

GENDJUS GUIDELINES ON GENDER-SENSITIVE JUDICIAL WRITING. Prejudice, Stereotypes and Bias in Judicial Discourse on Sexual, Parental and Reproductive Rights

How to cite: Gilleri, G., Miyamoto, E., Sarni, C., Danisi, C., & Pontrandolfo, G. (2026). GenDJus Guidelines on Gender-Sensitive Judicial Writing. Prejudice, Stereotypes and Bias in Judicial Discourse on Sexual, Parental and Reproductive Rights. The GenDJus Project - PRIN 2022 PNRR. <https://doi.org/10.5281/zenodo.19385758>

INTRODUCTION¹

Linguistic structures shape the meaning of the content of any legal rule. This is particularly true for judicial decision-making. Notwithstanding the judicial effort to aim at neutrality, language accounts for a number of sociocultural as well as personal assumptions and visions concerning social relations, groups and their gendered dimension. These Guidelines offer a useful tool to appreciate the impact of gender and sexual orientation in judicial texts, and to improve linguistic constructions in order to embrace more inclusive decision-making practices.

Consideration of the impact of gender and sexual orientation in judicial language falls under internationally established obligations. For example, the principle of non-discrimination on the basis of gender is enshrined in all human rights treaties at both international and regional level.² As such, the principle incorporates the obligation for States not to discriminate. Equally, other principles and obligations flow from it. For example, the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)³ prohibits stereotyping on the basis of gender in ways that nullify or hamper the enjoyment of human rights. At regional level, the European Court on Human Rights (ECtHR) has, in turn, identified gender-based stereotypes amongst the judiciary, underscoring the latter's institutional responsibility to avoid reproducing sexist prejudices.⁴ In doing so, the ECtHR is to be viewed as being in line with the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence (commonly referred to as Istanbul Convention)⁵, which also prohibits gender stereotyping having the effect of maintaining patriarchal relations of power in the family and in society.

Gender-based as well as sexual orientation-based prejudices, stereotypes and biases (PSB) may be implicit or explicit in legal reasoning. It is crucial to learn how to avoid them, and the connected impact they produce on the enjoyment of rights and on socio-legal interpretations and meanings more generally. There is therefore a need for judges not only to improve their use of sensitive language but also to learn how to tackle PSB. Moreover, such PSB also extend to gender identity and sex characteristics, thereby undermining the equal recognition of LGBTIQ+ (lesbian, gay, bisexual, trans, intersex, queer) people, while jeopardising the enjoyment of human rights.

These Guidelines aim to facilitate the prevention and eradication of PSB on these grounds in judicial language and, to this end, are focused on the relations between judicial language and PSB as enshrined therein in the specific area of human rights concerning sexuality, parenthood and reproduction.

¹ These guidelines are one of the final milestones of the GenDJus project. Although they are the result of a joint effort, Giovanna Gilleri, Erika Miyamoto, Chiara Sarni authored the first draft under the scientific supervision of Carmelo Danisi and Gianluca Pontrandolfo and with the feedback by Marco Balboni and the GenDJus Advisory Board.

² Art. 2, Universal Declaration of Human Rights (adopted 10 December 1948) A/RES/810; Art. 2(2), International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR); Art. 2(1) and Art. 26, International Covenant on Civil and Political Rights ('ICCPR') (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; Art. 1, Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13; Art. 2, African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev. 5; Art. 1 and Art. 24, American Convention on Human Rights (Pact of San José) (adopted 22 November 1969, entered into force 18 July 1978) OASTS 36; Arts. 1, 14, Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (adopted 4 November 1950, entered into force 3 September 1953) ETS 005; see also Art. 1, Protocol No 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 2000, entered into force 1 April 2005) ETS 177.

³ Art. 5(a), Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

⁴ *Carvalho Pinto de Sousa Morais v Portugal*, ECtHR, 25 July 2017, no. 17484/15, para 54. See also, *J.L. v. Italy*, ECtHR, 27 May 2021, no. 5671/16, paras 140-141.

⁵ Art. 12(1), Convention on Preventing and Combating Violence against Women and Domestic Violence (adopted 11 May 2011, entered into force 1 August 2014) CETS 210.

HOW TO READ THIS DOCUMENT

This document offers guidance for judges and legal practitioners in the use of gender- and LGBTIQ+-sensitive language. This document is divided into four parts. It first defines the (A) *Basic Concepts* used in the Guidelines, followed by the international principles on (B) *Mandatory Judicial Training*. Second, the document contains (C) *General Recommendations on How to Avoid Symbolic Violence in Judicial Drafting* for a better use of judicial language, considering the socio-legal implications of gender-based as well as sexual orientation-based linguistic and discursive constructions. Third, section (D) *Specific Recommendations on Gender and LGBTIQ+ Prejudices, Stereotypes and Bias* focuses on the importance of naming and avoiding the use of PSB. It offers examples of constructs that identify, highlight and/or reiterate the use of this group of PSB. These are further divided into three categories:⁶

- **Sex PSB** focus on the physical and biological differences between men and women.
- **Sexual PSB** target the sexual interaction between individuals.
- **Gender role PSB** refer to the roles, attitudes and behaviours that are ascribed to and expected of individuals because of the physical, social and cultural constructions connected to their gender, sexual orientation, gender identity, and sex characteristics.

The Recommendations and the examples provided in the tables below rely on the GenDJus database and corpus, which gathers together judgments, decisions, separate opinions and advisory opinions in English, Spanish and Italian from supranational and international Courts (the Court of Justice of the European Union - CJEU, the European Court of Human Rights - ECtHR, and the Inter-American Court of Human Rights - IACtHR) and national courts in Italy (the Italian Court of Cassation - CSC and the Italian Constitutional Court - CC). The examples included in sections (C) and (D), are accompanied by the title of their respective source, with a full reference being provided in the *Table of Cases* at the end of the document. However, it should be noted that the PBS examples cited in this document are not always attributable to the Court to which they refer, but are often statements made by domestic courts that the International Courts themselves stigmatise and condemn.

⁶ These are partially drawn from Simone Cusack and Rebecca J Cook, *Gender Stereotyping: Transnational Legal Perspectives* (University of Pennsylvania Press 2010) 24-31.

A. BASIC CONCEPTS

Bias: a cognitive shortcut. This is a quick process through which we interpret reality. If the stereotype is the act of labelling, bias is the cognitive activity of using the stereotype as a tool to make judgments about ourselves and others.

Discrimination: acting-out of PSB that may take varied forms and may produce multiple effects. Any distinction, exclusion or restriction made on the basis of a certain social marker or on the intersection of several social markers which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by an individual of human rights and fundamental freedoms.

Gender: a socially constructed notion that attributes specific roles to women and men and sociocultural meanings based on sex differences, thus resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women.

Gender identity: each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of their body and other expressions of gender, including dress, speech and mannerisms.

Gender-inclusive language: language that does not exclude or discriminate against a particular gender, sexual orientation, gender identity, or sex characteristics.

Gender-neutral language: language that is not gender-specific and does not assume any gender, sexual orientation, gender identity, or sex characteristics.

Gender-sensitive language: language that addresses all individuals, including women, lesbian, gay, bisexual, asexual, transgender, intersex and queer people (LGBTIQ+), as people of equal value, dignity, integrity and respect.

Prejudice: a broad term referring to a positive or, more often, negative opinion about or a judgment on other individuals based only on their belonging to a given group. A prejudice is both emotional and cognitive in nature.

Sex: biological differences between men and women.

Sex characteristics: each person's physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty.

Sexual orientation: each person's capacity for emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

Stereotype: a simplified cognitive representation of a certain social group. It is based on the generalising consideration of a number of characteristics as indispensable to the essence of the group. Stereotypes are persistent in that they serve the conservatory function – of a group, a society, a circle, an élite, an institution – so as to preserve the *status quo*. It constitutes the cognitive aspect of prejudice.

B. MANDATORY JUDICIAL TRAINING

Human rights treaties impose the obligation on States parties to grant alleged victims an effective remedy when they are deemed to have suffered a human rights violation, as well as the right not to be discriminated against in the exercise of that right or not to suffer any degrading treatment, for example by using offensive language based on PSB or by placing the alleged victim in a situation of particular distress on PSB grounds. The full enjoyment of these rights and freedoms can only be guaranteed if mandatory training is put in place.

With reference to gender, the obligation to deliver training on gender-based PSB for judges has been highlighted by the CEDAW Committee.⁷ It requests that States report on the judicial training programmes undertaken at national level under Article 18(1) CEDAW on State reporting. States should show that they have implemented the relevant measures for specific training on the Convention, its Optional Protocol and its general recommendations for judges, lawyers and law enforcement personnel.

A similar goal is pursued by the Council of Europe, particularly its Consultative Council of European Judges, which has recommended that States provide comprehensive and continuous judicial training.⁸ Gender-related issues are among the objectives of the Human Rights Education for Legal Professionals (HELP) platform⁹ and the Women's Access to Justice project.¹⁰ Most importantly, training of judges can be viewed as a preliminary condition for giving effect to the right to an effective remedy under Art. 13 ECHR.

The same obligation applies to sexual orientation, gender identity, and sex characteristics, meaning it is prohibited to handle cases involving LGBTIQ+ people on the basis of PSB. Judicial training must therefore include awareness as to how PSB concerning sexual orientation, gender identity, and sex characteristics manifest in legal reasoning and judicial discourse. Such training should equip judges to identify and prevent discriminatory assumptions, stigmatising language, or heteronormative and cisnormative frameworks that undermine the impartial administration of justice. By explicitly addressing LGBTIQ+-related PSB, judicial training facilitates the equal recognition of dignity, integrity, and human rights for all individuals.

⁷ *O.G. v Russian Federation*, CEDAW/C/68/D/91/2015, 6/11/2017, para 9(b)(vi); *R.P.B. v. Philippines*, CEDAW/C/57/D/34/2011, 21/02/2014, para 9(iv); *R.K.B. v. Türkiye*, CEDAW/C/51/D/28/2010, 24/02/2014, para 8.10(b)(ii); *Isatou Jallow v. Bulgaria*, CEDAW/C/52/D/32/2011, 23/07/2012, para 2(c).

⁸ Consultative Council of European Judges, 'Opinion No. 4: On Appropriate Initial and In-Service Training for Judges at National and European Levels', 27/11/2003

⁹ Council of Europe, 'HELP Courses' <https://www.coe.int/en/web/help/courses> (last accessed 15/09/2025).

¹⁰ The project includes capacity building activities for legal professionals aimed at improving the gender-sensitivity and gender-responsiveness of the justice systems and strengthening access to justice for women victims of gender-based violence. Council of Europe, 'Women's Access to Justice: implementing Council of Europe gender equality and violence against women standards' <https://www.coe.int/en/web/genderequality/women-s-access-to-justice-implementing-council-of-europe-s-gender-equality-and-violence-against-women-standards> (last accessed 15/09/2025).

C. GENERAL RECOMMENDATIONS ON HOW TO AVOID SYMBOLIC VIOLENCE IN JUDICIAL WRITING¹¹

Symbolic violence¹² is a form of violence producing relations of domination and power through mitigated and disguised strategies. One of the most powerful tools by which this form of violence is exercised is language that in judicial texts can contribute to a perpetuation of patterns of inequality and that promotes gender stereotypes, thus facilitating discrimination.

1. FRAME CLEAR NARRATIVES WHILE BUILDING ARGUMENTATIVE STRUCTURES THAT AVOID GENDER AND LGBTIQ+ STEREOTYPING, STIGMATISATION, REVICTIMISATION AND *DOUBLE ENTENDRE*:

- a. **Avoid blaming the victim and shifting responsibility** by using rhetorical, syntactic and lexical strategies aimed at stressing the burden caused by the victim and downtoning the negative action of the dominant social group.

As pointed out by the IACtHR in *Velásquez Paiz El Al. v. Guatemala*, “the concept of ‘a crime of passion’ is part of a stereotype that justifies violence against women. The term ‘passion’ places the accent on justifying the conduct of the perpetrator.” For example, “‘he killed her because he was jealous,’ ‘in an attack of fury,’ [are] expressions that encourage blaming the woman who suffered the violence. The victim is blamed and the violent action of the attacker is supported” (para 187).

In *J.L. v. Italy*, the ECtHR considered “the Court of Appeal’s references to the red underwear “displayed” by the applicant during the evening to be unjustified, as are the comments on her bisexuality, romantic relationships and casual sexual relations prior to the events in question” as well as to the applicant’s “ambivalent attitude towards sex, which the Court of Appeal inferred from such details as her artistic choices”. It therefore concluded that “the assessment of the applicant’s decision to report the events, which the Court of Appeal found to have resulted from a wish to “stigmatise” and to repudiate a “questionable moment of fragility and weakness”, is regrettable and irrelevant, as is the reference to the applicant’s “non-linear life” (para 136).

- b. **Avoid questioning the credibility of the victim** by using linguistic tools such as rhetorical questions, double negation, or mitigation.

In the case *Scuderoni v. Italy*, while assessing Italian judges’ attitude towards the victim, the ECtHR found: “la Cour estime que les conclusions auxquelles le tribunal est parvenu sont sujettes à caution. Elle relève à cet égard que le tribunal a conclu que le harcèlement, les agressions, les appels incessants, le contrôle du téléphone de la requérante, les enregistrements vidéo au moyen de caméras installées dans la maison ou encore les privations de sommeil par exposition constante à la lumière étaient de simples « méchancetés » de G.C. à l’égard de la requérante, lesquelles s’inscrivaient dans le cadre de leur séparation. [E]n mettant en doute la crédibilité de la requérante sans motivation suffisante, et ce malgré la production par elle d’un certificat médical établi en contexte d’urgence immédiatement après les faits allégués, le tribunal a aussi contribué à décrédibiliser la parole de la requérante en tant que victime de violences domestiques” (paras 113-114)¹³.

¹¹ See, among others, Ni Wayan Sartini and Diaz Adrian, ‘Symbolic violence and discrimination in a social media comment section: A study on discriminatory discursive strategies targeting non-binary gender identity in the context of Indonesia’ (2023) 10(2) *Cogent Arts & Humanities*; John Flowerdew, David C. S. Li and Sarah Tran, ‘Discriminatory news discourse: Some Hong Kong data’ (2002) 13(3) *Discourse & Society* 319–345; Helmut Gruber, ‘The Rhetoric of Trivialization: the Coverage of Right Wing Extremism and Neonazism in Austria’s Most Read Tabloid.’ In J. Blommaert and C. Bulcaen (eds.) *Political Linguistics* (1997) 11 *Special edition of Belgian Journal of Linguistics* 139–56; Ruth Wodak, ‘The discursive construction of the other.’ In C. Florian (ed.), *The Handbook of Sociolinguistics* (Blackwell 1997); Teun A. van Dijk, *Elite Discourse and Racism* (Sage 1993); Teun A. van Dijk, *Racism and the Press* (Routledge 1991); Teun A. van Dijk, *News as discourse* (Lawrence Erlbaum Associates 1988); Teun A. van Dijk, *Communicating racism* (Sage 1987).

¹² Pierre Bourdieu, *Language and symbolic power* (Polity Press 1991).

¹³ “The ECtHR considers that the conclusions reached by the court are questionable. It notes in this regard it concluded that the harassment, assaults, incessant phone calls, monitoring of the applicant’s telephone, video recordings using cameras installed in the house and sleep deprivation through



In *Angulo Losada v. Bolivia* the IACtHR “has recognized that personal prejudices and gender stereotypes affect the objectivity of state officials in charge of investigating the complaints presented to them, influencing their perception to determine whether or not an act of violence occurred, in their evaluation of the credibility of witnesses and the victim themselves. Stereotypes “distort perceptions and lead to decisions based on preconceived beliefs and myths, rather than facts, “which in turn can lead to denial of justice, including the re-victimization of complainants” (para 163).

- c. Avoid delegitimizing and outcasting individuals** through discursive devices such as analogies, allusions, evocations, presuppositions or implications focusing on the categorisation of their social group as violators of pivotal social norms, thus disempowering their human rights.

For example, by invoking in a judgment that “[to] treat as normal, within the legal order, partners of the same sex [leads] to distort the meaning of a human couple, man and woman, and therefore, alters the natural meaning of the family, [...] since it affects the fundamental values of the family, as the core unit of society” (*Atala Riffo and Daughters v. Chile*, IACtHR, para 31), it results in a discriminatory discourse pointing to the supposed illegitimate status of same-sex couples causing the reproduction and perpetuation of discriminatory institutionalised discourses and the denial of fundamental rights.

In *Fedotova and Others v. Russia*, the ECtHR affirmed: “the Government submitted that official recognition of same-sex couples [...] could harm the health and morals of minors and instil in them “a distorted image of the social equivalence of traditional and non-traditional marital relations”. [B]y adopting such [approach] the authorities reinforce stigma and prejudice and encourage homophobia, which is incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society” (para 222).

In *C.D. v S.T.*, the CJEU through implicature delegitimizes commissioning mothers by affirming that motherhood is only biologically established: “a commissioning mother who has had a baby through a surrogacy arrangement cannot, by definition, be subject to less favourable treatment related to her pregnancy, given that she has not been pregnant with that baby” (para 42).

- d. Avoid obscuring the agency and responsibility of acts** through use of the passive voice, nominalisation and impersonal expressions that background individuals and their actions, thereby trivialising the human rights violation.

For example, while describing episodes of violence it is crucial to repeat the subjects in order not to elude to the perpetrators: “Members of the commando threw two hand grenades into the house and then fired indiscriminately against the persons there; [...] members of the commando set fire to the house and to the bodies of the murdered persons in the yard. [...] members of the commando plundered and destroyed the dwellings, stole their belongings, their food, their animals and their personal effects.” (*Plan de Sánchez Massacre v. Guatemala*, IACtHR, para 42.19).

constant exposure to light were simply ‘meanness’ on the part of G.C. towards the applicant, which were part of their separation. By questioning the applicant’s credibility without sufficient grounds, despite the emergency medical certificate she issued immediately after the alleged events, the court also contributed to discrediting the applicant’s testimony as a victim of domestic violence” (paras. 113-114). [our translation].

2. REPRESENT PEOPLE BY USING DISCOURSE STRATEGIES THAT AVOID DISCRIMINATION AND DEVALUATION:

- a. **Avoid discriminatory nomination** (i.e. how people are named and referred to linguistically), by avoiding degrading diminutives, forms of address and nouns and derogatory tropes, and especially metaphors, metonymies and synecdoche, including antonomasia.

For example, “[...] the characterization of homosexual men as “promiscuous, depraved, sexual predators and criminals by nature,” as well as “liars, “produces interactions that result in human rights violations” (*Olivera Fuentes v. Perú*, IACtHR, para 186).

- b. **Avoid discriminatory predication** (i.e. what debasing traits, characteristics, qualities and features are ascribed to people), by avoiding depreciatory attributes and rhetorical figures (e.g. hyperboles, litotes, euphemisms) that hamper the enjoyment of human rights.

In *E.B. v. France*, the ECtHR found suspicious “the systematic reference to the lack of a “paternal referent”, in the context of adoption by a female single person. It therefore found that “notwithstanding the precautions taken by the Nancy Administrative Court of Appeal, and subsequently by the Conseil d’état, to justify taking account of the applicant’s “lifestyle”, the inescapable conclusion is that her sexual orientation was consistently at the centre of deliberations in her regard and omnipresent at every stage of the administrative and judicial proceedings” (paras 87-88).

As the IACtHR highlighted in *Olivera Fuentes v. Perú* the “use of adjectives in the administrative file and the judicial rulings describing Mr. Olivera and his partner’s conduct as “exaggerated”, “inappropriate”, or contrary to “morals and good manners” indicate the presence of stereotypes” (para 186).

3. USE INCLUSIVE LANGUAGE TO ADOPT A GENDER PERSPECTIVE IN JUDICIAL WRITING TO ENSURE THE LINGUISTIC VISIBILITY OF ALL INDIVIDUALS:

- a. **When referring to people in general, use gender-neutral language:**

NO	YES
<ul style="list-style-type: none"> ● Avoid gender-specific pronouns and adjectives (e.g. <i>homosexuals</i>, <i>lesbians</i>). ● Avoid the generic masculine form. ● Avoid nouns conveying the message that a person of a given gender performs a particular activity, role or occupation. ● Avoid gender-specific nouns when making generic references. 	<ul style="list-style-type: none"> ● Use non-gendered collective nouns (e.g. <i>people</i>, <i>humankind</i>). ● Use plural pronouns/adjectives (e.g. <i>their</i>/<i>themselves</i>). ● Rephrase to omit the gendered pronoun or use gender-neutral pronouns (e.g. <i>who</i> or <i>one</i> for English).

Bad practice	Rewriting
<p><i>There [is] no scientific evidence or sociological data at its disposal suggesting that the mere mention of homosexuality, or open public debate about sexual minorities' social status, would adversely affect children.</i></p> <p>ECtHR, <i>Fedotodova and Others v. Russia</i>, para 210.</p>	<p><i>There [is] no scientific evidence or sociological data at its disposal suggesting that the mere mention of a diverse sexual orientation, or open public debate about sexual minorities' social status, would adversely affect children.</i></p>

b. When referring to specific individuals, use gender-sensitive language:

NO	YES
<ul style="list-style-type: none"> Do not assume a person's gender, sexuality or pronouns, when dealing with LGBTIQ+ people since they can feel excluded by language. Do not use gender-blind nouns and adjectives. Avoid exclusionary forms. Avoid the generic masculine form. 	<ul style="list-style-type: none"> Use gendered pronouns and adjectives according to the individuals involved. Prefer the use of adjectives over the use of nouns to refer to lesbian, gay, bisexual, transgender and intersex people. Address transgender persons by adopting their preferred nouns and pronouns thereby reflecting their choice of gender identity.
Bad practice	Rewriting
<p><i>They also show why I think that for the purposes of Article 12 (art. 12) a transsexual, after successful gender reassignment surgery, should be deemed to belong to the sex he has chosen and therefore should have the right to marry a person of the sex opposite to his chosen one.</i></p> <p>ECtHR, <i>Ignaccolo-Zenide v. Romania</i>, Dissenting Opinion of Judge Martens, para 4.6.</p>	<p><i>They also show why I think that for the purposes of Article 12 (art. 12) transgender people, after successful gender reassignment surgery, should be deemed to belong to the sex they have chosen and therefore should have the right to marry a person of the sex opposite to their chosen one.</i></p>



Article 5(1) of the directive precludes dismissal of a **transsexual** for a reason related to a gender reassignment.

CJEU, *P v S and Cornwall County Council*, para 25.

Article 5(1) of the directive precludes dismissal of **transgender people** for a reason related to a gender reassignment.



D. SPECIFIC RECOMMENDATIONS ON GENDERED AND LGBTIQ+ PREJUDICES, STEREOTYPES AND BIAS

1. AVOID REITERATING OR REINFORCING THE USE OF GENDERED PSB:

- a. Identify and highlight the impact of gender-based PSB in previous judicial decision making by naming the constructs that unveil them.

How to identify and highlight PSB

References to traditions, general assumptions or prevailing social attitudes in a particular country are insufficient justification for a difference in treatment on grounds of sex. For example, States are prevented from imposing traditions that derive from the man's primordial role and the woman's secondary role in the family.

ECtHR, *Konstantin Markin v. Russia*, para 127.

A provision such as the one at issue in the main proceedings, far from ensuring full equality in practice between men and women in working life, is liable to perpetuate a traditional distribution of the roles of men and women by keeping men in a role subsidiary to that of women in relation to the exercise of their parental duties.

CJEU, *Maïstrellis*, para 51.

Stereotypes regarding the role of women persist and that there is resistance in Italian society to the cause of gender equality. [...] The Court considers that the language and arguments used by the Court of Appeal convey prejudices existing in Italian society regarding the role of women and are likely to be an obstacle to the effective protection of the rights of victims of gender-based violence, in spite of a satisfactory legislative framework.

ECtHR, *J.L. v. Italy*, para 140.

Promoting one type of family at the expense of another is never acceptable under the Convention. [M]easures which restrict children's access to information about same-sex relationships solely on the basis of sexual orientation demonstrate that the authorities have a preference for some types of relationships and families over others – that they see different-sex relationships as more socially acceptable and valuable than same-sex relationships, thereby contributing to the continuing stigmatisation of the latter. Therefore, such restrictions, however limited in their scope and effects, are incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society.

ECtHR, *Macaté v. Lithuania*, paras 214-215.

The Court has pointed out that it is possible to associate the subordination of women to practices based on socially dominant and socially persistent gender stereotypes. In this regard, their creation and use become a cause and consequences of gender violence against women, conditions that increase when they are reflected, implicitly or explicitly, in policies and practices, particularly in the reasoning and language of state authorities. Indeed, even if the use of any type of stereotype is common, it becomes harmful when it limits an individual's capacity to develop their personal abilities or becomes a violation or violations of human rights. The Court also underlines that the use of stereotypes by the judicial authorities in their actions may indicate a lack of impartiality.

IACtHR, *Manuela and Others v. El Salvador*, para 133.

The Court considers that certain aspects of the reasoning given by the administrative authorities warrant a differentiated and additional analysis of the alleged discriminatory application of stereotypes on sexual orientation and gender expression in those decisions.

IACtHR, *Olivera Fuentes v. Peru*, para 72.

The Court finds that the language used by the Supreme Court of Chile regarding the girls' alleged need to grow up in a "normally structured family that is appreciated within its social environment," and not in an "exceptional family", reflects a limited, stereotyped perception of the concept of family, which has no basis in the Convention, since there is no specific model of family (the "traditional family").

IACtHR, *Atala Riffo and Daughters v. Chile*, para 145.

References to traditions, general assumptions or prevailing social attitudes in a particular country are insufficient justification for a difference in treatment on the grounds of sex. The Court has also considered that the issue with stereotyping of a certain group in society lies in the fact that it prohibits the individualised evaluation of their capacity and needs.

ECtHR, *Carvalho Pinto de Sousa Morais v. Portugal*, paras 45-46.

Given that the Convention is a living instrument, to be interpreted in the light of present-day conditions, the State, in its choice of means designed to protect the family and to secure, as required by Article 8, respect for family life, must necessarily take into account developments in society and changes in the perception of social, civil status and relational issues, including the fact that there is not just one way or one choice in the sphere of leading and living one's family or private life. In the present case, although the Klaipėda District Court cited the alleged incompatibility between maintaining family values as the foundation of society and acknowledging the social acceptance of homosexuality, the Court sees no reason to consider those elements to be incompatible, especially in view of the growing general tendency to view relationships between same-sex couples as falling within the concept of "family life".

ECtHR, *Beizaras and Levickas v. Lithuania*, para 122.

2. AVOID ANY TYPE OF PSB, INCLUDING: (I) SEX PSB; (II) SEXUAL PSB; AND (III) GENDER-ROLE PSB:

Sex PSB

Example of sex PSB	How to avoid sex PSB
<p>While equality between men and women, as set forth above, is accepted as a rule, one must nevertheless not lose sight of the fact that they each have qualities that make them superior to the other. <i>ECtHR, Nurcan Bayraktar v Türkiye, para 8.</i></p>	<ul style="list-style-type: none"> • Avoid generalisations about inherent “qualities” of men and women. • Assess individuals’ abilities and circumstances without reference to sex-based assumptions.
<p>[...] men’s [physical] strength cannot be [compared] to that of women, but, through the sensitivity and emotions that characterise them in their role as mothers, women are far stronger than men [...] the ability to give birth is specific to women. <i>ECtHR, Nurcan Bayraktar v Türkiye, para 8.</i></p>	<ul style="list-style-type: none"> • Refrain from associating emotional traits or social roles (e.g., motherhood) with sex. • Avoid defining “women” by reproductive function. • Acknowledge that not all women can or choose to give birth, and not all who give birth identify as women.
<p>To treat as normal, within the legal order, partners of the same sex leads to distort the meaning of a human couple, man and woman, and therefore, alters the natural meaning of the family, since it affects the fundamental values of the family, as the core unit of society. <i>IACtHR, Atala Riffo and Daughters v. Chile, para 31.</i></p>	<ul style="list-style-type: none"> • Avoid any assessment of parental behaviours based on assumptions or stereotypes regarding the parents’ personal characteristics or cultural preferences regarding the family’s traditional concepts. • Emphasise that there are manifold ways of leading and living one’s family or private life.

Sexual PSB

Example of sexual PSB	How to avoid sexual PSB
<p>References to the red underwear “displayed” by the applicant during the evening [...] comments on her bisexuality, romantic relationships and casual sexual relations prior to the events in question.</p> <p>Considerations concerning the applicant’s “ambivalent attitude towards sex”, which the Court of Appeal inferred from such details as her artistic choices. [...] her agreement to take part in L.L.’s short film despite its violent and explicitly sexual nature.</p> <p>The Court of Appeal found to have resulted from a wish to “stigmatise” and to repudiate a “questionable moment of fragility and weakness”, [...] reference to the applicant’s “non-linear life”. ECtHR, <i>J.L. v. Italy</i>, para 136.</p>	<ul style="list-style-type: none"> • Avoid references to clothing, appearance, sexual history, or orientation, as well as to personal attitudes or artistic expressions related to sexuality, which are irrelevant to credibility, consent, or liability. • Do not interpret participation in sexual or artistic expression as consent to real-life sexual activity, nor evaluate a person’s lifestyle or sexual identity in judicial reasoning.
<p>The applicant’s lifestyle did not provide the requisite safeguards for adopting a child.</p> <p>The applicant was, at the time of her application, in a stable homosexual relationship, but that this could not be construed as a decision based on a position of principle regarding her sexual orientation.</p> <p>An ‘unusual attitude [on the part of the applicant] to men in that men are rejected.’ ECtHR, <i>E.B. v. France</i>, paras 82-83, 85.</p>	<ul style="list-style-type: none"> • Avoid vague or moralising terms such as “lifestyle”. • Ensure that sexual orientation is treated as irrelevant to legal eligibility unless it has demonstrable and direct relevance to the issue, as mere mention can perpetuate bias. • Refrain from framing same-sex orientation or preferences as deviant, and recognise sexual diversity as part of human variation.
<p>The authorities did not take into account the elements that indicated that the act could be linked to the victim’s gender identity, due to the fact that she was a trans woman sex worker. IACtHR, <i>Vicky Hernández and Others v. Honduras</i>, para 108.</p>	<ul style="list-style-type: none"> • Condemn the acts of violence, the human rights violations, and all forms of discrimination due to, or on the basis of gender identity or expression and sexual life.

<p>Sexuality is not as important for a fifty-year-old woman and mother of two children as for someone of a younger age. <i>ECtHR, Carvalho Pinto de Sousa Morais v. Portugal</i>, para 52.</p>	<ul style="list-style-type: none"> • Reject traditional ideas of female sexuality as being essentially linked to child-bearing purposes. • Value the physical and psychological relevance of sexuality for the self-fulfilment of women at all ages.
<p>Given the sexual practices of a lesbian couple, their daughters are under constant risk of contracting sexually transmitted diseases such as herpes and AIDS. <i>IACtHR, Atala Riffo and Daughters v. Chile</i>, para 31.</p>	<ul style="list-style-type: none"> • Recognise that the parents' sexual orientation does not affect children's development and psychological and physical health in terms of gender identity, gender role, behaviour, sexual orientation and/or sexual life.
<p>Any expression of affection between same-sex couples could imply an erotic aspect. <i>IACtHR, Olivera Fuentes v. Peru</i>, para 122.</p>	<ul style="list-style-type: none"> • Name and contest negative stereotypes based on sexual orientation with a pejorative element that would not have been applied to a heterosexual couple without a detailed analysis of the specific acts of affection displayed by the couple.

Gender Role PSB

Example of gender role PSB	How to avoid gender role PSB
<p>Women are responsible for the household and children, with men earning money outside the home. <i>ECtHR, Konstantin Markin v. Russia</i>, paras 120-121.</p>	<ul style="list-style-type: none"> • Recognise women's agency and their ability to perform any kind of job.
<p>Fighting and military service are for men rather than for women. <i>ECtHR, Konstantin Markin v. Russia</i>, paras 120-121.</p>	<ul style="list-style-type: none"> • Women who are willing to serve their country should be respected for who they are. • Recognise women's strength.

<p>She was an irresponsible mother because she abandoned her children when she went to work. IACtHR, <i>Ramírez Escobar and Others. v. Guatemala</i>, para 296.</p>	<ul style="list-style-type: none"> • Women can be both workers and mothers at the same time, if they wish. This does not affect the upbringing of children and responsibilities at home. • Value women's abilities inside and outside the domestic sphere.
<p>Her self-perceived gender identity was ignored. IACtHR, <i>Vicky Hernández and Others v. Honduras</i>, para 121.</p>	<ul style="list-style-type: none"> • Never misgender trans people but refer to them by the gender identity with which they self-identify.
<p>All the studies on parenthood show that a child needs both parents. Her status as a single person was relied on as a ground for refusing the applicant authorisation to adopt. ECtHR, <i>E.B. v. France</i>, paras 86-87.</p>	<ul style="list-style-type: none"> • Fully recognise the parental rights of single persons, including the right to apply for authorisation to adopt.
<p>She was not capable of watching over and caring for the three girls, given that her new sexual lifestyle choice, together with her cohabiting in a lesbian relationship with another woman, were producing harmful consequences for the development of these minors. IACtHR, <i>Atala Riffo and Daughters v. Chile</i>, para 31.</p>	<ul style="list-style-type: none"> • Acknowledge that sexual orientation is not a key element in a woman's fitness as a mother.
<p>Logical lines of investigation were not followed up on which could have examined her death as a possible manifestation of gender-based violence and discrimination owing to her trans feminine identity. IACtHR, <i>Vicky Hernández and Others v. Honduras</i>, para 121</p>	<ul style="list-style-type: none"> • Recognise discrimination against LGBTIQ+ people by looking into the context of possible crimes based on gender identity, gender expression and sexual orientation.
<p>Exposure to gay lifestyles or exchanges of affection between people of the same gender may have a negative impact on children. IACtHR, <i>Olivera Fuentes v. Peru</i>, para 58.</p>	<ul style="list-style-type: none"> • Identify differential treatment of same-sex couples displaying their affection in public. • Recognise misleading assumptions on the effects of gay and lesbian manifestations on children's wellbeing.



The Court reiterates that support and encouragement of the traditional family is in itself legitimate or even praiseworthy [...]. It has held that protection of the family in the traditional sense is, in principle, a weighty and legitimate reason which might justify a difference in treatment on grounds of sexual orientation.

ECtHR, *Fedotova and Others v. Russia*, para 207.

- **Avoid** assumptions based on outdated traditional concepts and accept and recognise diversity in family configurations.

TABLE OF CASES

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- Case C-167/12 *C.D. v S.T* [2014]
- Case C-222/14 *Maïstrellis* [2015]
- Case C-13/94 *P v S and Cornwall County Council* [1996]

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The GenDJus Guidelines are part of the interdisciplinary research project “Rights and Prejudice: Linguistic and Legal Implications of Gendered Discourses in Judicial Spaces (GenDJus)”, PI: Prof. Gianluca Pontrandolfo (UNITS), co-PI: Prof. Carmelo Danisi (UNIBO), funded by the European Union - NextGenerationEU under the National Recovery and Resilience Plan (PNRR) - Mission 4 "Education and research" - Component 2 "From research to business" - Investment 1.1, Prin 2022 PNRR Notice announced with Directorial Decree n. 1409 of 14 September 2022, Prot. P2022FNH9B - CUP J53D23017220001 www.gendjus.it