Essays

Recent Normative Developments in Women's Political Representation in the Italian Regions

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Abstract

The paper aims to analyse the mechanisms of gender equality implemented by Italian regions in their electoral laws. If in recent years, at national and local level, the state legislation has introduced effective measures which have partially redressed the historical under-representation of women in the elected assemblies, at regional level the picture is very different. The percentage of women in regional councils is still on average very low, although this varies from region to region. This heterogeneous scenario – *inter alia* – depends on delays in the implementation of the mechanisms – gender quotas and double gender preference – provided by legge 15 February 2016 no 20. Autonomy does not mean more attention for gender equality, as shown by the inertia of some ordinary as well as special regions.

To resolve such inertia, the government has recently used its substitutive power (laid down in Art 120, para 2, of the Italian Constitution), introducing the double gender preference in the Apulian electoral system. Such an intervention has raised several legal problems, but emphasises the key importance of the principle of gender equality in the current Italian constitutional system. The differentiated implementation of gender quotas and double gender preference by regions may endanger the legal unity of the Republic, the principle of equality, and the right to vote and stand for election, all of which require protection by the state.

I. Introduction

The slow growth in women's participation in political decision-making has increased calls for more efficient mechanisms to achieve a gender balance in political representation, such as gender quotas.[1]

The use of specific measures to redress women's historical under-representation

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[1] E. Lépinard and R. Rubio-Marín, *Transforming Gender Citizenship: The Irresistible Rise of Gender Quotas in Europe* (Cambridge: Cambridge University Press, 2018). Scholars do not agree on the definition and classification of gender quotas. In short, it is possible to distinguish between constitutional or legal compulsory quotas and voluntary party quotas. This notion also includes legislated 'reserved seats', which regulate by law the gender composition of elected bodies, by reserving a certain number or percentage of seats for women, implemented through special electoral procedures. In order to explore the different approaches, see: D. Dahlerup, *Women, Quotas and Politics* (London: Routledge 2006); D. Dahlerup et al, *Atlas of Electoral Gender Quotas* (Stockholm: International Institute for Democracy and Electoral Assistance, 2013); P. Norris, *Electoral Engineering: Voting Rules and Political Behavior* (Cambridge, New York: Cambridge University Press, 2004); R.E. Matland, 'Electoral quotas: frequency and effectiveness', in D. Dahlerup ed, *Women, Quotas and Politics* (London: Routledge, 2006), 275.

in the elected assemblies has also become a usual feature of Italian electoral systems, at all levels of governments. However, the path leading to this result has been long and tortuous.[2] It began in 1993 and 1995, when Parliament modified the existing electoral systems, introducing two mechanisms – electoral gender quotas and alternating rank order – designed to promote a greater presence of women in the elected bodies, at local, regional and national level.[3] The life of these promotional measures was short, since in September 1995 they were declared unconstitutional by judgment no 422 of the Constitutional Court, which stated that only the principle of equality in its formal sense was applicable in electoral matters. Any mechanism aimed at ensuring reserved quotas for women in the candidates' lists as a means of promoting women's political representation was judged objectively discriminatory, by diminishing for some citizens 'the concrete content of a fundamental right in favour of other citizens belonging to a group deemed disadvantaged'.[4] The right to stand in elections recognised by Art 51 of the Constitution is absolute and must be guaranteed according to full equality.[5] Nevertheless, the Court continued to state that such measures would not be deemed unconstitutional if adopted voluntarily by political parties, associations or groups taking part in the elections.

This closing approach of the Constitutional Court led, in the early 2000s, to several significant constitutional reforms aimed at affirming the constitutional duty of the State and regions to adopt policies and actions for gender-balanced representation.[6] More precisely, constitutional legge 18 October 2001 no 3 rewrote Art 117 of the Constitution, providing that

[2] A. Donà, 'Eppur Si Muove. The Tortuous Adoption and Implementation of Gender Quotas in Conservative Italy', in E. Lépinard and R. Rubio-Marín eds, n 1 above, 186.

[3] More exactly, legge 25 March 1993 no 81, relating to the direct election of mayors, presidents of the provinces and members of municipal as well as provincial councils, established that in the candidates' lists neither gender could normally account for more than two-thirds. A similar rule was established by legge 23 February 1995 no 43 relating to the system for the election of regional councils. Finally, as for the election of the Chamber of Deputies, the so-called *Mattarellum* law provided that the candidates' lists, presented at the regional level for the allocation of 25% of the seats with proportional representation system, had to be formed by candidates in alternating gender order (recently, M. D'Amico, *Una parità ambigua. Costituzione e diritti delle donne* (Milano: Raffaello Cortina Editore, 2020)).

[4] Para 6 of the Conclusions on points of law.

[5] The Court highlighted that affirmative actions and special measures are admissible only in the economic field, not in the political one. This judgement was extensively criticized by legal scholars. See, among many: G. Cinanni, 'Leggi regionali e azioni positive in favore delle donne' *Giurisprudenza costituzionale,* 1995, 3283; U. De Siervo, 'La mano pesante della Corte sulle «quote» nelle liste elettorali' *Giurisprudenza costituzionale,* 1995, 3268; L. Carlassare, 'L'integrazione della rappresentanza: un obbligo per le Regioni', in L. Carlassare et al eds, *La rappresentanza democratica nelle scelte elettorali delle regioni* (Padova: CEDAM, 2002), 22; L. Gianformaggio, 'Eguaglianza formale e sostanziale: il grande equivoco', in A. Facchi et al eds, *Eguaglianza, donne e diritto* (Bologna: il Mulino, 2005), 229.

[6] Together with some international and European milestones, such as 1995 UN Beijing Platform for Action, EU Amsterdam Treaty and Charter of Fundamental Rights of the European Union (A. Donà, n 2 above, 186).

> 'regional laws shall remove any hindrances to the full equality of men and women in social, cultural and economic life and promote equal access to elected offices for men and women' (para 7).

Similarly, legge costituzionale 31 January 2001 no 2 imposed on the electoral laws of regions with special status to promote 'equal conditions for access to electoral consultations'. Finally, legge costituzionale 30 May 2003 no 1 added wording to the first paragraph of Art 51 of the Constitution, under which 'the Republic promotes equal opportunities between women and men by means of specific measures'.[7]

This new constitutional framework paved the way for legislative adoption of electoral gender quotas and for a change in constitutional case law, which occurred with judgment no 49 of 2003 that rejected the claim of unconstitutionality raised by the government regarding some provisions of the electoral law of the Valle d'Aosta Region. The challenged rules merely stated that the electoral lists had to include 'candidates of both genders' and the regional electoral office had to declare invalid any list submitted that did not meet this requirement.[8]

The jurisprudential overruling was motivated not only by the new constitutional rules, but also by the full awareness of the great heterogeneity of the so-called positive actions.

The measure under scrutiny was not considered a 'deliberately unequal legislative measure' aimed either at favouring individuals belonging to disadvantaged groups or at offsetting these disadvantages through advantages directly attributed. According to judgement no 49 of 2003, these forms of 'result oriented' mechanisms are not constitutionally lawful when they interfere with rights, such as the right to stand for election, which must be guaranteed equally to all citizens.

In contrast, the rule introduced by the Valle d'Aosta electoral law simply provided that both genders had to be included in the candidates' lists, without directly attributing the result (ie, the election of female candidates). In this type of measure there is a 'natural' uncertainty between candidacy and election results, due to ample freedom of choice that allows voters to deny the result to the persons favoured by the protection rule.[9] The choice by voters of the list and/or of the candidates, and their election, shall be in no way conditioned by the gender of the candidates. The voter may cast preference votes, and the order in which candidates on the same list are elected is determined by the number of preferential votes obtained by each of them. Thus, the equality of chances between lists and between candidates on the same list is not impaired.

As emphasised by the Constitutional Court, these measures establish a constraint not with regard to the right to vote or to the right of eligible citizens'

[7] M. Midiri, 'Art 51', in R. Bifulco et al eds, *Commentario alla Costituzione. Tomo I: artt. 1-54* (Torino: UTET giuridica, 2006), 1016.

[8] Arts 3-*bis* and 9 of legge regionale no 3 of 1993, as modified by legge no 21 of 2002.

[9] A. D'Aloia, Eguaglianza sostanziale e diritto diseguale. Contributo allo studio delle azioni positive nella prospettiva costituzionale (Padova: CEDAM, 2002).

standing for election, but to the expression of free choices by political parties and groups, which present electoral lists, precluding them (only) from presenting lists made up of candidates of the same sex. However, pursuing the constitutionally enshrined goal of ensuring women's more equal representation is considered a valid reason to limit such autonomy.

Thus, having a neutral structure and a merely promotional nature the measure of the Valle d'Aosta Region was ruled lawful.

The Constitutional Court's new approach has been confirmed by other rulings. In particular, judgment no 4 of 2010 rejected the question of constitutionality relating to the rule of Campania's electoral law, which introduced, for the first time in the Italian as well as European legal system, the so-called 'double gender preference'. According to this mechanism, the voter may cast one or two preferential votes, but, in this latter case, preference votes have to be related to one male candidate and one female candidate of the same list, under penalty of cancellation of the second preference. The government challenged these mechanisms because they would have infringed the principle of formal equality and the right to vote and to stand for election. In other words, the government considered the double preference of gender a measure aimed at obtaining a result and, therefore, an unconstitutional affirmative action.

On the contrary, the Constitutional Court ruled this measure constitutionally lawful, considering that it only promotes the achievement of effective equality between women and men in the access to elected offices, without, directly or indirectly, affecting the outcomes of citizens' electoral choices. The double gender preference merely introduces an additional – certainly not compulsory – option for the voter, which enlarges the range of electoral choices. Basically, the voter is free to indicate no candidate, only one or two candidates, and if the second preference is of the same gender, it is simply not counted, leaving the first one valid.

Lastly, judgment no 81 of 2012 established another important principle,

> 'stating that political discretion (even at regional level) is limited by the existence of legal constraints deriving from the regulatory, constitutional and legislative framework'.[10]

[10] On the judicial developments relating to equality between women and men standing for elected office, see, recently, State Council judgment 4 June 2021 no 4294, which has referred the questions of constitutional legitimacy of Art 71, para 3-*bis*, of decreto legislativo 18 August 2000 no 267 in the part in which it does not provide for the necessary representation of both genders in the electoral lists in municipalities with a population of less than 5,000 inhabitants, and of Art 30, letter *d*)-*bis* and letter *e*), decreto del Presidente della Repubblica 16 May 1960 no 570 in the part in which it excludes from the sanctioning regime of the 'exclusion of the list', the electoral lists submitted in violation of the necessary representation of both genders in reference to municipalities with fewer than 5,000 inhabitants due to the violation of Arts 51, paras 1, 3, para 2, 117, para 1, Constitution in reference to Art 14 European Convention on Human Rights (ECHR), and Art 1 Additional Protocol no 12, to the Constitutional Court.

Thus, all institutions must comply with the principle of gender equality, including ordinary and special regions.

In the light of this regulatory and case law framework, this article analyses the most recent normative developments of gender promotional mechanisms at regional level, where the composition of legislative assemblies is still very unbalanced from a gender viewpoint. The percentage of female members in regional councils is on average 17.7% (in March 2020), very far from the percentage recorded at the European Union (EU) level, equal to 33.5%, as well as at national (about 36%) and local level.[11] This scenario is, indeed, rare in the European context where the high achievers at national level are also the high achievers at regional level, with Finland, France, Spain and Sweden approaching gender parity.[12] Indeed, the data of Italian regions vary widely from region to region,[13] depending – *inter alia* – on the different measures of gender equality effectively introduced in their electoral laws. As we will see, the broader regional autonomy in electoral matters, introduced by the 1999 constitutional reform, does not necessarily translate into the adoption of more incisive measures for the promotion of women's representation. The paper therefore examines the potential remedies for the inertia of those regions that fail to implement the abovementioned constitutional and legislative principles. Particular attention will be given to the 'Puglia case' and to the government's choice to trigger, for the first time, the substitutive power provided by Art 120, para 2, Constitution in order to forcibly implement the measures of gender equality in the Apulian territory. Furthermore, the paper deals with the same issue with reference to the special regions, which have wider powers in electoral matters, according to their respective special statutes. In conclusion, the results of the regional election of 20-21 September 2020[14] are considered, looking at how the electoral rules on gender equality have affected female representation in regional councils.

II. Ordinary Regions and Electoral Mechanisms to Promote Gender Equality

As mentioned, female representation in regional councils varies from region

[11] The presence of women is 33.6% in the assemblies of municipalities with a population of up to 15,000 inhabitants and about 31.4% in municipalities with a population of more than 15,000 inhabitants (Camera dei Deputati, Servizio Studi, 'La partecipazione delle donne alla vita politica e istituzionale' *Dossier no 104*, 2020 available at https://tinyurl.com/2wdurke4 (last visited 31 December 2021) and Senato della Repubblica, Ufficio Valutazione Impatto, 'Parità vo' cercando 1948-2018. Settanta anni di elezioni in Italia: a che punto siamo con il potere delle donne?', 2018, available at https://tinyurl.com/2p87vxb8 (last visited 31 December 2021).

[12] European Parliament, 'Women in politics in the EU. State of play', Briefing, 2019, available at https://tinyurl.com/2p84pzsj (last visited 31 December 2021).

[13] From 9.5 of Basilicata to 38.1 of Umbria.

[14] Elections held in Puglia, Campania, Liguria, Marche, Toscana, Veneto and Valle d'Aosta.

to region. It depends – *inter alia* – on electoral rules adopted and on different implementation of the state provisions aimed at ensuring gender balance in the regional assemblies.

Since 1999 ordinary regions have concurrent competence in regional electoral matters. According to new Art 122, para 1, Constitution,

> 'the electoral system … shall be established by a regional law in accordance with the fundamental principles established by a law of the Republic, which also establishes the term of elective offices'.

This reform has introduced a form of electoral federalism, in which the State has the power to identify the fundamental principles of the matter and the regions the power to regulate it in detail, complying with state principles. These principles were established by legge 2 July 2004 no 165, without providing principles of gender equality, despite Art 117, para 7, Constitution having already provided that regional laws promote equal access to elected offices for men and women. However, this principle was introduced in many regional statutes[15] and, consequently, in several regional electoral laws.[16]

Only legge 23 November 2012 no 215 included, among the fundamental principles of the framework law no 165 of 2004, the promotion of equality between men and women 'through the provision of measures to encourage access for the under-represented gender to elected office' (lett c-*bis*). This new principle in fact did not succeed in pushing regional legislatures to change their electoral rules and in 2016 further state lawmaking was necessary.[17] Such a principle was translated into stricter rules by legge 15 February 2016 no 20, which greatly limited regional powers in this field, channeling regional implementing choices towards essentially predefined solutions.[18] This law did not establish mere principles, but specific measures, at first glance contradicting the model of concurrent legislative power, which reserves only the definition of the fundamental principles to the State.[19] However, this approach can be justified in the light of long-standing constitutional jurisprudence, according to which 'positive actions' require a uniform application throughout the country and cannot be subject to

[15] See: Art 6 St. Puglia; Art 2, para 2, letter d) St. Calabria; Art. 6, para 6, and 19, para 2, St. Lazio; Art 4, lett. f), St. Toscana; Art 13 St. Piemonte; Art 3 St. Marche; Art 2 St. Emilia-Romagna; Arts 7 and 42, para 3, St. Umbria; Art 2 St. Liguria; Art 6 St. Abruzzo; Art 11 St. Lombardia; Art 1, paras 2 and 5 St. Campania; Art 6, letter c) and Art 34, para 3, St. Veneto; Art 6 St. Molise; Art 6 St. Basilicata.

[16] E. Catelani, 'La tutela delle pari opportunità negli statuti e nella legislazione elettorale', in E. Catelani and E. Cheli eds, *I principi negli statuti regionali* (Bologna: il Mulino, 2008), 244.

[17] M. D'Amico, n 3 above.

[18] D. Tega, 'La l. 15 febbraio 2016, n. 20: l'ultima tappa verso il riequilibrio della rappresentanza politica' *Studium Iuris,* 1 (2017).

[19] G. Maestri, *L'ordinamento costituzionale italiano alla prova della democrazia paritaria* (Roma: RomaTre-Press 2018).

differences in relation to their geographical and political areas.[20] Nevertheless, this issue has not been clarified as no region has decided to challenge the law in front of the Constitutional Court.

More exactly, legge no 20 of 2016 has provided that the principle of promoting equal opportunities in the access to elected regional offices is to be implemented in three possible ways, designed in a manner which takes into account the type of electoral system in force.

Thus, (1) if the regional electoral system provides the chance to cast preference votes, it has to establish legislated gender quotas, in such a way that same gender candidates do not exceed 60% of the total in each list, and allow at least two preferences for candidates of different gender, under penalty of the cancellation of preferences after the first.

(2) In case the regional electoral rules do not allow the expression of preference votes (so-called closed lists), the alternating order between candidates of different gender has to be provided, together with a legislated gender quota of 40%.

(3) In case of single-member constituencies, the electoral law shall provide for the balance between candidates presented with the same symbol in such a way that candidates of one sex do not exceed 60% of the total.

The new state discipline provided regions with a range of possibilities, leaving them the choice to implement the solution corresponding to the electoral system adopted. It is clear that the three solutions are able to produce very different outcomes: for example, the mandated alternation of candidates by gender on closed lists allows the election of more women than gender quotas of 40% in open lists. Yet, the effectiveness of the quota mechanism applied to single-member constituencies depends on the political parties' decisions about the assignment of 'winnable' constituencies.

The mechanisms proposed by state legislation are basically electoral gender quotas and, relating to the open list system (solution no 1), the gender double preference. Both are constructed as gender-neutral, which means that they aim to redress the under-representation of women and men, setting up a maximum for both sexes. As emphasised by the administrative jurisprudence, gender quotas are

> 'not only formalistically aimed at guaranteeing a balanced composition of the lists, but dynamically and theologically intended to ensure a balance in the composition of the political assembly'.[21]

[20] Judgment no 109 of 1993 (para 2.2). It is also worth noting that the constitutional case law does not accept a strict and unitary notion of fundamental principles. In several cases, the Constitutional Court has ruled as lawful specific state provisions in concurrent matters on the grounds they were linked to the fundamental principle by a strong relationship of coessentiality and necessary integration. See, recently: judgment no 64 of 2020 (M. Di Folco, 'Profili problematici dell'intervento sostitutivo del Governo nei confronti della regione Puglia per imporre la doppia preferenza di genere' *Osservatorio sulle fonti,* 1191 (2020)).

[21] Regional Administrative Court for Lazio 31 January 2013 no 1108.

In any case, legislated gender quotas provide a percentage at least of 40%, but include neither placement mandates nor strong enforcement mechanisms, leaving regions free to introduce zipper list systems and to set sanctions, such as the rejection of the lists or financial penalties.[22] The effectiveness of quotas depends, significantly, on their design.[23]

If the electoral system provides open lists, there must be at least two preference votes relating to candidates of different gender. Thus, a single preference voting system is not allowed, whereas regional rules can abstractly increase the number of persons to be indicated. This new mechanism does not reserve a share of seats to the underrepresented sex, but redresses the under-representation of women in decision-making assemblies, through a second preference vote. Thanks to this, greater gender balance of assemblies is encouraged, but it is not imposed. Like quotas, the double gender preference is a neutrally worded anti-discrimination measure, as it does not affect, directly or indirectly, the results of elections. The gender-difference rule for the second preference does not give candidates of either sex a better chance of being elected, given the reciprocal and equal conditioning of the two genders. Under this rule, there are no candidates who are more favoured or disadvantaged than others, but only an equality of opportunity that is able to promote a better gender balance in representation on the regional councils. It is, therefore, a mere promotional measure.

However, unlike gender quotas, it does not interfere with the stage of 'candidacy', but with the more sensitive one of right to vote and its freedom, being the voter unable to cast two preference votes in favour of persons of the same gender.[24] According to ruling no 4 of 2010, this interference is, nevertheless, legal, as the voter may decide not to use the second preference vote and choose only one male or female candidate.

After all, since the 1991 referendum onwards the Italian electoral scenario has been mainly characterised by single preference voting systems on open lists, and the chance of a second preference vote is not a constraint for voters, but an additional option, which the previous system did not provide.

All ordinary regions have opted for proportional representative systems, with open lists and preference voting,[25] with the initial exception of the Toscana legge elettorale no 25 of 2004, which opted for a system of closed lists, in which

[22] The sanction system cannot be inferred from constitutional and state legislative provisions. For this solution: Regional Administrative Court for Puglia 16 January 2021 no 95; State Council 25 June 2021 no 4860.

[23] L.A. Schwindt-Bayer, 'Making Quotas Work: The Effect of Gender Quota Laws On the Election of Women' XXXIV *Legislative Studies Quarterly,* 5 (2009).

[24] M. Olivetti, 'La c.d. «preferenza di genere» al vaglio del sindacato di costituzionalità. Alcuni rilievi critici' *Giurisprudenza costituzionale,* 84 (2010).

[25] For a recent complete picture of the regions' electoral choices, including majority bonus and threshold clauses, see: Camera dei Deputati, 'Leggi elettorali regionali. Quadro di sintesi' *Documentazione e ricerche*, 3 August 2020 no 109, available at https://tinyurl.com/2p97k8sw (last visited 31 December 2021).

the provincial candidates were elected according to their position on the list.[26] As a result of this, a vote cast by a voter, intended to determine the overall composition of the regional assembly, was a vote in favour of a list, without the right for of the voter to decide on the election of his or her own representatives.

> 'The election of candidates is dependent not only, obviously, on the number of seats obtained by the list of origin, but also by the order in which candidates are presented within the list, which is essentially decided by the parties'.[27]

To avoid this violation of the voters' right to choose, the Toscana Region adopted contextually regional law no 70 of 2004 aimed at encouraging and promoting the democratic participation of citizens in the selection of candidates for the regional elections, through the provision of (optional) primary elections.

However, after that the Constitutional Court judgment no 1 of 2014 declared the provision of closed lists established by the national electoral law to be unconstitutional, as 'these rules deprive voters of any possibility to choose their own representatives, which is left entirely to the parties', the Toscana Region changed its electoral rules, introducing open lists and preference voting.[28]

Thus, given that – since 2014 – all ordinary regions have opted for proportional representative systems, with open lists and preference voting,[29] both mechanisms – gender quotas and double gender preference – set by solution no (1) – should have been implemented. However, implementation has been very heterogeneous. Some regions anticipated the 2016 state regulations;[30] others promptly adapted their own electoral discipline to the new principles.[31] A few regions have designed more incisive mechanisms than those established by state legislation, ie the

[26] See: legge regionale 13 May 2004 no 25 ('Rules for the election of the regional council and the president of the regional government'). Relating to gender equality Art 8, para 4, provided that 'No more than two thirds of constituency candidates of the same gender can be presented in each provincial list'.

[27] Cf Corte costituzionale 13 January 2014 no 1, para 5.1 of the Conclusions on points of law.

[28] Legge regionale 26 September 2014 no 51. See: M. Rosini, 'Novità e criticità della nuova legge elettorale della Regione Toscana' *Le Regioni*, 1237 (2014).

[29] For a recent complete picture of the regions' electoral choices, including majority bonus and threshold clauses, see: Camera dei Deputati. 'Leggi elettorali regionali. Quadro di sintesi' *Documentazione e ricerche*, no 109 of 2020, available at https://tinyurl.com/3tctwsck (last visited 31 December 2021).

[30] Namely, Campania (legge regionale 27 March 2009 no 4); Emilia-Romagna (legge regionale 23 July 2014 no 21); Toscana (legge regionale 26 September 2014 no 51) and Umbria (legge regionale 4 January 2010 no 2, amended by legge 23 February 2015 no 4).

[31] Lazio (legge regionale 13 January 2005 no 2, as amended by legge 3 November 2017 no 10); Lombardia (legge regionale 2 December 2016 no 31); Abruzzo (legge regionale 2 April 2013 no 9, as amended by legge 16 July 2018 no 15); Basilicata (legge regionale 20 August 2018 no 20); Veneto (legge regionale 16 January 2012 no 5, amended by legge 25 May 2018 no 19); Marche (legge regionale no 27 of 2004, amended by legge no 36 of 2019); Molise (legge regionale 5 December 2017 no 20).

Toscana Region (together with Lombardia and Veneto), which has strengthened the gender quota mechanism, with district lists composed of candidates in alternating gender order (the so-called zipper system), under penalty of rejection. These three regions, plus Emilia-Romagna and Lazio, have also established that candidates of each gender have to be equally present in every district list, where the number of candidates is identical.

Furthermore, the impact of these gender quotas is stronger thanks to the adoption of effective sanctions: in most regions non-compliance causes the rejection of the lists, whilst in some cases financial penalties are provided.

In June 2020, 11 (out of 15) ordinary regions adopted the double gender preference as well. The only variant to this measure was introduced in Toscana, where the voter does not have to write the candidates' names, but may simply draw an X next to the name(s) on the ballot paper (so-called 'facilitated preference').[32]

Four regions – Calabria, Liguria, Piemonte and Puglia[33] – have so far not adjusted their electoral laws to the promotional gender equality rules. The consequences of the inertia were clearly shown in the results of the recent elections in Piemonte (26 May 2019) and Calabria (26 January 2020): in the former only eight women out of fifty one members were elected and, in the latter, two women out of thirty members, plus the president, Jole Santelli.[34]

These results reveal that women remain significantly under-represented because of a lack of quotas or other electoral measures, such as double gender preference, aimed at promoting effective gender equality in political representation.

III. State Principles and Legislative Inertia of Regions: What Remedy?

What actions can be put in place to remedy the prolonged inertia of some regions, which undermines the achievement of effective gender balance in regional assemblies?

Firstly, the judicial route. Legal steps have been taken against the regulatory inertia of the Calabria Region. In particular, two lawsuits were trigged: one against the decree calling for new elections issued by the president of the region, and the other against the electoral results. In the first case, the Regional Administrative Court for Calabria declared the complaint inadmissible due to lack of jurisdiction of the administrative judge.[35] The second case, which contested

[32] Art 14, para 3, of legge regionale no 51 of 2014 specifies that the second preference is that expressed in favour of the candidate, who is placed next in the order of the list. Thus, the list order chosen by political parties becomes very important.

[33] At that time (June 2020) Liguria and Piemonte did not have their own electoral law and continued to apply the 1995 state law, which did not provide gender equality rules.

[34] U. Adamo, 'Principio di pari opportunità e legislazione elettorale regionale. Dal Consiglio calabrese una omissione voluta, ricercata e «votata». In Calabria la riserva di lista e la doppia preferenza di genere non hanno cittadinanza' *Le Regioni,* 403 (2020).

[35] Regional Administrative Court for Calabria, 27 December 2019 no 2158, available at

the results of the regional election of 26 January 2020, was declared *improcedibile* because of the sudden death of the president and the consequent resignation of the executive board and dissolution of the regional council (*ex* Art 126, para 3, Constitution).[36]

This unfortunate event impeded a ruling on the merit of the issues, including the request to raise the question of constitutionality to the Constitutional Court in order to reverse the Calabria Region's failure to implement the principle of gender equality, through an 'additive' judgment. Nevertheless, the judicial path may represent an effective way to solve cases of regional failure to comply with a fundamental principle: an incidental question of constitutionality could be raised both in an administrative case of challenging electoral results and in a case relating to the elector's right to vote by a constitutionally compliant law.[37]

The judicial path can also force politically regional assemblies to adapt their legislation to state principles. This was the case of the regional council of Calabria, which has recently changed its electoral law, introducing a gender quota of 40% and double preference.[38] As a result of these changes, in the election of 3-4 October 2021, for the first time, six women (out of thirty) were elected member of the regional council of Calabria.

Another way to remedy inertia at the regional level could be the self-application of state principles, if they are detailed, as in this case.[39] According to this interpretative proposal, with legge no 20 of 2016 laying down binding rules of direct applicability in the regulation of preferences and candidacies, any public administration or court should apply directly such rules. They would be of '*cedevole*' nature, with the potential for regional lawmakers to re-legislate the matter.[40]

However, this proposal does not seem to be confirmed by the constitutional case law relating to another principle of legge no 165 of 2004, formulated in detailed terms. In fact, the rule on the non-immediate re-eligibility, at the end of the second consecutive term, of the president of the region elected by direct universal suffrage, has been considered not self-applicable by the courts.[41]

The government has opted for a third path: the use of substitutive power, provided by Art 120, para 2, Constitution. More exactly, in June 2020, four years after the adoption of legge no 20 of 2016, the government decided to take action against those regions that had so far not adapted their electoral laws to the principle of gender equality.

https://tinyurl.com/yckvzhrc (last visited 31 December 2021).

[36]Regional Administrative Court for Calabria 5 November 2020 no 1758, available at https://tinyurl.com/mt8yay72 (last visited 31 December 2021).

[37] F. Corvaja, 'Preferenza di genere e sostituzione legislativa della regione Puglia: il fine giustifica il mezzo?' *Quaderni costituzionali*, 609 (2020).

[38] Legge regionale 19 November 2020 no 17.

[39] L. Trucco, 'Preferenza di genere e sostituzione legislativa della regione Puglia: quando il fine potrebbe già avere il mezzo' *Quaderni costituzionali,* 605 (2020).

[40] These state *'cedevole'* nature rules would apply until they are replaced by regional laws.

[41] M. Di Folco, n 20 above, 1191. See: Corte d'Appello of Milano 20 May 2011 no 1404.

First, with a letter of 5 June 2020 the Minister for Regional Affairs and Autonomies, through the president of the State-Regions Conference, urged these regions, also in view of the next round of elections, to implement into their electoral laws the principles set by legge no 20 of 2016, aimed at ensuring a balance in representation between women and men in regional councils.

Second, at the meeting of the Council of Ministers on 25 June 2020, the same Minister outlined a survey carried out on regional legislation regarding the election of regional councils. This survey stressed that the electoral laws of some regions had not adopted the provisions introduced by legge no 20 of 2016. Their electoral systems, in fact, did not allow for the expression of the second preference reserved to a candidate of a different gender or did not provide for electoral gender quotas. The non-compliant regions were precisely those mentioned above: Calabria, Liguria, Piemonte and Puglia. Among these, Liguria and Puglia were due to vote on 20-21 September 2020. The same criticism was levelled at two regions with a special status, Friuli Venezia Giulia and Valle d'Aosta, and the Autonomous Province of Bolzano. However, the consequences for special autonomies have differed (see below).

Third, through a note on 3 July, the President of the Council of Ministers invited these regions to adapt 'with the utmost urgency' their electoral laws to the aforementioned principles introduced by legge no 20 of 2016.

This approach produced some effects. The Liguria regional council decided to comply with the government's request and unanimously approved legge 21 July 2020 no 18 (laying down 'Provisions concerning the election of the President of the Regional Government and of the Regional Council – Legislative Assembly of Liguria').[42] It provided – among other things[43] – that each voter may cast up to two preferences and, in this case, the second preference must concern candidates of a different gender or will be cancelled. A limit of 60% for same-sex candidates is introduced in the formation of lists in order to ensure adequate representation of both sexes.

In contrast, the inertia of Puglia continued and, consequently, the President of the Council of Ministers, with a provision of 23 July 2020, trigged the procedure for the exercise of the substitutive power. The measure established a short deadline, in theory compatible with the start of the electoral process in the region,[44] within

[42] Starting from 1999 and until the entry into force of legge regionale no 18 of 2020, Liguria continued to apply the transitional regulations introduced by Art 5, para 1 of legge costituzionale no 1 of 1999; it approved only sporadic interventions on very limited profiles (such as Art 13 of legge 29 December 2014 no 41, concerning the subscription of lists). See: B. Caravita, 'Le Regioni di fronte alla questione della legge elettorale', in B. Caravita ed, *La legge quadro n. 165 del 2004 sulle elezioni regionali* (Milano: Giuffrè, 2005).

[43] Indeed, legge regionale no 18 of 2020 has reformed the entire electoral system (L. Trucco, 'Preferenza di genere' n 39 above).

[44] Several scholars have pointed out the mortification of the scope for cooperation with the region imposed by the very tight deadline established by the government (L. Trucco, 'Dal mar ligure allo Ionio: norme elettorali "last minute" e rappresentanza di genere di "mezza estate" '

which the regional council was to modify its electoral law, implementing measures on the promotion of equal opportunities between women and men in the access to elected offices. In the absence of such legislative intervention, the government would take over the implementation of the constitutional principle to apply to 2020 regional elections.

Notwithstanding this warning, the Apulian regional council did not approve the amendments requested by deadline of 28 July 2020, leaving its electoral rules unchanged.

As a consequence, for the first time, the government exercised its substitutive power through the adoption of decreto legge 31 July 2020 no 86 ('Urgent provisions on gender equality in electoral consultations in regions with ordinary statute'), promptly converted, without amendments, into legge 7 August 2020 no 98. This Law established that in the Puglia Region for the election of the regional council on 20-21 September 2020, in place of the existing rules that were in contrast with the principles of legge no 165 of 2004, the following provisions had to be applied: (a) each voter may cast two votes of preference for candidates of different gender, and the appropriate ballot paper consequently prepared; (b) in case two preferences are cast for candidates of the same gender, the second one is annulled.

The Prefect of Bari was appointed extraordinary commissioner with the task of providing the necessary steps to implement this decree, including the recognition of the regional provisions incompatible with those introduced by decree-law, without compromising the principle of the concentration of electoral consultations.

Thus, on 3 August 2020, the Prefect issued a provision identifying the regional rules to be considered applicable.[45] On the same day, the president of the region, through own decrees, called the elections, established the number of seats allocated to each constituency, set the rules for the composition and subscription of the lists and established the model ballot paper.[46]

On 20 and 21 September, the voters of Puglia had the chance, for the first time, to cast two preference votes for a man and a woman. Finally, the mechanism was applied, albeit through the robust instrument of state interference in the sphere of the region's decision-making autonomy.

IV. Some Remarks on the Use of the Extraordinary Substitute Power Against Regional Legislative Inertia

The abovementioned event is interesting for several reasons and raises a number of legal questions.

Consulta On Line, 10 August 2020).

[45] Measures of the Prefect of Bari as Extraordinary Commissioner prot. 82022 of 3 August 2020.

[46] Decreto del Presidente della giunta regionale nos 324, 325, 326 and 327 of 3 August 2020, respectively.

The government substitutive power was introduced by the constitutional reform of 2001 to counterbalance the extension of regional competences. The reform enables government to replace regional bodies (or metropolitan cities, provinces and municipalities) if: (1) they fail to comply with international treaties and rules or EU legislation; (2) in the case of serious danger for public safety and security; (3) whenever such action is necessary to preserve legal or economic unity and in particular to guarantee the basic level of benefits relating to civil and social entitlements, regardless of the geographic borders of local authorities (Art 120, para 2, Constitution).

This power was implemented by Art 8 of legge no 131 of 2003, establishing its procedural steps 'in compliance with the principle of subsidiarity and the principle of loyal cooperation'. The first step is precisely the assignment to the bodies concerned of a reasonable time period to take the necessary measures.

We do not intend to analyse all the problematic aspects of the first use of this state power,[47] but only those directly related to the principle of gender equality. Frankly, the need to implement such a principle through the use of government's substitutive power may seem surprising in this period marked by critical problems in the state-regions relationship, generated by the Covid-19 pandemic.[48] However, the use of this power stresses the importance of the principle of gender equality in the current Italian constitutional context. Equally, it raises some questions: can non-implementation of the principle of promoting gender equality justify the triggering of substitute power by the government? Which of the prerequisites of Art 120, para 2, Constitution can it be attributed to?

Government reasoning leading to the use of the substitute power is not completely clear. The preamble of decreto legge no 86 of 2020 refers to the need to 'guarantee the effective respect of the principle of access to elected offices in conditions of equality under Art 51, para 1, of the Constitution'. In such a way, it intends to protect the 'legal unity of the Republic'. Similarly, Art 1, para 2, of the same decree states that the measures are adopted 'in order to ensure the full exercise of political rights and the legal unity of the Republic'.

Therefore, the main reason for the state's intervention seems to be the

[47] For an analysis of all the problematic aspects raised by the decree-law, see: P. Colasante, 'Il Governo "riscrive" la legge elettorale della Regione Puglia con la doppia preferenza di genere: profili problematici dell'esercizio del potere sostitutivo sulla potestà legislativa regionale' *Federalismi.it,* 9 September 2020; D. Casanova, 'Riflessioni sulla legittimità della sostituzione legislativa da parte del Governo ex art. 120 Cost. Note critiche a partire dal decreto legge n. 86 del 2020' *Nomos,* 1 (2020); M. Cosulich, 'Ex malo bonum? Ovvero del decreto-legge n. 86 del 2020 che introduce la doppia preferenza di genere nelle elezioni regionali pugliesi' *Federalismi.it*, 9 September 2020; R. Dickmann, 'L'esercizio del potere sostitutivo con decreto-legge per garantire l'espressione della doppia preferenza di genere in occasione delle elezioni regionali in Puglia del 2020' *Forum di Quaderni costituzionali,* 15 October 2020; T. Groppi, 'La Costituzione si è mossa: la precettività dei principi costituzionali sulla parità di genere e l'utilizzo del potere sostitutivo del governo, nei confronti della Regione Puglia' *Federalismi.it*, 9 September 2020.

[48] ibid 103.

protection of the legal unity of the Republic, with an evident shift, respect to the warning act of 23 July, which referred, instead, to the fact that the provisions of principle on equal opportunities

> 'are among the essential levels of benefits concerning civil and social rights that must be guaranteed, pursuant to Art 120, para 2, of the Constitution, on the entire national territory'.[49]

This change of perspective was grounded on the legal opinion of Advocates of States, who – without in-depth motivation – connected the principle of gender equality to the protection of the legal unity of the Republic and, more doubtfully, to the protection of an essential level of benefits concerning rights.

It is not simple to define the concept of 'legal unity'. According to the constitutional case law, legal unity clearly refers to interests and values, 'naturally' belonging to the State, which has ultimate responsibility for maintaining the unity and indivisibility of the Republic guaranteed by Art 5 of the Constitution.[50] The Constitution, therefore, requires that, regardless of the distribution of administrative competences, as implemented by state and regional laws on the various issues, the government can always intervene, in place of the competent bodies, to guarantee these essential interests, when there is a pressing need for sufficient homogeneity in the normative system. Thus, legal unity represents an *extrema ratio* clause, used in defence of the fundamental needs of equality, security, legality, which could be jeopardized by the non-exercise or illegitimate exercise of regional competences.

Effectively, this notion is not dissimilar to the protection of rights. The impairment of legal unity would lead to disharmony and imbalances between the various territories, which would acquire even greater importance were such an impairment to affect citizens' civil and social rights, which the Constitution provides enhanced protection for in terms of unity, resulting from the combined provisions of Arts 117, para 2, lett. m) and 120, para 2, Constitution.[51]

Clearly, this picture highlights the unresolved and ambiguous character of Italian regionalism, as configured by the reform of Title V: significant regional competences, a quasi-federal system, but without any clear instruments to protect the unitary needs. Therefore, interpretative arrangements are required to prevent the paralysis or disintegration of the whole system: which is what the Constitutional Court has tried to do, with some difficulties, in its re-reading of the 2001 reform.[52]

To conclude, does non-implementation of the principle of gender equality by

[49] On this perspective, see Le Costituzionaliste, 'Il mancato adeguamento delle leggi elettorali alle prescrizioni statali sulla parità di genere' *Rivista del Gruppo di Pisa*, 103 (2020).

[50] See the two leading cases of the Constitutional Court no 43 of 2004 and no 236 of 2004; and C. Mainardis, *Poteri sostitutivi statali e autonomia amministrativa regionale* (Milano: Giuffrè, 2007).

[51] See judgment no 121 of 2012, available at www.cortecostituzionale.it.

[52] T. Groppi, n 47 above, 1.

the Puglia Region endanger the 'legal unity' of the Republic, as stated in decree law no. 86 of 2020?

The answer 'yes' seems the most convincing, which can be reconciled with the preceptive nature of Arts 51, para 1, and 117, para 7, Constitution. Gender equality in the access to elected office is not a mere programmatic, open-ended constitutional principle or objective, which regional lawmakers are fully free to implement, but it is a preceptive rule, having binding effects, since it represents one of the essential aspects of the Republic, as a unitary State. In the light of this, the government can act as protector of the principle of gender equality.

Furthermore, heterogeneous regional approaches would cause a different application of the constitutional principle of gender equality, and the more general principle of equality pursuant to Art 3 Constitution. Such principles intend also to guarantee, throughout the national territory, the equal attribution, to each voter, of the chance of expressing a double gender preference. In short, in the government's reading of the normative framework, affirmative measures cannot be subject to differences regarding the geographical and political areas of the country.

V. Gender Equality and Regions with Special Autonomy. Something Different?

As mentioned in its preamble, the decreto legge no 86 aimed to protect the 'legal unity of the Republic' through the exercise of government's substitute powers. On the basis of this reasoning, the decree law should have applied to all regions that did not introduce the double gender preference. In contrast, its rules applied only to Puglia, despite the fact other regions had not established in their legislation such a mechanism.

This choice may be explained in the light of the government's urgent intention to intervene only in the area of the electoral laws of the regional councils, which had to be elected on 20-21 September 2020. The decree law stressed the 'imminent electoral deadlines', which were the basis for the need 'to intervene urgently'. However, among the seven regional councils to elect, the Apulian one was not the only one whose electoral discipline provided for single preference voting without the double gender preference.

Indeed, this mechanism was also missing (and still is) in the Valle d'Aosta electoral rules. Legge regionale 12 January 1993 no 3 establishes 'equal conditions between genders', but these 'conditions' merely consist in a gender quota of 35%. The electoral system offers voters the chance to cast one preference vote for a candidate on the list they vote for.

Notwithstanding this normative scenario, the electoral rules of Valle d'Aosta were not affected by the government intervention. What were the reasons for this different treatment?

The only plausible reason can be found in the special status of the Valle d'Aosta

Region, which implies a different normative framework in electoral matters compared to ordinary regions. If the latter have concurrent legislative competence, special regions have the exclusive power to adopt their electoral law, as provided by the current text of their respective special statutes.[53] In other words, in adopting their electoral rules, special regions have to be 'in harmony with the Constitution and the principles of the legal order of the Republic', but they are not bound to respect the fundamental principles laid down in state acts. Formally, therefore, the electoral rules of special regions need not comply with the legislative principles established by legge no 165 of 2004.

Nevertheless, in exercising this exclusive competence, electoral laws of special regions have to promote 'equal conditions for access to electoral consultations'.[54] A closer look reveals this formula to be 'analogous, though not identical'[55] to that of Art 117, para 7, Constitution, because it refers to equal access to electoral competitions and not to elected offices. This could lead to a weaker interpretation of the principle, aimed at excluding the introduction of 'strong' affirmative actions, such as gender quotas.[56]

Regardless of this reconstruction, what is certain is the evident delay in the adoption of mechanisms to promote gender equality by special regions: only Sardegna and the Autonomous Province of Trento have introduced gender quotas and gender double preference. Both have built such instruments in a stricter way, providing equal quotas[57] and the alternation of candidates of different gender in the lists. The remaining special regions and the Autonomous Province of Bolzano have implemented only the mechanism of gender quotas, often reducing their size[58] and the relative penalties.[59]

This situation raises a significant question: have special regions the power not to implement the principle of gender equality, as stated by legge no 20 of 2016?

To answer this, we have to take into account the legislative power of special regions in electoral matters which expressly limited by the 'principles of the legal order of the Republic', must, in some cases, comply with principles of state legislation.

According to judgment no 143 of 2010, these regions cannot avoid the

[53] See: Art 12 St. Friuli-Venezia Giulia; Art 15 St. Sardegna; Art 47 St. Trentino Alto Adige/Südtirol; Art 15 St. Valle d'Aosta; Arts 3 and 9 St. Sicilia, as modified by legge costituzionale no 2 of 2001.

[54] See n 46 above.

[55] Judgement no 49 of 2003, available at www.cortecostituzionale.it.

[56] S. Mabellini, 'Equilibrio dei sessi e rappresentanza politica: un revirement della Corte' *Giuriprudenza costituzionale*, 372 (2003); *contra* M. Cosulich, *Il sistema elettorale del Consiglio regionale tra fonti statali e fonti regionali* (Padova: CEDAM, 2008).

[57] See: Art 25, para 6-*bis*, legge provinciale Trento no 2 of 2003, as amended by legge no 4 of 2018, and Art 4, para 4, legge regionale Sardegna no 1 of 2013, as amended by legge no 1 of 2018.

[58] It is case of Valle d'Aosta electoral law, which provides a gender quotas equal to 35%; Sicilia and Autonomous Province of Bolzano, with quotas equal to 1/3.

[59] For example, Sicilia (G. Maestri, n 19 above).

application of the principles set out in legge no 165 of 2004, which are expressions of the unchanging need for uniformity imposed by Arts 3 and 51 Constitution, unless 'specific local conditions' apply. For example, on the incompatibility of regional councilors, legge no 165 of 2004 codifies principles of a general nature, which may be self-imposed even on regions with special status.

This conclusion can be accepted also with reference to the principle of gender equality, as stated by legge no 20 of 2016. It is the legislative translation of a principle of a constitutional nature, whose implementation is not optional for special regions.

The real problem, thus, is not about the '*an*' of introduction of mechanisms to achieve a more balanced representation in legislative assemblies of special regions (their introduction is, in fact, mandatory), but the '*quomodo*' of their implementation. Special regions must surely implement the constitutional principle of gender equality, but it is questionable that they are obliged to introduce the specific and detailed instruments provided by legge no 165 of 2004, as amended in 2016. According to some scholars, it is not correct to include specific instruments, such as gender quotas and double gender preference, among the general principles of the Republic's legal system that represent the only one constraint of the electoral legislation of special regions.[60]

On the contrary, we believe that legislated gender quotas and – relating to preferential voting systems on open lists – double gender preference have acquired the nature of general features of the current Italian legal system in electoral matters. As long-standing case law states, the general principles, which limit the exclusive legislative competence of special regions, are

> 'guidelines and directives of general and fundamental nature, which may be inferred from the systematic connection, the coordination and inner rationality of the rules which, at a given moment in history, form the pattern of the legal system in force'.[61]

This definition could include gender quotas and gender preference, which represent a *leitmotiv* of all Italian electoral systems.

According to this interpretative proposal, special regions are required to implement the two instruments, which in our electoral systems usually concretize the principle of gender equality. However, they are not required to comply with all the detailed rules of legge no 20 of 2016, such as the size of quota and the number of preferences. Thus, for example, the electoral system of the Autonomous Province of Bolzano could continue to provide four preference votes, but should

[60] M. Di Folco, n 20 above. This interpretative solution was accepted by the Offices of the Camera dei deputati, 'Equilibrio della rappresentanza tra donne e uomini nei Consigli regionali', Dossier 30 September 2015 no 346, available at https://tinyurl.com/b46j2t8v (last visited 31 December 2021).

[61] Judgment no 6 of 1956, available at www.cortecostituzionale.it.

introduce a differentiated-gender rule.

This interpretative suggestion is able to protect the 'legal unity' of the Republic, invoked by the government in decreto legge no 86 of 2020, which cannot be subject to exceptions in some geographical areas of the country, as an expression of the fundamental principle of unity and indivisibility of the Republic (Art 5 Constitution), without deleting the autonomy of special regions.

VI. Conclusions

The paper has analysed the difficult path of the Italian regions towards the implementation of the constitutional principle of gender equality in their electoral legislation. On the one hand, in the last ten years, the state approach has been open to the introduction of measures to redress female under-representation in EU and national parliaments, in local executive bodies and assemblies and in regional legislative assemblies.[62] On the other hand, in some regional contexts, such as Liguria, Calabria and Puglia, the implementation of gender quotas and double gender preference has been neither simple nor quick, whilst in Piemonte and some special regions so far they have not been introduced at all.

Such a heterogonous situation can be observed even in the outcomes of the regional elections of 20-21 September 2020. Compared to previous ones, the number of female members elected has increased in Veneto (from 11 to 17), Toscana (from 9 to 16), Puglia (from 4 to 8) and Marche (from 6 to 7). In no case was equal representation reached, even though in Toscana and Veneto a good percentage of women was elected, 40% and 34%, respectively. Notwithstanding the increase in the number of women elected, the female component of the regional councils of Marche and Puglia remains low (23.3% and 16%).

A different trend, characterized by a decrease in the number of women elected, can be noted in Campania (from 11 to 9) and Liguria (from 6 to 3)[63], in the latter case, despite the introduction of gender quotas and double gender preference. The single-preference voting system of Valle d'Aosta has produced even more unsatisfactory results: the regional council is 90% of male.[64]

This picture highlights how electoral mechanisms, such as gender quotas and double gender preference, *can* have a key role in reducing disparity between men and women in the election to public offices and effectively contribute to an increase in the number of women elected. However, the capacity of these mechanisms to lead to rapid change should not be over-estimated, as it depends

[62] M. D'Amico, n 3 above.

[63] The percentages are equal to 18% and 9.68%, respectively [E. Aureli, 'La parità di genere nell'accesso alle cariche elettive nelle elezioni regionali del 2020. Analisi e prospettive' *Federalismi.it,* 18 (2020)].

[64] M. Perrone, 'Regionali, le elette sono appena il 23%. Hermanin (+Europa): «Donne rimosse dalla politica»' *Il Sole24ore,* 23 September 2020.

on many factors, not least the design of the quota system. Thus, the success rate of female candidates is higher where rules concerning rank order and effective sanctions for non-compliance are provided. Only in such cases – Toscana and Veneto – have women reached a significant percentage, likely able to fulfil a substantive representation, which should change the style of politics and place women's issues on the formal political agenda and legislation.[65]

In the case of less strictly designed regulations, gender quota mechanisms are not sufficient to solve by themselves the gender gap in Italian regional politics, as shown by the results in Liguria and Puglia, which used for the first-time gender quotas and/or double gender preference. These mechanisms do not automatically lead to higher representation of women, only reserved seat systems could guarantee a certain number of women being elected, but, as said, constitutional case law has judged them unlawful.

Any promotional measure aimed at balancing gender representation in political offices is, in fact, unlikely to overthrow informal barriers to women's political participation, present in the political, cultural and social context. For example, the double gender preference may be ineffective when faced with the lack of commitment of political parties and candidates to apply it properly.[66]

In short, formal rules are important, but not sufficient, as they need to be complemented by other conditions in order to level the playing field for women. First and foremost, good-faith compliance of the political parties. They are the gatekeepers to gender balance in political decision making since they control the selection process. For example, they have a key role in the functioning of gender quotas, avoiding that female candidates are all placed at the bottom of the list.

In some regional contexts political parties have been less prepared to reduce their right to decide over own lists, avoiding or delaying the introduction of gender equality mechanisms. This scenario shows that autonomy (including special autonomy) does not mean necessarily more attention for gender equality. Electoral federalism has, therefore, not been used by all regions to achieve a more balanced representation of their citizens of female gender. This approach in not isolated, but it can be noted in other cases, such as the regulation of the 'maso chiuso'.[67]

Legal analysis alone cannot explain the reasons for differing attitudes of

[65] D. Dahlerup, 'The story of the theory of critical mass' 2 *Politics & Gender,* 511 (2006). See, also: European Commission for Democracy to through Law (Venice Commission), 'Report on the impact of electoral systems on women's representation in politics', 2009, available at https://tinyurl.com/2p8ecyru (last visited 31 December 2021).

[66] A. Deffenu, 'Parità di genere e istituzioni politiche prime note per un bilancio', in B. Pezzini and A. Lorenzetti eds, *70 anni dopo tra uguaglianza e differenza. Una riflessione sull'impatto del genere nella Costituzione e nel costituzionalismo* (Torino: Giappichelli, 2019), 38.

[67] See judgment no 193 of 2017, available at www.cortecostituzionale.it. The regulation of the Autonomous Province of Bolzano provided that in the succession of farmsteads (so-called 'maso chiuso') between co-heirs of the same degree, males had priority over females (Art 5 of Autonomous Province of Bolzano no 33 of 1978, repealed by legge no 18 of 2001, but applicable to the case to trial). Such a rule was declared unconstitutional for violating the principle of equality.

State and regions, or of each region towards the principle of gender equality, since the study of these reasons implies an interdisciplinary approach, which also looks at the features of the local organization of political parties and of the regional public opinion and communities. However, legal analysis stresses the basic principle of equality gender and its main implementation instruments – gender quotas and double preference – should be introduced in a homogenous manner on the national territory in order not to jeopardize the right to vote and to stand in elections and, thus, ultimately the legal unity of the Republic. In the current constitutional context it is such an important value that it justifies the launch of extraordinary substitutive power by the government.