

Transitional Justice Institute: Ulster University
LLM Human Rights Law and Transitional Justice

**HOW EFFECTIVE? THE BASQUE COUNTRY'S RESPONSE TO GENDER
IMBALANCE IN POLITICAL DECISION-MAKING PROCESSES**

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TABLE OF CONTENTS

Abstract	4
1. Introduction	5-11
2. Literature review	12-16
3. Conceptual framework	17
<i>3.1. Formal and substantive equality</i>	17-19
<i>3.2. Affirmative measures</i>	19
<u>3.2.1. Leadership</u>	19-20
<u>3.2.2. Gender Quotas</u>	20-25
<u>3.2.3. Parity laws</u>	25-27
4. Basque Country's response	28
<i>4.1. International/European/Spanish policy framework: introductory remarks to the Basque case</i>	28-31
<i>4.2. Basque legal framework</i>	31-36
<i>4.3. Effectiveness</i>	36-40
5. Conclusions	41-43
Bibliography	

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ABSTRACT

This dissertation sheds light on the Basque Country's means by which it has addressed women's unequal participation in political decision-making processes. The final purpose will be to find out whether this response adopted by the Basque institutions has been effective or not. For this purpose, this study will begin by analysing the historical imbalance that has existed and exists between men and women in many spheres of our society, focusing on the political terrain. This will serve to understand the general background of the study at hand, the reasons for choosing the political domain and the differences between public and private spheres.

The analysis will outline the gender theories and historical overview related to women's political rights and their participation in decision-making processes as a matter of human right and democracy, amongst others. This will show the broad panorama around the unfinished process that implies the full recognition of the political rights of women, scrutinizing necessary concepts such as substantive and formal equality, equality of results as well as gender quotas and parity laws. Thus, this study will take mainly a socio-legal approach.

Finally, this research will endeavour to clarify the success and the limitations of the Basque response by showing the results of the political panorama through statistics provided by the Basque Statistic Office and the Basque Institute for Women. The Basque Equality Act provisions will be discussed since it targets the gender quotas and parity requirements at the Basque Government and the Basque Parliament. This will help to reach the final conclusions that will allow qualifying the answer to the effectiveness of the Basque practice.

1. Introduction

'Women should fully enter politics if they want their legal equality to be transformed into effective equality, participating in all levels of power where future decisions are made and main laws are developed for the interest of the whole population'.¹

Although women have always been in the workforce, historically they have rarely been able to access the same jobs as men. This was justified by the well-worn myths that a woman's natural role was in the domestic sphere.² It was only in the late 19th century, when very slowly legal disabilities were gradually dismantled.³

After the Second World War, and more precisely, from the 1970's onwards, a great influx of European women entered the labour market as a totally new phenomenon and became a far more visible part of the workforce.⁴ In spite of this, job segregation, pay disparities

¹ Auñamendi Eusko Entziklopedia Fondo Bernardo Estornés Lasa 'Mujer' Historia: Moderna y Contemporánea (2013), para 6. See at <http://www.euskomedia.org/aunamendi/82757/56907>.

² Philosophers such as John Locke or Hegel based many of their ideas on the analytical separation of the public and the private spheres, namely that citizen or heads of household (for which one should read men) were the ones who were active in the public terrain. Karen Celis, Johanna Kantola, Georgina Waylen and S. Laurel Weldon 'Introduction: Gender and Politics: A Gendered World, a Gendered Discipline' in Georgina Waylen, Karen Celis, Johanna Kantola and S. Laurel Weldon *The Oxford Handbook of Gender and Politics* (Oxford University Press 2013), 6-7; Amelia Valcárcel *La Política de las mujeres* (Universitat de Valencia 1997), 30-31; Sandra Fredman *Discrimination Law* (Oxford University Press 2011), 65.

³ Sandra Fredman *Discrimination Law* (Oxford University Press 2011), 66; Mary Nash *Mujeres en el mundo: Historia, retos y movimientos* (Alianza ensayo 2004), 27.

⁴ Many International and European treaties helped this to happen: International Covenant on Economic, Social and Cultural Rights, Resolution 2200A (XXI) 16 December 1966 (into force January 1976) Art. 3; International Covenant on Civil and Political Rights, Resolution 2200A (XXI) 16 December 1966 (into force March 1976) Arts. 2 and 3; The Declaration on the Elimination of Discrimination against Women, Resolution 2263 (XXII) 1967 (see i.e. Arts 1 and 2) and the following legally binding 1979 Convention on the Elimination of All Forms of Discrimination Against Women (i.e. Arts. 2 and 5); the principle of equal pay for equal work became part of the Treaty of Rome (1957) and one of the European Union's fundamental values. See on this Case 43/75 *Defrenne v Société Anonyme Belge de Navigation Aérienne* (ECJ, 8th April 1976). See more at the European Commission Report 'Gender equality in the workforce: Reconciling work, private and family life in Europe' Justice, April 2014, 1 or Colm O'Connell The Constitutionalization of Equality within the EU Legal Order: Sexual Orientation as a Testing Ground *Maastricht Journal of European and comparative law*, Vol 22, N°3 (2015), 371. With the entry into force of the Treaty of Amsterdam in 1999, the promotion of equality between men and women became one of the essential tasks of the European Community (Article 2 EC). Since 1999, the EU has had the competence to take further action to combat discrimination based on gender (Article 13(1) EC, now 19(1) TFEU), providing legal basis for a series of directives,

and part-time work persisted.⁵ This has not changed that much in Europe since women continue to hold unequal position in the employment domain.⁶ Even though in recent years more women have entered the workforce, women and girls still experience more difficulties than their counterparts in finding a first job, earning the same wages and climbing the career ladder.⁷ Likewise, most women have been socialized into traditional roles in patriarchal societies and have had a low or no presence when deciding and executing decisions:⁸ the industrial revolution together with the liberal politics developed the archetype of men as a public figure, worker, citizen, house-head, breadwinner and the only political subject, whilst women were consigned to the home.⁹

on equal pay, equal treatment, social security, burden of proof, pregnancy and parenthood and other relevant areas such as the principle of equal treatment between men and women in access to and the supply of goods and services 2004/113 or 2006/54 on equal opportunities and treatment in matters of employment and occupation. The Charter of Fundamental Rights of the European Union also prohibits discrimination on any grounds, including sex, (Article 21) and in 2009, the Treaty of Lisbon provided that equality between men and women features amongst the common values on which the European Union is founded: Art. 2 of the Treaty on European Union (TEU) or the promotion of equality by Art. 3(3) TEU) or Art. 157 of the Treaty on the Functioning of the European Union (TFEU), providing for equal pay between male and female workers.

⁵ Report summary: Women in the labour market, two decades of change and continuity, Institute for employment Studies, employment patterns. See <http://www.employment-studies.co.uk/report-summaries/report-summary-women-labour-market-two-decades-change-and-continuity>. See also Sandra Fredman *Discrimination Law* (Oxford University Press 2011), 66.

⁶ European Commission Report on Gender Equality Key Findings Fact Sheet, March 2016. See at http://ec.europa.eu/justice/genderequality/files/annual_reports/160307_factsheet_gender_equality_2015_final_en.pdf.

⁷ Katrin Elborgh-Woytek, Monique Newiak, Kalpana Kochhar, Stefania Fabrizio, Kangni Kpodar, Philippe Wingender, Benedict Clements and Gerd Schwartz *Women, Work and the Economy: Macroeconomic Gains from Gender Equity* International Monetary Fund (2013), 4; See also OECD Report 'Closing the Gender Gap: Act Now' (OECD Publishing 2012), 15 and 149.

⁸ Rosa Linda T. Miranda 'Impact of women's participation and leadership on outcomes' Expert Group Meeting on Equal participation of women and men in decision-making processes, with particular emphasis on political participation and leadership 24 to 25 October 2005 Addis Ababa UN, 4.

⁹ Mary Nash *Mujeres en el mundo: Historia, retos y movimientos* (Alianza ensayo 2004), 28. Sandra Fredman remarked that this subordination was especially true of marriage and following this, John Stuart Mill described the marriage as woman's legal death, where 'the whole character of the marriage relation as constituted by law... confers upon one of the parties to the contract legal power and control over the person, property, and freedom of action of the other party, independent of her own wishes and will...'. See Neus Campillo 'Introducción a John Stuart Mill y Harriet Taylor Mill' *Ensayos sobre la igualdad sexual* Madrid, Ediciones Cátedra, Instituto de la Mujer (2001), 40; Sandra Fredman *Discrimination Law* (Oxford University Press 2011), 64.

Although this research will focus on the current topical issue of women in the political arena,¹⁰ decision-making positions could be on any other domain such as the judiciary, public administration, business and finance, education, social partners and NGOs, environment or the media and so on.¹¹ The reason why this study will concentrate on politics is because, as Andrew Heywood defined it, politics is ‘the activity through which people make, preserve and amend the general rules under which they live’.¹² The distinctive feature of politics is precisely its public or general nature, the way it affects the whole community.¹³ As Bismarck said, politics can be defined as ‘the exercise of control within society through the making and enforcement of collective decisions’.¹⁴ This is why it is widely acknowledged that the exclusion of women from the public power created politics from a male perspective.¹⁵

¹⁰ See e.g. the recent media repercussion on Clinton running for US presidency as a woman in 2016. Maeve Reston ‘What Clinton’s loss says about women in politics’ CNN November 10 2016: <http://edition.cnn.com/2016/11/09/politics/clinton-loss-women-politics/>; or Arantza Santesteban ‘Clinton vs Trump: emakumeak eztabaidaren erdigunean’ Berria 10/27/2016: http://www.berria.eus/paperekoa/1832/015/003/2016-10-27/clinton_vs_trump_emakumeak_eztabaidaren_erdigunean.htm.

¹¹ See e.g. European Commission webpage on Gender balance in decision-making positions, Database, last update 02/08/2016: http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/index_en.htm.

¹² Andrew Heywood *Politics* Fourth Edition (Palgrave Macmillan 2013), 2. He further defines two approaches to defining politics: 1) the association with an arena or location and 2) process or mechanism in which case ‘political’ behaviour exhibits distinctive characteristics or qualities, so it can take place in any and perhaps all social contexts. Ibid, 3.

¹³ Rousseau, Weber, Arendt or Stuart Mill stated that politicians are those who hold ‘public office’. See at Hannah Arendt *The human condition* (University of Chicago Press 1958), 29-30. Weber was mentioned saying this in Amelia Valcárcel *La Política de las mujeres* (Universitat de Valencia 1997), 100; Jean Jacques Rousseau *The Social Contract and Discourses* New York (E.P Dutton & CO 1761), 49-90; John Stuart Mill ‘Consideration on Representative Government’ in John Stuart Mill and Geraint Williams *Utilitarianism, On Liberty and Consideration on Representative Government* (Dent & Sons Acton H.B. 1972). Aristotle, interestingly, called ‘polity’ the ideal system of government as it is ‘mixed’, since it combines both aristocratic and democratic features. See more at Andrew Heywood *Politics* Fourth Edition (Palgrave Macmillan 2013), 5.

¹⁴ In 1884, when speaking in the Reichstag, Bismarck offered a variant to this definition: ‘Politics is not a science, as the professors are apt to suppose. It is an art’. Otto von Bismarck (1815-1898) Prussian statesman Speech, Prussian upper house (18 Dec 1863). This would be the classical definition of politics, developed from the Ancient Greece. See more at Andrew Heywood *Politics* Fourth Edition (Palgrave Macmillan 2013), 3.

¹⁵ Karen Celis, Johanna Kantola, Georgina Waylen and S. Laurel Weldon ‘Introduction: Gender and Politics: A Gendered World, a Gendered Discipline’ in Georgina Waylen, Karen Celis, Johanna Kantola and S. Laurel Weldon *The Oxford Handbook of Gender and Politics* (Oxford University Press 2013), 7; Robert Dahl *Modern political analysis* Upper Saddle River (NJ: Prentice-Hall 1984), 9-10. This academic defined politics as relating to power and political systems as ‘any persistent pattern of human relationships that involves control, influence, power or authority’; Amelia Valcárcel *La política de las mujeres* (Universitat de Valencia 1997), 125. Following Arendt, Cynthia Enloe highlighted

Thus, through women's involvement in political decision-making processes, this 'subordinated' or minority group¹⁶ that has been underrepresented would have more chances to change their situation and make visible interests and necessities that have not been discussed or seen so far: not only in politics, but also in all other areas that compose our society.¹⁷

Research has shown the existence of multiple factors that prevent gender-balanced competition at the political level.¹⁸ The most common explanations explored in literature can be grouped in three dimensions such as the structural, cultural or ideological, and institutional or political.¹⁹ The empowerment of women is not, however, a neglected issue. Already in the 1960s, the International Covenant on Civil and Political Rights (ICCPR) stated that 'the States party to the present covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present

that study of power must include 'not only those perceived as the powerful, but also all those involved in the realisation of power and influence for those at the top'. Cynthia Enloe 'Margins, silences and bottom rungs: How to overcome the underestimation of power in the study of international relations' in Steve Smith, Ken Booth and Maryisa Zalewski *International theory: Positivism and beyond* Cambridge UK, Cambridge University Press (1996), 186-202; Begoña Zabala González *Movimiento de mujeres, mujeres en movimiento* (Txalaparta 2008), 14.

¹⁶ Helen Mayer Hacker *Women as A Minority Group* Social Forces 30 (1951), 60-69.

¹⁷ Anne Phillips e.g. advocated that women's presence generate knowledge about women's problems and their solutions, prioritizing their specific issues. Anne Phillips *The Politics of presence* (Oxford: Clarendon Press 1995), 71; Miki Caul Kittilson 'Representing women: The adoption of family leave in comparative perspective' *Journal of Politics* 70(2) (2008), 323-334; or Leslie Schwindt-Bayer *Political power and women's representation in Latin America* Oxford (Oxford University Press 2011), 183-184; or Monique Leijenaar *Political Empowerment of Women: The Netherlands and Other Countries* 59 (Springer 2013), 3. Monique emphasizes what makes women in common as a group: (a) the historical deprivation of (political) rights; (b) a lower participation rate in the labour force, and one which exhibits both horizontal and vertical segregation; (c) a capability to bear children, which has resulted, among others, in a gendered division of domestic labour, as women being the 'carers' in society.

¹⁸ 'Every study of political recruitment shows that legislatures almost always include more men than women, more well than badly educated, more affluent than poor, more middle-aged than young, more people working in the public sector than in the private sector and more urban than rural representatives'. See at Monique Leijenaar *Political Empowerment of Women: The Netherlands and Other Countries* 59 (Springer 2013), 2-3.

¹⁹ Marcela Ríos Tobar *Mujer y política: el impacto de las cuotas de género en América Latina* IDEA Internacional Institute for Democracy and Electoral Assistance (2008), 14; OECD 'Closing the gender gap: Act now', Executive Summary (2012), 15. See on country's (political, ideological or cultural and socioeconomic) development at Jocelyn Viterna, Kathleen M. Fallon and Jason Beckfield 'How Development Matters: A Research Note on the Relationship between Development, Democracy and Women's Political Representation' *Harvard University International Journal of Comparative Sociology* (2008).

covenant²⁰. In addition, in 1995 the European Council of Ministers adopted the resolution where the Council acknowledged that balanced participation in decision-making in every sphere of life ‘constitutes an important condition for equality between men and women’.²¹ Furthermore, this persistent under-representation of women in politics has triggered great issues to the functioning of representative democracy.²² The Inter-Parliamentary Union has acknowledged that ‘a strong and vibrant democracy is possible only when parliament is fully inclusive of the population it represents’ and that ever since the first United Nations World Conference on Women in Mexico City in 1975, the international community has paid great attention to women’s representation and impact on political decision-making structures.²³ Neither did the Basque political leaders shrink from giving a response to this worldwide issue that needs an output in order to count on a real, qualitative and fairer democracy. It was not until 2005 when the Basque Government introduced the Gender Equality Act 4/2005,²⁴ exercising the competence emanating from the Spanish Constitution (SC).²⁵

In order to be able to examine the means by which the Basque Country (BC) has addressed women’s unequal participation in political decision-making processes; first, it is convenient to explain why this study will use the European Union (EU) and Spain as geographical framework.

To begin with, it must be noted that Spain is a highly decentralized unitary state. It is divided into seventeen autonomous communities (AC), each with its own legislative and

²⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Art. 3.

²¹ Council Resolution of 27 March 1995 on the balanced participation of men and women in decision-making Official Journal C 168, 04/07/1995 P. 0003 – 0004, 1 (a).

²² Monique Leijenaar *Political Empowerment of Women: The Netherlands and Other Countries* 59 (Springer 2013), 2.

²³ Inter-Parliamentary Union ‘Equality in Politics: A Survey of Women and Men in Parliaments’ Reports and Documents n° 54 (2008), III.

²⁴ Ley 4/2005 de 18 de febrero para la igualdad de Mujeres y Hombres. Publicado en BOPV núm. 42 de 02 de Marzo de 2005 y núm. 274 de 14 de Noviembre de 2011.

²⁵ Cortes Generales ‘Constitución Española 1978’ *Boletín Oficial del Estado* 311 (1978), see English version at http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/const_espa_texto_ingles_0.pdf.

Under Arts. 147 (1) and (2) (d) of the Spanish Constitution, the Basque Government can regulate on gender equality and non-discrimination issues on grounds of sex through its own ‘Estatuto de Autonomía del País Vasco’, Ley Orgánica 3/1979 de 18 de diciembre, Art. 9 (1) and (2) (d). See also Art. 149.1.1 together with 23 and 81.1 SC.

executive power, which relate to the central state in Madrid, as established in Title VIII of the Spanish Constitution.²⁶ Therefore, the BC comprises the community of the Basque Country and Navarre in Spain along with the Northern Basque Country in France. For our purpose, this dissertation will mainly focus on the Spanish Basque Country (Hego Euskal Herria) and its three provinces: Alava, Biscay and Gipuzkoa. The Spanish nation has asymmetrically vested competences in each community, and in turn, they can exercise their right to self-government within the limits determined in the constitution and their autonomous statutes.²⁷ As a result, Basque's response cannot be analysed ignoring the country they belong to at the moment. Likewise, it cannot be overlooked that Spain, and hence the Basque Country, joined the EU in 1986, which influences their national legislation by virtue of EU gender equality directives transposition as well as the work of gender policy actors and civil servants.²⁸ Although the aim of this research will not consist of a comparative analysis, it will be useful to explain the background, origin, influences and overall context of the Basque reaction to this subject under investigation.

In this fashion, by analysing the different gender balance mechanisms, this dissertation scrutinizes Basque initiatives to deal with the gender imbalance in political decision-making processes. The final purpose will be to find out whether these means adopted by the Basque institutions are effective by involving the 51% of the Basque population when making decisions that concerns the whole community.²⁹

➤ Structure

This dissertation is divided into five chapters. Following the introduction, the literature review includes an analysis of gender theories and historical overview related to women's political rights and their participation in decision-making processes. The third chapter provides the concepts with which the fourth chapter will deal with when explaining the

²⁶ See Art. 137 of the SC.

²⁷ See Art. 143.1 SC.

²⁸ http://www.europarl.europa.eu/external/html/eu enlargement/default_en.htm. See Art 114 TFEU (Treaty on the Functioning of the European Union, approximation of laws).

²⁹ See more at Eustat (Basque Statistic Institute):

http://en.eustat.eus/elementos/ele0011400/ti_Poblacion_de_la_CA_de_Euskadi_por_a%C3%B1o_de_nacimiento_segun_el_territorio_historico_y_elsexo_2015/tbl0011424_i.html#axzz4PL5tl64H.

strategies employed by the Basque Country to tackle the historical absence of women in the public realm, including the extent to which such means have achieved the meeting expectations. Both chapters study how this can impact on the discourse of equality, human rights, citizenship as well as democracy. This study ends by outlining some of the challenges that remain in the Basque remedies to qualify the Basque response as effective.

➤ **Methodology**

This dissertation subscribes to a socio-legal approach: analysing the relationship between law and society. Therefore, both theoretical and empirical research is included. It assesses documents specialized in this topic, including those on gender theory, international and national instruments protecting women's political rights as well as statistical database and information about the current women's participation in the Basque Country. These latter sources are of particular value as far as effectiveness is concerned and will serve to give credibility to the final critical analysis. When talking about political decision-making processes, this study focuses on women's involvement or participation in the institutions where these decisions are taken such as the Parliament and the Government. This is why the research is conducted primarily through the information provided by functional government agencies, Statistic Offices along with the organizations and entities to which the information relates. Furthermore, methods such as the black letter or doctrinal research will help to enhance the final arguments. Finally, the languages the study will use are English, Spanish, Basque and to a less extent, French.

2. Literature Review

Women's exclusion from the public sphere motivated many critics and provoked questions as to the recognition of women as citizens. In this vein, political theory and gender studies have sought to explain, for decades, the reasons for the persistent marginalization of women policy areas and the impact this has on the possibility of moving towards greater gender equity and to empowerment of women as political and social subjects.

During the Age of Enlightenment, women were not included in the so-called social contract.³⁰ The *Declaration of the Rights of Man and of the Citizen* (1789) passed by France's National Constituent Assembly, influenced by Thomas Jefferson together with General Lafayette³¹ reaffirmed the exclusion of women as right-holders, denying them the category of citizenship and thus, the rights inherent to that condition.³² With the French revolution (1789-1799), many women started organising in a collective way claiming for their political rights.³³ The message of the revolution was based on the principles of freedom, equality and rights as universal paradigm. Thereby, Olympe de Gouges published the *Declaration of the Rights of Woman and Citizen* (1791) demanding that the revolution denied women's political rights and showed the false universalism of its principles.³⁴ She proposed a constitution where both men and women could be considered as citizens and could participate in the social contract.³⁵ Similarly, the British

³⁰ The Age of Enlightenment was created in Europe, mainly in France and England during XVIII century. The whole idea was about enlightening the world by the use of the reason, which only men could do. Adriana Medina Espino and Ruth Gisela Márquez Benítez *La participación política de las mujeres: De las cuotas de género a la paridad* Centro de Estudios para el Adelanto de las Mujeres y la Equidad de Género (2010), 15; See more on social contract at Carole Pateman and María Xosé Agra Romero *El contrato sexual* Vol. 87 (Anthropos Editorial 1995), 9-29.

³¹ Gregory Fremont-Barnes *Encyclopedia of the age of political revolutions and new ideologies 1760-1815* (Greenwood Publishing Group 2007), 189-190.

³² See overall Legifrance at <https://www.legifrance.gouv.fr/Droit-francais/Constitution/Declaration-des-Droits-de-l-Homme-et-du-Citoyen-de-1789>. The man was the one considered as the subject with his own rights (Arts 1, 2) and that man was white, owner and heterosexual. See more at Cinta Canterla González 'Mujer y derechos humanos: universalismo y violencia simbólica de género' in *Discursos, realidades, utopías: la construcción del sujeto femenino en los siglos XIX-XX* (Anthropos 2002), 19-20.

³³ Mary Nash *Mujeres en el mundo: Historia, retos y movimientos* (Alianza ensayo 2004), 74 and 77.

³⁴ During the 'Reign of Terror', in 1793, she was executed by guillotine for crimes against the government.

³⁵ See more at <https://chnm.gmu.edu/revolution/d/293/>. Additionally, she presented a written political programme advocating female's vote, besides women's representation right and national sovereignty. See at Junius Rodriguez *Encyclopedia of Emancipation and Abolition in the Transatlantic World* Vol. 1-3 (Routledge Taylor and Francis Group London and New York 2015), 167.

writer and philosopher Mary Wollstonecraft wrote a book called *A Vindication of the Rights of Woman* (1792), gradually making more accepting women's role in the workplace.³⁶ In addition to these feminists, John Stuart Mill and Harriet Taylor also played key roles on the insistence of the extension of suffrage to the entire population: Taylor published an essay called *The Enfranchisement of Women* (1851)³⁷ advocating for women's right to vote, barely three years after American women had called for women's suffrage at the Women's Rights Convention in Seneca Falls (1848),³⁸ and John Stuart Mill did the same with *On Liberty* (1859).³⁹

The rise of women's political liberation movement continued in Europe during the late 19th and early 20th centuries. This period, also called as the 'first wave' or collective action, had women's suffrage as its primary goal (women's right to vote and to be elected), resulting in access to the public sphere and acquisition of political rights, education and paid jobs. Thanks to this movement, the right to participate in politics was internationally recognised as a fundamental right.⁴⁰ Nonetheless, this recognition was not enough to abolish the exclusion of women in positions of political power. Consequently, the 1960s and 1970s, often viewed as the 'second wave', stimulated more radical thinking about the nature of the political arena as well as where it takes place.⁴¹ During this time, significant female activists published influential books, such as Simone de Beauvoir, who produced *the second sex* (1949) or *Feminine Mystique* (1963) by Betty Friedman. The first publication dealt with the treatment of women throughout history and examined the different singularities of male oppression.⁴² The latter was launched as a resurgence of

³⁶ Mary Wollstonecraft *A Vindication of the Rights of Woman* (ed Isabel Burdiel) Madrid, Ediciones Cátedra, Instituto de la Mujer (1994), 131-132. She dared to argue the thoughts of Burke and Rousseau by defending how weak they make women with their writings. She also saw inexplicable the fact of excluding half of human beings in government participation and concluded that it was not legitimate to do so.

³⁷ Harriet Taylor Mill *The Enfranchisement of Women* Vol. 2 (Trubner 1868).

³⁸ See more at Judith Wellman 'The Seneca Falls Women's Rights Convention: A Study of Social Networks' *Journal of Women's History* 3.1 (1991), 9-37.

³⁹ John Stuart Mill 'On Liberty' in *A Selection of his Works* (Macmillan Education 1966).

⁴⁰ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A III), Art. 21.

⁴¹ It was during this time when the notion of 'the personal is the political' was more asserted. Andrew Heywood *Politics* Fourth Edition (Palgrave Macmillan 2013), 10-11; Amelia Valcárcel *La Política de las mujeres* (Universitat de Valencia 1997), 78. See also Kate Millet *Sexual Politics* (University of Illinois Press 2000), 23.

⁴² Simone De Beauvoir *Le deuxième sexe* Paris (Gallimard 1949).

women's rights activism among middle class white women, a group that had been politically passive since achieving suffrage.⁴³

In the case of the Basque Country, the second wave was key for women's political rights movement. The right to vote was recognised for the first time during the Second Republic (1931–1936), which ended being abolished with the Franco regime (1939-1975), after the Civil War (1936–1939).⁴⁴ When Franco died in November 1975, also called the first day of women's liberation,⁴⁵ the Spanish and Basque's transition to democracy began, which is considered to come to an end with the adoption of the Constitution in 1978.⁴⁶ By virtue of the Constitution and the recognition of formal equality (Art. 14), women's rights started developing together with other European women's political demands.⁴⁷ During this time María de Maeztu (Lyceum Club),⁴⁸ Concepción Arenal (*La mujer del porvenir*),⁴⁹ Carmen de Burgos (*La mujer moderna y sus derechos*)⁵⁰ and the main activist

⁴³ Betty Friedan *The Feminine Mystique* (1963).

⁴⁴ See more at Auñamendi Eusko Entziklopedia, Fondo Bernardo Estornés Lasa 'Mujer (Historia: Moderna y Contemporánea): <http://www.euskomedia.org/aunamendi/82757/77375?idi=en>.

⁴⁵ Ibid.

⁴⁶ Josep M. Tamarit Sumalla, *Historical Memory and Criminal Justice in Spain, a case of late Transitional Justice*, Vol.14 (2013), 61-63. Javier Chinchón differentiates three periods here: the massive repression realized by the bands in the Civil War (from 17 July 1936 to February 1937), the period of the emergency War Councils (from March 1937 to the first months of 1945) and the repression exerted by the dictatorship to eliminate the guerrillas and those who assisted them (from 1945 to 1952). Javier Chinchón Alvarez, 'The challenges posed to the recent investigation of crimes committed during the Spanish Civil War and Francoism', in Jessica Almqvist and Carlos Espósito, *The Role of Courts in Transitional Justice*, voices from Latin America and Spain (2012), 141.

⁴⁷ Ascensión Elvira Perales 'La participación política de la mujer' in Alberto Palomar Olmeda *El tratamiento del género en el ordenamiento español: Una visión multidisciplinaria del tratamiento de la mujer en los distintos ámbitos sociales* Tirant Lo Blanch Valencia (2005), 415.

⁴⁸ See Juan Aguilera Sastre 'Las fundadoras del Lyceum Club femenino español' *Brocar: Cuadernos de investigación histórica* 35 (2011), 67.

⁴⁹ Concepción Arenal 'La mujer del porvenir' *La mujer en los discursos de género. Textos y contextos en el siglo xix* (1995), 473-85.

⁵⁰ Carmen De Burgos *La mujer moderna y sus derechos* (2007). See more at El Público 'La Simone de Beauvoir española se llamaba Carmen de Burgos' 09/11/2016: <http://www.publico.es/sociedad/simone-beauvoir-espanola-llamaba-carmen.html>.

on women's suffrage, Clara Campoamor (*Mi pecado mortal. El voto femenino y yo*)⁵¹ were noteworthy for their active role on women's political involvement.⁵²

Due to nearly 40 years of Franco's repressive governmental policies, Basque women's movement was very behind comparing to other European countries.⁵³ But the time between the 60s and 70s supposed a wake-up call with the rise of Basque nationalism, the creation of the armed Basque nationalist and separatist group (ETA) together with women's equal participation movements and associations.⁵⁴ The 80s brought the institutionalisation of feminism by the incorporation of feminists in Basque institutions, such as the Institution to guarantee equality between men and women (Emakunde, 1988).⁵⁵ However, it is believed that the high point for Basque women's political participation was in the 90s, culminating with the 1995 Beijing Platform for Action and the introduction of women's quotas in many countries, leading to important increases during the 21st century.⁵⁶ In this phase, important scholars expanded their ideas about women's specific concerns in decision-making: Amelia Valcarcel (*La política de la mujeres*),⁵⁷ Mary Nash (*Mujer, familia y trabajo en España*),⁵⁸ Susan Tavera

⁵¹ Clara Campoamor *El voto femenino y yo* Vol. 5 (Editorial Horas y Horas 2006). See also her speech when women's right to vote was recognised for the first time in 1931 at EL PAÍS 'Texto íntegro del discurso de Clara Campoamor en las Cortes' 01/10/2015 (Spanish):

http://sociedad.elpais.com/sociedad/2006/10/01/actualidad/1159653602_850215.html?id_externo_rsoc=FB_CM.

⁵² Voces Visibles 'La mujer, una voz visible que se extiende' Historia de feminismo en España (Nov. 2015). See more at <http://www.vocesvisibles.com/historia-del-feminismo/historia-del-feminismo-en-espana>.

⁵³ Begoña Zabala González *Movimiento de mujeres, mujeres en movimiento* (Txalaparta 2008), 27.

⁵⁴ Edurne Epelde, Miren Aranguren and Irati Retolaza *Gure genealogia feministak. Euskal Herriko mugimendu feministaren kronika bat* (2015), 23, 32, 50 and 74; Amy Crumly 'Gender, Basque nationalism and women's associations: The case of Lanbroa' *European Journal of Women's Studies* 20.1 (2013), 49-51.

⁵⁵ Ley 2/1988, de 5 de febrero, sobre la creación de Emakunde-Instituto Vasco de la Mujer (publicado en BOPV nº 45 de 4 de Marzo de 1988 y BOE nº 62 de 13 de Marzo de 2012). Through this law the Basque Women's Institute, better known as Emakunde, was created. See also Euskal Herriko Bilgune Feminista 'Bagoaz Euskal Herriaren Burujabetza Feministarantz' (2015), 16. Whilst Emakunde maintains a non-partisan position in regard to Basque politics, individual associations vary significantly in their relationship to Basque politics and to Basque nationalism.

⁵⁶ Anita Vandenberg 'International trends in women's political participation and representation' in Rawwida Backsh and Wendy Harcourt *The Oxford handbook of transnational feminist movements* (Oxford University Press 2015), 216. The extent that women's organisations are included in policy-making processes has shown to be a highly issue specific. See at Mieke Verloo 'Gender equality policies as interventions in a changing world'. Keynote lecture at the second gender and politics European Consortium for Political Research (ECPR) conference, Budapest, (2011), 7.

⁵⁷ Amelia Valcárcel *La política de las mujeres* Vol.38 (Universitat de València 1997).

⁵⁸ Mary Nash *Mujer, familia y trabajo en España (1875-1936)* Vol. 5 (Anthropos Editorial 1983).

(*Experiencias desiguales: conflictos sociales y respuestas colectivas*),⁵⁹ Margarita Nelken (*La condición social de la mujer*),⁶⁰ Revilla⁶¹ or Elizondo, amongst others.⁶² As can be seen, all these long-term published literature by feminist activists as well as women's political rights mobilizations prove that this is a matter of major concern that has not been ignored and reflects a long history of discrimination against women in the public realm.

⁵⁹ Susanna Tavera García and Mary Nash *Experiencias desiguales: conflictos sociales y respuestas colectivas (siglo XIX)* (1994).

⁶⁰ Margarita Nelken *La condición de la mujer en España* Vol. 7 CVS Ediciones (1975).

⁶¹ Marisa Revilla 'Participación política: lo individual y lo colectivo en el juego democrático' *Sociedad y política: temas de sociología política* (Alianza Editorial 1995), 299-323.

⁶² Arantxa Elizondo 'Partidos Políticos y Mujeres' in Edurne Uriarte and Arantxa Elizondo *Mujeres en política: análisis y práctica* Vol. 3 (Instituto de Estudios Almerienses 1997), 94-130.

3. Conceptual framework

3.1. Formal and substantive equality

In pursuance of a better understanding of the gender-based disparities in political decision-making processes, it is worth looking into the question of the principle of equality and the principle that ‘likes should be treated alike’.⁶³ This phrase is more commonly known as the basic Aristotelian principle of consistency or formal equality.⁶⁴ It entails that everyone should be treated according to his/her merits as an individual in her/his own right.⁶⁵ Albeit, as Fredman perfectly sets forth, consistency of treatment of two individuals who appear alike but in fact differ in access to power, opportunities or material benefits results in unequal outcomes.⁶⁶ According to her, such a principle would lead to focus on equality of results.⁶⁷ This alternative conception is based on a more substantive approach to justice, which relies on correcting past or ongoing discrimination and adjusting norms to accommodate difference.⁶⁸ The central idea is whether the effect of the law is to perpetuate disadvantage, discrimination, exclusion or oppression and act more favourably on measures that promote substantive equality for previously

⁶³ The concept of direct discrimination is based on this principle. See at Sandra Fredman *Discrimination Law* (Oxford University Press 2011), 148.

⁶⁴ Sandra Fredman *Discrimination Law* (Oxford University Press 2011), 40, 44.

⁶⁵ The result of the assumption of a ‘universal individual’ has been dubbed in feminist literature as the ‘male norm’, asking the question ‘Equal to whom?’. See the words of Catherine Mackinnon i.e. ‘under the sameness standard, women are measured according to our correspondence with man...’ C. MacKinnon *Feminism Unmodified* (Harvard University Press 1987), 34.

⁶⁶ Also described as indirect discrimination. See 155. See generally the pioneering US case *Griggs v Duke Power Co* USSC 46, 401 U.S 430 (1971).

⁶⁷ Sandra Fredman *Discrimination Law* (Oxford University Press 2011), 48. She stresses that the impact can be used on the individual or on a group.

⁶⁸ If only ‘likes’ are qualified for equal treatment and if a woman is doing a work of less value than a comparable man, it may be appropriate to pay her less, without treating her according to her difference. This is why the ‘like’ treatment could entrench difference and as Sen has argued ‘equal consideration for all may demand unequal treatment of the disadvantaged’. Amartya Sen *Inequality Re-examined* (Oxford University Press 1992) cited by Sandra Fredman *Discrimination Law* Oxford University Press (2011), 47. See also Marta Minow ‘Feminist reason: getting it and losing it’ *Journal for Legal Education* Vol 38 (1998), 47. Elaine Kennedy-Dubourdieu *Race and Equality: World Perspectives on Affirmative Action* (University of Nantes 2006), 50.

disadvantaged groups.⁶⁹ This difference approach arose in response to the initial view by liberal feminists that sought to minimize or equalize gender differences and opportunities so that women could assimilate into mainstream norms characterized and dictated by male standards.⁷⁰

In this theory of outcomes, Fredman identifies a sophisticated multidimensional classification of overlapping aims: to ‘break the cycle of disadvantage’ (redistributive); promote equal dignity and worth (recognition); entail positive affirmation and accommodate difference to achieve structural change (transformative); and facilitate or promote full participation (participative).⁷¹ It is in this last example where compensating for the ‘absence of political voice’ requires opening up ‘channels for greater participation in the future’.⁷² In this way, the redistributive would help to detect the root causes of women’s underrepresentation, the transformative would adapt the measures to the corresponding changes and the recognition dimension would promote a culture of respect for each individual.⁷³ Building on this approach, there is an alternative to both formal and substantive equality: equality of opportunity. This middle ground notion is believed to require taking measures ‘to ensure all persons of society have genuinely equal chance of satisfying the criteria for access to a particular social good’.⁷⁴

⁶⁹ Women as being part of the ‘vulnerable group’, substantive equality would focus on seeking the effects of particular measures on them. See more at Andrea Broderick ‘A Reflection on Substantive Equality Jurisprudence: The Standard of Scrutiny at the ECtHR for differential treatment of Roma and persons with disabilities’ *International Journal of Discrimination and the Law* Vol 15(1-2) (2015), 102. With regard to group vulnerability (on grounds of sex), see *Kiyutin v Russia* Appl. No. 2700/10 (ECtHR, 10 March 2011), para 63 citing *Abdulaziz, Cabales and Balkandali v UK* Appl. Nos. 9214/80, 9473/81, 9474/81 (ECtHR, 28 May 1985), para 78.

⁷⁰ This was supported by the idea to the women’s unique reproductive capacity and associated socially prescribed roles that differed from men and thus merited special treatment and accommodation. See more at Claire Barclay *Toward substantive equality: A feminist critique of the notion of difference in the Canadian and South African equality tests* *International Journal of Discrimination and the Law* Vol 5 (2001), 169.

⁷¹ Sandra Fredman ‘Providing Equality: Substantive Equality and the Positive Duty to Provide Resources’ (2005) 21(2) *South African Journal on Human Rights* 163, 167; or Sandra Fredman *Discrimination Law* (Oxford University Press 2011), 55; or Andrea Broderick ‘A Reflection on Substantive Equality Jurisprudence: The Standard of Scrutiny at the ECtHR for differential treatment of Roma and persons with disabilities’ *International Journal of Discrimination and the Law* Vol 15(1-2) (2015), 102-103.

⁷² Lourdes Peroni and Alexandra Timmer, ‘Vulnerable Groups: The Promise of an Emergent Concept in European Human Rights Convention Law’ *International Journal of Constitutional Law* 11 (2013), 1074-1075. See also Sandra Fredman *Discrimination Law* (Oxford University Press 2011), 60.

⁷³ Sandra Fredman *Discrimination Law* (Oxford University Press 2011), 250-251.

⁷⁴ B Williams ‘The Idea of Equality’ in P Laslett & WG Runciman (eds) *Philosophy, Politics and Society* Second Series

Hence, all these commitments to redressing the disadvantage, combating social exclusion as well as facilitating positive participation in substantive equality is claimed to be entailing the duty to provide or the so well known affirmative action that will be explained in the next chapter.⁷⁵

3.2. *Affirmative measures*

These policies are based on the recognition of the necessity to take special measures with provisional character. The aim is to accelerate men and women's *de facto* equality and eliminate women's structural disadvantages in order to have a balanced participation of them in all areas of society.⁷⁶ As such, affirmative measures recognise women and men's historical inequality regarding power and rights, which requires the state to take compensatory temporary measures in order to decrease gender imbalance.⁷⁷

3.2.1. Leadership

Among the measures that seek to guarantee greater gender balance in political decision-making, there is the one oriented to empower women's leadership and the barriers they face to access and remain. The restriction many females suffer from participating in politics reflects the general tendency of separating women and men's tasks, usually men

(1962), 125-126. Cited by Sandra Fredman 'Providing Equality: Substantive Equality and the Positive Duty to Provide Resources' (2005) 21(2) South African Journal on Human Rights 163, 167.

⁷⁵ It is well worthwhile mentioning the Canada's Supreme Court approach to the explicit affirmative action clause they have in the constitutional equality guarantees. While s.15(1) of the Canadian Charter of Rights and Freedoms sets out the basic protection against discrimination, s.15(2) ensures the constitutionality of affirmative action programmes. The Court clarified that a substantive approach to equality is 'not only to prevent discrimination but also to play a role in promoting the amelioration of the conditions of disadvantaged persons'. See at *Lovelace v Ontario* 1 S.C.R. 950 (2000), para 93. See more at Elaine Kennedy-Dubourdieu, ed. *Race and inequality: World perspectives on affirmative action* (Ashgate Publishing 2006), 50.

⁷⁶ Adriana Medina Espino and Ruth Gisela Márquez Benítez *La participación política de las mujeres: De las cuotas de género a la paridad* Centro de Estudios para el Adelanto de las Mujeres y la Equidad de Género (2010), 20.

⁷⁷ Virginia Maquieira y Elena Beltrán *Feminismos: Debates teóricos contemporáneos* Madrid: (Alianza Coleccion Ciencias Sociales 2001), 231.

occupying the highest positions,⁷⁸ resulting in as some scholars have qualified it as ‘glass ceiling’ effect.⁷⁹ Even those who make it tend to put up with male values that define politics, causing a double burden on them.⁸⁰ This is why international development organisations have emphasized the necessity to guarantee a ‘critical mass’ of women occupying positions requiring responsibilities so that they can also serve as role models to future generations as well as transform behaviours, beliefs and political dynamics.⁸¹

3.2.2. Gender Quotas

Gender quotas represent a compensatory and temporary mean that aim to ensure a minimum percentage of women in the legislature. They seek to achieve effective equality between different social groups when acceding to decision-making positions.⁸² In this way, the effort is not only on women, but also on those who control the selection process to get into political representation positions.⁸³ Therefore, these positive action measures highlight the collective responsibility over an individual right.

Gender quotas are a relatively new political factor for understanding women’s participation in politics. Their recent and rapid diffusion, also labelled as the ‘fast track’

⁷⁸ See more details at <https://firstladies.international/2016/02/22/2016-women-and-political-leadership-female-heads-of-state-and-heads-of-government/>.

⁷⁹ See amongst others Amelia Valcárcel *La Política de las mujeres* (Universitat de Valencia 1997), 98; Alison L. Booth *The glass ceiling in Europe: Why are women doing badly in the labour market?* Swedish Economic Policy Review 14 (2007), 121-144; The Guardian, ‘Forget the glass ceiling, we need to fix the broken windows first’, Women in leadership, 26 May 2015: <http://www.theguardian.com/women-in-leadership/2015/may/26/forget-the-glass-ceiling-we-need-to-fix-the-broken-windows-first>; or ‘Women of 2015: Where are the cracks in the glass ceiling?’ Gender, 30 December 2015: <http://www.theguardian.com/world/2015/dec/30/women-feminism-2015-glass-ceiling>.

⁸⁰ Jone Martinez Palacios in Berria ‘Parte hartze handiagoak ez dakar berez genero hausturarik’ 02/10/2016, para 11-12. She puts as examples women’s discretion, firm speeches and strong voice in order to be listened... See also this article on the strategies women tend to face in order to be listened: The Wall Street Journal ‘How to be heard at work as a woman’ Journal Reports: leadership 27/09/2016: <http://www.wsj.com/articles/how-to-be-heard-at-work-as-a-woman-1474963201>.

⁸¹ United Nations Beijing Declaration ‘Platform for Action’ *Fourth World Conference on Women* Vol. 15 (1995), 15, 31.

⁸² Marcela Rios Tobar *Mujer y política: el impacto de las cuotas de género en América Latina* IDEA Internacional Institute for Democracy and Electoral Assistance (2008), 13, 15.

⁸³ *Ibid*, 15.

to equal representation⁸⁴ is a central research topic in feminist and political theory since they are able to cover concepts such as citizenship,⁸⁵ representation, democracy,⁸⁶ equality, fairness, the political meaning of sex and gender and the actual decision-making process leading to quotas.⁸⁷ In fact, it is believed that a country's level of democracy can set the general context in which women are placed into political positions.⁸⁸ Nonetheless, specific features of each political system or levels of economic development can also

⁸⁴ Drude Dahlerup and Lenita Freidenvall 'Quotas as a 'fast track'to equal representation for women' *International Feminist Journal of Politics* 7.1 (2005), 26-48; Mona Lena Krook 'Quota laws for women in politics: Implications for feminist practice' *Social Politics: International Studies in Gender, State & Society* 15.3 (2008), 346.

⁸⁵ See i.e. the French parity debate, calling into question the universal character of French citizenship in order to replace it with the principle of parity, resulting in a constitutional amendment enshrining the principle of gender equality to create a legal basis for the adoption of statutory gender quotas. Françoise Gaspard, Claude Servan-Schreiber and Anne Le Gall *Au pouvoir citoyennes!: Liberté, égalité, parité* Seuil (1992); Gisèle Halimi *La nouvelle cause des femmes* Seuil (1997). Cited by Petra Meier and Emanuela Lombardo 'Gender quotas, gender mainstreaming and gender relations in politics' *Political Science* 65.1 (2013), 54-55.

⁸⁶ Some scholars suggest that initial levels and growth in democracy produce gains in women's representation 'given time' through an increasing return process. As such, they describe it by two dimensions: political rights and civil liberties, through which opportunities for activism may expand. See more at Pamela Paxton, Melanie M. Hughes and Matthew A. Painter II 'Growth in women's political representation: A longitudinal exploration of democracy, electoral system and gender quotas' *European Journal of Political Research* 49 (2010), 26, 30-31.

⁸⁷ Drude Dahlerup 'Gender Quotas—Controversial But Trendy: On Expanding the Research Agenda' *International Feminist Journal of Politics* 10.3 (2008), 323.

⁸⁸ See Michele L. Swers 'Conclusion: Does electing women matter? The impact on policy development and democracy' in *The difference women make: The policy impact of women in Congress* (University of Chicago Press 2002); Pamela Paxton, Melanie M. Hughes and Matthew A. Painter II 'Growth in women's political representation: A longitudinal exploration of democracy, electoral system and gender quotas' *European Journal of Political Research* 49 (2010), 28-31; Drude Dahlerup 'Gender Quotas—Controversial But Trendy: On Expanding the Research Agenda' *International Feminist Journal of Politics* 10.3 (2008), 323; Teresa Sacchet 'Beyond numbers: The impact of gender quotas in Latin America' *International Feminist Journal of Politics* 10.3 (2008), 369; Inglehart and Norris use the world Values Survey to show that semi-democratic states tend to be considerably more conservative in terms of their gender equality values than democratic states, which demonstrate a strong correlation between democracy status and gender values. See at Ronald Inglehart and Pippa Norris *Rising tide: Gender equality and cultural change around the world* (Cambridge University Press 2003), 37, 44. It is also pointed out that many quotas emerge during periods of democratic transition and many post-conflict societies, demanding further 'participation, inclusion and fairness, opening space for organized women to put gender equality on the public agenda', see more at Susan Franceschet, Mona Lena Krook and Jennifer M. Piscopo 'The impact of gender quotas: A research agenda' Paper presented at the Annual Meeting of the American Political Science Association Toronto (2009), 9; Pamela Paxton, Melanie M. Hughes and Matthew A. Painter II 'Growth in women's political representation: A longitudinal exploration of democracy, electoral system and gender quotas' *European Journal of Political Research* 49 (2010), 28-31, 43, 47; Fredman relates this process as a learning process, during which decision-makers are able to redefine their goals as a result of discussion and debate, facilitating the voice of groups which are excluded from traditional representative decision-making and to prevent a 'top-down exercise' imposed from above. Sandra Fredman *Discrimination Law* (Oxford University Press 2011), 251-252.

influence female political representation, including the electoral system as well as the presence and structure of gender quotas.⁸⁹ In this sense, it seems logical to ask whether a democracy is really effective when an important part of the population is missed.⁹⁰ As explained before, these measures aim to increase women's representation because the historical under-representation of women is seen as an inequality to be corrected.⁹¹ Feminist literature frequently have considered different obstacles to gender inequality in politics, such as the nature of electoral systems,⁹² political parties⁹³ or the 'deeply embedded culture of masculinity in institutional structures',⁹⁴ amongst others. According to some 19th century scholars,⁹⁵ the removal of the formal barriers to women's political participation by giving them the right to vote was enough and it was then up to individual women to act. Albeit, as a result of strong women's movements and international organizations pressure,⁹⁶ quotas and other forms of active equality measures shifted as means towards 'equality of results'.⁹⁷

⁸⁹ Others hesitate about the relevance of democracy and pay more attention to the influence of economic development. See i.e. Aili Mari Tripp and Alice Kang 'The global impact of quotas on the fast track to increased female legislative representation' *Comparative Political Studies* 41.3 (2008), 358.

⁹⁰ The Inter-Parliamentary Union (IPU) stated that 'the concept of democracy will only assume true and dynamic significance when political policies and national legislation are decided upon jointly by men and women with equitable regard for the interests and aptitudes of both halves of the population'. See the Plan of Action to correct present imbalances in the participation of men and women in political life, adopted by the Inter-Parliamentary Council, the plenary policy-making body of the IPU, at its 154th session, Paris (1994), 1.

⁹¹ Also defined as positive duties or proactive measures. See at Sandra Fredman *Discrimination Law* (Oxford University Press 2011), 239, 243.

⁹² Monique Leijenaar *Political Empowerment of Women: The Netherlands and Other Countries* 59 (Springer 2013), 68-71.

⁹³ See overall Pippa Norris and Joni Lovenduski *Political recruitment: Gender, race and class in the British Parliament* (Cambridge University Press 1995).

⁹⁴ Joni Lovenduski *Feminizing Politics* (Cambridge Polity 2005), 48.

⁹⁵ See i.e. John Stuart Mill 'The subjection of women' in Alice Rossi John Stuart Mill and Harriet Taylor Mill *Essays on Sex Equality* (1970), 123-242.

⁹⁶ Mona Lena has drawn three main actors who participate in quota campaigns: civil society, the state and the international and transnational spheres. See more at Mona Lena Krook 'Quota laws for women in politics: Implications for feminist practice' *Social Politics: International Studies in Gender, State & Society* 15.3 (2008), 351-352.

⁹⁷ Drude Dahlerup and Lenita Freidenvall 'Quotas as a 'fast track'to equal representation for women' *International Feminist Journal of Politics* 7.1 (2005), 30-31.

With regard to the measures adopted by gender quotas, they can involve a wide array of mechanisms such as reserved seats, legislative or statutory quotas and party quotas.⁹⁸ Although reserved seats first appeared in the 1930s, party quotas were the most prevalent type of quotas until the 1990s.⁹⁹ They entail reforming individual party statutes, pledged by individual parties to nominate a particular percentage of women. Meanwhile, reserved seats are provisions that literally set aside seats for women in political assemblies that men are not eligible to contest.¹⁰⁰ Finally, and most significantly for our study, there are the so-called legislated quotas that change electoral laws and/or constitutions requiring all parties put forward a certain proportion of female candidates.¹⁰¹ In this fashion, political theorists distinguish at least three different meanings of political representation, essentially; descriptive representation, where the representative stands for a group by virtue of sharing similar features; symbolic representation, where a leader stands for a national ideas;¹⁰² and substantive representation, where the representative seeks to advance a group's policy preferences and interests.¹⁰³

There have been multiple interesting debates over how to explain the links between them such as the usefulness of the concept of 'women's interests' given the heterogeneity of women and their beliefs. On the one hand, it could be supported the idea that due to both women's biology and social experience, there are good reasons to reckon that some interests are gendered: these interests may not affect or interest all women equally but could affect women as a group more than they could do to men.¹⁰⁴ On the other hand, it

⁹⁸ Some scholars divide party quotas into two additional types: aspirant quotas, which affect pre-selection processes and candidate quotas, which require that parties select a particular proportion of women among their final lists of candidates. See at Richard Matland 'Electoral Quotas: Frequency and Effectiveness' in Drude Dahlerup *Women, Quotas and Politics* New York (Routledge 2006), 280-281. See also Drude Dahlerup and Lenita Freidenvall 'Quotas as a 'fast track' to equal representation for women' *International Feminist Journal of Politics* 7.1 (2005), 38.

⁹⁹ Mona Lena Krook 'Quota laws for women in politics: Implications for feminist practice' in *Social Politics: International Studies in Gender, State & Society* 15.3 (2008), 347.

¹⁰⁰ *Ibid*, 347.

¹⁰¹ *Ibid*, 350.

¹⁰² Hanna Fenichel defines symbolic representation as the 'power to evoke feelings or attitudes'. See at Hanna Fenichel Pitkin *The concept of representation* (University of California Press 1967), 97.

¹⁰³ Marcela Ríos Tobar *Mujer y política: el impacto de las cuotas de género en América Latina* IDEA Internacional Institute for Democracy and Electoral Assistance (2008), 61.

¹⁰⁴ Cristina Alberdi, former Minister for Social Affairs when Spain held the presidency of the European Union in 1995 mentioned experiences such as those related to community life (caring facilities, changes to working hours for family reconciliation) to balance properly their productive and reproductive roles. Agnes Hubert 'Moving beyond Quotas in

could be argued that those elected women do not necessarily represent women's concerns.¹⁰⁵ Thereby, even in cases where all women may agree at a general level, they may perfectly disagree over the more specific measures that governments should adopt.¹⁰⁶ As a result, these concerns may be affected depending on different factors or backgrounds such as individuals (ideology, age, race, social class, education, gender consciousness...), critical mass (the number of women), institutional context (atmosphere, electoral system, political parties' nature...) or social factors (lobbies, female movements...)¹⁰⁷ Yet, the risk of accommodating women's 'specific situations' could end up reinforcing gender roles.¹⁰⁸ The other disputes are about the meaning of women's substantive representation in reality as well as the impact of increased numbers of women in the decision-making processes.¹⁰⁹

Certainly, ineffectiveness may occur in many aspects, such as when a law or party rule exists but the parties ignore them due to lack or no significant sanctions, bad implementation, electoral system as well as the wording, requirements, perceived legitimacy of the quotas or when quotas become a ceiling rather than a floor for further growth of women's political representation.¹¹⁰ Dahlerup states, based on her collective

the EU: An Emerging Stage of Democracy' A paper presented at the International Institute for Democracy and Electoral Assistance (2004), 5.

¹⁰⁵ See e.g. Nancy Fraser's comments on Clinton's presidency, she considered her 'a neoliberal kind of feminism which mostly benefits privileged women' and she feels Sanders is closer to her kind of feminism. See more at Álvaro Guzman Bastida 'Clinton embodies a neoliberal kind of feminism which mostly benefits privileged women' Contexto y Acción N° 61 20/04/2016: <http://ctxt.es/es/20160420/Politica/5538/fraser-feminism-Hillary-Clinton-neoliberal-feminism-redistribution-recognition-representation-Estados-Unidos-Entrevistas-The-English-Corner.htm>.

¹⁰⁶ See for example the interview to Jone Martínez Palacios in Berria 'Parte hartze handiagoak ez dakar berez genero hausturarik' 02/10/2016, para 9; or the discussion held by Jon Rejado in Berria 'Berdintasuna aulkien jokoa' 02/10/2016: http://www.berria.eus/paperekoa/2002/003/001/2016-10-02/berdintasuna_alkien_jokoa.htm.

¹⁰⁷ See Marcela Ríos Tobar *Mujer y política: el impacto de las cuotas de género en América Latina* IDEA Internacional Institute for Democracy and Electoral Assistance (2008), 67.

¹⁰⁸ See at Maria Stratigaki *The Cooptation of Gender Concepts in EU policies: The Case of 'Reconciliation of Work and Family'* 11 Social Politics 30 (2004), 38, 51.

¹⁰⁹ Susan Franceschet and Mona Lena Kroop 'Measuring the impact of quotas on women's substantive representation: Towards a conceptual framework' Paper presented at the Annual Meeting of the American Political Science Association Boston (2008), 4.

¹¹⁰ Richard Matland 'Electoral Quotas: Frequency and Effectiveness' in Drude Dahlerup *Women, Quotas and Politics* New York (Routledge 2006), 278; Pamela Paxton, Melanie M. Hughes and Matthew A. Painter II 'Growth in women's political representation: A longitudinal exploration of democracy, electoral system and gender quotas' *European Journal of Political Research* 49 (2010), 28, 31-35; Adriana Medina Espino and Ruth Gisela Márquez Benítez *La*

study, that ‘the mere introduction of quotas do not result in uniform increases in the numbers of women parliamentarians worldwide’.¹¹¹ To illustrate, France, became the first country in the world to introduce 50% or parity quotas, but sanctions for non-compliance failed to change party pre-selection practices at the national level, resulting in only 19% of elected seats in National Assembly by 2007.¹¹² Nevertheless, there are other examples such as Costa Rica or Rwanda, where women’s representation jumped overnight from 19 to 35% or exceeded and exceeds 50% in parliament, respectively.¹¹³ As a consequence, all this debate of the redistribution of power and recognition of women’s under-representation as an issue seems to recognise, once again, that women and men are not playing on equal terms. The reaction concerning quotas has led some to think of other means such as parity laws aimed at creating a substantial improvement in the quality of democracy.

3.2.3. Parity laws

Through the Athens Declaration in 1992, the EU debated the concept of parity at the first European Summit of Women in Power. The declaration openly stated that ‘equality of women and men imposed parity in the representation and the administration of Nations’.¹¹⁴ The departing point of the reflection towards parity in the field of politics has been the revision of the concept of citizenship. This consideration comprises men and women equally, and thus, both should be represented on equal percentages in the political

participación política de las mujeres: De las cuotas de género a la paridad Centro de Estudios para el Adelanto de las Mujeres y la Equidad de Género (2010), 25. The latter explains that many political actors understand quotas as ‘to cover’ or as a limit rather than a starting point for women’s political participation.

¹¹¹ Drude Dahlerup *Women, quotas and politics* (Routledge 2013), 18; Mona Lena Krook ‘Quota laws for women in politics: Implications for feminist practice’ *Social Politics: International Studies in Gender, State & Society* 15.3 (2008), 351, 357.

¹¹² Drude Dahlerup and Lenita Freidenvall, ‘Quotas as a fast track to equal representation for women’ *International Feminist Journal of Politics*, 7(1) (2005), 40-41. See updated at <http://www.ipu.org/wmn-e/classif.htm>.

¹¹³ Pamela Paxton, Melanie M. Hughes and Matthew A. Painter II ‘Growth in women’s political representation: A longitudinal exploration of democracy, electoral system and gender quotas’ *European Journal of Political Research* 49 (2010), 25; See more at <http://www.ipu.org/wmn-e/classif.htm>.

¹¹⁴ See at <http://www.eurit.it/Eurplace/diana/ateneen.html>.

system. Accordingly, the quantitative increase of women's political participation will follow a qualitative change in the ways of doing politics and the political culture.¹¹⁵

Along these lines, parity laws seek to achieve a balanced or comparable presence of both sexes by setting the threshold at 50%.¹¹⁶ Although the underlying logic is not necessarily the same, some of the arguments in favour of a quota system can be extended to the case for parity.¹¹⁷ However, for some academics, this idea of equal sharing of responsibilities or functions is a better solution to the quotas.¹¹⁸ This approach could be described as Nancy Fraser's classic distinction 'transformative' as opposed to 'affirmative' remedies, seeking to guarantee equal or parity citizenship, expanding the domains of citizenship to include all the relevant spheres of social contribution and human fulfillment including that of social reproduction.¹¹⁹

In fact, parity democracy has been understood to be more than a proposal for balanced participation of women and men in political decision-making processes: it has become a claim of social structure with shared responsibilities in both public and private spheres. As such, the European glossary of 100 terms regarding equality between men and women defined it as 'a concept of society integrated equally by women and men, in which the balanced representation of both in decision-making functions policy is a prerequisite to the full enjoyment and equal citizenship as well as the principle of democracy'.¹²⁰ The

¹¹⁵ Maria Luisa Femenias 'Cuotas ¿Un cambio hacia la paridad?' in Ángela del Carmen Sierra González and María del Pino de la Nuez *Democracia paritaria: aportaciones para un debate* (Editorial Laertes 2007), 47.

¹¹⁶ Ruth Rubio-Marín 'A New European Parity-Democracy Sex Equality Model and why it won't Fly in the United States' 60 (1) *American Journal of Comparative Law* (2012), 110; Blanca Rodríguez-Ruiz and Ruth Rubio-Marín 'Constitutional Justification of Party Democracy' *Alabama Law Review* 60 (2008), 1171.

¹¹⁷ Blanca Rodríguez Ruiz and Ruth Rubio-Marín 'The Gender of Representation: On Democracy, Equality and Parity' *International Journal of Constitutional Law* 6.2 (2008), 288. Actually, in many countries parity and quota measures are seen as complementary or even as equivalent. See at European Parliamentary Research Service Blog 'Quotas in Politics' October 4, 2012. See more at <https://epthinktank.eu/2012/10/04/quotas-in-politics/>. See also Jocelyne Praud 'Introduction: Gender parity and quotas in European politics' in *West European Politics* 35.2 (2012), 289.

¹¹⁸ Eva Martínez-Sampere 'La legitimidad de la democracia paritaria' *Revista de Estudios Políticos* 107 (2000), 142-143.

¹¹⁹ See Nancy Fraser 'From Redistribution to Recognition? Dilemmas of Justice in a 'Postsocialist' Age Justice Interruptus' *New left review* 212 (1995), 23-26. Cited by Ruth Rubio-Marín 'A New European Parity-Democracy Sex Equality Model and why it won't Fly in the United States' 60 (1) *American Journal of Comparative Law* (2012), 117.

¹²⁰ Comisión Europea '100 palabras para la igualdad' *Glosario de términos relativos a la igualdad entre hombres y mujeres*, Dirección General de Empleo, Relaciones Laborales y Asuntos Sociales (1998), 19 (Spanish version).

promotion of parity has also been fuelled by discussions on the legitimacy of a democracy in which most representative institutions exclude women.¹²¹

In this vein, Ruth Rubio-Marin tests the compatibility of gender quotas and gender parity by challenging the traditional elected representation model with different democratic representation models, such as the deliberative democracy model, which puts the emphasis on the participation and voice; the mirror representation model, where the underlying idea is that different social groups should be represented in a parliament that ‘mirrors society in all its complexity’; and parity democracy model, aiming to unsettle the separate spheres tradition, enabling both men and women to participate equally in all domains of citizenship.¹²² All these can serve to see the impact these crucial concepts like substantive equality, human rights, social justice, citizenship as well as democracy have on this matter at hand and will help us to answer the question of the effectiveness of the Basque Country’s response to gender imbalance in political decision-making processes.

4. Basque Country’s response

¹²¹ Yanira Zúñiga ‘Democracia Paritaria: De la Teoría a la Práctica’ *Revista de Derecho* (2005) vol.18, 131- 154.

¹²² Blanca Rodriguez-Ruiz and Ruth Rubio-Marin ‘Constitutional Justification of Party Democracy’ *Alabama Law Review* 60 (2008), 1178-1180.

4.1. International, European and Spanish legal framework: introductory remarks to the Basque case

Since the Basque response was not made from scratch, it is to our advantage to analyse the context it comes from and how it has been able to develop throughout the years. If we look back at the history of the initiatives and instruments promoting greater gender balance in political decision-making, there has been an evolution regarding the treatment of equality between men and women: it started from a limited, social and mostly employment related issue moving to a broader question of democracy.¹²³

At the international level, things had been moving with the International Women's Year (1975),¹²⁴ the first United Nations World Conference on Women in Mexico (1975),¹²⁵ the Decade for Women (1976-1985),¹²⁶ the consequent World Plan of Action and the First European Ministerial Conference on Equality between Women and Men (1986)¹²⁷ which served to determine that gender equality was an integral part of human rights and a prerequisite for genuine democracy.¹²⁸ This concern about women's involvement in decision-making was reflected in the Third European Commission's Pluriannual Action Programme (1991-1995), resulting in a follow-up process across Europe, culminating in a Recommendation by the Council in 1996.¹²⁹ The Beijing Declaration, even though it is

¹²³ Agnès Hubert 'From equal pay to parity democracy: The rocky ride of women's policy in the European Union' in *Has Liberalism Failed Women? Assuring Equal Representation in Europe and the United States* (Palgrave Macmillan 2001), 143-148. See e.g. the European Convention for the protection of Human Rights and Fundamental Freedoms (1950) Art. 14 on the prohibition of discrimination; Protocol No 12 to the ECHR (non-discrimination clause of a general nature); the European Social Charter (1961) and its additional Protocol of 1988 introducing the principle of equal opportunities and equal treatment in employment and occupation, regardless of sex and so on.

¹²⁴ UN General Assembly Conference of the International Women's Year A/RES/3276 10 December 1974.

¹²⁵ See Report of the World Conference of the International Women's Year Mexico City 19 June-2 July 1975 (United Nations publication).

¹²⁶ UN General Assembly United Nations Decade for Women (1976-1985) A/RES/33/188.

¹²⁷ It was at that Conference that all the member countries of the Council of Europe were called upon to establish national mechanisms. This was later to become the theme of the second European Ministerial Conference on Equality between Women and Men, held in Vienna in 1989.

¹²⁸ 119th Session of the Committee of Ministers in Madrid (2009), para 2 refers to gender equality as a fundamental criterion of democracy establishing that, far from simply implying equal rights, it also requires 'equal visibility, empowerment, responsibility and participation of both women and men in all spheres of public and private life'.

¹²⁹ See the 'Third Medium-Term Community Action Programme for Equal Opportunities for Women and Men' (1991-1995) and Council Recommendation on the balanced participation of women and men in decision-making 96/694/EC.

not a binding treaty, together with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) bolstered this call for a greater gender balance in politics.¹³⁰ One of the visible effects of this awareness in international and European structures was the recognition that equality mechanisms were essential for the advancement and the effective realisation of equality.¹³¹ Despite the balanced participation goal going from strength to strength in the international and European agendas,¹³² if we look at the current facts, only 22.9% of all national parliamentarians are women as of November 2016, resulting in a slow increase in ten years from 11.3% in 1995.¹³³ As for the EU, the average percentage of women parliamentarians reaches 24.6%, excluding the Nordic countries.¹³⁴ Spain ranks as the fourth highest among EU Member States (after Sweden, Finland and Belgium) with 39.10% of women in the lower chamber of parliament.¹³⁵

It encouraged the Member States to take measures to redress women's under-representation in decision-making processes, including legislative and/or regulatory measures and incentives.

¹³⁰ See United Nations Beijing Declaration Platform for Action Fourth World Conference on Women Vol. 15 (1995) and UN General Assembly Convention on the Elimination of All Forms of Discrimination Against Women 18 December 1979 United Nations, Art. 7. Available at: <http://www.refworld.org/docid/3ae6b3970.html>. See comments about these at Emakunde 'Pekín en Euskadi Vascas en Pekín Emakumeei buruzko IV Goi-bilera' 1995/10, 40.

¹³¹ Maria Regina Tavares da Silva 'Twenty-five years of Council of Europe action in the field of Equality between Women and Men' 5th European Ministerial Conference on Equality between Women and Men EG (2002) 5, see at http://www.coe.int/T/E/Com/Files/Ministerial-Conferences/2003-equality/25_years_action_tavares.asp.

¹³² See the European Parliament resolution on the Commission report on the implementation of Council Recommendation 96/694 of Dec. 2 1996 on the balanced participation of women and men in decision-making process (COM(2000) 120, C5-0210/2000, 2000/2117(COS)) or the European Commission's Action Programmes on Equality between Men and Women, such as the Strategic Engagement for gender equality 2016-2019. The Resolutions 1325 (2000) on women, peace and security and 58/142 (2003) on women and political participation also put some pressure by urging public actors to develop a comprehensive set of policies and programmes to increase their participation. See at the UN Security Council, Security Council resolution 1325 (2000) on women and peace and security, 31 October 2000, S/RES/1325 (2000), 1. Available at: <http://www.refworld.org/docid/3b00f4672e.html> and UN General Assembly Resolution on Women's Political Participation (A/RES/58/142), 22 December 2003. Available at http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/58/142. See also the 2011 UN General Assembly Resolution on Women's Political Participation (A/RES/66/130), 19 December 2011. Available at http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/66/130 or the UN Economic and Social Council Resolution 1990/15, May 1990. Available at http://www.un.org/ga/search/view_doc.asp?symbol=E/1990/90.

¹³³ Single House or Lower House. Inter-Parliamentary Union 'Women in National Parliaments as of 1st November 2016': <http://www.ipu.org/wmn-e/world.htm>. See also at <http://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures>.

¹³⁴ Ibid. See also the latest European Commission Report on equality between women and men in the European Union Commission Staff Working Document (2015), 24.

¹³⁵ Ibid.

This is mainly due to the approval and implementation of women's quotas through the 2007 gender equality law (Organic Law 3/2007) to promote the balanced participation of women and men in political decision-making.¹³⁶ Among other provisions, the law mandates parties to incorporate in all electoral lists no less than 40% and no more than 60% of candidates of each sex.¹³⁷ This 40% quota proportion has to be respected and in the case of not fulfilling it, electoral authorities will withdraw them.¹³⁸ However, parties tend to assign women the lowest proportion of the candidature to place men in the higher ranks of the top five list positions.¹³⁹ The law was passed under the rule of the centre-left Spanish Workers' Party (Partido Socialista Obrero Español, PSOE). Not surprisingly, in January 2008 the legislation was constitutionally challenged by the conservative People's Party (Partido Popular, PP) on the ground that mandatory quotas are unconstitutional by contradicting the formal equality principle¹⁴⁰ in relation to the right to participate in public affairs,¹⁴¹ political parties' right to self-organization,¹⁴² free speech and ideological freedom¹⁴³ together with the principle of the unitary sovereignty of the nation.¹⁴⁴ Nevertheless, the Constitutional Court rejected the appeal relying on Article 9.2 of the Spanish Constitution¹⁴⁵ and upheld the constitutionality of this provision based on a

¹³⁶ Ley Orgánica 3/2007, de 22 de marzo, para la igualdad efectiva de mujeres y hombres (Vigente hasta el 01 de Enero de 2017). Bear in mind Organic Laws require an absolute majority of the House of Representatives in order to be approved, modified or repealed. See also Angela Alemany Rojo, Laura Fernández Gómez, Carmen Zamorano López *Las mujeres y la toma de decisión* Asociación de Mujeres Juristas (Themis 2009), 79-89.

¹³⁷ See Art. 4(6) Organic Law 3/2007. This principle of balanced presence embodies a parity law with a margin of flexibility, as it relies on minimum and maximum percentages for each gender, as does the quota system, but endorses percentages that approach 50%. For more see Blanca Rodríguez Ruiz and Ruth Rubio-Marín 'The Gender of Representation: On Democracy, Equality, and Parity' *International Journal of Constitutional Law* 6.2 (2008), 297.

¹³⁸ See at Title VI of the Organic Law 3/2007.

¹³⁹ Tània Verge 'Gendering representation in Spain: Opportunities and limits of gender quotas' *Journal of Women, Politics & Policy* 31.2 (2010), 166-190.

¹⁴⁰ SC Art. 14.

¹⁴¹ SC Arts. 23 and 68.5.

¹⁴² SC Arts. 6 and 22.

¹⁴³ SC Arts 16 and 20.1 (a).

¹⁴⁴ SC Art. 1.2. See more at STC 12/2008, January 29, upholding law on the Effective Equality of Women and Men, 5-10 legal basis (fundamentos jurídicos).

¹⁴⁵ Although men and women are formally equal (Art. 14 SC), the Court notes that women have traditionally been excluded from the political domain, so that it is now the task of public authorities to take proactive measures to ensure they are incorporated. See at STC 12/2008, 3-4 legal basis. Article 9.2 SC establishes the responsibility of the public authorities 'to promote conditions ensuring that freedom and equality of individuals and of the groups to which they

substantive approach to the constitutional principle of equality.¹⁴⁶ A year later, this ruling served as a landmark case for the same constitutional challenge against the Basque Equality Act.¹⁴⁷

4.2. Basque legal framework

The Basque Country, as a Spanish autonomous community, is composed of the executive and the legislative power with their own competences emanated from the Spanish Constitution as explained in the introduction. As such, the first Basque Government (BG) was created the same year the Spanish civil war begun (1936) upon the approval of its first Statute of Autonomy, presided over by the *lehendakari* José Antonio Aguirre (Basque Nationalist Party, EAJ-PNV).¹⁴⁸ However, the BG, which was chaired by Jesús María Leizaola since the death of Aguirre in 1960, had to remain in exile during the dictatorship.¹⁴⁹ After Franco's death (November 1975) and the short government of Carlos Arias Navarro (named by Franco), the political forces started grouping around the new president Adolfo Suárez proclaimed by the King Juan Carlos (1976) in order to pursue the transition to democracy.¹⁵⁰ Therefore, the first democratic elections were held in 1977 together with the approval of the Constitution in 1978. This way, the Basque Country

belong are real and effective, to remove the obstacles preventing or hindering their full enjoyment and to facilitate the participation of all citizens in political, economic, cultural and social life', serving as a cornerstone to the principle of equality in the constitutional system (see Art. 1.1 SC). This is why the Court concluded there was no need for a constitutional reform. See at <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>.

¹⁴⁶ STC 12/2008, 3rd legal basis.

¹⁴⁷ STC 13/2009 de 19 de enero de 2009 Recurso de Inconstitucionalidad 4057-20005 (Nº 38 BOE 13 de febrero de 2009). See at : <https://www.boe.es/boe/dias/2009/02/13/pdfs/BOE-A-2009-2502.pdf>.

¹⁴⁸ See the very recent anniversary done on behalf of the Basque Government in December 2016: <http://www.eitb.eus/es/radio/radio-vitoria/detalle/4540107/el-principal-celebrara-80-aniversario-primer-gobierno-vasco/>.

¹⁴⁹ See more details at the documentary on ETB2 'El largometraje documental: El Gobierno Vasco en el exilio' 07/10/2015: <http://www.eitb.eus/es/television/detalle/3523296/estreno-largometraje-documental-el-gobierno-vasco-exilio/> or even at: <http://www.eitb.eus/es/noticias/politica/detalle/4540794/primer-gobierno-vasco-homenaje-diaspora-80-aniversario/> 13/12/2016.

¹⁵⁰ According to Aguilar, it would be difficult to understand the transition without taking into consideration the King's role on the democratic disposition since he was crucial in the first months following Franco's death and played also an important role in the attempted coup of 23 February 1981. See in Paloma Aguilar, 'Justice, Politics and Memory in the Spanish Transition' in Alexandra Barahona, Carmen Gonzalez-Enriquez and Paloma Aguilar *The politics of memory. Transitional Justice in Democratizing Societies* (2001), 111.

acceded to the maximum degree of autonomy contained in the Spanish Constitution (Art. 151) and approved the Statute of Autonomy (better known as Statute of Gernika) in 1979.¹⁵¹ Through the elections of the Basque Parliament (BP), the new BG was created in 1980, superseding the Basque General Council.¹⁵² Garaikoetxea was the first *lehendakari* of the new Government and Juan José Pujana the head of the Parliament. As can be seen, both the executive and legislative bodies were initially run by men, followed by 6.7% women in the Parliament (all from the Nationalist Party) and a mere tokenistic presence in the executive body.¹⁵³

Drawing from these results, greater demands came from certain socio-legal sectors insisting on the need to develop a law guaranteeing the principle of equality on grounds of sex rather than interpreting Article 14 SC or European Directives through the jurisprudence.¹⁵⁴ The Basque women's movements and the international commitments pressure also suggested the need to create a legal framework in the field of gender equality.¹⁵⁵ As a result, the Basque Institute for Women (Emakunde) was formed through

¹⁵¹ This process was hampered by the central government's unwillingness to proceed with real transfer of powers. See Ley Orgánica 3/1979 de 18 de diciembre de Estatuto de Autonomía para el País Vasco: http://noticias.juridicas.com/base_datos/Admin/lo3-1979.html. Two provisions are of utmost importance for our study: Art 9.1 SC which refers to the Spanish Constitution, proclaims the right of Equality and non-discrimination on grounds of sex (among other reasons) and Article 9.2(d) SC thereof establishes the obligation of the public authorities to promote and remove obstacles so that the equality of individuals and groups are real and effective.

¹⁵² Auñamendiko Eusko Entziklopedia Fondo Bernardo Estornés Lasa Idoia Estornés Zubizarreta 'El Primer Gobierno Vasco (1936-1980)' (2013): <http://www.euskomedia.org/aunamendi/47983/48480>.

¹⁵³ In 1990 women's representation at the Parliament increased to 20% and in 2001, 37.3%. See more at Marce Masa, Tatiana Cano and Laura Ortuondo Emakunde 'Zifrak 2015: Emakumeak eta Gizonak Euskadin' (2015), 112; Helena Ortiz de Lejarazu and Mainer Dominguez 'Seguimiento del cumplimiento, desarrollo y aplicación de la Ley 4/2005 de 18 de febrero para la igualdad de mujeres y hombres 2015' Evaluación Cuantitativa (2016), 104; Arantxa Elizondo and Eva Martínez 'Presencia de Mujeres y Políticas para la igualdad entre los sexos: El caso de las Instituciones Políticas Vascas (1980-1994)' Revista de Estudios Políticos 89 (1995), 349-350.

¹⁵⁴ Arantza Campos Rubio 'La igualdad de mujeres y hombres: 30 años de Parlamento vasco. La Ley 4/2005, de 18 de febrero, para la igualdad de mujeres y hombres' Anuario de derecho parlamentario 23 (2010), 22.

¹⁵⁵ To name some: Asambleas de mujeres de Bizkaia, Ermua y Araba, Plazandreok, Zero Taller Soziologikoa, Asociación Casino de Irún y otras 55 asociaciones, Eraldatzen, Belén Martínez (particular) Colectivo Feminista Lambroa, Confederación Coordinadora de Personas con Discapacidad Física de la capv, Ekin Emakumeak Elkarte, Equipo técnico del Ayuntamiento de Irún, Equipo técnico del Ayuntamiento de Vitoria-Gasteiz, Escuela de Gestión, Euskal Herriko Bilgune Feminista, Forum Feminista María de Maeztu, Juntera del grupo Aralar, Secretaría de la Mujer de ccoo... See overall at Edurne Epelde, Miren Aranguren and Irati Retolaza *Gure genealogia feministak. Euskal Herriko mugimendu feministaren kronika bat* (2015).

Law 2/1988.¹⁵⁶ This big step placed women's issues in a more central and strategic position in the Basque institutions.¹⁵⁷ Emakunde promoted a broad culture of planning and evaluation through the equality plans, which are evaluated annually and must be approved by the Government before being sent to the Parliament.¹⁵⁸ Through the years, Emakunde committed to adopt a draft bill together with other women organizations and feminist groups that would constitute the biggest step to tackle gender imbalance in the Basque political terrain: the Equality Act 4/2005.¹⁵⁹ This legal landmark marked a turning point in the history of equality policies in the Basque Country by incorporating the gender perspective into the activity of all Basque public institutions.¹⁶⁰ Among other mandates, it stipulates that all public authorities should have gender equality bodies or units; elaborate and implement equality plans; carry out preliminary gender impact assessments and promote a balanced representation of women and men in decision-making bodies, including quota systems.¹⁶¹

¹⁵⁶ Ley 2/1988, de 5 de febrero, sobre la creación de Emakunde-Instituto Vasco de la Mujer (publicado en BOPV nº 45 de 4 de Marzo de 1988 y BOE nº 62 de 13 de Marzo de 2012). See more at:

http://www.emakunde.euskadi.eus/contenidos/informacion/english_documents/eu_def/adjuntos/equality_policies_for_women_and_men_bac.pdf (English version); Eurne Epelde, Miren Aranguren and Irati Retolaza *Gure genealogia feministak. Euskal Herriko mugimendu feministaren kronika bat* (2015), 283.

¹⁵⁷ This has facilitated the promotion of equality policies in each of the areas of public intervention, in a decentralized manner and in accordance with a gender mainstreaming approach.

¹⁵⁸ See each of them at <http://www.emakunde.euskadi.eus/politika-publikoak/-/informazioa/aurreko-planak/>.

¹⁵⁹ Ley 4/2005 de 18 de febrero para la igualdad de Mujeres y Hombres. Publicado en BOPV núm. 42 de 02 de Marzo de 2005 y núm. 274 de 14 de Noviembre de 2011: http://www.emakunde.euskadi.eus/contenidos/informacion/english_documents/eu_def/adjuntos/equal_opportunities_men_women_act.pdf (English version). It is interesting to note that the use of the preposition "between" or the preposition "of" in the naming of the Act is not trivial. They defended that 'of' seeks a more substantive substantive approach to equality. See at Encarna Bodelón 'Las leyes de igualdad de género en España y Europa: ¿Hacia una nueva ciudadanía?' *Anuario de Filosofía del Derecho* 26 (2010), 102.

¹⁶⁰ Currently, there is a specialized equality unit in all departments of the Basque Government as well as at provincial and local level, which have an equality body or unit. This has had an increase of 38% in comparison to 2005. See more at Emakunde 'Equality Policies for Women and Men in the Basque Autonomous Community' (2014), 4.

¹⁶¹ Ibid, 3. See Art. 23 (General Provisions), which states that 'all Basque public powers must promote a balanced presence of men and women with suitable skills, abilities and preparation in the appointing and designating of people to constitute or form part of their directive bodies and associations' and the whole purpose of the Act in Art. 1 of the Act 4/2005. It is worth mentioning here that it has had one amendment with regard to the pioneering structure of an independent body formally attached to Emakunde but with no hierarchical link to it: the Basque Ombudsman (Ararteko). This brought the elimination of Title IV of the Equality Act and created Chapter VIII in Title III by 'Ley 3/2012 de 16 de febrero por la que se modifica la Ley para la igualdad de Mujeres y Hombres y la Ley sobre Creación

In light of this, on the one hand, the Act establishes the regulations governing the selective processes for access, provision and promotion in public employment must include a clause by which, in the event of equality in skills, priority is given to women in the bodies, scales, levels and categories of the authority in which representation is below 40%, except in certain circumstances.¹⁶² On the other hand, it sets forth gender quotas both for the executive and legislative bodies as it establishes that ‘in the Government, both sexes will be represented by at least 40%’.¹⁶³ Likewise, a paragraph is added to Art. 50 of the Basque Parliament Elections Act 5/1990 requiring 50% of women,¹⁶⁴ otherwise, they may not apply for subsidies or aids, among other consequences.¹⁶⁵ Therefore, as in the Spanish legislated candidate quotas,¹⁶⁶ Basque party lists must include between 40 and 60% of candidates of each sex in the case of the Government whereas a minimum of 50% of women’s representation is required for the case of the legislative power, coinciding with Rubio-Marin’s parity democracy model. Now, if we look at the evolution of both institutions since the law was passed in 2005 until the last recent Basque elections in September 2016, it seems that the Basque response had a significant impact on the outcome:¹⁶⁷

1. Basque Government (8 Ministers + the Presidency):¹⁶⁸

de Emakunde N°65, 16 de Marzo de 2012. Thus, the Basque Ombudsman became into a service attached to Emakunde in terms of both organization and function.

¹⁶² Art. 20.4(a) of the Equality Act.

¹⁶³ See the third Final Provision of the Equality Act.

¹⁶⁴ See the fourth Final Provision of the Equality Act.

¹⁶⁵ Ibid, Sixth Final Provision. See also Title V on offences and Sanctions.

¹⁶⁶ See more details at <http://www.quotaproject.org/country/spain>.

¹⁶⁷ This research will mainly focus on the Basque Country’s main legislative and executive bodies in order to detect gender imbalance in political decision-making decisions, without going further on the analysis of each province’s legislative and executive powers and their capitals’.

¹⁶⁸ See at Helena Ortiz de Lejarazu and Maider Dominguez ‘Seguimiento del cumplimiento, desarrollo y aplicación de la Ley 4/2005 de 18 de febrero para la igualdad de mujeres y hombres 2015’ Evaluación Cuantitativa (2016), 73. In order to see the last complete composition of the Ministers and the Presidency (2015), see at Marce Masa, Tatiana Cano and Laura Ortuondo Emakunde ‘Zifrak 2015: Emakumeak eta Gizonak Euskadin’ (2015), 113. Here they do not provide the development of women’s participation at the Basque Government since its creation. This is why it feels necessary to check Emakunde’s each year’s Report at <http://www.emakunde.euskadi.eus/zerbitzua/-/zifrak/>, which at the same time is limited to 2004. Before this date, they did not use to do a report every year, instead, there are some of them available in specific years (information provided by Emakunde): 1982, 1996, 1999 or 2000 via EUSTAT (the Basque Statistics Office) or INE (Spanish Statistical Office). Unlike the Basque Parliament, the executive power is not complete yet (2016). See the published list of the new Ministers at <http://www.euskadi.eus/miembros-del-consejo-de->

	2005		2008		2010		2015	
	W	M	W	M	W	M	W	M
Ministry	36%	64%	45%	55%	50%	50%	50%	50%
Deputy Ministers	11%	89%	14%	86%	34%	66%	31%	69%

2. Basque Parliament:¹⁶⁹

	2005	2009	2012	2016
Legislation	VIII	IX	X	XI
Women	53,3%	46,7%	49,3%	%55
Men	46,7%	53,3%	50,7%	%45

These results show that the Equality Act did have an effect on the gender balance in Basque political decision-making processes if we compare to the first years of these institutions. For the second time, the BP has more women than men at the chamber, this year reaching the highest percentage ever and presided by a woman for the second time in a row.¹⁷⁰ However, the time lapse also demonstrates that even though women are able to reach parity results in both institutions, the tendency to maintain them has not been clearly consolidated at the BP. Similarly, the Deputy Ministers of the BG has not been able to reach the minimum established by the law, in spite of achieving parity results as for the Ministers during the last years. Some academics have blamed these ups and downs

gobierno/web01-slezaleh/es/. Together with the *lehendakari*, there are 7 men and 5 women composing the Ministry, that is 45% of women (2016). The Deputy Ministers' composition is not complete yet but some names are already available at http://www.abc.es/espana/pais-vasco/abci-nuevos-consejeros-gobierno-vasco-dejan-escano-parlamento-201612071738_noticia.html.

¹⁶⁹ Marce Masa, Tatiana Cano and Laura Ortuondo Emakunde 'Zifrak 2015: Emakumeak eta Gizonak Euskadin', 112; Helena Ortiz de Lejarazu and Maider Dominguez 'Seguimiento del cumplimiento, desarrollo y aplicación de la Ley 4/2005 de 18 de febrero para la igualdad de mujeres y hombres 2015' Evaluación Cuantitativa (2016), 104: http://www.emakunde.euskadi.eus/contenidos/informacion/politicas_evaluaciones/es_def/adjuntos/2015/evaluacion_cuantitativa.pdf. Here they offer a table to see how it has evolved women's representation since the first legislation in 1980. As can be seen, the positive action was necessary to make a change towards women participation in politics. The data for the brand new composition of the Parliament is available at <http://www.euskadi.eus/elecinf/2016/elecciones-parlamento-vasco/librodd/document.pdf>. See also at ARGIA <http://www.argia.eus/albistea/emakumeak-gehiengo-izango-dira-legebiltzar-berrian>.

¹⁷⁰ See at <http://www.legebiltzarra.eus/porta/es/web/eusko-legebiltzarra/noticias-y-eventos/saludo-presidencia>.

on the lack of the ‘order of precedence’ requirement in the Act, allowing men to be the first persons on the list of a party.¹⁷¹ Either way, the Act has been warmly welcomed by international institutions as proved by the data of international equality indicators such as the Gender Equality Index (GEI), which placed the BC in fifth position in the GEI ranking of the EU.¹⁷² In addition, the United Nations (UN) has recently awarded the BC with the ‘UN Public Service Award 2015’ for the implementation of the Act.¹⁷³

4.3. Effectiveness

In order to answer the question of the effectiveness of the Basque response to tackle gender historical imbalance in politics, first, it is necessary to understand what shall be understood as effectiveness. The Black Dictionary defines it as ‘the closeness of actual results achieved to meeting expectations’.¹⁷⁴ Kelsen believes that effectiveness is a condition of validity together with the positive existence of a coercive order.¹⁷⁵ According to him, effectiveness is an ‘is-fact’, the fact that the norm is actually applied and obeyed, the fact that people actually behave according to the norm.¹⁷⁶ Indeed, this concept can have different meanings or understandings: whilst what for one individual or society a

¹⁷¹ See at Arantza Campos Rubio ‘La igualdad de mujeres y hombres: 30 años de Parlamento vasco. La Ley 4/2005, de 18 de febrero, para la igualdad de mujeres y hombres’ *Anuario de derecho parlamentario* 23 (2010), 37 and 39. She argues those parties, federations and groups that can have in each electoral confrontation 6 representatives will comply with the parity requirement, however, the law allows men to be the first three persons on the list, leading to male over-representation. She advocates the only way to preserve parity is through order of priority, more known as ‘zip lists’, woman-man, woman-man or the other way round.

¹⁷² See at:

http://es.eustat.eus/elementos/ele0013400/ti_La_CA_de_Euskadi_se_situa_al_nivel_del_quinto_puesto_entre_los_paises_de_la_Union_Europea_en_el_ranking_del_Indice_de_Igualdad_de_Genero/not0013407_c.html#axzz4SpQIcS4W (17/05/2016);

http://www.emakunde.euskadi.eus/contenidos/informacion/english_documents/eu_def/adjuntos/basque_country_fifth_place_gender_equality.pdf (English version)

¹⁷³ See at:

http://www.emakunde.euskadi.eus/contenidos/informacion/english_documents/eu_def/adjuntos/project_summary_eng.pdf (English version).

¹⁷⁴ <http://thelawdictionary.org/effectiveness/>.

¹⁷⁵ Stanley L. Paulson and Bonnie Litschewski *Normativity and norms: critical perspectives on Kelsenian themes* (Oxford University Press 1998), 127.

¹⁷⁶ *Ibid.*

law is deemed to be effective, for another, it might be the opposite.¹⁷⁷ Taking into account the ambiguity of this concept, this study will mainly focus on whether at the end of the day, the Basque affirmative measures meet the envisaged expectations in order to combat gender imbalances in political decision-making processes. For this purpose, it has been described how the Equality Act sets forth two requirements to compose both the executive and the legislative bodies. It has also been determined through statistics along with the international recognition that the BC is not far from its goals to promote women's participation at the main political decision-making institutions. Nonetheless, the mere fact of including more women does not mean the effectiveness is guaranteed. In fact, the answer is more complex than it seems.

According to the general principles that must govern and guide the actions of the Basque public powers, 'equal treatment, equal opportunities, respect for diversity and difference, integration of gender perspective, positive action, the elimination of gender-related roles and stereotypes, balanced representation and coordination' shall be accomplished.¹⁷⁸ In this respect, it has been widely questioned whether the gender balance provisions in political decision-making positions have completely fulfilled them. As briefly mentioned in the first and third chapters, it is the case that within the group of women there are also other dimensions of discrimination that could trigger from their selection such as ideology, age, race, social class and education, among others. In this light, the Act has been criticised for not progressing at the same speed as the society by not fostering the diversity and difference as well as not eliminating the stereotyped gender roles that still exist in our society. Indeed, if we look at the last quantitative evaluation, the reality shows that at lower scales, gender imbalance is more visible as seen in the case of Deputy Ministers as well as the rest of the composition like the Presidency, where only %33.3

¹⁷⁷ The majority of those who participated in the Basque Women Institution qualitative evaluation 2015 agreed that the effective equality means equality of treatment. Such effective equality would be summarized as the anthropologist Manuel Delgado would explain in the utopia egalitarian societies as the right to indifference, the right to be treated as a person regardless your condition defined by sex, gender or origin among others. See at Igor Ahedo Gurrutxaga, Jone Martinez Palacios, Tania Martinez Portugal, Idoia Del Hoyo Moreno 'Evaluación cualitativa de la Ley 4/2005 para la Igualdad de Mujeres y Hombres en el País Vasco 2015' UPV and Parte Hartuz, 268.

¹⁷⁸ See Art. 3 of the Act.

women were represented according to the last data available.¹⁷⁹ Likewise, the current ‘Foral Governments’ (the government of each province), except for Gipuzkoa, and their capital’s mayors are mainly constituted by men.¹⁸⁰ At the same time, it feels necessary to see the type of women that have been selected to participate in the Basque political decision-making processes. During the course of the years, the Basque Nationalist Party has shown to be the most elected party among the Basque citizens and, once again, this has been demonstrated in the last elections held in September 2016.¹⁸¹ If we look at the women that compose the BP, for instance, the average turns out to be the middle/upper class white woman, with university degree, without physical disabilities, of Basque origin and with resources to access social services in the broad sense.¹⁸² Things do not vary in the executive power, which has same women’s profile as shown in the last legislature or in the provisional current formation of the Ministers.¹⁸³ Moreover, although the target of this study are women, it is also worth stressing how the Act limits to two genders, leaving other current social realities such as transsexuals, transgender or intersex with little or no support from the public sector.¹⁸⁴ Some feminist movements also claim the Act leaves

¹⁷⁹ See the whole list at Marce Masa, Tatiana Cano and Laura Ortuondo Emakunde ‘Zifrak 2015: Emakumeak eta Gizonak Euskadin’, 113. In order to see older composition lists completely, please check Emakunde’s webpage at <http://www.emakunde.euskadi.eus/zerbitzua/-/zifrak/>.

¹⁸⁰ Gipuzkoa complies with the quota requirement for this institution since 42.3% of women participate as chief executives and 50% at the County Council. Biscay and Alava also fulfil this requirement with regard to the latter, but do not in terms of the chief executives. See at Helena Ortiz de Lejarazu and Maider Dominguez ‘Seguimiento del cumplimiento, desarrollo y aplicación de la Ley 4/2005 de 18 de febrero para la igualdad de mujeres y hombres 2015’ Evaluación Cuantitativa (2016), 74.

¹⁸¹ See the results at Eusko Jaurlaritzak ‘hauteskundeak 2016’ Behin betiko emaitzak, 8-11: <http://www.euskadi.eus/elecinf/2016/elecciones-parlamento-vasco/librodd/document.pdf>.

¹⁸² See at Igor Ahedo Gurrutxaga, Jone Martinez Palacios, Tania Martinez Portugal, Idoia Del Hoyo Moreno ‘Evaluación cualitativa de la Ley 4/2005 para la Igualdad de Mujeres y Hombres en el País Vasco 2015’ UPV and Parte Hartuz, 267; El Correo ‘Composición del Parlamento Vasco 2016: los 75 parlamentarios’ 21/10/2016: <http://www.elcorreo.com/elecciones/vascas/201609/26/composicion-parlamento-vasco-2016-20160926000950.html>; Eusko Jaurlaritzak ‘hauteskundeak 2016’ Behin betiko emaitzak, 16, 20 and 24: <http://www.euskadi.eus/elecinf/2016/elecciones-parlamento-vasco/librodd/document.pdf>.

¹⁸³ See the Xth legislature formation at Irekia <http://www.irekia.euskadi.eus/en/politicians> or the current provisional designation profiles at El Mundo ‘Quién es quién en el Nuevo Gobierno Vasco’ 24/11/2016: <http://www.elmundo.es/pais-vasco/2016/11/24/5836f918468aeb06578b4601.html>.

¹⁸⁴ Ibid, 71. There is only 6% of actions aimed at this other minority group.

many measures to develop in the future and does not address some of the their proposals.¹⁸⁵

Another reason that could contribute to the diminishing of the effectiveness is that the Act may not have a significant 'bite'. As Arantza Campos argues, formal deficiencies such as the language used in the Act can weaken its mandates. To illustrate, the second chapter of the law concerning the institutional organisation and coordination among the Basque public authorities uses terms such as 'impulse, advice, aware, propose or guide the activity of public powers in the field of gender equality', which do not seem to correspond to a legal norm.¹⁸⁶ By contrast, it must be noted that the BG has pledged to intervene significantly by for example dedicating the 26% of its actions in awareness, diffusion and communication, having a major influence on the citizens and playing a crucial role in the transmission and even construction of the Basque cultural identity.¹⁸⁷

Last, but not least, as above-mentioned, the effectiveness issue may have different meanings depending on where we are. For this reason, I reckon it would make a valuable contribution to see how the Basque society reacts to this subject under investigation. According to the 2015 qualitative assessment, the evaluators were impressed by the maturity and commitment of a society whose proactive attitude demands for more effort and resources in order to satisfy the objectives determined in the 4/2005 Equality Act.¹⁸⁸ Indeed, as evidenced by the empirical research on the ten-year report of the Equality Act (July 2016), 93% of the respondents answered affirmatively when they were asked about

¹⁸⁵ Edurne Epelde, Miren Aranguren and Irati Retolaza *Gure genealogia feministak. Euskal Herriko mugimendu feministaren kronika bat* (2015), 347.

¹⁸⁶ The capacity of enforceability and sanction has been linked to the competences issue. Bear in mind that when this Act was enacted, there was no general legislation from the state that could regulate things that the BC could not touch (see Art. 149.1 and 81 of the SC). See at Arantza Campos Rubio 'La igualdad de mujeres y hombres: 30 años de Parlamento vasco. La Ley 4/2005, de 18 de febrero, para la igualdad de mujeres y hombres' *Anuario de derecho parlamentario* 23 (2010), 25; Igor Ahedo Gurrutxaga, Jone Martínez Palacios, Tania Martínez Portugal, Idoia Del Hoyo Moreno 'Evaluación cualitativa de la Ley 4/2005 para la Igualdad de Mujeres y Hombres en el País Vasco 2015' UPV and Parte Hartuz, 266.

¹⁸⁷ Helena Ortiz de Lejarazu and Maider Dominguez 'Seguimiento del cumplimiento, desarrollo y aplicación de la Ley 4/2005 de 18 de febrero para la igualdad de mujeres y hombres 2015' *Evaluación Cuantitativa* (2016), 70.

¹⁸⁸ Igor Ahedo Gurrutxaga, Jone Martínez Palacios, Tania Martínez Portugal, Idoia Del Hoyo Moreno 'Evaluación cualitativa de la Ley 4/2005 para la Igualdad de Mujeres y Hombres en el País Vasco 2015' UPV and Parte Hartuz, 260.

the level of importance they give to gender imbalances (this represented a small decrease from 95% in 2015).¹⁸⁹ This implies that a vast number of Basques feel that active implication of these public institutions is vital in order to achieve a real and effective gender balance in political-decision making processes of the BC.

¹⁸⁹ Prospekzio Soziologikoen Kabinetea 'Emakumeen eta Gizonen berdintasunerako legeak 10 urte' July 2016, 1: http://www.euskadi.eus/contenidos/documentacion/o_16sv60_igualdad/es_def/adjuntos/16sv60_igualdad.pdf.

5. Conclusions

If we think about the question whether the Basque Country has taken effective measures to tackle the traditional gender imbalance in politics, the first impression might lead to answer affirmatively. However, as demonstrated in the last substantive chapter, this answer is more complex than it seems at first glance.

In order to come to a conclusion, we started explaining the historical inequalities inflicted upon women and from which they still suffer. As described, women have been socialized into traditional domestic roles in patriarchal societies and have had a low or no presence when deciding and executing decisions: access to material or symbolic resources such as employment, public space, welfare, participation, health, self-esteem and overall, life. Similarly, we have seen that this inequality based on male domination is interconnected with other inequalities such as racial, economic, generational, mobility, origin and language among others, generating stronger and more complex chains of domination. In this sense, we have disclosed the reason of choosing politics and how its public nature can serve to exercise control within society through the making and enforcement of collective decisions, where women would have more chances to change their situation and make visible interests and necessities that traditionally have not received a collective or public response. It is precisely here where feminist work is based, which has managed to unveil the public matrix of inequality as outlined in the literature review.

In view of the differences that remain, we continued with the concept of equality and the justification of positive discrimination through active measures such as gender quotas and parity laws in pursuance of equality of results. This has enabled us to see that the equality of women and men, besides being a human right, is a strategic necessity for the deepening of democracy and for the construction of a more just, fair, cohesive and socially and economically developed society. This is not just a matter of rational self-interest; because they all compose the community, they ought to be participating or represented as citizens in order to respond a more diverse demand.

Building from this approach, we described how the International and European communities followed by Spain and the BC started paying greater attention to women's representation and impact on political decision-making structures.

As clarified in the Basque legal framework, although the BG was already formed since 1936, the Civil War and the Franco dictatorship thwarted this process and forced it into the exile. It was not until Franco's death, that the ensuing democratic elections allowed the establishment of the Basque Parliament together with the new BG in 1980. Through the years, the pressure put by the socio-legal sectors, women's movements as well as the international commitments served as the basis for the creation of the Basque Institute for Women (1988), whose work was crucial for the formulation of the Basque Country's Equality Act 4/2005. As evidenced through the two tables, the introduction of the Act and its affirmative measures had a significant effect on the gender balance in the Basque political decision-making processes by enabling for the first time in 2005 more women than men in the chamber: this year resulting in an all-time high at 55% of women at the BP and consolidating parity results for the Ministers. This seemed something unreachable 35 years ago when women comprised 6.7% at the Parliament. As a result, the Basque Country's response has been internationally acknowledged as shown with the fifth position in the GEI ranking and the award received from the UN for the Act's implementation.

Nevertheless, not all that glitters is gold. In order to qualify the answer as effective, there are many things we need to take into account besides the number of women represented in the Basque political institutions. On the one hand, we have seen the recognition of some formal and substantive advances in the institutional architecture of public policies and strategies towards equality. On the other hand, we have found that these advances could be limited since there are some envisaged expectations that have not taken place yet. First of all, we have pointed out that the response does not foster the desired diversity and difference foreseen in the Act: as indicated, the profile of women selected to participate in the Basque political decision-making processes does not vary, not visualizing the diversity of other current social realities. At the same time, despite proving a greater increase in the amount of women at the BP or at the highest level of the BG, these increases drop sharply in lower scales as witnessed in the Deputy Ministers, Presidency and most Foral Governments along with the capitals.

Moreover, the outcomes have shown that the parity presence of women struggles to remain clearly at the BP, resulting in ups and downs and some blaming it on the lack of the 'order of precedence' requirement and the 'lack of bite' of the Act.

Europe, Spain and the BC are experiencing a financial recession with severe social implications, serving again as an excuse to pass the woman question to a secondary role for the sake of other so-called 'more important' or 'urgent' causes. However, the BC realised that women's inclusion was necessary in order to comply with its democratic credentials and its commitment to social justice as a matter of equality, freedom and its very *raison d'être*. This reaction is undeniable judging from the political will put forward to tackle this traditional imbalance introducing a law prior to the national legislation and making possible parity results as well as outperforming it in the highest positions of the BG and BP. In this sense, we could consider the response to be effective. It seems to me, nonetheless, that in this same scenario, perhaps those most in need of attention, women from lower social classes, migrant women, young women, women in lower positions in these institutions, some academics as well as feminist movements may not come to the same conclusion since there are still many loopholes that need to be addressed in order to qualify it as effective. Therefore, the Basque Country's response has demonstrated that it was necessary to make a more balanced representation of women and men in the Basque political decision-making processes, however, there are a number of loose threads that have been left dangling, which prevent the response from being a completely effective answer. And as far as I am concerned, there are good reasons to think it is on the right track as evidenced by the qualitative assessment, where a vast number of Basques together with women's organisations and feminist movements have shown pressing demands that will require great effort from the Basque institutions to keep on working on a more inclusive, diverse and consistent model in all levels of the political terrain, notwithstanding it will imply plenty of time, resources and resistance.

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