

EQUAL OPPORTUNITY AND GENDER DIFFERENCE IN MAGISTRACY:  
APPRECIATING DIVERSITY AND NON DISCRIMINATION.

- Hon. Judge Emma Rosati, Vice General Prosecutor- Audit Office

With regards to diversity of gender in magistracy, I've always asserted the importance of the presence of women in magistracy. It is a sector that is extremely delicate in relation to the understanding of human, social and psychological events and implications of people, whether actively or passively involved in crimes, as well as those who are harmed in their own rights or legitimate interests or have caused or suffered damage of various types. It's certain that the merits and distinctive characteristics of a woman magistrate can consciously bring much professionalism, in depth analysis and reflection in a sensitive though rigorous and objective application of the law.

This seems perfectly in line with what was effectively defined, 'the advantage of diversity' in the European Year of Equal Opportunity (2007).

Apart from the historical motivations that required enormous objective sacrifices of the female gender, in the professional field, practically all over the world, in my opinion what has to change is the basic philosophy and methodological approach to the problem and concept of the right to 'equal opportunity'.

Today, in fact, I don't think that it is so much of (or only) a problem of the 'right to equal opportunity', as much as the necessity to reach an awareness that differences are our real strength.

Diversity, in fact, can bring enormous advantages to society and to the labor market. An ever increasing number of companies today recognize, for example, that diversity is not only a moral issue. If companies promoted a real 'policy of diversity', we could even observe a beneficial effect from an economical point of view. Making use of a 'different work force' could involve a variety of perspectives and different ideas as well as shared solutions to the advantage of a final product and result.

Consequently, from the gender diversity point of view (male or female) I firmly believe that a greater female presence, for example (to remain in my field and, that is, in magistracy) could only bring perspectives of greater fairness to trials and to the whole 'justice' system, as it would reflect a 'really' more human jurisprudence, in line with the contingent social structure, in which citizens, men and women live together and exchange opinions, so that a different expression of the institutional structure, with a magistracy made up of only men or women, would be extraneous to the social context and would risk distorting the dynamic of justice.

I don't think that the issue should be addressed in terms of a conflict, rather it should be a civil and critical debate as well as agreements and convergences. Having negative

contrasts and a counter positive approach between genders would be extremely distorting and would probably diminish instead of reinforce the concept of 'diversity' enhancement. Real equal opportunity, that allows both sexes equal representation in magistracy, in all institutional and associative sectors, would not be a too distant and futuristic perspective but realistically mature.

However, I think that it will be necessary to continue to fight so that substantial equality is progressively guaranteed. This is given by the sum of differentiations, by healthy and positive diversities and pluralism in civil society and in the reciprocal and equal promotion of both sexes in magistracy.

I've spoken about representation, and not by chance, given that this objective is one of the four fundamental key objectives, together with 'rights', 'recognition' and 'respect' in the name of which various activities were organized on a European level in 2007, declared precisely "European Year of Equal Opportunity".

Therefore, what do we mean by 'representation' in this context? It means succeeding in stimulating a debate in relation to the objective of increasing the social involvement of groups subject to discrimination, so as to assure a wide and above all balanced participation for example amongst men and women.

A very important objective, that must lead to an awakening of citizens regarding their rights to equal treatment of the need for creating an existence free of discrimination, irrespective of gender, ethnic or racial origin, religion or creed, disability, age or sexual orientation, opening a continuous and general debate on the primary importance and real advantages of the promotion of diversity, for European societies as well as for individuals.

From this point of view and with this picture of reference, various Equal Opportunity Committees in magistracy have been created precisely during the European Year of Equal Opportunity, in order to bring new prospects of enhancement within the justice system with the contribution of both men and women of the 'magistracy workforce' that operate in the jurisdictional area, in order to implement that prospective and productive equal balance and distribution of magistrates, in terms of gender, that positively affects their job for the users of the justice service.

On the subject of equal opportunity, through the work of the 'Equal Opportunity Committees', instituted at different jurisdictions, many positive results have been reached.

Some activities of particular importance are to be pointed out: the in depth study and positive experimental interventions in the area of 'gender budgeting'; the creation and implementation of codes of behavior against sexual harassment in the workplace and for the protection of the dignity of workers, adopted in 2006 and 2007; the important initiatives on the subject of "mobbing", that have favored the full implementation of

projects, targeted at promoting the prevention of hostile or persecutory situations or of moral violence, to the protection of all workers in their concrete diversities.

Among the activities described, particular attention should be paid to the innovative conviction of creating budgets through a prospect of gender. The principle that a budget cannot be considered a 'neutral' instrument is well known but it reflects the distribution of power, existent in society. The European Union has shown interest in this matter, with a specific resolution by the European Parliament on 'gender budgeting', adopted in 2003, on the wave of initiatives, in such a sense, that – already originating between the 80s / 90s [1], in various countries of the world – has allowed us to recognize this absolute relevance in 'gender budgeting', already credited at an international level.

Gender budgeting therefore places a stress on the analysis of the impact of public policies on women and men. It introduces a perspective of gender to all levels of the process of creation of public budgets and aims to restructure the incomes and expenses with the aim of promoting equality between men and women. Gender budgeting is the application of the principle of mainstreaming that can be defined as a global and transversal strategy aimed at highlighting and overcoming the differences of impact that apparently neutral policies actually have on men and women. Adopting a viewpoint of gender (gender budgeting) therefore means responding to the needs for fairness, cost-effectiveness and reality. Public expenditure is effective and efficient, apart from equal, when it is able to promote the development and potential of all components of society.

It's clearly not about producing separate budgets for men and women, but assuring an equal and effective distribution of financial resources in all policies, with the aim of pursuing equality among men and women, with perspective achievement of some strategic objectives for governments, among which are counted restructuring and redefining public expenditure in order to promote financial opportunities for women and their access to productive resources as well as promoting more transparent and adequate processes of budgeting to different levels that also encourage the financing of projects for equal opportunity among men and women.

As one can understand, these are objectives of great importance and value, that in Italy have lead to the presentation of specific bills (between 2005 and 2006), through which one highlights the necessity of promoting a strategy of an equality policy with a global approach which is therefore not necessarily limited to the mere promotion of women. The declared objective is that of integrating some aspects inherent to equality, in a lasting and general way at all organizational levels. Thanks to this strategy, both women and men should benefit in equal measure from each project and provision created within public administration.

In conclusion, I would like to highlight that acquiring consciousness about the right to equality and non discrimination in every sector of political-social, cultural, and professional life in my opinion brings forth, a great awareness, on behalf of Authority and individuals, that diversities are a benefit, that reflect advantageously on citizens, institutions and on all civil society and that substantial equality (that is not a uniformity)

can only signify an appreciation of differences and diversities, that must, if anything, lead to concretely implementing and assuring a real equality of treatment in all sectors of private and public life, if needed, removing possible hindering obstacles to the full exercise of this right.

(Hon. Judge Emma Rosati  
Vice General Prosecutor- Audit Office)