

The feminization of the Spanish judiciary

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Abstract: The Spanish judiciary is undergoing a major transformation, in which women have been gaining prominence, being majority in the latest promotions. However, women have been discriminated in their access to high responsibility positions, in which their representation is low, even though they meet all the requirements. Presumably, in the coming years, the presence of women in decision-making bodies and the judiciary's management will substantially increase. As a result, justice could become more effective and efficient. The methodology used was, on the one hand, descriptive and analytic, considering the increasing participation of women in the Spanish judiciary and analyzing the feminization of the judiciary professionals; and, on the other, qualitative, collecting their views on this phenomenon and on the existing conditions of equality in the Spanish judicial system.

Key words: feminization, glass ceiling, opportunities, discrimination.

Resumen: La judicatura española está experimentando una transformación importante, y en las últimas promociones las mujeres superan a los hombres. No obstante, hasta fechas muy recientes la mujer ha estado discriminada en el acceso a puestos de máxima responsabilidad, donde su representación es reducida, a pesar de reunir las condiciones requeridas. Previsiblemente, en los próximos años la presencia de la mujer en los órganos de decisión y gestión judicial se habrá incrementado sustancialmente y, como consecuencia de ello, tal vez la justicia sea más eficaz y eficiente. La metodología utilizada es de carácter cuantitativo de tipo descriptivo y analítico, dado que se estudia el aumento creciente de la presencia de mujeres dentro de la carrera judicial española, y se hace un análisis del proceso de feminización de los profesionales de la justicia. Y también de carácter cualitativo, recogiendo sus opiniones sobre este fenómeno y las condiciones de igualdad existentes en la organización judicial española.

Palabras clave: feminización, techo de cristal, oportunidades, discriminación.

Introduction

This research is located within the public organizations sociology realm and its objective is to demonstrate the feminization process the Spanish judicial administration is currently experiencing, and how those women who are accessing the judicial career are taking first level positions –first instance and instruction judges, social courts- being their presence still lacking in the maximum responsibility positions as well as in the higher organs of the magistrature. In order to achieve this, a response to the following issues is proposed:

Does the increasing presence of women in these last years mean that there is an opportunity equality in the Spanish judicial institution? Or is this presence only given in access, reserving the most relevant positions to men? Is the possibility of women reaching higher responsibility positions conditioned by the difficulty of managing family and professional lives or is still there a favorable preference for men by the institutional organs?

The interest of the research lies in the fact that the Spanish judicial career has moved from being a male-only organization to an organization in which women are present in a higher percentage. Is it about a quantitative change or is it deeper and thus affecting the structures of the judicial power –bringing a democratization within its ranks?

Methodologic Approach

The general objective of this study is to present the feminization process of the Spanish judiciary by means of developing three starting hypotheses, which work as the backbone of this research.

1st The judiciary career is an institution where there is no discrimination when a person want to access it, and university women have a higher possibility of developing a qualified job according to their specialization.

2nd In order to access the most relevant positions of the judicial organogram, more availability is required, therefore, women with family obligations, in practice, have less chances in comparison to their male counterparts to access such positions.

3rd In these last years an important change is taking place in the Spanish judiciary with the approval of norms whose objective is to provide equal opportunities for female judges and magistrates, and which results have allowed the slow appearance of women in the decision-making and responsibility organs.

The methodology used in this research is descriptive and analytical in its nature, using documental analysis techniques and personal opinion of the ones involved.

The documents considered for the qualitative analysis are: 1st) *VI Barómetro de*

Opinión de la Judicatura Española [6th Opinion Barometer of the Spanish Judiciary] which gathers 401 interviews proportionally distributed to the number of judges and magistrates of Spain, with a random selection of courthouses according to the jurisdiction order, and within these, a random selection of Spanish judges and magistrates (not including the Supreme Court), hence, this a representative sample of the judicial career, as for gender. 2nd) *V Encuesta a la Carrera Judicial* [5th Judicial Career Survey]. 3º) *Encuesta a la carrera judicial sobre conciliación de la vida familiar* [3rd Judicial Career Survey on the reconciliation of family life] where 751 members of the judicial career have taken part. 4th) Similarly, the opinion of women who are currently in responsibility positions and who describe the difficulties they have to deal with, in both familiar and professional contexts.

For the quantitative analysis the official statistical information has been used; this was provided by the General Council of the Judicial Power through the yearly publication *Informe sobre la estructura demográfica de la Carrera Judicial* [Report on the demographic structure of the Judicial Career].

Contextualization. The qualified women and their professional insertion

Throughout history societies and human groups have generated asymmetric power relations between men and women, by the establishment of distinguishing roles according to gender, which have contributed to deprive women from the same opportunities men have to access important positions in organizations and institutions. This occurs since there still exist values that diminish the ability to carry out certain responsibility functions due to household obligations.

This sexualized division of roles between genders, and the principles it is based upon, has been studied by Bourdieu (2005) as a social construct based on the biological differences between men and women and which have determined social relations between both genders. But this domination, which has been called symbolic violence, is translated into the imposition of men over women in every relational sphere (domestic, professional, social, etc.), and in the assumption and assimilation of this social situation by women and that leads them to accept a sexualized social order, which begins within their own family as this is taught there, and then moves to the labor sphere.

“Power” is an inherent concept to gender relationships for the following reasons:

- A) First, gender and power are structurally linked: the representation of men, in general, is higher in better-paid jobs, and with more formal, organization, political and institutional power. B) Second, gender and power are culturally linked in the social practices, tasks –positions and characteristics socially construed according to the gender (...). These links highlight the unequal distribution of power between men and women

and have been a cornerstone in the feminist reconstruction of gender in terms of social constructionism ... (Brunet *et al.*, 2011: 41).

This women's discrimination/segregation in the workplace is experienced mainly through three stages of their lives:

- Career choice. University or professional studies, and which generally also present a higher salary, are held by men, whereas in the social careers, whose performance requires more social abilities and skills, women are present in a larger number (Navarro-Guzmán and Casero-Martínez, 2012).
- Access to Jobs. Women present difficulties to compete with men in terms of both academic and professional training conditions; the latter are put before women for the only reason of their gender.
- Professional development. The idea that decision-making positions, and principally those that present implications or effect on other people or their assets, should be held by men is still in vogue. This because men are more objective and are less prone to be let sentimentalism influence their decisions (Sarrio *et al.*, 2002). Moreover, if a woman is still young and there is risk of a pregnancy, this would mean facing multiple difficulties to lead a position of management and administration.

These stereotypes around masculinity/femininity have been incorporated to popular culture and have been present throughout time despite the signs of modernity introduced to occidental societies, determining identities and social customs, lifestyles, attitudes, etc., Culturally speaking, women have been given internal roles of caretaking, whereas men are reserved to roles of familiar and social representation.

The ideal leader responds to a prototype of person: available, totally immersed in their task, without familiar worries, etc., a situation that is typically associated with the male figure, socially speaking. Therefore, the ideal typology (Weber, 1993) present in the collective imaginary discriminates women to access responsibility and decision-making positions, not because of a lack of qualities or studies, rather due to the lack of availability.

Breaking these stereotypes has been a long process and bowing to the struggle, mainly by the feminist movement, little by little the social differences that put women on a second place are becoming shorter and the numerous barriers that hinder their full participation in the education and work fields are being surpassed (Beck-Gernsheim *et al.*, 2001).

Nowadays women in developed societies aspire to have the same educational, formative and working opportunities as those of their fellow men.

To begin with, women are principally located in the service sector, main source of employment creation in our labor market. Secondly, there is a clear coincidence between the evolution of the occupation structure and feminine distribution. In the third place, women intensify their investments in education, in agreement with the higher demands for qualifications in the productive activities (Castaño *et al.*, 1999: 17).

However, women who reach a qualification level higher than that of men and they are still segregated to occupy positions that imply less responsibility and decision-making procedures.

There is “glass ceiling barrier”¹ that stops women from occupying positions of responsibility despite having the professional knowledge and competences required. SánchezApellániz (1997) describes three barriers inherent to this “glass ceiling barrier” women face:

- The internal barriers related to the social identity of gender. From the beginning of history, a socialization process has occurred –through the family, the school with its hidden curriculum, the mass media, etc., differentiated and linked to gender; and children/teenagers are raised in a society with roles attributed to genders in accordance with the latter and which respond to attitudes and expectations socially established and that are discriminatory toward women.
- The external barriers linked to the organizational culture and the existence of gender stereotypes. And as a consequence of this, the distinction of roles and functions and activities performance differentiated by gender prevail in the organizations’ culture as these are dominated by androcentric values that always work against the promotion of women.
- Barriers derived from their family role (procreation and household responsibilities). The need to come into terms with the household responsibilities constitutes an impediment for women to be in charge of positions with variable working hours or positions that require mobility. The lack of equal distribution of house chores with their spouses indirectly contributes to the formation of this barrier.

Women usually juggle with their familiar and professional lives since there is a lack of public measures to deal with this inequity as a mere situation of fact, but not

¹ The term “Glass ceiling barriers” first appeared in an article in the Wall Street Journal in 1986 in the United States, and was used to describe the invisible barriers qualified women face in the development of their professional careers. Ever since, it has been frequently used in labor sociology studies and women’s sociology to analyze the obstacles women have to sort out in order to take a position of responsibility in public and private institutions. Some authors who started using this concept are: Carr-Ruffino (1991), Lynn (1991), Davison and Cooper (1992), Holloway (1993), among others.

as a problem; this lack is caused by the male culture present in most organizations, both private and public, and the absence of social sensibility. It is important to change this situation and to promote a new relational order between genders, mainly in the working sphere (Wirth, 2002).

Horizontal segregation has allowed and favored the concentration of women in activity sectors, being mostly in medium-level responsibility positions and most of the time related to their traditional roles, in administration departments and organizations and in social-related activities (Sarrio *et al.*, 2002), thus having to turn themselves into “generic” workers (flexible, with the ability to adapt schedules and tasks, substitutable by any other who accepts the terms of over-exploitation...); it is the ruling trend of women who enter the globalized labor market (Amorós, 2005).

Cobo (2010) mentions that economic globalization is creating a growth in the employment of women; however, such incorporation does not mark a radical trend of change and neither does it produce the same effects in all women.

Gender discrimination is lower in the public administration when compared to the private sector since women can access, through selection evaluations, qualified positions with higher salaries and identical to those of their male peers. Nevertheless, there is also a covered discrimination for the access to responsibility positions to which only a handful of very qualified women access. “There is an invisible barrier that stops women, in the public sphere, to reach the positions men hold. This has been called the glass ceiling barrier, which hides an indirect discrimination, not reflected in the laws and that is measured by the differential results (Osborne, 2005: 163).

Achieving real opportunities equality is a long process that starts by the elimination of the existing discrimination practices in the legislative sphere and in the access to higher education, and to promotion of procedures that lead toward social and material equality in comparison to men (Barberá, 2005). And to all this, the domestic sphere has to be added, with a less biased distribution of roles and functions within the family, as Miller mentions (2004:59), “the incorporation of the women in the labor field does not depend on a voluntary intervention by the State or by means of applying pressure through acceptance, but rather through a transformation in the domestic sphere that affects, among other aspects, the socio-labor status men have been carrying out”.

Women in the administration of justice

The administration of justice is experiencing an important transformation as a consequence of the access of women to judge, magistrate, prosecutor and judicial administration positions, even if the responsibility levels of the highest ranks of the judicial branch are still, on most occasions, in the hands of men. This feminization

process has been taking place over the last decades in many European and Latin American countries, and has produced a large number of bibliography in which the reasons and causes of these changes in the judicial power –an institution that has, for centuries, been reserved to men- have been studied.

Among the aforementioned studies we highlight: Perry (1991) considers feminine representation in the judicial organs in the United States; Flores (2012) analyzes from a sociological perspective the effects of the presence of women in justice administration in Mexico; Cavagna *et al.* (1994) and Gastiazoro (2008) highlight the increment of feminine presence and the transformation process that comes along this increment in the Argentinian justice administration; Kohen (2008) analyzes the presence of women and its effect in the justice administration in Argentina; Rueda (2009) studies the increase of the number of female judges in the administration of justice in Peru from the gender theory; Boigeol (2007) considers the difficulties female judges and magistrates face in order to access responsibility positions in France, etc.

Women with high levels of training access justice administration only after passing hard and complex evaluations, which require a great personal effort, capability, consistency and will. This is why, it is a very attractive institution for competent women as there they can develop their capabilities and demonstrate their value and thereby feel recognized and gratified by the effort and work done, and which regularly does not occur in the private sector (Junqueira, 2003).

This tends to be an occupation where they are satisfied and where generally they are not discriminated, on the contrary, they admit their difficulties, both professional and personal –to combine their work with their family- to have access to more responsibility positions. Some authors, such as Kohen (2008) in Argentina and Junqueira (2003) in Brazil, emphasize that this increment in the number of women in the judicial institution is due to the easiness to combine their domestic obligations and tasks with the professional exercise, given their discretionary nature to organize and carry out their jobs.

However, as Bergallo (2006) mentions, women's position, in comparison to their male counterparts is not egalitarian in selection and access recruiting processes in Argentina, especially for positions with the highest responsibilities. Therefore, women must establish strategies to change the inertia of this discrimination and domination by male workers in the justice administration system, as mentioned by Boigeol (2007), when referring to the French judicial system. In regards to the contribution of women to the judicial process, due to their sensibility and values, the studies by Malleson (2007) in the Italian judicial system, Menkel-Meadow (2002) in the United States, Gastrón (2009) in Argentina, Fix-Fierro and López-Ayllon (2006) in Mexico, etc.

Women in the Spanish judiciary

Until four decades ago, the judicial career in Spain² has been a masculine institution, as well as in many other countries. During the Francoist time, the Spanish jurisdiction recognized the nondiscrimination of professional and labor rights (article 11: "...any Spanish citizen may hold office in public positions and functions according to their merit and capabilities"). However, women were discriminated in the judicial career as according the Law of December 18th, 1950, which regulates the Judicial School, created by the Law of May 26th, 1944, which established that in order to have access to it, a requirement was to be male.

Law 56/1961, from July 22th, on women's political, professional and labor rights abolishes the existing restrictions and discriminations and recognizes the women's rights to access the different institutions of public administration, recognizing their capacity to carry out any activity, except those that require disproportionate physical force.

This law set a precedent since it prohibited all forms of labor discrimination because of a person's gender, and specifically in regards to salary; and from this change the working conditions suppressing the clauses of dismissal because of marriage, which was until then, current. However, the discrimination to prevent women from accessing certain functions of the State's administration, as mentioned in the article three two: "An exception of the decree (...) the admittance to: (...) c) the Administration of Justice in the positions of Magistrates, Judges and Prosecutors, with the exception of the minor and labor jurisdictions". We had to wait for the reforms of the Civil and Commerce Codes, in 1975 –when the Francoist dictatorship disappeared- so that the marital authorization to sign a working contract and exercise commercial activities was abolished.

The 1961 law was written by a government's technocrat elite whose intention was to improve Spain's image in the international context, and despite the dictatorship

² The judicial career in Spain is formed by judges, magistrates and prosecutors. Prosecutors and judges are selected via a free opposition where any person without any criminal records, with a degree in law and with full civil rights can participate. In the case of the candidates to the judiciary, once the evidence is approved, the candidates must complete a two-year training course at the Judicial School, and once this is done, they become judges. Prosecutors also have to do a formative course at the Center of Judicial Studies. Magistrates are those judges who have a seat at the higher judicial organs, such as the Provincial Court, Supreme Court or the National Court. The magistrate positions are covered through a quota system among the justice and law professionals. Magistrates are ascribed to the different courts with agreement to specific norms that take into account technical and specialization criteria. The promotion to the magistrate position at the Supreme Court is carried out with similar arrangements.

Within each of these categories, the presidents of each jurisdictional organism and the courts each one of these are divided in are appointed by the King via a Royal Decree, proposed by the General Council of the Judicial Power.

regime, to show women's situation in respect to the working possibilities, comparable to the European societies, and for that reason, the legal impediments that stop them from accessing certain positions within the public administration (Telo, 1966: 81).

During 1966, the need of abrogating those articles from the 1961 Law that excluded women from the judicial career, because of the social pressure by university women's groups linked to the Schools of Law; this created a great impact in the mass media (Espuny *et al.*, 2010: 111). The numbers of students enrolled in the Law Schools in Spain are a clear indication of this, and their numbers are increasing since then: 1959-1960 (855 students, 5,8%), 1975-1976 (14.277 students, 30,1%), 1980-1981 (31.123 students, 37,3%), 1990-1991 (99.323 students, 53,3%), 2000-2001 (81.305 students, 52,2%), 2010-2011 (34.537 students, 50,9%) (National Institute of Statistics).

It must be kept in mind that in those times, and as a consequence of the increase of the personal and familiar income and the consolidation of an urban middle class, the number of women accessing university studies increased as well; they started attending not only humanistic-related courses –which are generally highly feminized– but also law, economics, business, etc. These women were mainly the daughters of professional people or businessmen.

The feminization of the law degree represented an increment in the presence of women in companies and professional firms, although most of the times holding less qualification positions because of their functions and economic conditions rather than the ones that because of their qualifications would be entitled to. Having a position in the public administration enabled women to compete against men under the same conditions, opening with this a space for qualified women, although there were still discrimination to access positions of maximum responsibility in which the female presence was very scarce on those years (and although when this is achieved, the positions are held in social or assistance organisms, but not in economic-related organisms, those which are more related with productivity)

Law 96/1966 from December 28th, suppresses the established limitation in section c) number two, article three of Law 1961, July 22nd on women's rights, and allows them access magistrate, judges and prosecutors positions. This normative change is justified because, according to what is stated in the Preface of the Law, “such an exception gave answer to a protection of women's feelings when faced with certain actions their duty would certainly make them experience, rather than a lack of responsibility or capability to be in charge of such positions”. This is produced in an apparently open political moment created by the nation's government which by all means is trying to gain its integration to Europe.

Currently, in the last promotions for the access to the judicial career, women surpass men in numbers. The analysis of the figures from the annual reports on the demographic structure of the judicial career indicates this process of change. Women's access to the Spanish judiciary has taken place mainly during the last three decades,³ even if there has been an uprising trend, and this is confirmed by the income information on 2014, as the percentage of women in free turn⁴ reached 63.2% of the total. In the case of other turns different to the free turn, two male workers accessed the positions per one woman accessing them.

If we consider the way professionals had access to the Spanish judiciary career, we can observe that in the case of women it is mainly through the free turn (96.6%), generating a discrimination in relation to any other way of entry, especially as "jurist of renowned competence" (15-20 years of professional practice), this despite the fact that there are female jurists within the Spanish law branch with international reputation, which shows the difficulties women face to compete, not because lack of qualifications, but rather because of the difficulties encountered when trying to conciliate between professional and familiar obligations.

In the case of the military judicial turn, it is because of the little correlation between women and the judicial topics related to the Armed Forces. These gender related differences are still occurring, as Table 1⁵ shows (period 2005-2014), despite the number of women entering the judicial career.

The average age of the members of such career confirms once more this trend toward feminization as the number of female judges and magistrates under 50 years of age is higher than that of over 50-year-old male judges and magistrates (Table 2); this is due to the number of women who have had access to the judiciary, mainly in the last years. Together with this, we observe a relatively young judicial system as 61.7% of its members are less than 50 years of age; this difference is significant since the group of women is younger.

³ On January 23rd, 1978, Josefina Triguero Agudo took office at the Naval Moral de la Mata Court, in Badajoz, and by doing so, she became the first judge in Spain. However, the first female judge was Concepción de Carmen Venero, member of the Minors Tutelage Court, who, after an evaluation at the Officials Corp of the Minors Tutelage Court was promoted to a secretario habilitado [Enabled Secretary], and later, she was appointed as a judge by the Ministry of Justice. Keep in mind that Law 1961 allowed women to hold office as judges only in labor and minor tutelage jurisdictions.

⁴ The free turn consists in taking evaluations, called "opposition evaluations", where candidates must prove their judicial knowledge and their capability of interpreting and applying said laws. In the restricted turn, to which a small number of positions are available, only renowned professionals with more than ten years of experience can access. To access these positions, only personal and professional trajectories are taken into account, without the need to present any kind of evaluation; the candidates take the same course as the free turn candidates.

⁵ Figures and tables are included in the Annex, at the end of this paper (Editor's note).

The comparison between data from 2005 and 2014 shows this change and how women are increasingly taking higher responsibility positions. The judicial career is socially recognized and well-regarded and it provides higher salaries in comparison to those offered to other professionals working for the administration, as well as more favorable working conditions in terms of workload distribution, working hours, etc., without gender based differences.

In spite of the fact that women outnumber men, they are still a minority in higher judicial organisms such as the National Court, Supreme Courts of the Autonomous Communities, Supreme Court or senior judges despite the fact that 40 years have passed since women were granted access to positions in justice administration. Their presence is higher at court where they have had presence since the beginning of the judicial career (see Table 3), as mentioned by Robles (2004:48).

The presence of women is very similar to that of men in the different Courts throughout Spain under the different judicial parties without presenting a correlation of the type of court (First instance, instruction, mixed, familiar, criminal, social, minors and penitentiary surveillance) and gender for a preference of personnel in terms of their areas of expertise, since Familiar or Minor Tutelage, positions are held by both men and women indistinctively; the same occurs with the Provincial Audiencias.

If we consider the Central Organisms of the Judicial Power (Table 3) the presence of women is small with a significant difference when compared with the male presence. This, despite the fact that there is a large number of women with more than sufficient experience and professional qualifications to be eligible for positions of responsibility at higher courts (National Court and the presidency of the Supreme Courts of the Autonomous Communities and Provincial Courts). As Ribas (2014) mentions, the presence of women in sectors that are traditionally led by men, and especially in power and responsibility positions historically assigned to men, has not increased at the same pace, creating a vertical segregation in reference to the little female presence at higher hierarchic levels.

However, this situation has started to change in recent years with the approval of the Organic Law 3/2007, from March 22nd, for the effective equality between men and women, and whose article 16 states that “the public powers shall ensure the principle of a balanced presence of men and women in the appointment and designations to the pertinent responsibility positions”. The Strategic Plan of Opportunity Equality (2008-2011), approved by the Council of Ministers on December 14th, 2007, establishes as a strategic objective 3: “To increment the participation of women in management and responsibility in the judicial power”, and in order to achieve this, it promotes the development of Commissions provided by the Organic Law 3/2007, from March 22nd.

In order to favor opportunities equality in the justice administration, the General Council of the Judicial Power approved a Book of Regulations in February 2010 which regulates the allocation of discretionary positions in the judicial organs.

There is a demand from judges and magistrates so a more objective system for the allotment of higher responsibility positions is established, as seen in the *V Encuesta a la Carrera Judicial*, 5th Judicial Career Survey⁶ (Chart 2), where a modification of the position assignment criteria by the General Council of the Judicial Power of Supreme Court magistrates and the presidency in their courts is proposed; the magistrates and the presidency of the Autonomous Communities Supreme Courts and the presidencies of the Provincial Courts. And that the experience in the jurisdictional experience and in the collegiate organ is considered more important, as well as seniority in the hierarchy and in the collegiate organ which is intended to preside. While on the other hand, that the interview to the candidates in which their exposition of aptitudes and merit takes a second place.

The May 20th, 2011 Resolution, the Ministry of State for the Public Office which issues the Acuerdo del Consejo de Ministros –Ministers Council Agreement of January 28th, 2011, by which the First Equality between men and women in the State General Administration and Public Organisms Plan was issued and which establishes in its Eje 2 [Second thesis], as one of the Plan most important objectives: “To promote and improve the possibilities for women to Access responsibility positions”

In order to stop this situation and comply with what was established in the approved rulings to favor equal opportunities for any gender, the same General Council of the Judicial Power approved, on February 14th, 2013, a Plan of Equality in the Judicial Career to accomplish effective equality between men and women within the judicial organs, and more specifically to facilitate the promotion of women with the merits and capabilities to be in charge in government, as well as magistrates in the Supreme Court.

Moreover, the plan establishes eleven strategic axes of the General Council of the Judicial Power to favor the equality in several aspects; among of the most relevant are the following: access to the judicial career by the restricted turn, professional formation and promotion, sensitization and conciliation with familiar life and a higher participation in the decision-making organs. As we can observe in the yearly memoirs and reports, measures are being taken, even though their effects are not as speedy as it was desired.

⁶ *V Encuesta a la Carrera Judicial* [5th Judicial Career Survey]. Carried out in 2010 by request of the General Council of the Judicial Power, by means of a self-administered questionnaire mailed to 4,528 judges and magistrates. A total of 1,763 questionnaires were answered –which is 39%, and despite not having used a probability sample, participants reflect the study universe considered in regards to the sociodemographic features.

Nowadays, the General Council of the Judicial Power comprises 12 magistrates, of which nine are women, which implies an important change having in mind that during the period between 2001 and 2008 only two female magistrates were part of this organ. Therefore, we must consider that there is institutional availability to eradicate gender discrimination in the access to great responsibility positions in the judiciary and collegiate decision-making organs.

Feminization of justice from the perspective of its own performers

The CGPJ of Spain has carried out various consultations among those who take part in the Spanish judicial career on topics relevant at the different stages, and whose results are gathered in studies and reports. For this research the main ones that refer to gender are considered.

The documents that were taken into account were the *VI Barómetro de Opinión de la Judicatura Española*⁷ [6th Opinion Barometer of the Spanish Judiciary], the *V Encuesta a la Carrera Judicial* [5th Judicial Career Survey], and the *Encuesta a la carrera judicial sobre conciliación de la vida familiar*⁸ [Judicial Career Survey on the reconciliation of family life], as well as the other cited documents. Such information is completed with references to interviews with magistrates who have had access to responsibility positions and which have been published by the Spanish press.⁹

Following, we gather the information provided by very male and female actors, judges, magistrates on the feminization process the Spanish judicial system is currently experiencing:

1st. Increment in the number of female presence

The presence of women in the judiciary has to be considered as a part of the normalization that comes with the development of a democratic society, and within the real and effective recognition of equal opportunities and of an homogenization in the role distribution, as the one the Spanish society is experiencing, although this change is occurring more slowly than desired.

⁷ The barometer has two different kinds of questions: The first type are multiple choice –where the interviewee has a selection of close options, and open-ended by giving their opinions by answering open questions. A second type of questions, an evaluation expressed by 1-5 and 0-10 scales is requested. The results from the latter type of questions are expressed by its median. The information gathering method was through a 30-minute personal interview via a pre-coded and structured questionnaire (with some open-ended questions), and which was carried out at their place of work. Since the sample deals with a finite population, and according to the simple random sampling criteria, for a confidence level of 95.5 (two sigmas) and in the least favorable hypothesis ($p=q=50$), the sampling error would be $\pm 5\%$. The previous consults were carried out in 1984, 1987, 1990, 1993 and 1999. The last one was in 2003 and the field work was carried out from April 28th to June 20th, 2003.

⁸ Such survey was carried out during February and March 2008.

⁹ It must be mentioned that the members of the judicial career in Spain are reluctant to comment publicly about the way the institution works. For that reason, valuable information sources which have appeared in mass media were selected.

This is an adaptation of the social reality, a normalization, since in society both men and women share spaces, and in the judicial organs it is totally normal that men and women work together. Besides, it provides a series of values and habits that can be more frequently found in feminine education: we are more concrete, we have another way to address people, more naturally, and this creates a better achieved closeness. Without a doubt I would like there were more women in the Courts, as justice would be more complete, and everything would be seen from all sides (Esther Erice, President of the Provincial Court of Navarra, *Diario de Navarra*, November 22nd, 2010).

Among the explanations for the increment of the number of women in the judicial career, we highlight the opinion of informants from both genders about the predisposition of women to prepare themselves for the selective evaluations. There is also a shared opinion by magistrates and judges in regards that the judiciary offers more possibilities of promotion for women, when compared with other departments of the public administration; this may be because the promotion requirements are more objective. However, this opinion is only shared by 43% of women and 42% of men. On the other hand, the statement about an easier access to the judicial career, as well as that there is less discrimination toward women because of their gender, are not shared, and the responses reflect inconformity and low levels of acceptance. (Chart 1).

2nd. Discrimination to access the highest levels of the judiciary

Similarly to what occurs in public administration, the highest responsibility positions are accessible only after several years of service and proven experience, which is achieved when a person has led different positions in different jurisdictions and destinations, or the person has a long renowned professional trajectory, when it is accessed by means of a restricted turn, as a university professor in the area, a professional office, etc., and these have only been achieved later in life. In 2014, there were 614 female judges and magistrates between 51 and 60 years of age, and 73 between 61 and 70 years of age, many of whom comply with the conditions to be in charge of high responsibility positions.

For Montserrat Comas — chairperson of the General Council of the Judicial Power during the 2001-2008 period—: “It is about reaching an equilibrium, we never talk about a 50% parity as we should not be so drastic. A decisive policy has been lacking. Simply by looking at the composition one can have an idea: I don’t mean that the chairs are against, but to change the trends is much more complex. They are used to see the merit in men” (El País, April, 22nd, 2008). The possibility of reaching a parity in the judiciary superior organs is a long process. The reasons presented by the female judges and magistrates are positive and reflect the hope that the objective will be reached in the end.

I don't see more mindedness in the justice compared to other departments. In the Supreme, for instance, I think there are few women due to an age situation. Besides, there is an inertia as men have been present for centuries. [...]. There is an important number of female judges in the unipersonal organs that later will be part of the collegiate organs and because from the CGPJ there is an intention and work so that the destinations within the judiciary are taken by personnel with the curriculum and capacities for each of them (Esther Erice, president of the Navarra Provincial Court, *Diario de Navarra*, 22nd November, 2010).

Efforts to achieve equality have been made, such as the commission by the CGPJ which offers positive data. Parity will take time, or, observing how the future promotions are occurring, the proportion may change. But it is not about reaching a 50% between men and women, but to give more naturalness to the positions; that genders are not taken into account, but personal information (Mari Paz Benito, senior judge of Pamplona, *Diario de Navarra*, 22nd November, 2010).

This opinion of not imposing an equalitarian proportion has also been seen in the V Encuesta a los miembros de la carrera judicial [5th Survey to the members of the Judicial Career] (Table 2); the need of a balanced participation in regards to gender was valued only with 2.3 points over 10, by 89.7% of the interviewees. This conception responds to the competitive nature of the people who are part of this group and who consider that promotion should be granted exclusively due to personal achievements of training, capabilities and experience.

3rd. Difficulties to access the higher levels of the judiciary, derived from the need of balance familiar life

The *Encuesta sobre jornada laboral y conciliación familiar en el ámbito Judicial*¹⁰ [Survey on working hours and the Judicial environment] created by the Union Commission of Judges for Democracy, mentions that 60% of the women interviewed present more difficulties to come into terms with familiar professional life, and that the latter is affected; whereas for 70% of the interviewed people, the impact on the professional life is similar when it comes to combine both family and job. The difficulties to balance have affected 39% of the interviewees, of which 58% are women, mainly from the ones who have children. In regards to responsibility, as mentioned by Mercedes Guerrero, president of the Álava Provincial Court: "In the relevant positions of the judicial high spheres we (women) are not represented [...], the problem is that we

¹⁰ The survey was sent to all active judges and magistrates between March 15th, 2012, and April 15th, 2012, receiving only of 346 answers from a total of 4.569, which represents 7.57%. The data of the recipients are representative of the universe the survey was directed to, this way it did not present a bias that may distort the results obtained.

find it difficult to combine our professional life with our families. The magistrates who are also mothers have to juggle in order to take care of children and also to be part of this very demanding profession” (El Correo.com, 2010).

Most of the female judges and magistrates consider that the fact of being a woman negatively conditions the development of their career since they are faced with more difficulties to compete and have a professional development with the same opportunities as their male peers; this was mainly stated by those between 30 and 40 years of age or those who are mothers of one or two children –this according to the Encuesta a la carrera judicial sobre conciliación de la vida familiar [Judicial Career Survey on the reconciliation of family life]. This is reflected by the fact that 39% of the interviewed women state that this situation conditions their application for a position of a discretionary appointment nature, or to ask for a transfer to a position that demands more dedication.

This situation is similar to the one that professional women in justice administration in other countries experience (Bergallo, 2006; Gastiazoro, 2008). However, such difficulty is surpassed by a request to a position that would require a change of residence (33%), which indicates that those women who enter the judicial career are in the understanding that climbing up in hierarchy, specifically the change from judge to magistrate, implies, most of the times, a change in their residence. Nonetheless, in last years we have observed appointments that imply changes of residence and these positions have not been as accepted in the same numbers by women as their male peers.

However, according to the data collected by Encuesta a la carrera judicial sobre conciliación de la vida familiar [Judicial Career Survey on the reconciliation of family life], 71% (76% women and 64% men) considers that families should be taken into account when a position is appointed, and close to the total (96.5%) acknowledges that moving or changing residence due to a promotion is a problem in their family life. Because of this, 98.3% considers as absolutely necessary to include measures to improve this conciliation when there are children under 3 years of age –or a first child- and in situations when a member of the family is affected by a chronic disease or disability, or in the cases that the new position is located far from the family residence. This difficulty to combine the familiar and professional life is once more highlighted as an issue in the V Encuesta a la Carrera Judicial [5th Judicial Career Survey], where 52% of the interviewees consider that this is very conditioning, and 31% considers that it is somewhat conditioning.

Conclusions

The feminization of the Spanish justice system is a reality, just as it is so in many other countries. This process is taking place throughout all public departments as the possibility of accessing such departments depends mainly on personal merits, and gender discrimination tends to disappear. This progressive and constant incorporation of women in the public office, generally speaking, and more specifically in the judiciary system, can be explained from the interrelation of factors at three levels that make such change possible (Saltzman, 1992):

- Micro-level, where stereotypes about the roles a woman can develop and the beliefs about the different abilities and capabilities of both men and women have evolved toward equality.
- Medium level; in this regard, the study shows how the different institutions and communities have made some efforts to promote equality of opportunities.
- Macro-level: Political and economic systems, as well as the social stratification systems that evolve more gradually.

The possibilities of a female magistrate to access the higher organs is somehow conditioned by the existence of some sectors in the magistrature that still prefer male personnel for those positions, and in other cases, by the needs of mixing the personal and professional life which implies an impediment to participate in the promotions for discretionary assignment positions. The glass ceiling still exists, used not only by the institutional resistance –which is disappearing-but because the women-mother role hinders their possibilities of competing with their male peers, who are in a way freer from familiar responsibilities; this despite the fact that they (men) state in the questionnaires that they are equally conditioned.

Therefore, the origin of this professional discrimination also resides in the existing inequality in the domestic sphere for which they are educated and where the old role distribution is maintained (Bourdieu, 2005: 45; Touraine, 2007); hence, as younger generations are educated and take a more egalitarian distribution of family roles, women's opportunities in the labor field increase and a more just society will ensue.

The public-domestic dichotomy is reflected in the differences men and women face when trying to access administration positions in the basic scales, with a growing number of women who have opted for choosing more stable positions whereas men have selected positions with higher economic remuneration and benefits in the private industry. However, this trend could be reversed due to the economic crisis since the high unemployment rates experienced by both genders could lead to a higher motivation in men to hold positions that were not appealing in the past in order to achieve better professional stability.

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Table 1

Form of access to the judicial career by gender

Form of Access	January 1 st , 2005		January 1 st , 2014	
	Women	Men	Women	Men
Jurist Vacancy of renowned performance 6 years	63	142	60	132
Inquiry-administrative Jurist Vacancy 311.3 and 6	5	13	5	12
Jurist vacancy 10 years civil 313.3 and 6	16	18	17	17
Jurist vacancy 10 years civil C-P- art. 313.3 and 6	26	29	23	26
Jurist vacancy 10 years criminal art. 313.6	18	23	11	18
Jurist vacancy 10 years social art. 313.6	13	19	9	14
Jurist Vacancy of renowned performance 10 years	49	136	47	131
Jurist Vacancy of renowned performance 15/20 years		11		12
Inquiry-Administrative specialization evaluations	3	9	2	9
Selective Social specialization evaluations	1	1		1
Transitory disposition 17 of the L.O.P.J. (Judicial Power Organic Law)	2	8	2	8
Appointed by the vacancy of the Autonomous Communities	6	14	6	14
Judicial-Military vacancy		5		5
Free Vacancy	2212	1831	2247	1824
Total	2414	2259	2429	2223

Source: *Consejo General del Poder Judicial. Informe sobre la estructura demográfica de la Carrera Judicial*, [General Council of the Judicial Power. Report on the Demographic structure of the Judicial Career, January 1st, 2005 to 2014].

Table 2

Judges and Magistrates by gender and age group

	January 1 st , 2005			January 1 st , 2014		
	Women	Men	Total	Women	Men	Total
	1857	2368	4225	2661	2558	5219
Average age (years)	39,62	46,73	43,6	44,72	50,49	47,55
Seniority (years)	9,97	15,29	12,95	14,06	18,9	16,43

Source: *Consejo General del Poder Judicial. Informe sobre la estructura demográfica de la Carrera Judicial*, [General Council of the Judicial Power. Report on the Demographic structure of the Judicial Career, January 1st, 2005 to 2014].

Table 3

Proportion of female judges and magistrates by destination organism

Supreme Court	11.7
National Court	35.9
Central Court of Inquiry and Administration	45.5
Supreme Justice Court	33.6
Provincial Court	33.9
Criminal Court	59.0
Administration and Inquiry Court	41.9
Social Court	53.0
Penitentiary Surveillance Court	59.2
Minor Court	58.2
First Instance and Instruction Court	65.1
First Instance Court	59.4
Instruction Court	55.4
Unique Exclusive Civil Registry	60.0
Exclusive Senior Court	16.7
Commercial Court	26.6
Violence against women court	66.7
Supreme Justice Court pending post	64.9

Source: *Consejo General del Poder Judicial. Informe sobre la estructura de la Carrera Judicial*, [General Council of the Judicial Power. Report on the Structure of the Judicial Career, January 1st, 2014].

Chart 1

Explicative reasons for the increment of women in the Spanish Judiciary

Question:	Women	Men
	(%)	(%)
State your conformity/non-conformity with the following possible explanations for the increment of female presence in the judicial career.		
Women prepare oppositions more intensely than men.	53	55
The Judiciary offers better promotion possibilities for women compared to a private enterprise or other administration bodies.	43	42
There is less discrimination against women in the access courts to the judiciary compared to other courts of the administration.	20	17
The Judiciary is an easier opposition to prepared compared to others.	2	7

Figures refer to the % of interviewed people who answered positively to the item given a “much” or “very much” answer.
Source: *Sexto Barómetro de Opinión de la Judicatura Española*, 6th Opinion barometer of the Spanish Judiciary, p. 30.

Chart 2

Selective criteria proposed by judges and magistrates for the selection of presidents for the Justice Supreme Courts of the Autonomous Communities, Court Presidencies, Presidencies of Provincial Courts and senior Judges

	0 to 10 value	% that values
Seniority in the structure	7.2	92.9
Seniority in the department to preside	6.4	91.5
Experience in the collegiate department	7.0	91.8
Experience in the corresponding jurisdictional order	7.9	91.4
Management plan of the department to preside	5.5	88.7
Interview at the General Council of the Judicial Power to present merits / aptitude defense	3.3	91.4
Public interview to present merits and aptitude defense	3.6	90.6
Balanced participation by gender	2.3	89.7

Source: *V Encuesta a la carrera judicial 2010*, [5th Survey on the Judicial career 2010, p. 18].

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Reception: October 11th, 2014

Approval: August 31st, 2015