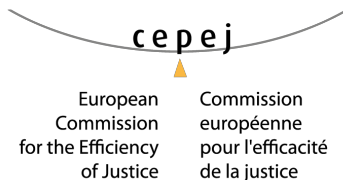


EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)

Guidelines on gender equality in the recruitment and promotion of judges



Adopted at the 39th plenary meeting
of the CEPEJ (Strasbourg, 6-7 December 2022)



COUNCIL OF EUROPE



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l'égalité des genres dans le recrutement et
la promotion des juges*

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Introduction

Gender equality is a fundamental value of the Council of Europe, originating in the principle of non-discrimination stipulated by the European Convention on Human Rights and by the European Social Charter. This value is re-affirmed in other conventions¹ and recommendations² adopted by the Council of Europe.

■ The present document³ adopts the defining elements of gender equality stipulated in the Council of Europe Gender Equality Strategy 2018-2023:

“Gender equality entails equal rights for women and men, girls and boys, as well as the same visibility, empowerment, responsibility and participation, in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men⁴.”

■ These guidelines stem from a human rights approach, contributing in particular to the implementation of strategic objectives 3 and 4 of the Council of Europe Gender Equality Strategy 2018-2023, with a view to ensuring the equal access of women to justice and achieving a balanced participation of women and men in political and public decision-making⁵, as opposed to a human resources management approached focused simply on having both sexes represented.

■ In the context of the recruitment and promotion of judges, gender equality⁶ entails that both women and men have equal access to the profession of judge, as well as equal visibility, empowerment, responsibility and participation, at all levels of the judiciary, allowing them to aspire to job changes and career progression based on

¹ The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), the Council of Europe Convention on Action against Trafficking in Human Beings, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention).

² E.g. Recommendation No.R (98) 14 of the Committee of Ministers to member States on gender mainstreaming; Recommendation 2003 (3) of the Committee of the Ministers of the Council of Europe, “Balanced participation of women and men in political and public decision making”; Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism; Recommendation No.R(96) of the Committee of Ministers to member States on reconciling work and family life.

³ The present document was prepared by Ms Iustina Ionescu, scientific expert designated by CEPEJ-GT-QUAL.

⁴ [Council of Europe Gender Equality Strategy 2018-2023](#), point 2.

⁵ *Id.*, pp.12-14.

⁶ *Id.*, point 5.

skills. This entails that the authorities in charge with judges' training, recruitment, promotion, and administration of the judiciary, as well as the representative bodies of judges acknowledge the importance of gender equality and are committed to take measures to ensure substantive and full gender equality. This is where CEPEJ comes into play as a body in charge of researching, evaluating, promoting good practices, and adopting tools to, in this case, support the efforts at the national level to promote gender equality in the judiciary, as a way to improve the efficiency and quality of justice in the member States of the Council of Europe.

These guidelines are based on the assessment of the current situation in a number of jurisdictions, reflected in the CEPEJ-GT-QUAL's Comparative Study on Gender Equality in the Recruitment and Promotion of Judges, and the existing research and analysis of promising practices revealed in several member States⁷.

The research that CEPEJ undertook in 2021-2022 in this field showed that it is generally accepted among the scholars and the representatives of the judiciaries in democratic countries that gender equality is justified by the principle of equal opportunities of both genders to access the profession of judge⁸ and by the principle of equality in decision-making, where representatives of each gender participate in the process of adjudication, as a way of exercising power and authority in the society⁹. At the same time, the research showed that gender equality in the profession of judge reflects on the legitimacy and democracy of the institution – where all citizens, both men and women, feel they are represented by the bench¹⁰ and the recruitment and promotion is fair and does not exclude some categories of the society¹¹.

These guidelines propose measures that can support the efforts of national authorities to achieve gender equality in the profession of judge. Their implementation may be adapted to the specific circumstances regarding gender equality in the judiciaries of member States. The guidelines address gender equality in the recruitment and promotion of judges from the moment of applying to initial training programs for the profession of judge and recruitment criteria and procedures, to career promotion. They

⁷ CEPEJ-GT-QUAL(2021)4, study conducted by Ms Tabeth Masengu for CEPEJ-GT-QUAL.

⁸ See Kate Malleson 'Justifying Gender Equality on the Bench: Why Difference Won't Do', *Feminist Legal Studies*, 11(2003), 1-24 (p.15); Tabeth Masengu, 'A Perspective on Women and Leadership in the South African Judiciary', *South African Journal on Human Rights*, 31,15 (2015), 655–666; Rackley and Webb, 'Three models of Diversity', p.287, as cited by CEPEJ-GT-QUAL(2021)4, point 3.1.

⁹ See Kenney, 'Gender and Judging', p. 129; Nancy B. Arrington, 'Gender and Judicial Replacement', *Journal of Law and Courts*, 6.1 (2018), 127–54 (p.129); Josephine J Dawuni, *African Women Judges on International Courts: Symbolic or Substantive Gains?*, ICourts Paper Series (Hague, 2016), as cited by CEPEJ-GT-QUAL(2021)4, point 3.4.

¹⁰ See Catherine Albertyn, 'Judicial Diversity', in *The Judiciary in South Africa*, ed. by Cora Hoexter and Morné Olivier (Cape Town: Juta, 2014), pp. 245–287, as cited by CEPEJ-GT-QUAL(2021)4, point 3.2.

¹¹ See Richard Devlin, A.Wayne MacKay and Natasha Kim, 'Reducing the Democratic Deficit: Representation, Diversity and the Canadian Judiciary or towards a Triple P Judiciary', *Alberta Law Review*, 38 (2000), 734–865; Rackley and Webb, 'Three models of Diversity', p.290, as cited by CEPEJ-GT-QUAL(2021)4, point 3.3.

also aim at strengthening a working environment that supports work and family life balance and is free from gender discrimination and gender stereotyping.

■ This holistic approach takes into account that member States are at various stages in the process of ensuring gender equality in the profession of judge, while taking into account that the procedures of recruitment and promotion might vary from one country to another. There are some member States in which women are still underrepresented in the profession of judge. There are member States where women and men are equally represented in the profession or where women are overrepresented, but they work especially in lower courts and do not take positions with higher responsibility. Therefore the percentage of women judges in higher courts and in management positions is lower than that of their male counterparts. There are also member States where gender equality in higher positions is achieved. For the public policies addressing gender equality in recruitment and promotion to be effective, the national authorities should plan a set of measures based on a thorough assessment of the situation, addressing potential inequality between women and men at different levels of the professional carrier and creating a working environment that is respectful of the principle of non-discrimination and gender equality.

I. Non-discrimination and combatting gender stereotypes

1

Member States should adopt and implement measures to promote non-discrimination and combat gender stereotypes at the level of the judiciary.

A working environment that is respectful of and values all employees for what they are as professionals and human beings, irrespective of their gender, where there is no gender violence, sexual harassment and sexism, is a place where every person can grow and perform at their best, both women and men. The simple presence of more women in the profession does not necessarily change the organisational culture and the working atmosphere, at least not immediately. Women and men are the reflection of the society they live in, and women themselves can have gender stereotypes and discriminate against other women. Therefore, national authorities are encouraged to be proactive and adopt and implement measures to promote non-discrimination and combat gender stereotypes at the level of the judiciary. For example, internal regulations and professional statutes should include provisions forbidding discrimination, harassment based on gender, and sexual harassment, and provide for internal complaint procedures to address potential cases. The national High Council for the Judiciary or another equivalent independent body, or the Ministry of Justice, depending on national context, should monitor the situation with these complaints and take measures to promote gender equality, including continuous training on non-discrimination and combating gender stereotypes in the institutions where incidents have been reported.

II. Ensuring gender equality in the process of recruitment of judges

Historically, the legal professions, including the profession of judge, were male professions in patriarchal societies. Because it used to be the result of an unequal status between women and men, the lower representation of women in decision-making bodies, including the judiciary, is considered within the Council of Europe a matter of gender inequality that needs to be addressed by adopting adequate public policies. In this section are proposed various measures to ensure a fair and gender-equal recruitment in the profession of judge, while the aspects referring to career promotion will be addressed in the next section.

2

Member States should collect sex-disaggregated data on all applicants in the recruitment process and monitor the evolution of gender representation in the profession of judge.

Collection of sex-disaggregated data is the first step to assess the situation with regard to gender equality in a country/sector. The adoption, implementation, evaluation of the effects, and adjustment of measures to promote gender equality should rely on the thorough analysis of sex-disaggregated data over a period of time¹². For example, when data indicate a lower percentage of representatives of one gender in the profession of judge, it may be due to the fact that fewer members of that gender apply, or to the fact that fewer representatives of that gender make a successful candidature. In order to differentiate between these two situations and understand where this imbalance is coming from, it is essential that the authorities are aware how many women and men applied in the recruitment process.

Based on the CEPEJ research for these guidelines, only 8 jurisdictions out of 33 respondents are collecting sex-disaggregated data of all applicants in the recruitment process¹³. This key action was underlined in the 2017 Report of the European Parliament "Mapping the representation of women and men in legal professions across the EU", which recommended: "Initiating a framework for the systematic monitoring of gender, and gathering all monitoring data into one place on a regular basis"¹⁴. The

¹² The European Institute for Gender Equality, *Gender statistics and indicators*, 2019.

¹³ CEPEJ-GT-QUAL(2021)4, point 6.1.

¹⁴ European Parliament, *Mapping the representation of women and men in legal professions across the EU*, August 2017, p.89.

data about the numbers of women and men that apply and are accepted in the profession of judge should serve to monitor the dynamic of gender representation in the profession, from one year to another. This is a first step in the analysis of gender imbalance in the profession, a step that may direct the authorities to different sets of measures addressing gender inequality. If representatives of one gender apply in the same proportion as representatives of the other gender but they are not equally successful, the authorities should look into the criteria and procedures of recruitment and assess to what extent they are ensuring equal opportunities for women and men. When representatives of one gender do not apply in sufficient numbers, the authorities should look into ways to encourage qualified professionals or law students belonging to that gender to consider the profession of judge attractive, for example by promoting it among these groups, making the recruitment process more transparent, removing certain barriers that discourage women or men who must balance work and family responsibilities.

■ National authorities could partner with associations and groups of law students and legal professionals to publish the information about the recruitment procedures, criteria, and policies among their members, including online. Judges from under-represented gender could be invited at events for law students and legal professionals to share how they entered the profession, how they are overcoming eventual barriers in the exercise of the profession of judge, how they are balancing work and family life, or to inspire potential candidates with their professional carriers. The salaries of judges could also be part of the collection of sex-disaggregated data in order to identify potential salary gaps and determine measures to ensure gender equality also in this regard.

3

Member States should ensure that the procedures of recruitment are conducted transparently, the criteria are clear, detailed and implemented in an impartial manner, and women are equally involved in the decision-making process of recruitment.

■ The CEPEJ 2022 Evaluation of judicial systems Report identified a variety of recruitment methods for judges in 44 member States¹⁵. There are member States that have competitive examinations in the recruitment of judges. Other states combine exams with a procedure for legal professionals with long-term working experience, and other states have a system that relies only on experience and seniority among legal professionals, without a competitive exam. Irrespective of the recruitment method implemented, the principles of fairness, independence, and transparency must prevail. In addition, there are states where the recruitment process for judges includes

¹⁵ [European Commission for the Efficiency of Justice, *European Judicial Systems CEPEJ Evaluation Report: Part 1* \(Strasbourg: Council of Europe, 2022\).](#)

specialised training that can take two-three years, and an important part of the candidates to the profession of judge come from graduates of this training program. Therefore, the measures aimed at ensuring gender equality must apply also to these training programs.

■ As to the recommendation that women are equally involved in the decision-making process of recruitment, there are several studies pointing to the added value of such measure for promoting gender equality. According to the 2017 Report of the European Parliament:

"[I]n both Civil and Common Law Countries appointment and selection committees remain largely in male hands, thus men are controlling access and resources and often stereotypical perceptions of masculinity and femininity play an important part¹⁶."

■ In corporate governance, the lack of representation of women in nomination committees was found to impact the decision of which candidates to interview and subsequently appoint as board members, which is one of the explanations of absence of women in leadership¹⁷. If we are to agree that being a man or a woman is not relevant in order to fulfil the requirements for acting as a member of a judicial nomination or selection committee, then the national stakeholders can definitely elect or appoint as members of these committees an equal number of men and women from the large number of qualified professionals existing at the national level. This change, along with the guarantees of independence and transparency, would contribute to a higher confidence in the recruitment procedure.

¹⁶ European Parliament, [Mapping the representation of women and men in legal professions across the EU](#), August 2017, p.32.

¹⁷ See [Barriers to Progression](#) (London, 2016), as cited by CEPEJ-GT-QUAL(2021)4, point 4. For judicial appointments see Sundeep Iyer, 'The Fleeting Benefits of Appointments Commissions for Judicial Gender Equity', *Commonwealth & Comparative Politics*, 51.1 (2013), 97–121, as cited by CEPEJ-GT-QUAL(2021)4, point 4.

4

Member States should adopt clear recruitment policies stating the principle of gender equality, expressing the commitment that conscious or unconscious bias towards women or men will not determine the recruitment decisions and raise awareness among the members of the nomination or selection committees on gender equality in judges' recruitment.

Concrete examples of measures that could allow raising awareness among the members of nomination or selection committees on gender equality in recruitment are discussing the results of monitoring the dynamic of representation of women and men in the profession of judge, internal evaluation of implicit bias regarding women and men in decision-making, for example by self-administered questionnaires with the results available only to the respondent, so that they become aware of their own level of potential bias and how that may influence their decisions in the recruitment process, adopting guidelines on gender-sensitive interviewing etc.

5

Member States should include gender equality and non-discrimination in the initial and ongoing professional training programs.

By including gender equality and non-discrimination as topics in the professional training programs of judges, the national authorities are sending the message that gender equality and non-discrimination are key principles in the administration of justice that all judges should master. In consequence, they will become aware that inside the profession those principles should also apply. Those preparing to become judges or those who are working as judges should study and be evaluated on the main legal provisions, procedures, and case law implementing the principles of gender equality and non-discrimination in all areas of public life.

III. Ensuring gender equality in the career promotion of judges

6 Members States should adopt and implement measures to promote work and family life balance for all judges.

Despite the fact that women are achieving more and more equality at work, this is not always replicated at home or in the society, where women can be more involved in the domestic work. This is a burden that women might take into account when choosing their profession, applying for or accepting promotion or management positions. Several studies on gender diversity in judiciaries and other studies consulted for the CEPEJ-GT-QUAL's Comparative Study on Ensuring Gender Equality in the Recruitment and Promotion of Judges identified the challenge of balancing traditional family roles and professional roles, due to "time poverty", strict working hours, internal bias of women that they would not be able to balance work and family life, and bias of decision makers that a management position will not be appealing to a woman as she has family responsibilities¹⁸.

National authorities that want the under-represented gender to consider the available professional and career development opportunities must also consider addressing these obstacles by adopting measures aimed at ensuring a balance between work and family, such as introducing flexible working arrangements that are allowed by law, such as flexible working hours, teleworking, part-time work; adopting paid and accessible maternity leave, paternity leave, and parental leave, and special working conditions for new parents and judges with young children; organising administrative meetings, trainings and other activities strictly during working hours; organising open doors days for the families to visit the courts as a way of raising awareness on the fact that judges have also family lives and to acquaint families with the working environment and professional responsibilities of judges; organising playgrounds for judges' and other staff's children where they could stay for a couple of hours before the end of a business day.

¹⁸ See Revital Ludewig and Juan LaLlave, 'Professional Stress, Discrimination and Coping Strategies: Similarities and Differences between Female and Male Judges in Switzerland', in *Gender and Judging*, ed. by Ulrike Schultz and Shaw (Portland: Hart Publishing, 2013), pp. 233–54 as cited by CEPEJ-GT-QUAL(2021)4, point 5.3. See also Council of Europe, *Main factors contributing to the under-representation of women judges in the management of the common courts in Georgia*, 2019, pp.21-26; Legal Resources Centre from Moldova, *Assessment of Gender Dimension in the Justice Sector of the Republic of Moldova*, October 2019, pp.55-59; Leah Treanor, 'Problems in the Pathways to Judicial Success: Women in the Legal Profession in Northern Ireland', *International Journal of the Legal Profession*, 27.2 (2020), 203–16.

Part-time work was emphasized in the CEPEJ-GT-QUAL's Comparative Study on Ensuring Gender Equality in the Recruitment and Promotion of Judges as one of the measures making attractive the profession of judge among other civil service jobs for both women and men¹⁹. For example, introducing part-time work for judges helped mitigate the impact of juggling family life and career for women judges in Switzerland and Denmark²⁰. Introduced in 2011 in Switzerland, part-time work coincided with a raise in the percentage of women in the profession of judge²¹. At the same time, flexible working conditions, such as part-time work, may make the profession of judge more attractive to men too, as it gives the opportunity to pursue judicial work part-time while conducting other work²².

7 Member States should ensure that the procedures of promotion are conducted transparently, the criteria are clear, detailed and implemented in an impartial manner, and women are equally involved in the decision-making process of promotion.

The CEPEJ 2022 Evaluation of judicial systems Report showed that the representation of women at higher courts or in managerial positions in some countries remains low or indicates a slower progress up the ladder, suggesting the existence of a glass ceiling for women in the profession of judge²³. This situation led the Committee of Ministers of the Council of Europe to emphasise in 2003 the monitoring in higher courts as opposed to lower courts for the progress in the representation of women and men. In 2017, the Gender Equality Commission's Analytical report on balanced participation of women and men in political and public decision-making revealed that, despite a positive evolution regarding women in high courts or supreme courts and constitutional courts, very few countries reached the 40% target²⁴.

The 2017 Report by the European Parliament found persistence of gender stereotypes, including gender bias (often unconscious) in the promotion processes of judges²⁵. The report also found a lack of transparency in the promotion process in some member States, which accounted for a lower proportion of women at higher

¹⁹ See CEPEJ-GT-QUAL(2021)4, point 7.2

²⁰ See Laureline Duveillard, 'Women Find No Justice in Law Profession', *Swissinfo.Ch*, 2011, pp. 1–4 as cited by CEPEJ-GT-QUAL(2021)4 point 5.3.

²¹ See CEPEJ-GT-QUAL(2021)4, point 5.3.

²² *Id.*, point 8.

²³ [European Commission for the Efficiency of Justice, European Judicial Systems CEPEJ Evaluation Report: Part 1 \(Strasbourg: Council of Europe, 2022\)](#). See also Council of Europe, 'Achieving Balanced Participation of Women and Men in Political and Public Decision-Making: A Gender Equality and Democratic Requirement', 2017

²⁴ Council of Europe, '[Achieving Balanced Participation of Women and Men in Political and Public Decision-Making: A Gender Equality and Democratic Requirement](#)', 2017.

²⁵ European Parliament, '[Mapping the representation of women and men in legal professions across the EU](#)', August 2017, pp.13, 31, 86.

court levels and in seniority of positions²⁶. Studies at the national level found that situations where there are no criteria or too general criteria for promotion co-exist with lower representation of women than men²⁷. In addition, proper dissemination of information regarding promotion is necessary²⁸. For example, announcements about the upcoming opportunities of promotion, containing detailed information about the criteria that apply and the process, should be disseminated during administrative meetings of all judges at court level, during continuous training, and other reunions. These measures will ensure that many more judges, women and men, know about the opportunities they have in order to grow professionally and will feel encouraged to be a candidate for promotion. This measure could also help addressing the issue that was reported in national reports that lower numbers of women candidate to promotion²⁹.

■ The CEPEJ 2022 Evaluation of judicial systems Report and the CEPEJ-GT-QUAL's Comparative Study identified different approaches to promotion, based on exams or based on seniority. Irrespective of the method chosen, the promotion criteria should be evaluating the performance of the judge and his/her capacity of overcoming the challenges coming with the new job, by using quantitative and qualitative criteria. In the CEPEJ-GT-QUAL's Comparative Study 36 out of 45 respondent states are already using professional skills and/or qualitative performance and years of experience as the most common criteria for assessing judges for promotion³⁰.

■ The comments made at Guideline no.3 to support the recommendation to equally involve women in the decision-making process of recruitment are relevant for judicial promotions.

8

Member States should provide ongoing education programs targeted specifically towards the managerial positions, as an instrument to encourage women to access those positions, including positions of top responsibility within the profession, as well as training on identifying stereotypes and prejudices that lead to discrimination.

■ The administration of the justice system includes ensuring that people are trained to take up managerial positions that require certain skills that are not usually

²⁶ Id., p.86

²⁷ E.g. Council of Europe, *Main factors contributing to the under-representation of women judges in the management of the common courts in Georgia*, 2019, as cited by CEPEJ-GT-QUAL(2021)4, point 5.3; Legal Resources Centre from Moldova, [Assessment of Gender Dimension in the Justice Sector of the Republic of Moldova](#), October 2019, p.36.

²⁸ CEPEJ-GT-QUAL(2021)4, points 6.3 and 7.3.

²⁹ E.g. Council of Europe, [Gender equality in the judiciary of Armenia: challenges and opportunities](#), 2021, p.38; Legal Resources Centre from Moldova, [Assessment of Gender Dimension in the Justice Sector of the Republic of Moldova](#), October 2019, pp.30-34.

³⁰ CEPEJ-GT-QUAL(2021)4, point 5.2.

taught in law schools, such as management of an organisation, leadership, efficient communication, how to put together a budget, deployment of IT tools, time management, managing conflicts, stress management etc. Initial and continuous training programs for judges should include trainings on developing soft skills that, in the end, can help every judge to manage his/her work better or more efficiently. Moreover, potential candidates to managerial positions having received such training could feel more confident that they have what it takes to perform and apply for these positions in higher numbers. Such training programs will particularly benefit women judges who might have individual barriers, internalised bias that they are not competent for higher responsibility positions. This is called in specialised literature – “the confidence gap”, when women subjectively undervalue their own competences and skills when assessing the compliance with the formal criteria for employment or promotion³¹. Eventually, the trainings may create opportunities for training institutions to identify potential candidates for managerial positions, encourage them, create conditions and set-up mentoring schemes and additional support for promotions. These activities can be carried out in cooperation with other actors, such as professional associations³².

9 Professional associations should consider creating mentoring opportunities for women judges.

One element that was often mentioned in the context of promotion processes for judges in different studies carried out at the regional and national levels³³, aside from the formal procedures, was that social networking plays an important part in the career promotion. Through social networking judges share information about career promotion opportunities, encourage and support each other to take up higher responsibility positions.

In this regard, professional associations should play a more active role to create mentoring opportunities for women. In the 2017 Report of the European Parliament, professional associations were described in the following words:

“These associations can fulfil 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. [...] senior women judges [...] can play an important role in encouraging their peers

³¹ See Nancy. F Clark, ‘Act Now To Shrink The Confidence Gap’, *Forbes Magazine*, 2014, pp. 40–41, as cited by CEPEJ-GT-QUAL(2021)4, point 7.3.

³² European Parliament, [Mapping the representation of women and men in legal professions across the EU](#), August 2017, p.35.

³³ E.g. Council of Europe, [Gender equality in the judiciary of Armenia: challenges and opportunities](#), 2021, pp.41-42; Legal

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 needs."

10

Member States should collect sex-disaggregated data on how many women and men candidates were considered during promotion procedures and their results, and periodically carry out ample statistical analysis aimed at detecting gender imbalance.

The national authorities should collect data about how many women and men candidatures were considered during promotion procedures and their results. This statistical data must serve to periodically carry out ample statistical analysis aimed at detecting gender imbalance³⁴. When a significantly higher percentage of men who apply are promoted compared to women who apply, there is an indication of gender inequality in promotion for women, which needs further analysis³⁵. Potential reasons for such imbalance could be a gender-biased evaluation of certain criteria or imposing certain criteria, like certain quantitative criteria, that, depending on the national context, may disproportionately disadvantage women. For example, the criteria consisting of the number of years of effective work as a judge is relevant when it is imposed as a requirement to fulfil a minimum limit that allows the accumulation of experience and expertise. However, when statistically male candidates get promotions simply because they have more years of experience, besides the set minimum limit, than equally qualified female candidates, the analysis should take into account the gender gap that exists or existed in access of women to the profession of judge and the fact that women have to take breaks from work for maternity and child care leaves.

11

Member States should adopt clear promotion policies stating the principle of gender equality, expressing the commitment that conscious or unconscious bias towards women will not determine the promotion decisions and raise awareness among the members of the promotion committees on gender equality in judges' career development.

³⁴ See European Institute for Gender Equality, [Gender Statistics and Indicators](#), 2019.

³⁵ See e.g. Legal Resources Centre from Moldova, [Assessment of Gender Dimension in the Justice Sector of the Republic of Moldova](#), October 2019, pp.31-34.

■ The comments made at Guideline no.4 are relevant for the case of judicial promotions.

12 Member States could consider adopting gender quotas in promotion policies when the gender gap persists regarding judges in higher responsibility positions.

■ When the gender gap persists among judges in higher responsibility positions, the authorities could consider introducing gender quotas in judicial promotions. According to the European Institute for Gender Equality, gender quotas represent:

“positive measurement instrument aimed at accelerating the achievement of gender-balanced participation and representation by establishing a defined proportion (percentage) or number of places or seats to be filled by, or allocated to, women and/or men under certain rules and criteria.”³⁶

■ Gender quotas in promotion are temporary measures. This implies that the authorities carry out an initial assessment of the gender-sensitive data to identify and understand how wide, if it exists, the gender gap is, establish the target for attracting more competent judges from the underrepresented category in higher responsibility positions (e.g. minimum of 40% as proposed in the Recommendation 2003 (3) of the Committee of the Ministers of the Council of Europe on balanced participation of women and men in political and public decision making³⁷), design a plan for reaching the target, implement the gender quotas, and periodically review the progress. When the target is achieved, the authorities may decide to stop applying the gender quotas, but should not drop the objective of achieving or maintaining gender equality. The authority that should make the initial analysis and set quotas should be the Ministry of Justice, and/or the authority of judicial governance, like the High Council of the Judiciary, that implements the promotion policy. The CEPEJ-GT-QUAL’s Comparative Study on Ensuring Gender Equality in the Recruitment and Promotion of Judges concluded that setting gender quotas alone does not have much impact without concerted effort from stakeholders to implement those gender quotas and to follow the gender equality plan, that involves a variety of measures³⁸.

■ For example, a policy of applying gender quotas in the promotion of women is a human rights promotion measure, aimed at counteracting the prejudicial effects on female candidates of the attitudes and behaviour that are discriminating against them

³⁶ European Institute for Gender Equality, [Glossary & Thesaurus](#), 2016.

³⁷ See Recommendation 2003 (3) of the Committee of the Ministers of the Council of Europe, “Balanced participation of women and men in political and public decision making”.

³⁸ CEPEJ-GT-QUAL(2021)4, point 6.6.

and thus reduce instances of inequality which may exist in the real world. Such a policy implies that, when there are equally qualified candidates of different sexes, priority should be given to women in sectors where they are underrepresented, unless reasons specific to an individual male candidate tilt the balance in his favour³⁹. Based on the European Court of Justice case-law, this measure is not discriminatory against men, when:

“- in each individual case the rule provides for male candidates who are equally as qualified as the female candidates a guarantee that the candidatures will be the subject of an objective assessment which will take account of all criteria specific to the individual candidates and will override the priority accorded to female candidates where one or more of those criteria tilts the balance in favour of the male candidate, and

- such criteria are not such as to discriminate against the female candidates⁴⁰.”

■ The focus is placed on objective assessment, a clear and transparent process of promotion, where every decision can be easily justified based on objective reasons and on merit. This measure must pursue the aim of gender equality, and the means of achieving that aim must be proportional to it, as opposed to simply achieve a balance in the representation of men and women at a certain level in the profession.

³⁹ See European Court of Justice, C-409/95, [Hellmut Marschall v Land Nordrhein-Westfalen](#), 11 November 1997 as opposed to C-450/93, [Eckhard Kalanke v Freie Hansestadt Bremen](#), 17 October 1995.

⁴⁰ European Court of Justice, C-409/95, [Hellmut Marschall v Land Nordrhein-Westfalen](#), 11 November 1997 as opposed to C-450/93, [Eckhard Kalanke v Freie Hansestadt Bremen](#), 17 October 1995.

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