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Gender Inequality in Political Representation: the Efficiency of Promotional Legislative Measures*

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ABSTRACT

FOGLIAME, Virgilia. Gender Inequality in Political Representation: the Efficiency of Promotional Legislative Measures. In *Historia et theoria iuris*, 2020, vol. 12, No. 2, p. 26-31.

A significant contribution to the change in the political party panorama has undoubtedly been brought by the several legislative measures that have taken place over the years, aimed at fostering gender rebalancing in the representative offices. The present paper focuses, in particular, on the analysis of the equal based formula stated by the new electoral law, which has been circumvented by various opposed political parties through a series of strategies, undermining its effects. Indeed, the percentage of women elected at the end of the consultations has been not in line with the expectations, reaching a lower value compared to the same gender representative minimum threshold set by the relevant legislation. Such a scenario, which outlines the deep hostility concerning the respect of a principle whose effectiveness and substance are based on the Constitutional Charter itself, leads to a reflection on the role played by the leaders of the various parties in the structuring of political competition, since they have been shown to be able to hold out against the introduction of legislative policies aimed at curbing, albeit without success, their decision-making supremacy in relation to the selection of the elected political staff. The strategic allocation of the electoral victory's chances carried out by the leader, who placed the female component in a position of disadvantage, leads therefore to assess the need for a type of legislative regulation of the parties, suitable to reduce the underlying issues of the one-dimensional management, which reflects the “personal” structure of the modern party system.

KEY WORDS

Gender Inequality, Political Representation, Political Parties

1. INTRODUCTION

The issue of gender inequality in political representation has been the subject of broad and widespread scientific reflection, albeit conducted from different angles of observation. This research aims, in particular, to analyze the effects produced following the introduction, in the legislative landscape, of promotional measures to rebalance representation. Through a preliminary attempt to systematize the contribution provided by the constitutional jurisprudence consolidated on the subject, the investigation will develop on the analysis of the most recent state and regional legislative interventions, verifying their concrete performance.

This objective, however, cannot be separated from a study on the internal organizational dynamics of political parties, the main dominant actors in the representative scenario. In fact, the conspicuous marginalization of the female component in the elective

* I would like to thank Prof. Antonio Merlino for the encouragement and our discussions together about this comparison.

organs is, in most cases, linked to a selection of political personnel adhering to schemes that are anything but equal, put in place by the leaders of the various political parties. In the awareness that the contemporary party system was unable to spontaneously move towards solutions aimed at promoting gender balance in political representation, the legislator introduced a system of rules capable of affecting the *modus operandi* of party secretaries, with the aim to stem the restriction of political-participatory spaces reserved for women.

2. THE GUIDELINE OF THE ITALIAN CONSTITUTIONAL COURT

Through decision n. 422 of 1995, the Court first manifested a “heavy”¹ skepticism in relation to the introduction of gender quotas in the electoral scene, declaring them illegitimate for violation of articles 3, co. 1 and 51 of the Italian Constitution (the latter in its original formulation), in the belief that the measures in question did not aim to “remove the obstacles” that would have prevented women from “reaching certain results” at the outcome of the consultations, but, on the contrary, they attributed to them “*directly those same results, (...) ending up creating current discrimination as a remedy for past discrimination*”.

In accordance with this principle, the rule contained in the law for the election to the Chamber of Deputies was repealed, which provided for the proportional recovery of lists blocked in alternating gender order.

However, in the awareness that the political parties dominated the representation scene, on that occasion the Court specified that the reserves of electoral quotas could be positively assessed “*where freely adopted by political parties, associations or groups participating in the elections, also with specific provisions of the respective statutes or regulations concerning the presentation of candidates*”, directing the parties themselves to a “cultural growth” aimed at recognizing “*the urgent need to pursue the effective equal presence of women in public life, and in representative offices in particular*”.

Aware of moving in a field in which it would not have been enough to raise a mere problem of social conscience, the legislator, to provide “constitutional coverage” for measures aimed at favoring women's access to electoral competitions, intervened through a reforming path that took is developed around multiple points of tension, leading (also) to the modification of art. 51 of the Charter.

The intervention was placed on the same line as the solutions adopted in France, where the supremacy of the legislative system over the decisions taken by the Conseil constitutionnel has resulted in a constitutional reform aimed at promoting gender balance.²

¹ DE SIERVO, Ugo. La mano pesante della Corte sulle «quote» nelle liste elettorali. In *Giurisprudenza costituzionale*, 1995, Vol. 40, No. 5, p. 3268.

² DEFFENU, Andrea. La revisione virtuale dell'art. 51 Cost. In *Quaderni costituzionali*, 2002, Vol. 22, No. 3, p. 617. MANGIA, Alessandro. “Rappresentanza «di genere» e «generalità» della rappresentanza”. In *La parità dei sessi nella rappresentanza politica*. Eds. Roberto BIN et al. Torino : Giappichelli, 2003, p. 91. BRUNELLI, Giuditta. La parità dei sessi nella rappresentanza politica: le questioni aperte. In *La parità dei sessi nella rappresentanza politica* (ref. 2), p. 14-15. D'ALOIA, Antonio. Uguaglianza sostanziale e azioni positive in materia elettorale. In *Verso una democrazia paritaria, Modelli e percorsi per la piena partecipazione delle donne alla vita politica e istituzionale*. Ed. Anna FALCONE. Milano : Giuffrè, 2011, p. 55. TEGA, Diletta. Discriminazione e diritto antidiscriminatorio: considerazioni istituzionali (a partire dal diritto costituzionale italiano). In < https://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/paper/0086_tega.pdf>.

Defined as the “umbrella” rule³, as it was intended to provide the aforementioned “constitutional coverage” for the measures under analysis, the revision of the constitutional provision has been the subject of numerous doctrinal *querelles*, prompted by widespread resistance and diffidence about the “usefulness” of the reform, with heterogeneous and articulated arguments.

The belief that it was a purely formal revision, useful only in an ideological key, led to define it as an “intentio senza ratio”, a “monument raised to rhetorical utility”, largely ineffective in the complex framework of political pluralism “concrete “and fully adhering to an “ideal” political pluralism⁴.

For a correct translation in terms of effectiveness of the “cultural project” of gender equality, the alternative solution proposed in the doctrine reflected on the need to act on the concrete interest of politicians in promoting equal mechanisms, intervening on the *modus operandi* of political parties, in particular on selection phase of the candidates: since in this phase, in fact, the organizational choice used reflects the very capacity of the political parties who, through the elected representatives, will be able to influence the varied contents of politics.⁵

The skepticism of the doctrine towards the reformulation of the norm – defined “useless” and also potentially “harmful” – was based on the assumption that the same constituted only a “delaying maneuver”, which reflected the lack of willingness to adopt truly effective tools to guarantee a effective and equal involvement of women in political life. The results of this approach led to reflect on legislative solutions that guaranteed the effective political participation of the female gender, according to models oriented not towards the production of “programmatic norms with which to supply Statutes, laws and even the Constitution”, but towards a study of the organizational dynamics of political parties.⁶

Since what matters in a democratic constitutional system is that everyone has equal opportunities to participate, the debate regarding the admissibility of the introduction of measures aimed at favoring the rebalancing of representation in decision-making bodies has developed gradually into multiforms reflections that, at least initially, were characterized by strong critical issues in relation to the terms of the matter⁷.

The gradualness that has marked the path of women in the entry of political dynamics is evidenced by the fact that equal electoral solutions have been focused after several

³ BRUNELLI, Giuditta. Un «ombrello» costituzionale per le azioni positive elettorali, in *Quaderni costituzionali*, 2002, Vol. 22, No. 3, 2002, p. 615.

⁴ POGGI Annamaria. Sulla riforma dell'art. 51 Cost.: le quote alla prova della democrazia pluralista. In *Quaderni costituzionali*, 2002, Vol. 22, n. 3, p. 620. GIANFORMAGGIO Letizia. “La promozione della parità di accesso alle cariche politiche in Costituzione”. In *La parità dei sessi nella rappresentanza politica* (ref. 2), p. 78. AINIS Michele. La riforma dell'art. 51 Cost. e i suoi riflessi nell'ordinamento. In *La parità dei sessi nella rappresentanza politica* (ref. 2), p. 34. PEZZINI Barbara. Le quote come strumento di empowerment. In *La parità dei sessi nella rappresentanza politica* (ref. 2), p. 99.

⁵ D'ALOIA, Antonio. Le «quote» elettorali in favore delle donne: il «nuovo» contesto costituzionale ed il «precedente» n. 422 del 1995. In *La parità dei sessi nella rappresentanza politica* (ref. 2), p. 58. D'ALOIA, Antonio. *Eguaglianza sostanziale e diritto diseguale. Contributo allo studio delle azioni positive nella prospettiva costituzionale*. Padova : Cedam, 2002, 430 p.

⁶ CARLASSARE, Lorenza. Considerazioni conclusive. In *La parità dei sessi nella rappresentanza politica* (ref. 2), p. 246.

⁷ BRUNELLI, Giuditta. L'alterazione del concetto di rappresentanza politica: leggi elettorali e “quote” riservate alle donne. In *Diritto e società*, 1994, Vol. 22, No. 3, 576 p. CARTABIA, Marta. “Le azioni positive come strumento del pluralismo?”. In *I soggetti del pluralismo nella giurisprudenza costituzionale*, eds. Roberto BIN - Cesare PINELLI. Torino : Giappichelli, 1996, p. 78.

years, however still being defined (in terms of effectiveness) in some aspects, how this research will attempt to highlight.

3. THE NEW REGULATORY FRAMEWORK ON GENDER BALANCE (l. n. 165/2017).

In the wake of the indications coming from the jurisprudence of the Court, multiple constraints have been introduced, at all levels of government, suitable to guide, in terms of equal participation, the party choices in the phase preceding the consultations, that is the formation of the lists.

On the regional side, in fact, the law n. 20/2016 introduced specific measures aimed at ensuring equal access to elective bodies, which can be declined on the basis of the various regional electoral systems. With reference to the Regions that adopt regional electoral laws that provide for the expression of preferences, two different measures have been envisaged: the “quota system” (where candidates of the same gender are not to exceed 60% of the total on each list) and the “dual gender preference”, which provides the voter with the power to express two preferences provided they are addressed to candidates of different gender, under penalty of invalidity of the second.

If the regional electoral system instead provides lists without expressing preferences (so-called “blocked” lists), the legislator has established the maximum representation limit of the same gender equal to 60%, and that candidates must be presented in order alternating of gender.

On the national side, the new electoral law tends to retrace the line defined by the regional legislator: the law n. 165/2017 provides, in fact, the order alternating of gender among the candidates on the blocked lists of electoral colleges, and the “quota system”.⁸

The data on those elected following the first application of the law certainly lead to note that, compared to the past, the number of female parliamentarians has significantly increased, considering that 34.6% of deputies and 34.8% of senators are women: up to five years ago, in fact, female percentages corresponded to 30.7% in Montecitorio and 28.4% in Palazzo Madama, and in the XV legislature the contraction was even more marked, considering that the female presence corresponded to 17%.⁹

This increase, however, does not fully reflect the objectives set by the legislator, since the number of women elected, both in the Chamber of Deputies and in the Senate, is less than 40 percent, which is the minimum representation threshold of the same gender that the law n. 165/2017 seemed to prefigure.

Analyzing in percentage terms the number of female candidates, emerges data that show, unequivocally, how the rules to ensure gender representation were essentially circumvented by the political parties, through a series of maneuvers that contributed, in fact,

⁸ SGRÒ, Francesca. Prime considerazioni sulla legge n. 165 del 2017: questioni nodali e specificità del nuovo sistema elettorale italiano. In *Osservatorio AIC*, 2017, No. 3. GARDINI, Silia. Equilibri di genere negli organi di rappresentanza politica. In *Diritto e processo amministrativo*, 2017, No. 1, 551 p. PITINO, Adriana. La rappresentanza di genere nella legge n. 165 del 2017: profili di dubbia legittimità costituzionale, a prima lettura. In *Quaderni costituzionali*, Vol. 38, č. 1, p. 188-191. TAGLIERI, Luisa. Parità di genere e prima applicazione della legge n.165/2017. Le “quote rosa” e il percorso verso la parità di genere nel sistema elettorale. In < <http://dirittifondamentali.it/wp-content/uploads/2019/06/Taglieri-Parit%C3%A0-di-genere-e-prima-applicazione-della-legge-n.165-2017..pdf>>. IMPARATO Emma. La rappresentanza di genere tra sistemi elettorali, giurisprudenza costituzionale e modelli socio-culturali di “effettiva uguaglianza”. In *Rivista AIC*, 2018, No. 2. SCARLATTI, Paolo. La declinazione del principio di parità di genere nel sistema elettorale politico nazionale alla luce della legge 3 novembre 2017, n. 165. In *Nomos. Le attualità del diritto*, 2018, No. 2, p. 1-20.

⁹ <<https://www.openpolis.it/tre-poli-contrapposti-2018-lidentikit-del-nuovo-parlamento>>.

to weaken the formula in analysis: the reference is to the strategic distribution of the chances of victory made by the leaders of political parties, through the placement of most women in the electoral colleges “weak”, where the chance of electoral victory, according to the polls carried out before the electoral competition, were lower¹⁰.

The analyzed data lead, therefore, to the conclusion that – in terms of spontaneous adaptation – the political parties certainly did not favorably evaluate the equal solution contained in the electoral law, developing a series of strategies aimed at both “sterilizing” (in terms of functionality and effectiveness) the optimal performance of the same, both to “exploit” the role of women during the electoral competition, placing them in “weak” electoral colleges only for the quota required by the reference legislation. For these reasons, despite the high number of female candidates, the elected members were however predominantly men (over 60%).

The percentages recorded outline a trend that has marked – and will probably continue to mark – a widespread resistance, by the political parties, to respect for solutions aimed at guaranteeing gender balance in assemblies representative. Such resistance, determined in particular by the shortcomings of “political communication” with respect to fair representation of the sexes, constitutes one of the main characteristics of “personal” parties. Since the “personal” party is represented by the leader¹¹, it would seem that the mechanism introduced by the national legislator – despite the increase in the number of elected women (double compared to ten years ago, and 10 percent more than five years ago) – in reality, it has failed to tarnish the male leadership in the personal party which, in the ways indicated above, has prevented a fully equal participation political.

4. CONCLUDING REMARKS

The mechanism introduced by the state legislature does not seem to have constituted an innovation factor; on the contrary, it has translated into a dangerous factor of consolidation of the political establishment, given the substantial inability to “innovate itself” manifested by the political parties, which have shown themselves to resist the legislative measures aimed at determining innovative forms to their structure, still and increasingly focused on the leader.¹²

The strategies highlighted above have led a restriction of participatory spaces for the female gender, consequently compressing the meaning of the art. 49 of the Italian Constitution. If it is true, in fact, that the right preached by expression “democratic method” constitutes the “conceptual premise” to favor “equal political participation”, the conspicuous marginalization of women in the political representation constitutes one issue that reflects the urgency of legislative regulation of the internal life of parties, with particular reference to the selection activities of the political class.¹³

¹⁰ FOGLIAME, Virgilia. La parità di genere nella legge elettorale e il ruolo dei partiti politici. In *Osservatorio AIC*, 2018, No. 3, 134 p.

¹¹ STAIANO, Sandro. *Costituzione italiana: art. 5*. Roma : Carocci, 2017, p. 74. CALISE, Mauro. *Il partito personale*. Roma-Bari : Laterza, 2000.

¹² PASQUINO, Gianfranco. La leadership della rottamazione. In *Il Mulino*, 2015, No. 2, p. 257. CALISE, Mauro. Che ne sarà dei partiti. In *Il Mulino*, 2012, No. 3, p. 418.

¹³ FERRARA, Giani. *Il governo di coalizione*. Milano : Giuffrè, 1973, 44 p. CERRINA FERONI, Ginevra. “Democrazia dei partiti e pari opportunità. Una rassegna comparata”. In *La democrazia dei partiti e la democrazia nei partiti*. Ed. Stefano MERLINI, Firenze : Passigli, 2009, p. 209. MUSELLA, Fortunato. L'articolo 49 e la personalizzazione dei partiti politici. Il confronto Mortati-Togliatti a settant'anni dalla Costituente. In *Nomos. Le attualità nel diritto*, 2015, No. 3, p. 71. GORLANI, Mario. La “tardiva” attuazione legislativa dell'art. 49 Cost. nell'eclissi della funzione di rappresentanza dei partiti politici. In *Nomos. Le*

This task is not simple, since it tends to compress the ideology of the personal party, that is, the efficiency and reliability of the leader's action.

Indeed, the "virus" of personalization – which has infected the party system "in all its political fiber" – has favored the rise of charismatic leaderships that have eroded the binomial "membership-participation", to promote the development of systems characterized by an asymmetrical management of power, concentrated in the hands of "strong" political actors¹⁴.

These "dominant actors" define the internal and organizational dynamics of the political party to which they belong, including the selection of political personnel. It is in this "stony and muddy ground" of the modern structure of political parties that, too often, the female candidates stumble, considering that the political parties have developed various strategies capable of compressing a constitutional principle, leading to a significant alteration of democratic political representation to hold on the power of leader over the choices of political staff.

Such a scenario, probably determined by a substantial "mistrust" towards the political contribution of women, represents a real distortion of the principles imposed by the Constitution, difficult to overcome if the female presence in the Italian political system occupies only "decorative roles"¹⁵. Since the democratic organization of political parties represents the "indispensable precondition for having a true democracy outside of them", the "deafness" of "personal" parties on the problem of gender rebalancing has a profound effect on the political representation, specially in the case of "strategic use" of women during the electoral competition, as evidenced by the distribution of the chances of female victory in the last electoral competition.

A democracy based on equality must be supported by specific measures to remove situations of prejudice and discrimination, which will not produce significant results if political parties do not recognize the "value of social resource" for all its citizens¹⁶. Therefore, further action by the legislator, aimed at an equal "impermeable" solution to these dynamics, would be needed to ensure that gender balance is not only a "failed promise" of our system.

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attualità nel diritto, 2016, No. 1, p. 9. STAIANO, Sandro. La rappresentanza. In *Rivista AIC*, 2017, No. 3, p. 19.

¹⁴ CALISE, ref. 12, p. 419.

¹⁵ BIN Roberto, Donne e autoreferenzialità della politica. In *La parità dei sessi nella rappresentanza politica* (ref. 2), p. 43.

¹⁶ LÒPEZ AGUILAR, Juan Fernando. "Introduzione". In *Verso una democrazia paritaria, Modelli e percorsi per la piena partecipazione delle donne alla vita politica e istituzionale*. Ed. Anna FALCONE. Milano : Giuffrè, 2011, p. XIV.