

## **Gender Balance in Politics: The Italian Constitutional Court's Judgment n° 4 of 2010**

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**Abstract:** The aim of this study is to briefly analyse the under-representation of women in politics with a specific reference to Italy in the light of the Italian Constitutional Court Judgment n° 4 of 2010. Therefore, some concepts are of major importance to better understand the framework. In order to achieve gender balance on the basis of political representation in practice, parity must be enforced, and it may occur either for the parties themselves or by the law.

**Keywords:** Woman in politics. Italian Constitution. Gender Balance.

## **Equilíbrio de gênero na política: A constituição Italiana Sentença n° 4 de 2010**

**Resumo:** O objetivo deste estudo é analisar brevemente a sub-representação das mulheres na política, com uma referência específica à Itália à luz do acórdão do Tribunal Constitucional Italiano n° 4 de 2010. Para se alcançar o equilíbrio de gênero com base na representação política na prática, a paridade deve ser imposta e pode ocorrer tanto para as próprias partes quanto para a lei.

**Palavras-chaves:** Mulher na política. Constituição italiana. Equilíbrio de Gênero.

### **Introduction**

The aim of this study is to briefly analyse the under-representation of women in politics with a specific reference to Italy in the light of the Italian Constitutional Court Judgment n° 4 of 2010.

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Therefore, some concepts are of major importance to better understand the framework.

Firstly, the Principle of Equality, highlighted in the Italian Constitution in its Article 3, when it says:

“All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions”.

And in the second paragraph:

“It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country”.

Secondly, the first part of the Article 51 of the same Legal Code, where, in accordance to the first paragraph of Article 3, shows formal equality when provides:

“Any citizen of either sex is eligible for public offices and elected positions on equal terms, according to the conditions established by law”.

However, an important reform in 2003 introduced on the second part of the Article, positive actions extended to national law:

“To this end, the Republic shall adopt specific measures to promote equal opportunities between women and men”.

### **Gender Equality in Regional Elections: The Italian Constitutional Court’s Judgment n° 4 of 2010**

In 2010, the opinion of the Court involved a regional election law of the Campania region<sup>1</sup> raised by the Government. The Article 4, paragraph 8, L. R. Campania n. 4/2009 gave any elector the chance to express one or two preferences: the expression of two preferences (double preference) was only valid in case the two preferences were given to candidates (included in the same list) of different genders. In case both preferences were given to

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<sup>1</sup> Legge regionale 27 marzo 2009, n. 4, in Boll. Uff. Reg. Campania, 14 aprile 2009, n. 23 (It.).

candidates of the same gender, the second preference would be considered invalid<sup>2</sup>. The law voided every list that did not comply with this requirement.

The Government claimed violation of Articles 3 and 51 of the Constitution. In depth, according to the Government, the law violated article 3 because it treated the second candidate unequally based on his or her sex if he or she was of the same sex as the first candidate selected by the voter. And violated 51 because it tied access to an elected position to the sex of the second candidate selected by the voter and was thus an improper basis for unelectability.

The Government also challenged the constitutionality of the regional law, arguing that the electoral system would compress the freedom of vote, granted in Article 48.

### **The opinion of the Court**

The Court's argumentation is based on the consideration that the double-preference system does not compress the freedom of the right to vote, granted in art. 48 of the Italian constitution, that provides that: "All citizens, men and women, who have reached the age of majority, are voters. The vote is personal and equal, free, and secret. Its exercise is civic duty".

Since the regional law introduced a "promotional chance" which is perfectly gender-symmetric, and any elector remains free to express only one preference, the Court considered that those constitutional limits were not exceeded.

The Constitutional Court confirmed the legitimacy of the measure adopted to promote equal access to representation on the basis that norms such as these subject to the judicial examination could only provide voters with further possibilities of choice, without affecting the electoral result.

Thus, the Court concluded that the law creates a greater possibility in achieving equality in the election of women by the same time it does not impose on election of candidates (substantive equality). The Campania law indeed resulted in the election of more women in

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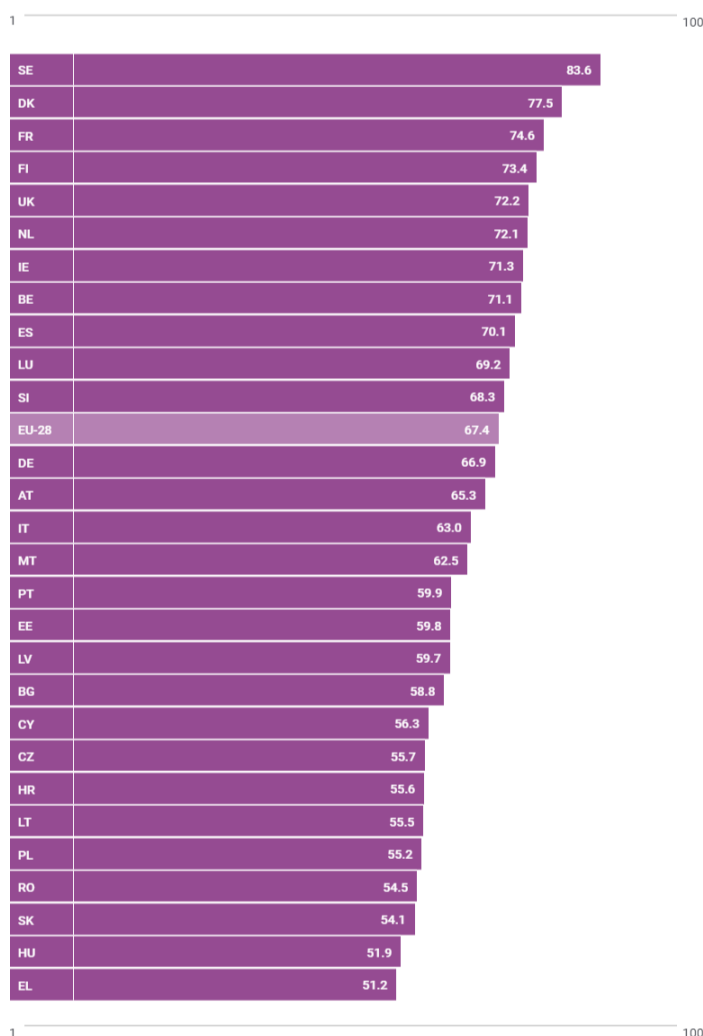
<sup>2</sup> Id. art. 4(3) ("L'elettore puo esprimere ... uno 0 due voti di preferenza ... Nel caso di espressione di due preferenze, una deve riguardare un candidato di genere maschile e l'altra un candidato di genere fernminile della stess lista, pena l'annullarnneto della seconda preferenza. ").

the regional elections of 2010, with a total of 23% improvement of women were elected in relation to the election of 2005 in that region<sup>3</sup>.

## Outcomes

It is necessary to present some data referring to the situation in Italy after the affirmative measures taken in order to highlight their importance and expose some improvements in gender equality on the field of political power. The tables demonstrate, 1) a comparison with 28 countries, in terms of Gender Equality and their position and 2) specifically some data in terms of political representation in Italy.

**Table 1:** Gender Equality Index Comparison EU 2019



Source: Gender Equality Index. The data for 2019 Index is from 2017.

<sup>3</sup> See Stefania Leone, "La preferenza di genere come strumento per *ottenere, indirettamente ed eventualmente, il risultato di un'azione positiva*," in *Giur. Cost.* 93-100 (2010).

According to the Gender Equality Index, Italy has the 14th position in the EU with 63.0 out of 100 points on the rank. Its score is 4.4 points lower than the EU’s score. Between 2005 and 2017, Italy’s score increased by 13.8 points. Italy is progressing towards gender equality since its rank has improved by 12 places since 2005.

**Table 2** – Gender Equality Index indicators for Italy for 2019

**Political**

Country	Share of ministers (%)		Share of members of parliament (%)		Share of members of regional assemblies (%)	
	Women	Men	Women	Men	Women	Men
IT	25.0	75.0	31.5	68.5	18.8	81.2
EU-28	28.1	71.9	29.3	70.7	28.5	71.5

Source: Gender Equality Index. The data for 2019 Index is from 2017.

The domain of power measures gender inequality in decision-making across the political, economic, and social fields. Within this basis, political power analyses the representation of women and men in national parliaments, government, and regional assemblies. According to The European Institute for Gender Equality (EIGE) and Gender Statistics Database, Italy’s score in the domain of power is 47.6 and although this is the lowest score for Italy across all domains, it has improved the most over time. Italy’s progress, in this domain, is the second strongest in the EU. This is due to the adoption by Italy of legislative candidate quotas in between 2005 and 2018 and the representation of women in parliaments improvement after their application.

**Final considerations**

With the Italian Judgment aforementioned, the Court declares gender preference legitimate in regional elections shaping the judicial interpretation of affirmative action measures to gender balance. The electoral quotas, as a ‘good discrimination’ ensure representation and democracy, because expose and react to a discrimination.

As can be inferred, the positive actions were adopted on the basis of the fundament of Substantive Equality, to safeguard disadvantage groups like women in political representation

and serving as starting points, trying to change the social, legal conditions of the group that are in a lower level, providing only the means to achieve the right, not giving the right itself, with the scope of accelerate the acquirement of gender equality and decrease discrimination against women.

Finally, in order to achieve gender balance on the basis of political representation in practice, parity must be enforced, and it may occur either for the parties themselves or by the law.

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