

Albania and Gender Challenges in Judicial Decision-Making

Dr. ANNA XHEKA

“Aleksandër Moisiu” University
Durrës, Albania

Abstract:

This publication presents the actual situation in Albania regarding Gender Equality in judicial power. Albania has adopted Law "On Gender Equality in Society" in the year 2008. According the article 4 of the law : “there shall be equal gender representation in cases when neither of the genders is represented by less than 30% in any institution, hierarchical instance, nominated body, political parties”, while Article 15 requires 30% as standard of gender equality.

“Equal gender participation and representation in all legislative, executive, judicial power bodies as well as in other public institutions shall be achieved when: a) A representation of above 30% of both sexes is ensured, including their steering bodies ”¹

Meanwhile the EU objection for member states or aspiring ones, goes beyond this critical figure, aiming a minimum of 40% .

The paper analyzes the current situation of women's representation in judgment system, in two main structures; in the entirety of judges as well as in top senior management positions from the perspective of gender equality. The analysis is based on secondary data from different reports or other studies, by analyzing and comparing them between countries as well as with EU standards. The paper concludes that gender equality in judicial decision-making power appears in two levels refereeing the judicial system scales. Taking in consideration the entirety of judges and prosecutors the

¹ Low Nr. 9970 datë 24.07.2008 “On Gender Equality in Society”

situation seems to be optimistic, while appears to be in a too critical level in terms of senior management positions .

Key words: Gender Equality, Judicial Power, Gender Quotas, Decision Making, Senior Management Positions.

Theories about the role of women's representation in the judiciary

While the efforts for achieving gender equality in parliament and government it is transformed into a multi-year action at national and international level, there was not a similar movement to achieve gender equality in judicial power. The quota of 30% representation of women at all decision-making bodies, sanctioned in the Beijing Declaration - 1995, it was a guideline of women progress in the judicial system.

Researchers of gender equality issues in judicial system as evidences two main dominant theories in support of increasing the representation of women in this sector. According the first theory, *women judges, tend to make judgments favorable aim to achieve social equality and support women's empowerment initiatives* (Mobekk, 2010: 102; Chew, 2011: 341; Kim 2009: 61-77) . According to the second one, *gender equality in the judiciary it is important, not because women judges will take different decisions from men, but moving towards gender equality, increase public confidence to the gender balanced judicial institutions* (Rackley, 2009; 11 - 26; Malleson, 2003: 1-24; O'Connor and Azzarelli, 2011: 3-9; Boyd, Epstein and Martin, 2010: 389-411.).

However, despite the lack of special and specific measures in this sector, women appears to be better represented than in the parliamentary power. The women represented 27% of judges worldwide in 2011 while represented only 20.2% of parliament's members worldwide in 2012.²

² Doherty, J. Joshua. (2012) *Women's Representation in Judiciaries Worldwide:*

The first theory it is also supported from a report of the UN-Women, "UN Women", 2011. According to this report; "... *Women judges can make a difference in women's lives because they treat cases differently from men judge*".³

One of the field's researcher, Chew based on statistical data, concluded that: "*Judges are results to have given to women more positive decisions against of all forms of women's discrimination, in employment, sexual harassment, ect* followed by another conclusion according to it: "*Judicial panels that are composed more of women judges are more "pro-plaintiff" than those composed of men only.*"⁴ She makes a classification in four different schools, regarding the thinking and judging's way of women judges. The first two school's models according to her; the legalistic and professional socialization ones, suggests that *there isn't any kind of influence in the judge's decision*, while two other models; the realistic one and the personal's attributes suggests that *gender's judge may affect the decisions she/se takes*.⁵

The legalistic model is premised on the idea that judicial decision-making is mechanical and formulaic, and therefore the judge's gender does not enter into the decision-making process.

Also **the professional socialization** model suggests that judges, through their legal and judicial training, are socialized to the profession's norms, thereby preventing personal attributes or experiences from interfering with judicial decision-making.

Arguments in favor of increasing the Gender Diversity on the Bench. Institute for Global and International Studies, The George Washington University: Washington. Page 1.

³ Turquet, Laura. et al. UN Women. (2012) *In Pursuit of Justice: Progress of the World's Women 2011-2012.* New York: United Nation Entity for Gender Equality and the Improvement of Women. UN Women. page 61.

⁴ Data proceeded from the author based in :

Chew ,K. Pat. (2011) *Judges' Gender and Employment Discrimination Cases: Emerging Evidence-Based Empirical Conclusions.* *The Journal of Gender, Race and Justice.* 14. Page359-74.

⁵ Ibid

Meanwhile **the realistic model** assumes that judicial decision-making involves some personal discretion, thereby implicating the judge's gender.

The personal attribution model extends this approach and suggests that judges' personal attributes (i.e. gender) and experiences (also informed by the judge's gender) consciously or unconsciously influence how judges interpret case facts and legal principles.

Other authors opposes the Chew's conclusion, according to which gender is a determinant key in the judge's decision-making, but of course without denying it categorically (Rackley, 2009: 11-26 & Malleson, 2003: 1-24). Malleson supports her conclusion, based in some observations made in different countries of the world, such as Canada, the United States, Israel, New Zealand etc.

While the first theory of the importance of representation of women in the judicial power has its arguments for and against as above, the second theory regarding the impact on public confidence, it seems to be widely accepted.

The authors support this theory argue that increasing of women participation in the judicial system, is necessary in order to overcome judiciary's institutional prejudices institutional and in the same time to have a judicial gender balanced system, more accessible to women and girls, a key element that directly related to impartiality, bringing greater confidence to the public and better reflection to the society regarding the judge's law interpretations. (O'Connor and Azzarelli, 2011: 3-9).

Malleson considers the increasing of the women representation in judicial power, as necessity to overcome systemic bias against women present in society more generally, in particular bias as reflected in the implementation and enforcement of laws. The overwhelming dominance of men on the judiciary, according to her, represents the result of unfair

arrangements that disadvantage women, such as traditional division of labor (Malleon 2003; 1-24).

Albania and women’s representation in the judiciary

Albania has adopted the Law "On gender equality in society", in the year 2008. Article 15 of the law expresses the standards of gender equality in Albania in all decision-making bodies; *"Equal gender participation and representation in all legislative, executive, judicial power bodies as well as in other public institutions shall be achieved when: a) A representation of above 30% of both sexes is ensured, including their steering bodies"*⁶

As it is clear from above article, the minimum standard of gender quota also regarding "judicial power" it is 30% (in this case it is a neutral quote).

Cross-Cutting Strategy of Justice has provided specially measures to increase the number of women in the judicial system. Specifically, the action plan of the Strategy envisages the integration of legal mechanisms for the implementation of gender quota, aiming the gender mainstreaming in all Albanian’s courts levels.

Table No. 17: The composition of the staff corps of justice by gender, 2014

Position	Women in %	Men in %
Judges of District Court	45.8	54.2
Heads of District Courts	9	91
Judges of Appeal Courts	37	63
Heads of Appeal Courts	29	71
Members of Supreme Court	25	75

⁶ Low Nr. 9970 datë 24.07.2008 "On Gender Equality in Society", Article 15.

⁷ INSTAT (2015) *Women and men in Albania 2015*. Tiranë: Instituti i Statistikave. Page 97. Available:

http://www.instat.gov.al/media/295842/femra_dhe_meshkuj_n_shqip_ri_2015.pdf. Seen at 25 September 2015.

Head of Supreme Court	0	100
Prosecutors at the Courts of First Instance	31	69
Prosecutors at the Appeal Courts	15	85
Prosecutors at the Court of Serious Crimes	18	82
Prosecutor's Office	17	83

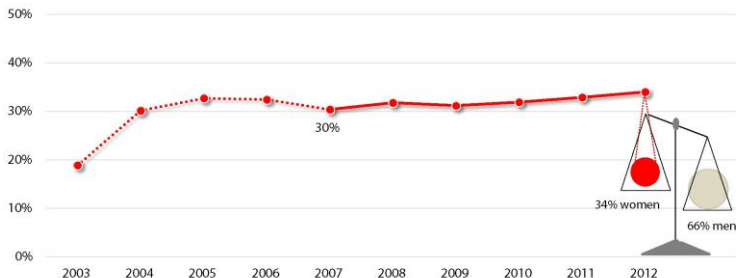
As the table shows, gender quota, met the group of the first instance’s judges and prosecutors, as well as those of appeals courts. Going above, up the stairs of the judiciary hierarchy, and governing structures, the situation of women’s representation appear to be in critical levels, below 10%, as it is for example the position of “Heads of District Courts”. Somehow better but again far from the gender quota, below 20%, also appear women’s representation in the structures of the prosecution, excluding the first instance of prosecutors.

Worldwide comparative analysis of judiciary’s women representation with special focus in Europe

Women’s representation in the judiciary, globally appears more optimistic than the minimum gender quota of 30%. The International Criminal Court has 57.9% women, Greece 51.7%, Rwanda 50%, Croatia 48.8%, Serbia 40%, Sweden 37.5%, Germany 31.3%, Denmark 26.3%, while the UK, Italy, Egypt, India and Pakistan women’s representation it is in very low levels, less than 10%⁸. Referring to the geography of this study, the European Union, the situation of women's representation at the highest level of the judiciary, the Supreme Court, is more optimistic than in all other types of the system, respectively 34%, following the positive global trend of this indicator. (See figure below)

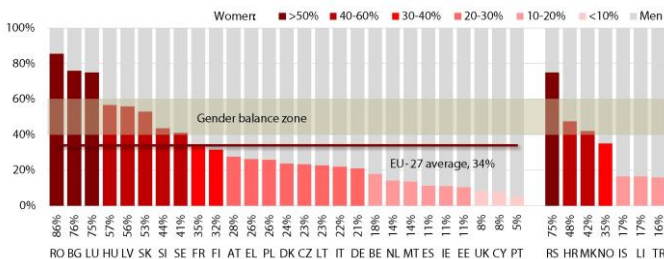
⁸ Rackley, Erika. (2013) *Women, Judging and the Judiciary: From Difference to Diversity*. New York: Routledge. Page 23.

Graph No. 1. Percentage of women judges in national high courts across the EU, from 2003 to 2012



The above graph shows that the first complete data about this indicator have been collected since 2007, while the indicator has been continuously improved, from 30% in 2007 to 34% in 2012. Meanwhile the individual mosaic of European countries, appear to be extremely diversified, starting from countries where women make up to three-quarters of the high level’s judiciary to the countries where they occupy no more than 10-15% of it.

Graph No. 2⁹: Representation of women in the Supreme Court of the European Union countries in 2012



As it is clearly shows from the graph above, countries like Hungary, Latvia, Slovakia, Slovenia, Sweden, Croatia and the former Yugoslav Republic of Macedonia have at least 40% of each gender in their Supreme Courts, while in Romania, Bulgaria, Luxembourg and Serbia women outnumber the men,

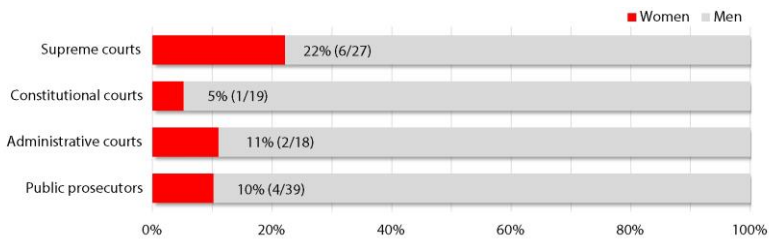
⁹ European Commission. (2013) *Women and men in leadership positions in the European Union*. Brussels: European Commission. Page 34.

occupying at least three-fourths of the supreme courts' judges. Very opposite is the situation in another countries block. At least 90% of judges, in Portugal, Cyprus and the UK are men and only slightly less than 85% in Estonia, Ireland, Spain, Malta and the Netherlands.

Meanwhile, if we analyze the data representation in senior positions, heads of supreme courts, the situation presents low levels of women's representation.

In critical levels it is women's representation in heads' positions of the Supreme Court, Administrative Court, Constitutional Court and that of the Public Prosecutor within the European Union.

Graph No. 3¹⁰. Gender representation in heads' positions of the High Civil Court, Administrative Court, Constitutional Court and Public Prosecutors in 27 EU countries - 2012



As it is above shown, the post of the supreme courts' head of the Member States of the EU, held on 21 cases or 78% from men and only in 6 cases or 22% from women.

The Supreme Administrative Court as is evident from the graph, does not exist in the 27 EU countries, but only 18 of them. That's because usually their role is fulfilled by higher courts' administrative colleges. Nevertheless from 18 countries where this position exists only in 2 of them (Germany and Slovenia), it is held by a woman achieving the level of 11% representation. The Constitutional Court exist in 19 countries in the whole EU and is headed by a woman only in one case or

¹⁰ European Commission. (2013) *Women and men in leadership positions in the European Union*. Brussels: European Commission. Page 35.

5% (case Slovakia). The gender representation's situation is similar in public prosecutors structure also. Among the heads of EU's public prosecutors, are nine men out of every ten positions, or 90%.

Referring to three national supreme courts together (Supreme, Constitutional and Administrative Court), women make up to 14% of the heads' positions¹¹, a figure far from the minimum of 30% and still farther from the EU target of 40%.

The judicial system of the European Union, as the body itself, comprises two courts - the Court of Justice, which is responsible for the interpretation of European law and its implementation in all Member States, and the General Court, which deals mainly with disputes brought by individuals and companies and also includes the European Court of Civil Service.

Each court from those above mentioned, in 2013 consisted of a panel of 27 judges, one from each member state, and the Civil Service Tribunal of seven judges, while the composition of this structure, consisted in 49 or 80% men and 12 or 20% women.¹² The Court of Justice of the EU, which is the highest authority of the EU judiciary system has 15% women, while the European Court of Human Rights, that has jurisdiction over member states of the Council of Europe is composed from 38% women . (18 out of 47 judges in total).¹³

Conclusion:

The researcher strongly supports promoting gender equality within the judiciary. The arguments are different such: female judges would decide cases in ways that are more favorable to promoting women's empowerment efforts in the broader society, the so-called difference-based argument for increased female

¹¹ Ibid

¹² European Commission. (2013) *Women and men in leadership positions in the European Union*. Brussels: European Commission. Page 35.

¹³ Ibid

representation. A judiciary that is more representative of gender equality would result in greater public confidence in the judiciary. For some others, gender equality is, by itself, a sufficient reason to pursue gender parity within the judiciary. The common conclusion it is that the judiciary has a very great potential to implement progressive changes in the rule of law. Achieving gender equality within its institutions has been identified as a key aspect of realizing this potential.

The above analysis leads us to the conclusion that regarding the low level of the judicial system and of justice system in general (including prosecutors), women's representation appears generally in optimistic figures, often exceeding the quota. Going above, up the stairs of the judiciary hierarchy, and governing structures, the situation of women's representation appear to be in critical levels.

Such a conclusion referred in Albanian case too, despite the fact that gender quota law and its provisions are approved in 2008 and in the same time specific measures are taken by the ministry responsible for its implementation. From a simple analysis of the provisions of the relevant law of the quota, it is concluded that the provision for quota especially in the executive, the judiciary and public administration sectors, are not accompanied by any measure or sanction that would guarantee it. That means that it remains more as a declarative format rather than a real objection to achieve. Its effectiveness requires intervention in the relevant law or in legal judicial package, to be filled with concrete measures and sanctions that would guarantee achieving the purpose.

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