

Representation of Women in the Judiciary in Turkey

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The recently announced Judicial Reform Strategy was subject to public debate with a series of promises ranging from issuing green passports to lawyers as a privileged of visa exemptions to the introduction of an appeal process in criminal cases concerning the freedom of expression.¹ The fundamental shortcoming of this new strategy and other reform efforts is the lack of a specific agenda on the representation of women professionals in the judiciary, especially in the leading positions including the apex courts. Policies on women's representation in the judiciary remained "invisible" in recent reform efforts on judicial policies.

Despite some quantitative improvements in the first instance courts during recent years, Turkey is not among those countries that are successful for nominating and appointing women judicial professionals to senior positions. This arises from the lack of a comprehensive and specific gender equality strategy that should necessarily include representation of women in the high ranks of the judiciary. There is some rough data based on gender which can be seen in the activity reports of the Ministry of Justice and in the periodical statistics of the Council of Judges and Prosecutors. However, these neither contain sufficient detail, nor reveal specific outcomes of any applicable strategy. In the current situation, it is not even possible to access the quantitative information showing the overall picture of gender ratios or regional distributions based on gender as regards the chairs of benches, in the chief prosecutors' offices or in the chambers of the apex courts. Some aggregated data for Turkey is mostly accessed either from the European Commission for the Efficiency of Justice (CEPEJ) reports² or the press news. It is seen that these can carry convoluted, overgeneralizing, and contradictory information from time to time.

Sex disaggregated data and women's representation in the judiciary

When available gender disaggregated data is examined, the quantitative distribution of men and women judicial professionals leads to an understanding of the inadequacy of the overall situation. According to the statements of the Ministry of Justice, as of December 31, 2018, the ratio of women judges and prosecutors is 35.23%.³ This ratio was 22.8% at 2010. Therefore, an improvement is observed in the representation of women judges and prosecutors between 2010 and 2018. However, it is noteworthy that the increase did not translate into a systematic and targeted progress over the years. During 2010-2011, 2013-2015 and 2016-2017, the ratio of women judges and prosecutors did not increase significantly. The increase has been experienced in the two years when intensive recruitment of judges and prosecutors took place. The ratio of women judges and prosecutors increased from 26.7% to 31.8% in 2016, and reached 35.23% in 2018. The ratio of women in the directorates of enforcement within the judiciary is quite low. According to 2018 data, only 81 out of 575 bailiffs are women. This data confirms that women are not preferred for high decision making and leadership positions. As for the deputy directors of enforcement, women representation is again lower than that of men, but higher than that in the case of bailiffs. 518 of the 1790 deputy bailiffs are women. Thus, in the secondary level decision making it is clearly seen that women serve as men's assistants. In addition, it is seen that, although the number of qualified and competent women to be appointed as decision makers is sufficient, they are not promoted to more influential positions.

Gender Distribution of Judges and Prosecutors at the Stand (Overall Turkey)

	Year	Men		Women	
		Count	Percentage	Count	Percentage
Overall Turkey	2010	9,027	77.2%	2,664	22.8%
	2011	9,092	77.1%	2,694	22.9%
	2012	9,389	75.2%	3,094	24.8%
	2013	10,056	73.9%	3,547	26.1%
	2014	10,895	73.6%	3,915	26.4%
	2015	10,791	73.2%	3,938	26.7%
	2016	10,876	68.2%	5,069	31.8%
	2017	11,081	68.81%	5,022	31.19%
	2018	12,585	64.77%	6,844	35.23%

Source : Ministry of Justice Annual Report, 2018, p. 19.

News on print media highlighted a significant increase in women's representation in judge recruitment and in the number of candidates participating in the draw, in 2019.⁴ 1446 judges and prosecutors were appointed at the draw ceremony held on 22 May 2019. Of these appointees, 758 were men, and 688 were women, marking a 47.5% women representation in this last appointment of judges.

Women are significantly under-represented in certain judicial branches, such as the prosecutor's office, that are thought to be more appropriate for men as a matter of gender stereotypes. The improvement observed in the case of women judges in 2019 could not be replicated in the case of prosecutors. Also based on the press data, 6,369 of 7,493 women judiciary members are judges, and 1124 are prosecutors. The proportion of women prosecutors in the Supreme Court is 12.58% as of August 2018 (with 19 women prosecutors).⁵ According to the CEPEJ 2018 report which was prepared based on 2016 data, the rate of women prosecutors in Turkey was stated as 32%.⁶ According to the same report, the proportion of women who should be considered leaders since they hold oversight and supervision authority in

the chief prosecutor position is merely 2%. On the other hand, as of 2018, the number of women prosecutors was shared as 10.73% by the Council of Judges and Prosecutors.⁷ Since there is not a significant time difference between the CEPEJ 2018 report and the Council of Judges and Prosecutors' data, the reasons behind this large proportional difference in the prosecution need to be carefully examined.

In July 2018 appointments to the high judiciary by the Council of Judges and Prosecutors, the number of women judges was, again, extremely low. Among the July 2018 appointees to the Supreme Court, there was only one woman judge. In this wave of appointments, Berrin Aksoyak, Head of Ankara Regional Court of Justice, is the only woman member.⁸ As for the Council of State, there were two women members -Gülây Ölmez and Şahnaz Gerek- among the 12 newly appointed members.

There are still no women members in the Constitutional Court. Even after the retirement of two women constitutional judges in the last six years, no women judges were appointed. The last woman judges were Fulya Kantarcıoğlu, who was appointed by President Süleyman Demirel in 1995, and retired in 2013; and Ayla Zehra Perktaş who retired in 2014. Fulya Kantarcıoğlu in particular, was known for her active stance against sexist policies at the constitutional judiciary. In her dissenting opinions, she asserted her commitment to the cause of gender equality.

After the 2010 constitutional amendment, the President and the Parliament who have the sole authority to designate the constitutional judges have not appointed new women members to the Constitutional Court. Nonetheless, Prof. Dr. Engin Yıldırım as a constitutional judge who had been appointed by President Abdullah Gül has come forward as a progressive man judge with an open attitude against gender based discrimination.⁹ It should be emphasized that so far only 5 out of 113 constitutional judges working in the constitutional court have been women. The first

woman constitutional judge was Samia Akbulut who was appointed by Turgut Özal in 1987. The other four women judges were appointed by President Demirel. (Aysel Pekinel, Tülay Tuğcu, Fulya Kantarcıoğlu and Zehra Ayla Perktaş). Among these, Tülay Tuğcu served as the President of the Constitutional Court between 2005 and 2007. In the history of appointments of constitutional judges, the General Assembly of the Council of State, and President Süleyman Demirel, have performed best in terms of maintaining gender-based equality, in nominating candidates and in appointments, respectively.

Today, there is only one legal department of the Supreme Court with a woman president (Nesrin Yılmazcan, 14. Legal Department). All criminal departments consist of judges who are exclusively men. There has never been a woman member of the Supreme Court who served as the Chief Justice. In this respect, the Supreme Court, unlike the Constitutional Court and the Council of State, displays a women exclusionary and male dominated continuity for its presidential position based on absolute representation of men. At the Council of State, a woman member still serves as a chief justice. (Zerrin Güngör, since 2013). There, two women judges had previously held this leading position. (Füruzan İkincioglulları between 1994-1998 and Sumru Çörtoğlu between 2006-2008).

It is also clear that representation of women members is extremely low in the Council of Judges and Prosecutors. Only one of the 3 council members is a woman (Songül Yazar). Of the two presidents of departments, both are men.

A call of priority for the judiciary: Action Plan for Gender Equality

The topic that Turkey needs to focus on but almost never gets seriously discussed as a judicial policy priority is an “Action Plan for Gender Equality” to improve the representation of women in the positions within the judiciary. This action plan should be among the main components of the strategy for the quality of the judiciary. Otherwise, any step towards gender equality within the judiciary would be coincidental, if taken at all. Gender action plans in the judiciary need to be prepared by both the Council of Judges and Prosecutors, and the supreme judiciary; and the fundamental tenets of these plans must be reflected in the relevant strategic plans of the relevant courts. Amendments to the relevant laws would be needed for accelerating and securing this process.

Strategic plans of the Council of State and the Supreme Court contain sex disaggregated data, particularly in terms of participation in the internal and external stakeholder surveys.¹⁰ However, these documents do not provide baseline information such as the distribution of judicial and administrative tasks, the analyses by years, and concrete practices and objectives for maintaining work-life balance. The inclusion of gender sensitive data in strategic plans of the apex courts will not only help us understand the current situation more clearly, but also distinguish between institutional policies that promote equality and those implicitly reinforcing gender stereotypes and exclusionary practices.

In the CEPEJ Report 2018 under the Council of Europe, it is noted that there are practices that take gender factor into account when recruiting and appointing judges in 13 countries. Such practices combat gender based discrimination in favour of merit principle in recruitment and appointment. They use models that guarantee equitable men-women representation, especially when candidates come with comparable competence. For example, in the United Kingdom, Montenegro and Bosnia and Herzegovina, compliance with the

principle of parity is an obligation for appointments and promotions in the relevant institutions.¹¹ In many EU member states, when candidates with comparable competence apply for positions in the public sector, the implementation of special measures benefiting the underrepresented gender have been in place for many years. Policies in this area are implemented within the framework of both egalitarian policies arising from EU law and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Articles 4 and 5). These policies that are defined as “accelerating tools” for achieving equality are often implemented as variations of the parity principle, merit-based quota or quantitative and/or time-bound targets in the judiciary. The positive impact of these accelerating tools on combatting implicit discrimination in the appointments and promotions is evident. Turkey sets an case study of bad practice where none of these effective accelerator tools are implemented and there is a significant lack of women in the senior positions of the judiciary despite the availability of competent candidates.

Gender action plans that are specifically designed for the judiciary are strategies that eliminate attitudes and preferences preventing the appointment of competent women judicial professionals to impactful, leading or senior positions. Action plans can include a variety of applications. Setting short term and long term quantitative targets to ensure the equality of representation based on a pre-defined merit principle, and following up with them may be an effective model for Turkey. Furthermore, in leading positions such as the presidency of the courts, selecting equally competent women candidates should be prioritized rather than continuously and disproportionately selecting men among equal candidates. The incentive strategies to change sexist practices should also be developed in areas where women are underrepresented, such as public prosecutors’ offices, chief prosecutors’ offices, court presidencies, chamber heads in the supreme judiciary and the directorates of enforcement.

Representation of women in the judiciary and the quality of justice

Women's representation in the judiciary is an element of quality in judicial management and administration of justice. The empirical data produced based on the egalitarian representation of women and men in decision making leads to efficiency, accuracy and effectiveness that can be applied to the judiciary.¹² This issue also determines the quality standards in the rule of law. The rule of law cannot be established through appointments or promotions that are explicitly or implicitly exclusionary in nature. It is clear that a judicial mechanism that systematically deems women judicial professionals worthy only of secondary duties, and thus excludes them from high ranking judicial or administrative duties within the judiciary is incompatible with the quality of justice that the whole mechanism is expected to deliver. This structure tends to produce discriminatory relations of power and exclusionary institutional culture within itself. This is an obstacle to the appointment of competent women professionals to senior positions. The same structure also results in the appointment or promotion of women professionals through inherently male dominated power relations such as family ties (spouse, brother, father's influence) and patriarchal bargaining. All these drawbacks are incompatible with an understanding of the notion of quality of justice that requires a merit based, effective and inclusive judiciary.

The number of both national level and comparative studies on decision making patterns of woman judges and man judges is relatively small.¹³ These studies fall short of providing evidence that gender, per se, creates an absolute change in all judicial matters including decision making processes. However, there are empirical examples proving that women judicial professionals can be effective in eliminating gender based inequalities, especially when they have proficiency and competence.¹⁴ On some critical issues, rights based and strong attitudes of women judges confirm the correlation between women's increased representation in

the judiciary and the improvement in the quality of justice. It has been pointed out that women judges have effectively advanced judicial case law and formed progressive alliances with man judges in taking gender based inequalities into account in certain situations such as the recognition of the right to asylum of women with sexual assault related traumas and/or injuries, labor and insurance law cases, and sexual harassment and sexual assault cases in criminal law (South Africa, USA and Germany examples).¹⁵ In fact, this situation demonstrates the importance of a judicial strategy that is implemented concurrently with women's representation within the judiciary. This strategy must also make use of the available information and awareness so as to ensure that gender based inequalities are taken into account in the judicial decision making processes. Such a strategy can only be implemented through an inclusive "Gender Action Plan in the Judiciary" including annual targets for increasing women's representation in leading positions. Such a plan should develop strategies that confront discriminatory decision making practices and take such practices into account while evaluating performance of judges. It should improve the judicial knowledge and awareness by highlighting and awarding good practices.

¹ The Strategy of Judicial Reform, T.C. Ministry of Justice Strategy Development Department, 2015.

² See especially; <https://www.coe.int/en/web/cepej/documentation/cepej-studies> (8 July 2018).

³ 2018 Annual Ministry Report, Ministry of Justice Strategy Development Department, February 2019.

⁴ Oya Armutçu, “Number of women judges-prosecutors at its highest”, *Hürriyet*, 5 June 2019.

⁵ The press data dated June 2019 reflects the number of women prosecutors in the Supreme Court as 24, see. Armutçu, op. cit.

⁶ European Judicial Systems, Efficiency and Quality of Justice, European Commission for the Efficiency of Justice, 2018 Edition (2016 Data), CEPEJ Studies No. 26, Council of Europe, p. 148. This data needs to be tested. In contrast to what CEPEJ Report requires, it should be investigated whether or not the judicial professionals who serve and are mentioned as judges are taken into consideration in addition to those judges working in criminal proceedings whilst determining the data.

⁷ For data see. <https://www.hsk.gov.tr/Eklentiler/Dosyalar/5d7f48c3-7f89-4c3d-afc2-03923e3db661.pdf> (8 July 2019).

⁸ Oya Armutçu, “112 new members appointed to the Supreme Court and the Council of State”, 16 July 2018.

⁹ cf. Constitutional Court, Verdict Number E. 2009/85, K. 2011/49 dated 10 March 2011.

¹⁰ Republic of Turkey Supreme Court Strategic Plan (2015-2019), at <https://www.yargitay.gov.tr/documents/2015-2019-yargitay-stratejik-plan.pdf> (11 July 2019); Republic of Turkey Supreme Court 2019-2023 Strategic Plan, at https://www.danistay.gov.tr/upload/danistay_2019_2023_strajik-plani.pdf (11 July 2019).

¹¹ European Judicial Systems, Efficiency and Quality of Justice, European Commission for the Efficiency of Justice, 2018 Edition (2016 Data), s. 98.

¹² Karş. Jakob Luring / Florence Villséche, “The Performance of Gender Diverse Teams: What Is the Relation between Diversity Attitudes and Degree of Diversity?”, *European Management Review* (2019), Vol. 16, 243–254.

¹³ Christina L. Boyd / Lee Epstein / Andrew D. Martin, “Untangling the Causal Effect of Sex on Judging,”

American Journal of Political Science 54, no. 2 (2010), 389–411; Thomas Dalby / Annik Mossière, “The Influence of Gender and Age in Mock Juror Decision-Making,” *Europe’s Journal of Psychology* 4, no. 4 (2008), at <https://ejop.psychopen.eu/article/view/440/html> (8.7.2019); Meda Chesney-Lind, “Judicial Paternalism and the Female Status Offender: Training Women to Know Their Place,” *Crime & Delinquency* 23, no. 2, (January 1977), 121–130; C. McGlynn, “Judging Women Differently: Gender, the Judiciary and Reform”, in *Feminist Perspectives on Public Law*, S. Millns / N. Whitty (eds.), (1999), Cavendish Publishing, London / Sydney, 87-106.

¹⁴ Jennifer Peresie, “Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts.” *Yale Law Journal* (2005) 114, 1759–1790; Sally J. Kenney, “Thinking about gender and judging”, *International Journal of the Legal Profession* (2008), 15:1-2, 87-110.

¹⁵ Ulrike Schultz / Gisela Shaw (eds.), *Gender and Judging*, 2013, Hart Publishing, Oxford; Ulrike Schultz, “Judiciary and Gender Topics. German Experience and International Perspectives “, e-cadernos CES [Online], 24 | 2015, colocado online no dia 15 dezembro 2015, consultado a 10 julho 2019. URL: <http://journals.openedition.org/eces/1998>.

Citation: Bertil Emrah Oder, 2019, Representation of Women in the Judiciary in Turkey, TESEV Briefs, <https://www.tesev.org.tr/en/research/representation-of-women-in-the-judiciary-in-turkey/>



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TESEV would like to thank the Friedrich Ebert Stiftung for their support for this publication.