suggested that the blatant difficulties that women face in striking a balance between personal and work life, rooted in our cultural tradition and in the general condition of women in Italy, make them less willing to apply for managerial positions.²² However, we shall not run the risk of oversimplifying this discussion: it cannot be only a matter of maternity leaves, or of reconciling private needs with schedules and extra working hours. A Constitutional Court decision of 2003 framed the picture within a broader context and connected such inequalities to

‘the persistence of the historical effects of a time when 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 organisation of the Country’.²³

All of a sudden, those ‘theoretical’ and ‘practical’ obstacles, which may appear as a relic of a long-forgotten time, seem to resurface and retain their general validity, although they might assume different shapes and weights in the individual career of a woman member of the judiciary. Without going into further details, it is just worth recalling that the same general problems are far from being an exclusive feature of the Italian judicial branch.

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 composition. Interestingly, civil law systems featuring a civil-service-like career system usually score better in achieving a gender-balanced composition than traditionally co-opt-based common law judiciaries.²⁴ However, the latest available European Commission for the Efficiency of Justice (CEPEJ) statistics

²¹ See n 13 above, 1.

²² E. Paciotti, ‘Women in the Judiciary’, in Permanent Mission of Italy to the United Nations eds, *Women and the Judiciary. Three perspectives*, 30 September 2015, New York, available at <https://tinyurl.com/y99ypcgg> (last visited 27 December 2020).

²³ Corte Costituzionale 10-13 February 2003 no 49, para 4 ‘*considerato in diritto*’, available at tinyurl.com/14ryqs2b (last visited 27 December 2020).

²⁴ See n 10 above, 25.

on gender distribution in Council of Europe member States clearly indicate that much is still to be done, especially in apex courts.²⁵

The same obstacles and issues are common to many other workplaces in the public as well as in the private sector,²⁶ and (to various degrees) to the rest of Europe, too.²⁷ In this respect, the approval of European Parliament and Council Directive (EU) 2019/1158 of 20 June 2019 on work-life balance for parents and carers²⁸ represents a notable step that will hopefully contribute to sizeable advancements across Europe and possibly in the judicial field, too.

Another cross-cutting issue that clearly emerges from the statistics above lies with underrepresentation of women in the Italian judiciary's self-governing body, ie 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 (twenty nine). Until recently, women judges or prosecutors holding auxiliary positions at the HJC (eg in the Secretariat or the Research Department) are still very few compared to their male counterparts. As one of the few women to serve as a HJC member, Giovanna di Rosa maintained that women judges or prosecutors are not adequately represented in the judiciary's self-governing bodies (at the national as well as at the local level) because they are not enabled to assume the additional tasks and workload that this participation entails. Among these, she lists joining the meetings, contributing to the training of judges and prosecutors, taking on organisational and managerial offices. Lack of professionalism or poor preparation cannot account for that, of course. We have just seen that women have outnumbered men in every public competition since 1987, and, when performing their functions, they usually score better in the relevant evaluation exercises and are less subject to disciplinary measures. Again, the broader explanation she proposes points to the lack of 'cultural sharing' of the different duties that women traditionally (and of course, biologically) take on, not only by the society at large, but also by the institutions themselves.²⁹ These words seem to echo and complete those of the Constitutional Court, and again call for increased awareness and commitment from all the involved actors:

²⁵ The Council of Europe European Commission for the Efficiency of the Judiciary (CEPEJ) Statistics for the 2016 exercise highlight the generally low number of women holding top-level offices with reference to both judicial, available at <https://tinyurl.com/yacot5w8> (last visited 27 December 2020) and prosecutorial, available at <https://tinyurl.com/yacot5w8> (last visited 27 December 2020) functions.

²⁶ See L. Tria, 'La discriminazione basata sul genere, nei rapporti uomo-donna' *Diritti dell'uomo*, 5-19 (2012); M. D'Amico, 'La rappresentanza di genere nelle istituzioni. Strumenti di riequilibrio' 1 *giudicedonna.it*, (2017), available at <https://tinyurl.com/ycb8ur2u> (last visited 27 December 2020).

²⁷ European Commission, *2019 report on equality between women and men in the EU*, available at <https://tinyurl.com/yy2tyobd> (last visited 27 December 2020).

²⁸ Full text is available here: <https://tinyurl.com/y767goaz> (last visited 27 December 2020).

²⁹ G. De Rosa, 'Il contributo delle donne al governo autonomo della magistratura', in 'I primi 50 anni delle donne in magistratura: quali prospettive per il futuro. La violenza di genere nella società attuale' 162 *Quaderni del Consiglio Superiore della Magistratura*, 39 (2014).

families, society, judiciary, institutions, and – of course – women themselves.

On a broader level, quite interestingly, the need for such increased awareness does not seem to be less important in those judicial systems where women judges or prosecutors outnumber their men counterparts – as it is the case of Italy. In this respect, a recent Organisation for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) report 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.³⁰ 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 bodies.

The two issues we have just outlined (and their mutual connections) seem to us the most prominent examples of how the so-called ‘glass ceiling’ – formally granting women equal access to the judiciary and allowing them to actively pursue a career in it – is in substance still far from being dismantled in its entirety. Nonetheless, in Italy measures have been adopted and are still being elaborated to challenge (and hopefully remove) this seemingly unbreakable structure. These measures consist in an interesting mixture of regulatory instruments and best practices aimed at redressing gender-based inequalities in accessing the judiciary, and top-level positions within the judicial branch in particular. In this respect, a crucial role was played by the Italian Women Judges Association (*Associazione Donne Magistrato Italiane*, ADMI³¹), established in 1990 for the purpose of

‘studying legal, ethical and social problems regarding the condition of women in society, promoting the professionalism of women judges in order to guarantee the best possible justice to citizens and propose legislative changes for the attainment of full equality’.

III. Breaking the Glass Ceiling: An Overview on Recent Reforms and Best Practices

³⁰ OSCE, Office for Democratic Institutions and Human Rights (ODIHR), *Gender, Diversity and Justice. Overview and Recommendations*, 2019, available at <https://tinyurl.com/ybe5kbrx> (last visited 27 December 2020), 7.

³¹ ADMI is a member of the International Association of Women Judges (IAWJ, www.iawj.org), founded in 1991 with the aim of promoting the inclusion of gender perspectives in the overall functioning of judicial systems, equal access to justice and unbiased application of laws as well as to facilitate the creation and strengthening of networks of women judges across the world.

The entry into force of legge 10 April 1991 no 125, aimed at realising equal opportunities in the work environment through the design and enactment of affirmative actions, paved the way to unprecedented discussion and opened up a season of renewed commitment. In order to increase the effectiveness of the policy approach underlying the new law, ie a combination of gender equality-based measures and interventions designed to specifically protect and promote women, in 1992 the HJC established the Committee for Equal Opportunities in the Judiciary.³² To some extent, this can be considered the turning point in the increase of the Judiciary's self-awareness on gender issues.³³ Art 17 para 1 of the HJC Rulebook³⁴ entrusts it with the task of addressing the relevant HJC internal commission opinions and proposals aimed at removing obstacles to the achievement of full gender equality in the judiciary as well as promoting affirmative actions in this respect. The Committee for Equal Opportunities is chaired by the President of the 6th HJC Commission, that is competent on issues related to the overall organisation for the judiciary, with a function of advice and proposal. The Committee is comprised of two members of the HJC, 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 propelled the work of the HJC by promoting the adoption of innovative measures, taking action – in some cases – even before the legislator. That is the case of internal order no 160/96, recommending the managers of judicial offices to organise 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 workers. It will take another four years before Parliament extends those guarantees to all female workers through legge 8 March 2000 no 5, and another six years before protective measures and affirmative actions for the achievement of gender equality found full systematisation and consistency in the Code of Equal Opportunities (decreto legislativo 11 April 2006 no 198). This example highlights how the Committee has not only contributed to embedding gender perspectives and equal opportunities in the work of the HJC, but also to mainstreaming gender and equal opportunities discourses in the wider policy and regulatory debates through the years.

Among the most important innovations suggested by the Equal Opportunities Committee, it is worth mentioning the introduction of the function of 'district judge/prosecutor', assigned to the Courts of Appeal to replace the judges and

³² HJC Committee for Equal Opportunities in the Judiciary: <https://www.csm.it/web/csm-internet/csm/cpom>.

³³ In 2000 a Committee for Equal Opportunities was also established within the National Association of Judges and Prosecutors (ANM).

³⁴ Available at <https://tinyurl.com/ycn7bfnt> (last visited 27 December 2020).

prosecutors serving in the district in case of temporary absence, eg due to maternity or illness leave.

Self-government initiatives did not stop at the central level. In 2008,³⁵ upon proposal of the HJC Committee for Equal Opportunities in the Judiciary, decentralised Equal Opportunities Committees were created within the judicial councils of every District of Court of Appeal (*Consigli giudiziari*) as well as (in 2009) within the judicial council of the Court of Cassation (*Consiglio direttivo*),³⁶ to perform consultative functions and formulate proposals. Local Equal Opportunities Committees are chaired by one member of the judiciary appointed from among those sitting in the local Judicial Council. At least a half of its judiciary members shall be women (performing either judicial or prosecutorial functions) and it is comprised of: a woman attorney-at-law appointed by the Equal Opportunity Committee of the local Bar Council; the Regional Assembly Delegate for Equal Opportunities; a woman representative from the district's administrative staff. As specified by HJC decision of 9 April 2008, local Committees perform their functions with regard to internal organisational 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. Although there are significant differences between the different local contexts when it comes to the input provided by local Committees, it is worth stressing that by entrusting a member of the local Judicial Council with the task of chairing the Committee, the necessary connection with the local judiciary's self-governing body is ensured and even strengthened. At the same time, 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 as inclusive as possible, while the broad composition of local Committees fosters a more comprehensive 'cultural sharing' of gender equality among legal professionals.

In 2007, the HJC signed a Constitutive Charter of the Network of Equal Opportunities Committees (EOC) of the legal professions. The Charter aims at connecting all the EOCs of the ordinary, administrative, accounting, military and tax administration judges, prosecutors and magistrates as well as the Bar EOCs, with a view to identify and pursue shared objectives in the different judicial sectors.

IV. Women in the Judiciary and Equal Representation in Self-Governing Bodies

³⁵ HJC Decision of 9 April 2008, available at <https://tinyurl.com/y8mx5jr7> (last visited 27 December 2020).

³⁶ The Judicial Councils work as consultative bodies of the High Council for the Judiciary.

Underrepresentation of women in the judiciary's self-governing bodies, and the HJC in particular, shall be analysed against the backdrop of the general, we would dare say 'systemic', underrepresentation of women in public institutions, which even required the approval of a constitutional amendment to the previously mentioned Art 51 para 1 of the Constitution. Such amendment was indeed necessary to overcome Constitutional Court decision no 422/1995,³⁷ that struck down several electoral law provisions intervening in the making of the electoral list in such a way as to favour their gender-balanced composition, thus ultimately promoting equal representation of women in the Chamber of Deputies and in Regional and Municipal Councils. This controversial decision was grounded on two principles: firstly, formal equality as contained in Art 3 para 1 of the Constitution; secondly, the assumed 'neutrality' of any elected representative irrespectively of his/her sex, leading to the dismissal of any objection based on substantive equality as enshrined in Art 3 para 2 of the Constitution. Such views were subsequently overruled by the already mentioned Constitutional Court decision no 49/2003,³⁸ but meanwhile they forced Parliament to intervene at a different level, ie, through constitutional amendment. The original Art 51 para 1 of the Constitution stipulating that '(a)ny citizen of either sex is eligible for public offices and elected positions on equal terms, according to the conditions established by law' was complemented in 2003 by the following words: *'To this end, the Republic shall adopt specific measures to promote equal opportunities between women and men'*. Comprehensibly criticised for its vague formulation and indefinite scope of action,³⁹ this sentence was subsequently clarified by another key Constitutional Court decision,⁴⁰ which made clear its inextricable connection with substantive equality and the Republic's duty to remove any obstacle that may hamper all citizens' full participation to the political, economic and social organisation of the Country. Following this and other Constitutional Court decisions, national and regional election-related legislation immediately reintroduced quotas, gender preferences and other mechanisms with the aim of boosting the representation of women in Parliament, as well as in the Regional and Municipal Councils. Many of these measures are still in force today.

Is there any lesson to be learned, or at least any hint to be drawn from the picture we have sketched so far? As the HJC remains the only constitutional body not to include any gender balance measures in its electoral law, the introduction of quotas in the election and appointment of HJC 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,

³⁷ Corte Costituzionale 6-12 September 1995 no 422, available at <https://tinyurl.com/yaauma9t> (last visited 27 December 2020).

³⁸ See n 23 above.

³⁹ M. D'Amico, n 26 above, 7.

⁴⁰ Corte Costituzionale 14 January 2010 no 4, available at <https://tinyurl.com/ycymcmh2> (last visited 27 December 2020).

Associazione Dipendenti Ministero dell'Interno (ADMI) contributed to drafting the HJC electoral law amendment bill⁴¹ 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.

Although the proposed measures did not envisage the attainment of a perfectly gender-balanced composition of the HJC (but rather entailed mechanisms to be applied in the preliminary phases of the elections), in the end they did not make it to the final version of the bill on grounds of assumed incompatibility with the principle of judicial autonomy and self-government. However, the reform process was put on a hiatus and has not resumed ever since. Much more interestingly, recent modifications to the internal regulation and electoral system of National Association of Judges and Prosecutors (ANM) introduced a fifty per cent gender balance clause for the composition of electoral lists as well as a mechanism of seat distribution ensuring that each gender has at least thirty per cent of the plenum.⁴²

Although nothing has been done for the HJC so far, the example of ANM demonstrates that the most valuable solutions (or at least, the most valuable attempts at solving controversial issues) are those stemming from the internal discussion of those who will be directly affected by them. As debatable and difficult to fine-tune as they may be, electoral quotas and gender-balance clauses are for sure mechanisms that self-government bodies (and Parliament) could and should take into account when reflecting upon possible corrections to the underrepresentation of women in national and local institutions, and in the HJC in particular.

V. The Road Ahead. Concluding Remarks

The picture we have just outlined shows very well the 'long and winding road' that women judges and prosecutors had to walk (and are still walking) to achieve full equality with their men colleagues. The situation has changed since 1963, but there is still a lot to do to permanently embed gender perspectives in the everyday life of the judicial branch at all levels. Affirmative actions⁴³ to

⁴¹ Chamber of Deputies Bill no 4512/2017.

⁴² See C. Lendaro, 'La rappresentanza di genere nelle istituzioni. Strumenti di riequilibrio. Introductory remarks' 1 *giudicedonna.it*, 4 (2017), available at <https://tinyurl.com/ydgzgfkm> (last visited 27 December 2020), for an extensive account of the various proposals in this respect.

⁴³ It is worth recalling the broad understanding and dynamic view that the United Nations (UN) Convention on the Elimination of All Forms of Discrimination Against Women (1979) provides on such term. In this respect, Art 4 para 1 stipulates that: 'Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall

compensate historical disadvantages have certainly contributed to boost women's role in the judiciary but have sometimes even reinforced the archetypical perception of women's frailty and resurrected the usual stereotypical comparisons with men, without intervening on the overall social and institutional context that nurtures these very inequalities. Debate, therefore, is far from being over and the perfect remedial measures have not been identified yet.

However, it would be just too simplistic to call for a full, unquestioned alignment of men's and women's working, career and representation conditions without a careful, objective identification and enhancement of the relevant specificities and added values. Moreover, this is not the framework our Constitution designs for substantive equality. The Republic shall remove the obstacles hampering full participation of citizens to the political, economic and social life of the country, but primarily it has to remove those obstacles hampering the full development of the individual (Art 3 para 2). This latter sentence cannot be read but in one with Art 2, stipulating that

'(t)he Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed'.

Substantive equality implies recognising and enhancing differences as the texture society is made of and aims at giving all 'equal opportunities' to express their potential and ultimately contribute to society itself. With specific regard to work, this is further clarified by Art 4, stating that

'(e)very citizen has the duty, according to personal potential and individual choice, to perform an activity or a function that contributes to the material or spiritual progress of society'.

Women's contribution to the exercise of judicial and prosecutorial functions has been innovative under many aspects, and has often brought new arguments, reasoning and even unprecedented nuances into the legal debate. Advancements have been both tangible and intangible and range from the attainment of a more inclusive judicial decision-making process to even more grassroots impact, such as that on the very implementation of democracy and the rule of law, by increasing the legitimacy of judicial institutions through broadening their representativeness.⁴⁴ Pluralism, enhancement of differences and equal opportunities are the backbone of post-World War II constitutionalism. In such a

not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved'.

⁴⁴ International Development Law Organisation (IDLO), *Women delivering justice: contributions, barriers, pathways*, 2018, available at <https://tinyurl.com/ycsr4nj7> (last visited 27 December 2020), 13.

multifaceted context as the one we are experiencing today, on the eve of unprecedented moral, social, and therefore legal, challenges, the presence of women in the judiciary is the added value that can contribute with its uniqueness to the continuous development of the rule of law in its substantive meaning.

As discussed here, the case of Italy is no exception. In performing their duties with professionalism and preparation, women judges and prosecutors were often called to face extremely sensitive issues, and they never backed down. It is here worth mentioning the case of Maria Gabriella Luccioli, one of those eight women to win the first public competition for entering the judiciary to be open to female participation, who guided the I Section of the Court of Cassation in adjudicating upon the interruption of end-of-life medical treatment and delivering the milestone ‘Englaro decision’ in 2007.⁴⁵

Contrary to what some of those sitting in the Constitutional Assembly might have thought, no frailty was shown here, but balance, legal sensitivity and farsightedness were in turn key to perform such a crucial task.

⁴⁵ Corte di Cassazione 16 October 2007 no 21748, available at giurcost.org.