

2. Law and Gender Equality

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Abstract: This chapter explains the path taken by the legal system within the scope of gender equality and gender equity, both at a national level and an international one. International declarations and conventions on gender equality and the promotion of women's rights are presented. At a national level, there is no doubt that equality of status—mainly legal, but also social—between men and women is demanded by the Constitution of many countries and must be implemented by the ordinary legislator. It means that the assumption of gender equality as a basis for generic positive discrimination should be proposed, promoting the use of the skills of each person, man or woman, in their individuality and unique sensitivity. This is precisely the way to enhance the ideal complementarity in a modern world and to ensure the recognition of the dignity of the treatment due to women. The text explains the path taken by the Portuguese legal system within the scope of gender equality or equity and the effective irradiation of the principle of equality enshrined in the 1976 constitutional text.

1. Gender

We focus on the notion of gender invoked by Sylviane Agacinski as a universal characteristic, *id est*: all humans are either male or female (Agacinski 1999).¹

However, it is important to clarify apparently overlapping terms:

- (a) Sex difference stems from biological characteristics that distinguish men and women.
- (b) Gender difference (“*rapports sociaux de sexe*”) is the recognition of the existence of constitutive values of female identity and male identity as having equal value that must be present and manifested equally in all spheres and dimensions of life.
- (c) Gender equality is an operational concept, corresponding to the absence of asymmetries between genders in all indicators related to social organization, the exercise of rights and responsibilities, individual autonomy, and well-being.
- (d) Discrimination on the grounds of sex or gender is a form of any disadvantage caused by legal rules, social practices, or individual behavior suffered by a person on grounds of sex or gender.

Within this framework, the subject of gender equality—which is very much in vogue nowadays but is not always addressed in the most obvious or pedagogically admissible way—tackles the analysis of asymmetries in social indicators between the situation of women and men in public and private spheres, paying particular attention to the incorrect and pernicious effect of the connection with issues of violence, human trafficking, torture, or sexual exploitation (*i.e.*, circumstances that,

¹ It considers the restriction of the object of “gender equality” to the dichotomy “male/female,” thus expressing the determination not to address the so-called “LGBTI issues,” understood to refer to the topic of sexual orientation and freedom of sexual expression (Múrias and Brito 2008; Santos 2009).

in many situations, artificially reduce the space for discourse and discussion around such topics).²

The proclaimed policy of equal opportunities between men and women aims to neutralize or overcome visible and invisible barriers that exist or may arise regarding the access of women and men under equal conditions to economic, political, and social participation. It can also be considered as an institutionally structured and organized way of ensuring that what happens on the political scene and in social life is gender-neutral (i.e., it does not influence gender equality differentially, negatively, or positively).

A dual approach to gender equality is based on the promotion of equality between men and women in all policies and activities (gender mainstreaming) but calls for specific positive measures.

When properly understood, rather than true gender equality, the term “gender equity” should perhaps be adopted, thus emphasizing a form of justice in the treatment of men and women.

2. Gender Equality

Equality (or, as suggested, equity) in the treatment of women and men is a fundamental principle of current legal systems and is, thus, a fully fledged component of citizenship and even a real criterion of democracy, as has been proclaimed by the Council of Europe.

Indeed, the association of gender equality with factors of public and private savings, innovation, and economic growth has also been emphasized by the OECD and the United Nations through the Millennium Development Goals.

There are men and women in every minority or majority group. In every minority or majority group, sex determines social gender roles that generate inequality (i.e., an inequality to which discrimination based on any factor can be added—origin, religion, cultural belonging, sexual orientation, age, or disability—but which is no longer confused with any such factor, because it cuts across all society and all factors).

The international framework for this matter is clearly stated in ancillary instruments such as the Charter of the United Nations in 1945, the Universal Declaration of Human Rights of 1948, and the complementary United Nations International Covenants on Civil and Political Rights and Social, Economic, and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women (1979/1981) and its Optional Protocol (1999), the Fourth UN Conference on Women, and the Platform for Action emerging from the Beijing Conference (1995).

Other key sectoral instruments are the Convention against Discrimination in Education adopted by UNESCO in 1960 (and entered into force in 1962), the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962), the Convention on Discrimination in Employment and Occupation (1958), the Convention on the Nationality of Married Women (1957), the Convention on the Political Rights of Women (1952), or, even in the more restricted field of the world of work, the Conventions of the International Labour Organization, in particular and retrospectively, No. 183 on maternity protection (2000), No. 177 on homeworking (1996), No. 171 on night work (1990), No. 156 on equal opportunities and equal treat-

² See, for example, the context of the European Union (European Union 2011, 2012).

ment for men and women workers: Workers with Family Responsibilities (1981), No. 118 on equal treatment (social security) (1962), No. 111 on discrimination in respect of employment and profession (1958), No. 103 on Maternity Protection (1952), No. 100 on Equal Remuneration of Women and Men, Equal Remuneration Convention (1951), No. 89 on Night Work of Women (1948), and No. 45 on Underground Work of Women (1935).

The action of the Council of Europe has also been fundamental in, first, the generic framework offered by the provisions of the European Convention on Human Rights and, second, in terms even more decisive for the state structure, taking sides in the sense of assuming gender equality as an unequivocal factor of citizenship and democracy.³ Accordingly, notable elements include the Declaration on the Equality of Women and Men adopted by the Committee of Ministers (16 November 1988) and the Declaration on Democracy and Equality between Women and Men as a Fundamental Criterion of Democracy, adopted by the 4th European Ministerial Conference on Equality between Women and Men (Istanbul 1997); the Resolution on the roles of women and men in conflict prevention, peace building, and post-conflict democratic processes—a gender perspective, adopted by the 5th European Ministerial Conference on equality between women and men (Skopje 2003); the Declaration and Programme of Action on Gender Equality: a core issue in changing societies, adopted by the 5th European Ministerial Conference on equality between women and men (Skopje 2003); the Resolution on “Achieving Gender Equality: a challenge for human rights and a prerequisite for economic development,” adopted by the 6th European Ministerial Conference on equality between women and men (Stockholm 2006); the Action Plan on “Achieving Gender Equality in All Spheres of Society,” adopted by the 6th European Ministerial Conference on Equality between Women and Men (Stockholm 2006); and the regular holding of the Conferences of European Ministers responsible for Equality (since 2000).

The involvement of the European Social Charter and, in particular, the statement of the resultant recommendations that paved the way for the future include Recommendation R (90) 4 on the elimination of sexism in language (21 February 1990), Recommendation R (96) 5 on reconciling work and family life (19 June 1996), Recommendation R (98) on gender mainstreaming (7 October 1998), Recommendation R (2002) 5 on the protection of women against violence (30 April 2002), and Recommendation R (2003) 3 on balanced participation of women and men in political and public decision-making (12 March 2003).

At the European Union level, the fundamental principles on this matter are listed in Articles 2 and 3 of the Treaty establishing the European Community, Article 6 of the Treaty on European Union, Articles 2 and 3 of the Treaty of Amsterdam,

³ The European Union has emphasized this same policy by requiring candidate and potential candidate countries to integrate the promotion of equality between men and women in the European Neighborhood Policy, as well as in foreign and development policies, and to adhere to the principle of non-discrimination as a political criterion for membership, under the terms of the (Copenhagen European Council 1993). Moreover, candidate countries are obliged to transpose directives prior to joining (as the former Directive 79/7/EEC or 92/85/EEC), as they form part of the “*acquis communautaire*”—see the developments outlined in the *Green Paper on Equality to Combat Discrimination in the Enlarged European Union* (European Commission 2004) or *Conclusions of the Brussels European Council* (European Council 2006). The power to make such determinations has also been exercised by the Court of Justice of the European Union (1996), which has played a pivotal role in consolidating this path.

and Articles 21 and 23 of the Charter of Fundamental Rights of the European Union. Moreover, the reference to the approval of the Women's Charter, even if in the form of a Declaration by the European Commission in March 2010 (European Union 2010b), is essential.

Regarding organic guarantee, the establishment of the European Institute for Gender Equality, created by the European Parliament and the Council in December 2006 and based in Vilnius, Lithuania, also marked a path consolidated with the Declaration Towards Gender Equality in the European Union, signed in May 2007 by Germany, Portugal, and Slovenia in the context of the work conducted by the Trio Presidency of the European Union, which reaffirms Gender Equality as a principle of the European Union.

3. Historical Setline

The focus on these matters today is in stark contrast, of course, to the traditional treatment that prevailed for a long time in this country. If Article 1104 of the Seabra Code stated, almost laughably for the modern world, that "[A] wife may not deprive her husband, by pre-nuptial agreement, of the administration of the couple's property; but she may reserve to herself the right to receive, for living expenses, a share of the income, and to dispose of it freely, as long as it does not exceed one-third of the said net income," and if Article 1186 imposed the obligation of "the wife to accompany her husband, except to a foreign country," Article 1204 clearly established the double standard by stating that, unlike the wife, adultery by the husband could only be a legitimate cause for separation of people and property if it comes "with public scandal, or complete abandonment of the wife, or with a concubine living in the conjugal home."

The evolution of the so-called "feminine condition" in Portugal is evident in the following list of significant dates and events throughout the 19th and 20th centuries, which culminates with the radiating effects of the approval of the new constitutional framework in 1976:

1867

The first Civil Code, which improved the situation of women regarding the rights of spouses, children, property, and its administration.

1889

First woman to earn a degree in Medicine—Elisa Augusta da Conceição de Andrade (Lisbon Medical-Surgical School).

1890

On 6 March 1890, the Law of 9 August 1888 was regulated, authorizing the Government to create secondary schools for girls.

1910

Divorce Law (Decree of 3 November 1910). Divorce is permitted for the first time in Portugal and the husband and wife are given the same treatment regarding grounds for divorce and rights over children.

New marriage and filiation laws base marriage on equality.

The woman ceases to owe obedience to her husband.

The crime of adultery is now treated the same when committed by women or men.

1911

Constitution of the Portuguese Republic.

Women acquire the right to work in the Civil Service.

- Physician Carolina Beatriz Ângelo, widow and mother, votes in the Constituent Assembly elections, invoking her status as head of the family.
- The law is subsequently amended, recognizing only men as having the right to vote.
- Compulsory education from age 7 to 11 for boys and girls.

1913

First woman with a degree in law—Regina Quintanilha.

Law no. 3 of 3 July 1913, which grants voting rights to male citizens who can read and write.

1918

By Decree No. 4876 of 17 July 1918, women are authorized to practice law. Previously, this profession was prohibited to them.

1920

Girls are allowed to attend boys' secondary schools.

1926

Women are now allowed to teach in male secondary schools.

1931

Explicit recognition of the right to vote for women with university or secondary education (Decree with the force of Law no. 19694 of 5 May 1931) while men remain only required to read and write.

1933

New Political Constitution of the Estado Novo establishing the equality of citizens before the law, "except, as to women, the differences resulting from their nature and the good of the family" (Article 5).

1935

First female members of the National Assembly: Domitila de Carvalho, Maria Guardiola, and Maria Cândida Parreira.

1946

New electoral law, broader than that of 1931, but still demanding different requirements for men and women voters in the National Assembly (Law no. 2 015 of 28 May 1946).

1966

ILO Convention No. 100 concerning equal remuneration for male and female workers for work of equal value was approved for ratification (Decree-Law no. 47 032, 4 November—Article 115).

1967

The new Civil Code comes into force. According to the latter, the family is headed by the husband, who is responsible for making decisions regarding the common conjugal life and the children.

1968

Law no. 2 137 of 12 December 1968, proclaiming equal political rights for men and women regardless of their marital status. Regarding local elections, however, inequalities remain, with only heads of family being eligible to vote in the Parish Councils.

1969

The principle of “equal pay for equal work” was introduced in national legislation (Decree-Law no. 49 408, No. 2, 24 November 1969—Article 16).

A married woman may cross the border without permission from her husband (Decree-Law no. 49 317 of 25 October 1969).

1971

Amendment of Article 5 of the Constitution, maintaining the expression “save, as regards women, the differences resulting from their nature” but omitting “the good of the family.”

1974

April 25 Revolution and the establishment of democracy.

- Three diplomas open the access of women, respectively, to all positions in the local administrative career (Decree-Law no. 251/74 of June 12), to the diplomatic career (Decree-Law no. 308/74 of July 6), and to the judiciary (Decree-Law no. 492/74 of September 27).
- Abolished all restrictions based on sex regarding the electoral capacity of citizens (Decree-Law no. 621/A/74 of November 15).

1976

Approval of 90-day maternity leave (Decree-Law no. 112/76, 7 February).

The new Constitution comes into force, establishing equality between men and women in all areas (April 25).

The right of the husband to open his wife’s mail is abolished (Decree-Law 474/76 of June 16).

The figure of the “head of the family” disappears. Domestic government ceases to belong, in its own right, to the woman.

Marital power no longer exists: both spouses govern their common life, and each one manages his own. The spouses upon the couple’s residence together. The husband and wife may add to their name, at the time of marriage, up to two of each other’s surnames.

1978

Entry into force of the revision of the Civil Code (Decree-Law no. 496/77, November 25):

- Women no longer need their husband’s permission to become traders.
- Each spouse may participate in any profession or activity without the consent of the other.

1979

Publication and entry into force of Decree-Law 392/79 (September 20), which aims to guarantee women equality regarding opportunities and treatment at work and in employment.

Portugal ratifies, by Law 23/80 of July 26, the Convention on the Elimination of All Forms of Discrimination against Women during the Second United Nations Conference on the Decade for Women, held in Copenhagen, to which Portugal sent an official delegation.

From then on, and even if the law in books differs from the law in action, Portugal has indeed provided major steps towards considering an effective constitutional framework.

4. Constitutional Grounds for Gender Equality

Thus, the mainstays of gender equality policy are today anchored directly in the constitutional text. Beyond the unavoidable Article 13, the main guidelines in this area are now in the Portuguese Constitution in Article 9, which establishes as a fundamental task of the State— in paragraph h)—the goal “to promote equality between men and women.” This task is reinforced by Article 59(1)(a) and (b) and the wording of Article 58(2)(b), which requires the State to promote “equal opportunities in the choice of profession or type of work, and conditions of work, so that access to all jobs, work or professional categories is not restricted on the basis of sex.”

Article 36(3) also calls for equality in the rights and duties of spouses regarding civil and political capacity and the protection and education of their children. In another professional context, Article 47 provides for the right to equality in the choice of profession and access to public service, while the right to equal participation in public life is governed by Article 48, and the right to vote is determined by Article 49. Specific equality rights with gender equality implications can be found in Articles 64 (Health), 67 (Family), or 68 (Paternity and Maternity).

5. Constitutional *Indirizzos*

Beyond the constitutional framework, special reference should, however, be made to the extent of the reinvigorating effectiveness of the Fundamental Law and the effort to conform to the ordinary sectoral legislation.

Thus, in the family sector, Decree-Law no. 496/77 of November 25, which came into force on April 1, 1978, introduced profound changes to the Portuguese Civil Code to recognize married women as having full legal equality alongside their husbands as an application of the more general principle of non-discrimination on the grounds of sex. The Resolution of the Council of Ministers no. 7/99 of February 9 then approved the Plan for a Global Family Policy, with clear guidelines for gender equality. Indeed, the most affected areas were, evolutionarily, those of family management and the status of spouses, divorce (now, again, in upheaval), paternal power, adoption, and unmarried cohabiting partners’ regime that culminated in the entry into force of Law no. 7/2001 of May 11, with successively approved amendments (the latest being Law no. 71/2018 of December 31) and new requirements on same sex marriage (Santos 2009), possible since Law no 9/2010 of 31 May.

Regarding maternity and paternity, the legal framework corresponds to Law no. 4/84 of April 5 (amended by Laws no. 17/95 of June 9, no. 102/97 of September 13, no. 18/98 of April 28, no. 118/99 of August 11, and no. 142/99 of August 31, rectified and republished by Decree-Law no. 70/2000 of May 4).

Regarding reproductive health and rights, the Portuguese Constitution notes (Article 67, no. 2, paragraph d) that the State is responsible for “guaranteeing, while respecting individual freedom, the right to family planning, promoting information and access to the methods and means of ensuring this, and organizing the legal and technical structures to enable conscientious parenthood.” Law no. 3/84 of March 24 provided the historical legal framework for sex education and family planning. The guarantees of the right to reproductive health were later reinforced by Law no. 120/99 of August 11, regulated by Decree-Law no. 259/2000 of October 17, and by Law no. 12/2001 of May 29 regarding the first regulation of emergency contraception.

Surrounding issues, such as the treatment of infertility or the possibility of Medically Assisted Procreation, are listed in the requirements of Law 32/2006 (successively amended), while the relevance of the treatment of issues regarding the voluntary interruption of pregnancy can be obtained in the explanation of the Constitutional Court Rulings Nos. 21/84 and 617/2007.

In the field of work and employment, the first relevant historical milestone was the entry into force of Decree-Law 392/79 of September 20 (amended by Decree-Law 426/88 of November 18 and by Law 118/99 of August 11), which strengthened the right to equality in this matter and to a large extent benefited from the systematic intervention operated by Law 105/97 of September 13 (amended by Law 118/99 of August 11), applicable to public or private entities. The application of this law aimed to ensure the realization of the right of individuals of both sexes to equal treatment at work and in employment, broadly defining indirect discrimination as any measure, criterion, or (apparently) neutral practice that disproportionately disadvantages individuals of one sex by reference to marital or family status, which is not objectively justified by any reason or necessary condition unrelated to sex. However, the law considers as indicative of discriminatory practice the considerable disproportion between the rate of workers of one of the sexes working for one employer and the rate of workers of the same sex in the same branch of activity. The law also operates a reversal of the burden of proof in legal actions aimed at proving any discriminatory practice, leaving it up to the employer to prove the non-existence of any discriminatory practice, criterion, or measure based on sex, while considering as a serious administrative offense the impediment of a woman’s access to any job, profession or post.

Moreover, Portugal has now transposed the principle of equal treatment and non-discrimination, in particular Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation,⁴ prompting a profound amendment of the Labour Code through Law no. 7/2009 of February 12, which has already resulted in successive amendments to Law no. 3/2011 of February 15, prohibiting all discrimination in the access to and exercise of self-employment.⁵

⁴ The new lines of development in the conclusion of the European Pact for Gender Equality (European Council 2006) and in the (European Commission 2006) Communication on the Demographic Future of Europe—Commission, 12 October 2006—resulted in the adoption of Directive 2006/54/EC (European Union 2006) which repealed, in historical terms, the following acts, Council of the European Communities (1979, 1992); Council of the European Union (2004).

⁵ This law transposes not only Directive 2006/54/EC (European Union 2006) but also Council Directive 2000/43/EC (Council of the European Union 2000a) and Council Directive 2000/78/EC (Council

Wage differentiation in the area of labor and employment, in particular, has deserved the attention of the legislator, stemming from the reiterated history of repeated violations, via regulation in Law no. 60/2018 of August 21. Another sectoral approach is the poverty and social exclusion phenomenon, with studies stressing that it is not neutral and that it particularly affects women. This conclusion largely stems from the specific nature of women's participation in family, economic, and social life: lower wages, unemployment, less social protection, longer life expectancy, and single-parent families, for which women are mainly responsible.⁶

Finally, and since the entry into force of the aforementioned Istanbul Convention in the Portuguese legal system on 1 August 2014,⁷ Portugal is obliged to develop policies aimed at eliminating domestic violence, which determined introductions to the legal regime already existing at that time in Article 152 of the Criminal Code and amendments that Law no. 129/2015 of September 3 introduced in Law no. 112/2009 of September 16 on the protection and assistance of victims. Regarding the crime of domestic violence, Law no. 24/2017 of May 24 amended the Civil Code, favoring the urgent regulation of responsibilities in situations of domestic violence, providing that the joint exercise of responsibilities may be considered contrary to the interests of the child in cases of serious risk. Beyond domestic violence, under Law no. 83/2015 of August 5, and pursuant to the aforementioned Istanbul Convention, the crime of female genital mutilation (Article 144—A of the Criminal Code) was made separate, with provision being made for the crimes of stalking (Article 154—A of the Criminal Code) and forced marriage (Article 154—B of the Criminal Code), and the crimes of rape, coercion, and sexual threat were modified.

6. A Wider Scope of Reasoning

Regarding power and decision-making, the principle enshrined in Article 48(1) of the Constitution should not be forgotten. It states that all citizens have the clear right to “take part in the political life and in the management of the public affairs of the country.” If it is true that the constitutional framework dictated by the 1976 Fundamental Law provided the main lines of action for what would become the State's action and the organization of society in this area, the specific relevance of the 1997 Constitutional Revision must also be highlighted. Indeed, Article 109 of the Constitution, in its then revised version, posits that “the direct and active participation of men and women in political life is a fundamental condition and instrument for consolidating the democratic system, and the law ought to promote equality in the exercise of civic and political rights and non-discrimination on the basis of sex in access to political office.” This wording, *in fine*, inevitably led to the implementation of so-called quota policies. Notably, the incentive that is now expressly stated in the Constitution even implies a possible judgment of unconstitutionality by omission if measures are not adopted with the aim of equality, as opposed to the previous

of the European Union 2000b). Moreover, see Directive 2010/41/EU (European Union 2010a) and 2004/113/EC.

⁶ The results published on the application of Law no. 19-A/96 (Portugal 1996, now revoked) and Law no. 13/2003 (Portugal 2003), show, for example, a very high rate of female beneficiaries.

⁷ And following on Directive 2011/36/EU (European Union 2011) and Directive 2012/29/EU (European Union 2012).

situation, in which any legislative intervention in this sense could be understood as inadmissible discrimination given a judgment of unconstitutionality by action.

Thus, until 1997, the ratio of the precept was brought back to the affirmation of a general principle of democratizing political organization that reinforced the importance of the participation of (all) citizens and, thus, normalized the “idea of participatory democracy and the democratization of democracy” (Canotilho and Moreira 1993). The amendment then produced necessarily leads to a different reading of the precept. Hence, as a major idea, gender equality now stands out, revealing the constituent legislator’s concerns about promoting this equality in the specific domain of the exercise of political power. It was then understood that only the express consideration of gender equality as a cornerstone of the principle of citizens’ political participation, together with the imposition of an active posture on the part of the State in the effective implementation of equality in this area, could fully satisfy the demands of a full democracy.⁸ Therefore, under the same banner, and with a common skeleton, we currently have an article with a different purpose and function.

The 1997 revision, thus, brought a new perspective to the extent that it speaks of the participation of “men and women,” recognizing the duality of humanity, when previously (e.g., Article 112) it referred only to citizens. Notably, these amendments are contemporaneous with the introduction of Article 9(h), which determines as a fundamental task of the State the promotion of equality between men and women. As Maria Eduarda Azevedo noted (Moura 1997) “... it is at the level of the public sphere that the exclusion of women is felt most (...). This is regardless of the proclamation of formal equality. There is a real gap between equality and actual practice.”

It is important to question whether the introduction of these alterations in 1997 was a requirement of the principle of equality, now considered in the sense of a principle that demands the consideration of material inequality for the adoption of proactive measures that formally aim at equality *de facto* (i.e., real equality). It then appears that the current wording of Article 109 adds nothing to the provision of Article 13. In fact, if we consider that equality before the law contains within it the imposition of *de facto* equality (Miranda 2000) (and, therefore, the need for the State to adopt a positive stance) and that gender is from the outset included in the exemplary clause set out in paragraph 2 of the same article, the amendments enshrined in the 1997 revision were not required by a modern (social) conception of the principle of equality (CRP Annotated by FDUP Students 2007).

Notwithstanding this possible understanding, recall that, following the new constitutional provision, a group of high-level experts was charged with studying the implications of Article 109 and proposing measures for more effective participation of women in political life to be included in the electoral law, which was then in preparation. The conclusions of this study then resulted in innovative proposals: the creation of minimum percentages of both sexes on the electoral lists with a mandatory reflection in the respective results (25%), progressive targets in the minimum percentages, rejection of lists that do not meet this requirement, penalizing parties that do not meet the minimum percentages, an incentive bonus for those that go beyond 33%, and organizing parliamentary work to reconcile professional and family responsibilities.

⁸ The expression is attributed to Natalina Moura, a member of the Socialist Party’s parliamentary group, during the discussion on the revision of the Constitution on 22 July 1997 (Moura 1997).

If eight or nine decades ago, women's fundamental demand was to win the right to vote and, with it, passive electoral capacity and, more broadly, the right to hold any political position, today the aim is to achieve a balanced distribution of positions at the leadership level in various sectors of Portuguese society and, in particular, the exercise of political power. In these terms, it is clear that a possible quota system could

- (i) Be exclusively feminist, favoring women, or be "neutral," preventing both men and women from occupying more than a certain percentage of seats.
- (ii) concern only the candidacies or also the composition of the elective bodies.
- (iii) Be adopted freely by the parties as an internal rule, because of their freedom of self-organization, or be imposed by law, with the parties being responsible for establishing them, within certain parameters, or directly establishing said quotas with binding force and consequences.

This system may, however, legitimately face political criticism, summarized in the claim that positive measures discredit and humiliate women, as they would enter politics, not because they have the merit to do so or because they wanted to, but because the law obliged them to do so or because of the claim that, given the affirmation of women in the professional, scientific, and academic fields, the same would naturally happen in the political field.

The legal criticisms are substantially based on the unconstitutionality of positive actions for offending the principle of equal treatment.

The evolution of this discussion eventually resulted in the so-called parity law—Organic Law no. 3/2006 of 21 August 2006—which established a "zip" system for drawing up lists and is now amended by Organic Law no. 1/2019 of March 29.⁹

7. Equality in Public Policy

Finally, it is appropriate to emphasize the objective of the institutional guarantee of the State's equality policy.¹⁰ Given the above discussion, the action of a State that is part of these contexts can only be understood today as being limited. The National Strategy for Equality and Non-Discrimination 2018–2030 "Portugal + Equal," approved by the XXI Constitutional Government on March 8, 2018, is published in the Official Gazette (Council of Ministers Resolution no. 61/2018 of 21 May).

Recognizing equality and non-discrimination as conditions for the construction of a sustainable future for Portugal, the XXI Constitutional Government has defined axes and strategic goals until 2030. This long-term vision is translated into the following action plans that define concrete measures and targets for each of the next four years:

- (a) The Action Plan for Equality between Women and Men.
- (b) The Action Plan to Prevent and Combat Violence against Women and Domestic Violence.
- (c) The Action Plan to Combat Discrimination on the grounds of Sexual Orientation, Gender Identity and Expression, and Sexual Characteristics.

⁹ This measure has been followed by complementary reforms in rated companies and public administration.

¹⁰ In organic terms, Decree-Law 164/2007 (now revoked), which included the Commission for Equality and Women's Rights and the Mission Structure against Domestic Violence, with the structure now defined in Regulatory Decree 1/2012 (Portugal 2012).

8. Possible Wrap Up

There is no doubt that the Constitution demands equality of status (mainly legal, but also social) between men and women and must be implemented by the ordinary legislator.

However, the assumption of gender equality as a basis for generic positive discrimination should be resisted, and better use should be made of the skills of each person, in their individuality and unique sensitivity.

This notion describes precisely how to enhance the ideal complementarity in a modern world and ensure the recognition of the dignity of the treatment due women, which does not and cannot result from the annual proclamation of days like March 8, or the legal provision of quota systems.

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