

Gender equality and quota in politics: Basic prerequisites of efficient quota

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Executive Summary

The concept of gender quota is closely interlinked with that of democracy and equality, and despite a relatively popular tool it represents also a controversial one. For a better in-depth understanding of the concept of quota, this research adopts both a theoretical and practical approach to the concept. From the theoretical perspective it clarifies the main contentious issues of quota by setting out the basis of quota legitimacy. The controversial nature of quota derives from the ambiguous and multidimensional character of the equality concept. Among the different viewpoints that surrounds the concept of quotas, this research identify quota as a form of affirmative action, perhaps in tension with formal equality principle but aiming to achieve substantial equality by rectifying the “injustice” which formal equality has no capacity to address.

From the practical perspective, quota as an arguable and at the same time relatively successful tool for achieving gender equality in politics is closely linked with the issue of efficiency. This research places quota in front of another similar successful gender equality approach such as the incremental track, with the purpose to point out the features that have converted quota into a popular tool despite controversial. This work argues that quotas increased popularity is due to their capacity in overturning the situation of gender discrimination when achieving their target successfully. Therefore, turning to quota efficiency this research aims to define and verify the basic criteria of quota efficiency, lack of which would cause a quota to be a mere formality emptied of its scope.

The paper utilizes the comparative methodology first, in identifying the features of quota as opposite to other gender equality measures and secondly, in defining and evaluating the basic

criteria of quota efficiency through the comparison of legislative quota provisions. The paper argues that the most important actors regarding gender equality in politics are the political parties. Moreover, the basic quotas' prerequisites of efficiency namely, the compulsory percentage, the ranking rule and the sanction are practically under political parties' faculty.

Additionally, the paper adopts the comparative methodology in regard to quota provisions and related legislation through which it aims to identify the basic elements that shape the profile of a quota. Legal analysis expectations are compared with quotas outcomes applied in Albania and similarly in Bosnia and Herzegovina, FYR of Macedonia and Croatia trying to identify the flaws in every defective quotas design. The paper suggests that the basic prerequisites of quotas are fundamental to their outcome but most importantly the political parties' acquiescence with such gender equality measures is an even more important efficiency requirement. Political parties may influence in various ways gender equality processes however, when it comes to establishing a quota rule either as a law or internal regulation of a political party, the effect of these rules is continually enforced. The exploration of the liaisons and mutual influence of political structures and gender legislation perhaps can constitute a research topic in itself, however this work aims to explore the role of politics on the fundamental issues that are tangible and possible to monitor such as quota feature embedded in law.

Introduction

Due to the highly arguable nature of quota, a great deal of quota literature is mostly focused on the issue of quotas legitimacy and the relation of this concept with other fundamental principles of justice.¹ A small part of quota literature refers to the practical aspects of quota application and quota efficiency and even in this case the views refer to a particular context or countries and can be rarely generalized. In respect to the first mentioned aspect, this work brings in the contemporary views on the much debated issues of quota legitimacy, depicting quota as a necessary measure to promote justice by applying substantial equality standards in the face of discrimination that formal equality cannot address. From the numerous countries' experiences with quota around the world² it results that gender quotas are widely accepted as effective measures to rapidly increase women participation in Parliament, but there exist different views as to the crucial factors that determine quota efficiency. Authors like Dahlerup³ and Krook⁴ have focused on the quantitative study of quota experiences, quota typology and the contextual character of quotas. The contextual character of quotas success has created difficulties in identifying one quota model universally successful for every context. Ballington and Matland⁵

¹ For more see A.Philips, *Politics of Presence: Oxford Political Theory*, Clarendon Press & Oxford University Press, Oxford & New York, 1995 and J.Lovenduski, *Feminizing Politics*, Polity Press, Cambridge, 2005.

² More than 100 countries in the world apply gender quota in politics according to the monitoring system implemented by International IDEA, *Global Database of Quotas for Women*, available at <http://www.quotaproject.org/> (accessed 12 February 2012)

³ D.Dahlerup, *Women, Quotas and Politics*, Routledge, New York, 2006.

⁴ M.L.Krook, *Quotas for women in politics, Gender and Candidate selection reform worldwide* Oxford University Press, New York, 2009.

⁵ J.Ballington & R.E.Matland, *Political Parties and Special Measures: Enhancing Women's Participation in Electoral Processes*, United Nations Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI), EGM/ELEC/2004/EP.8, 16 January 2004.

have focused their study on the role of political parties as to gender equality but without considering in detail the role of quota features in the quota outcome.

The purpose of this research is first to clarify the controversial aspects of quota in the views of the contemporary literature and secondly, through the analysis of quota provisions and quota-related legislation in Albania, Bosnia and Herzegovina, FYR Macedonia and Croatia, to explore and define beyond the contextual level of quota, the basic prerequisites of efficient gender quota. It will be shown first that quotas are a necessary measure to eradicate gender discrimination in politics in compliance with the principle of substantial equality and secondly that the obligatory percentage, the ranking rule and sanctions are the prerequisites of any legislative or voluntary quota project. This research bridges the existing gap between studies that focus on quota features and those few that examine the role of political parties in gender equality mechanisms, identifying the close connection between basic prerequisites of quota efficiency and political parties.

Quotas efficiency within the purpose of this research can be defined as the quotas capacity to bring a rapid numerical increase of female representation in parliament in compliance with its targeted level of representation and within a specified timeframe preferably between elections.

The research project relies on the comparative methodology of secondary sources namely books, working papers, and legislation (in Chapter III&IV) regulating and affecting quotas in the above mentioned countries and also a critical evaluation of the relevant material used for building on the main idea of the research. This work is conceptualized in two main parts each them based on a separate comparative analysis and every part is composed of two chapters. The four chapters

have an organic connection between each other as they lay out the arguments and proposed solutions surrounding two most important issues of quotas, their legitimacy and their efficiency.

In the First Chapter, is defined the important role of quota in the realm of gender equality measures in politics. Before focusing on the issue of efficiency, the chapter presents the arguments regarding main controversial issues of quota with the principle of equality and non-discrimination. The chapter further describes the role of quota in the democratic systems and quotas input into the multifaceted issue of substantive representation of women in parliament. The chapter concludes with the issue of quota efficiency which appears similarly interesting for exploration, considering quotas widespread application.

The Second Chapter puts quotas approach to gender equality also differently known as a *fast track* approach in comparative light facing another similarly successful but less popular system of gender equality methods as the *incremental track* approach with Sweden as the best representative of the system. In a comparative view, in this chapter are presented the respective mechanisms at the foundation of each approach and the reasons of their popularity or the lack of it. A general application of quotas has increased the popularity of the *fast track* approach due to its capacity to bring rapid progress in the issue of female underrepresentation in parliament. In the last part of this chapter, the focus turns on the crucial role of the political parties regarding gender equality in politics in both systems, developed further in the subsequent chapters in the context of quota. At this point of the work, the issue of quotas efficiency acquires a major relevance and determining efficiency criteria becomes the scope of the subsequent chapter. This lays down the base for the Third Chapter which defines and analyses the implementation of quota features in practical example of Albanian legislative quota.

In the Third Chapter throughout a legal analysis of the Albanian legislative quota, are defined the basic prerequisites for quota efficiency and compared with the defective outcome of the Albanian legislative quota. This chapter besides exploring the role of each quotas prerequisite in quotas' efficient outcome, it also clarifies further the link between these basic criteria and the key role of the political parties in their determination. The defective legislative quota in Albania illustrates such a liaison which becomes even more evident in case of a traditional society and a male-dominated politics as in Albania.

The Fourth Chapter again by using the comparative method of quota provisions and other legislative sources analysis are presented the cases of legislative and voluntary quota of Bosnia and Herzegovina, FYR of Macedonia and Croatia critically reviewed under the lessons drawn from the Albanian quota design. The comparison of legal sources directly or indirectly defining the basic quota features and the respective implementation experience of these countries serve to point out the individual importance of each quota prerequisite (the obligatory percentage, the ranking rule and the sanction) but also their simultaneous effect on quota outcome as a condition *sine qua non* efficiency and gender equality becomes an illusory target. Similarly interesting path of argument is the issue of political parties and culture influence on gender

CHAPTER I Gender equality, quotas and efficiency standard

The concept of quota is necessarily a controversial one both theoretically and practically.

Theoretically for it is based on the multi-sided concept of equality and on the definition of diversity, affirmative action and discrimination constituting the basis of quota legitimacy.

Practically, because despite highly popular especially in the political realm, there is no direct evidence that quota is the solution to structural discrimination of genders. However no matter its controversial background, quota as the most popular tool among gender equity measures in politics seems to be generally accepted at least as a starting point towards the eradication of discrimination and transformation of equality and democratic standards.

1.1 Gender equality in politics and quota

Before we enter into the analysis of gender quotas it is important to define in the first place the meaning of gender and quota in the context of this research. While they are both fairly popular terms in the realm of gender equality they seem to be used together every day more especially in politics. For the purpose of this research “gender can be defined as the culturally constructed meaning of biological sex differences.”⁶ In other words, gender is related with the sex of the person, despite it may or it may not be always correspond with that, for the concept of gender is related with the social perception and the attributes assigned to each gender by the society based on the perception of person’s sex.

⁶ GH.Lahti ‘Presidential Elections: Gendered Space and the Case of 2004’ in S.J. Carroll & R. L. Fox (eds.), *Gender and elections: Shaping the future of American Politics*, Cambridge University Press, New York, 2005, p.14.

Quota, in the context of this research, is considered as a form of affirmative action aiming to improve the political representation of the disadvantaged gender based on a timeframe and methodology of application. Affirmative action for the purpose of this research will consist of a differential treatment measure giving preference to the members of the disadvantaged group, aiming substantial equality between women and men besides formal equality. In the category of affirmative action may qualify even those apparently neutral measures which purposefully aim to favor the position of the disadvantaged gender in particular.⁷

Quota application as it has become a very popular tool; it reflects the increased attention of the countries regarding the presence of more women in politics as an important factor shaping democratic representation.

In particular, the spread of quotas to all world regions signals a major shift in approach from previous patterns of political incorporation, which did not recognize—and, indeed, often explicitly rejected—“women” as a category deserving political representation.⁸

Krook backed up also by other authors such as Ballington and Matland⁹, Peters & Suter¹⁰ relates the popularity pattern of quota in the last three decades (1980-2010) with the international

⁷ M. de Vos, *Beyond Formal Equality – Positive Action under Directives 2000/43 and 2000/78*, European Commission, 2007 available at http://www.migpolgroup.com/public/docs/14.Thematic_report_BeyondFormalEquality_EN_06.07.pdf. (accessed 12 February 2012)

⁸ ML.Krook, *Quotas for women in politics, Gender and Candidate selection reform worldwide* Oxford University Press, New York, 2009, p. 5.

⁹ Ballington J. & Matland RE., *Political Parties and Special Measures: Enhancing Women's Participation in Electoral Processes*, United Nations Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI), EGM/ELEC/2004/EP.8, 16 January 2004, p.11.

¹⁰ Peters A. & Suter S., 'Representation, discrimination and democracy: A legal assessment of gender quotas in politics' in LC.McClain & JL.Grossman, *Gender equality, Dimensions of women's equal citizenship*, Cambridge University Press, New York 2009, p.185.

initiatives and organizations promoting the implementation of positive measures for achieving gender equality in politics.¹¹ This major events that is considered to have influenced widespread of quota was the United Nations' (UN) Fourth World Conference on Women, Beijing (1995) and the Action Platform signed by all United Nations member states (189 states). This was a global event which foresaw for the first time the obligation of states to undertake measures for the purpose of increasing women's participation in the decision-making processes including politics.

Since then, the international support of this issue, the pressure from women's organizations and international organizations¹² against the political structures have escalated demands regarding measures with a rapid effect to equalize genders' representation in politics¹³. Actually, women constitute a social category, to whom political representation cannot be denied anymore, neither their absence in decision-making processes legally justified. "Those [women's] experiences should be included in any political deliberation for reasons of both effectiveness and democratic legitimacy."¹⁴

To summarize, the road towards gender equality in politics seems to be apparently closely linked with that of quota. Gender quota as a form of affirmative action, is highly popular in politics and less so in other spheres where is encountered gender discrimination i.e. work sector. This is perhaps related to two main reasons. First of all, the state's influence to impose quota differs between the private and the public sector. The state can impose measures in the public realm but

¹¹ Krook, p.3.

¹² CEDAW Committee, *General Recommendations*, Nr.23, 1997 para. 15 and 96/694/EC: Council Recommendation, *On the balanced participation of women and men in the decision-making process*, OJ 2000 L 319, 2December1996, 11–15, Section I.4(a).

¹³ L.Freindevall & D.Dahlerup "Quotas as a 'Fast Track' to Equal Representation for Women: Why Scandinavia is no longer the model" in *International Feminist Journal of Politics*, March 2005, pp. 26–48.

¹⁴ SH. Williams, 'Equality, Representation, and Challenge to Hierarchy: Justifying Electoral Quotas for Women' in SH. Williams (ed.), *Constituting Equality, Gender Equality and Comparative Constitutional Law*, Cambridge University Press, New York, 2009, p.62.

this is not equally the case for example when it comes to imposing norms on private business enterprises regarding gender equality policies. Second, political representation is different from any job in respect to its symbolic importance that it carries and for this reason the state has more competences to regulate gender equality in this sector if necessary even by law. Quota in politics can influence the overall social and economical situation of women while gender equality at work place deals only with one aspect of it. Moreover, the fact that other softer measures are applied in different sectors shall not be considered as substitute to the necessity of quota application in politics and parliament. Even though quotas do not constitute the only way to enhance gender equality in politics it seems apparently the most popular one despite its controversial nature.

1.2. Gender quota and democracy

In most part of the countries women are by law equal to men and this includes their citizenship rights and duties are equal. Women have the right to vote and to be voted in the public and political offices but no matter their legal rights and the way they exercise them, they continue to remain underrepresented in the most part of the countries around the world. According to Phillips¹⁵ the crucial features of democracy are *political equality* and *popular control* in the sense of democracy belonging and controlled equally by all its citizens. Lack of the preconditions for the practical realization of these two principles (especially for the women concerning half of the

¹⁵ A. Phillips, *Politics of Presence: Oxford political theory*, Clarendon Press & Oxford University Press, Oxford & New York, 1995, pp.27-28.

population), puts a big question mark on the democratic character of the system.¹⁶ When social groups are almost exempted from the political representation, it means that they exercise less influence in the political process.

Political equality is related with the concept of participation and representation in a democratic system.¹⁷ Despite participation and representation are two aspects of politics and democracy, they obey to different rules. While *participation* can be practically exercised by every adult citizen through voting, *representation* can be *potentially* exercised by everyone, since only a few can be elected to represent the whole society. Even though presumably in all democracies political rights of women and men are similarly guaranteed by law, the misbalance between female and male representatives in Parliament is obvious and persistent. Actually only 2 countries are nearer to reaching the equalization level of parliamentary representation in the global ranking. In Rwanda and Sweden female parliamentary representation is respectively 48.8 % and 45.3 % while all the other countries in the world despite their degree of development stand below this level.¹⁸

The increased popularity of quota means also increased of countries' awareness towards the existence of discrimination against women to join politics which apparently have translated in affirmative action to rectify the situation. This process did not bring only a reevaluation of women's role in politics but also a new emphasis of the principle of substantial equality as opposite standard of formal equality, transforming in an important feature of representative

¹⁶ A. Philips, *Politics of Presence: Oxford political theory*, Clarendon Press & Oxford University Press, Oxford & New York, 1995, pp.27-28.

¹⁷ Ibid., pp. 46-47.

¹⁸ See Inter-Parliamentary Union: Women in national parliaments, available at <http://www.ipu.org/wmn-e/classif.htm> and International IDEA, *Global Database of Quotas for Women*, available at <http://www.quotaproject.org/> (accessed 12 February 2012)

democracy.¹⁹ This means that if previously gender equality in politics was considered as a natural and gradual consequence of country's development process and no affirmative action was deemed necessary in this respect²⁰ actually it is generally considered as a precondition of democracy. In this aspect as mentioned earlier on, the international mechanisms have played an important role even in promoting the importance of *real* equality of genders in politics. This can be illustrated with one (but not the only) example from the general recommendations of CEDAW Committee stating that:

The concept of democracy will have real and dynamic meaning and lasting effect only when political decision-making is shared by women and men and takes equal account of the interests of both.²¹

Terms like democracy and gender quota in politics each day more often are considered so closely linked with each-other, that sometimes the latter (quota) is used by some states to intentionally create the illusionary presence of the former (representative democracy) especially in the case of totalitarian regimes which want to appear more democratic internationally.²²

¹⁹ For a better insight on this issue see: D.Dahlerup, *Quotas -A Jump to Equality? The Need for International Comparisons of the Use of Electoral Quotas to obtain Equal Political Citizenship for Women*, Paper workshop International Institute for Democracy and Electoral Assistance (IDEA) Jakarta, Indonesia, 25 September 2002.

²⁰ D.Dahlerup, *What are the effects of electoral gender quotas? From studies of quota discourses to research on quota*, Paper for the International Political Science Association's World Congress, Research Committee 19. Session: "Gender Quotas and Electoral Democracy", Fukuoka, July 2006, p.5.

²¹ CEDAW Committee, *General Recommendation no. 23*, 1997, para. 14.

²² L. Freindvall & D.Dahlerup 'Quota as a "fast track" to equal representation for women-Why Scandinavia is no longer the model', *International Feminist Journal of Politics*, 7:1 March 2005, pp.26-48.

1.3. Descriptive and substantive parliamentary representation of women

One of the important debates surrounding quotas application it is if perhaps quotas are limited in bringing only a numerical change of female representatives in Parliament without any difference in the political outcome also known as *substantive representation* of women.

Descriptive representation refers to the numerical aspect of female representation, i.e. when women are supposed to achieve a certain level of representation (in percentage) in parliament through quota. Substantive representation however, refers to the qualitative aspect of female representation in parliament; even this concept is abstract and difficult to be strictly defined. The main issue of debate is whether substantive representation *can* and *should* be used as a legitimating reason for increasing descriptive representation of women in parliament.

In the international level, countries are openly encouraged to increase women's descriptive representation as a way to improve the quality of the policy-making. For example European Council Recommendation (2003) refers that "the realization of balanced participation of women and men in political and public decision making would lead to better and more efficient policy making through the redefinition of political priorities and the placing of new issues on the political agenda as well as to the improvement of quality of life for all."²³ But is it really this the case, and if not should it be used a valid reason to reject quota?

There are doubts whether formal representation of women in Parliament increased through quota as rapid-change measure, will help for a better articulation of women's interest in

²³ Committee of Ministers, *Recommendation Rec (2003) 3 On Balanced participation of women and men in political and public decision making*, Council of Europe, March 12, 2003.

politics.²⁴ Aiming only for the formal or descriptive representation as quota does, authors like S. Childs believe that does not serve to enhancing the substantial representation of different interests.²⁵ In other words, there is contradictory evidence that a greater number of women in parliament will enhance substantive representation of women. On the other hand, despite there is no direct connection between these two aspects of representation, there are still qualitative indicators which demonstrate that female representatives would tend to assimilate easier when in smaller number and vice versa.²⁶ And that would serve as a sufficient reason to increase descriptive representation of women. The important issue in this context is not to try to discover the qualitative aspect of substantive representation but rather to think of the situations that would assist or impede women to represent themselves.²⁷

Authors like D. Dahlerup believe that instead of no representation at all, formal representation is still a step forward towards substantive representation of women²⁸. This is because political quota ensuring formal representation shall be considered as the start, and not the end of the process for gender equality. Dahlerup refers to substantive representation as follows:

What is crucial is how elected women use their new political power, what critical acts they perform in order to mobilize the resources of the political systems to improve the situation for themselves and for women in society in general²⁹

²⁴ Celis, pp.95–113.

²⁵ S.Childs, 'The House turned upside down?The difference Labour's women MPs made' in M.Sawer, M.Tremblay & L.Trimble (eds.) *Representing women in parliament-A comparative study*, Routledge, New York, 2006, pp.153-154.

²⁶ J.Lovenduski, *Feminizing Politics*, Polity Press, Cambridge, 2005, pp.174-175.

²⁷ S.Childs, 'The House turned upside down?The difference Labour's women MPs made' in M. Sawyer, M. Tremblay & L. Trimble (eds.) *Representing women in parliament-A comparative study*, Routledge, New York, 2006, p.154.

²⁸ D. Dahlerup . 'Electoral Gender Quotas: Between equality of opportunity and equality of result' *Representation Journal* ,Vol.43 No.2, (2007) pp 73-92.

²⁹ *ibid.*,p.42.

Due to the consequences it may produce, it is difficult to come with a single definition of substantial representation of women in parliament. A more traditional definition of substantive representation which indirectly identifies women as a group with a set of common interests is rejected on the other hand by postmodern authors³⁰ and replaced with the concept of the mere condition of formal or descriptive representation of women which in a way or another would generate substantive representation due to the difference in gender's social positions and experiences.³¹

If pursuing further the qualitative argument of substantive representation it becomes even harder to define what women's interests are by artificially considering them as homogenized group with identifiable preferences.³² According to K. Celis "'Good' substantive representation implies recognizing *diversity* and *ideological conflict* regarding women's interests and gendered perspectives."³³ And if substantive representation is to be used as a valid reason for gender equality in parliament, the fact that women can bring *different* experiences from those of men in the law-making processes should be considered a sufficient argument to increase their number.³⁴ In other words, the important issue in the discussion of substantive representation is not if women will bring a change in politics, rather than to point at their undeniable right to be there in proportion to their social and citizenship status and bring in only their experiences. Even though women's views may not radically change from those of men, women and men are biologically

³⁰ L. Trimble, 'When do women count? Substantive representation of women in Canadian legislatures' in M.Sawer, M. Tremblay & L.Trimble (eds.) *Representing women in parliament-A comparative study*, Routledge, New York, 2006, pp.122-123.

³¹ IM. Young, *Inclusion and Democracy*, Oxford University Press, Oxford, 2000, p.136.

³² J. Curtin 'Conclusion: Gendering political representation in the old and new worlds of Westminster' in M.Sawer, M. Tremblay & L. Trimble (eds.) *Representing women in parliament-A comparative study*, Routledge, New York, 2006, p.244.

³³ K. Celis 'Substantive Representation of women (and improving it): What it is and should be?' *Comparative European Politics* , Vol. 7, 1, 2009, p.95.

³⁴ Curtin, p.248.

different and dispose of different experiences as social beings, for this reason they must represent themselves in the process³⁵ on equal footing with men.

Enclosure of women's views in the law-making processes should not be influenced by quality debate, since it exists as a duty of the democratic system to consider and ensure representation of women's views. "The underrepresentation of specific groups in political institutions, decision making and policies is considered to be a democratic problem of justice, legitimacy, responsiveness and effectiveness"³⁶ Political rights are an important aspect of citizens' rights and barring women from *representation* means to undermine their rank of citizenship³⁷ or practically prohibiting them from enjoying the rights attached to their citizenship status.

1.4. Quota and the principle of non-discrimination

Political gender quota is known as the measure of differential treatment or the affirmative action based on sex criterion, with preference for the underrepresented sex in political representation. Differential treatment comes in contradiction with the principle of formal equality regarding equal treatment of the similar subjects but promotes on the other hand delivery of equality of opportunities or "real equality" for the disadvantaged categories through differential treatment.

³⁵ IM.Young 'Situated knowledge and democratic discussions' in J.Andersen & B.Siim (eds.) *The politics of inclusion and empowerment: Gender, Class and Citizenship*, Palgrave Macmillan, New York, 2004, pp.19-35.

³⁶ Celis , p.96. and A. Philips *Politics of Presence: Oxford Political Theory*, Clarendon Press &Oxford University Press, Oxford &New York, 1995.

³⁷E. McDonagh' Citizenship and Women's Election to Political Office: The Power of Gendered Public Policies' in L. McLain & J. Grossman (eds.) *Gender Equality: Dimensions of women's equal citizenship*, Cambridge University Press, New York, 2009, pp. 201-233.

Despite the increased popularity, quota still remains controversial when it comes to its application in terms of balancing properly the political rights of women and men. Main argument against quota has to do with being discriminatory against men's political rights because it burdens *unfairly* the position of men in present politics. *This based on the argument that quota aims to correct an inherently discriminatory system against women for which the actual male candidates may not be held directly responsible for.*³⁸ When referring to the concept of historical discrimination, this does not apply only to women's past since women's present and future continues to be affected by the discriminatory mechanisms as well. Bacchi notes that quotas rather than being discriminatory for men, their aim is to protect the position of women that have already being discriminated against in the past and that trend should not continue in the present and future.³⁹ The difference between these arguments depends on the approach applied between formal and substantial equality. If affirmative action is in tension with the formal equality principle it is still in compliance with the purpose of substantial equality aiming to equal in fact the opportunities⁴⁰ to join politics between the two genders. Wide range application of the quotas around the world has perhaps shifted permanently the concept of equality from formal equality to substantive one.⁴¹

³⁸ D.Dahlerup, 'From a Small to a Large Minority: Women in Scandinavian Politics', *Scandinavian Political Studies*, 11 (4), 1988, pp.275–97.

³⁹ C. Bacchi, 'Arguing for and against quotas. Theoretical issues' in D. Dahlerup (ed.) *Women, Quotas, and Politics*, Routledge, New York, 2006, pp. 32-51.

⁴⁰ D.Dahlerup, *Quotas -A Jump to Equality? The Need for International Comparisons of the Use of Electoral Quotas to obtain Equal Political Citizenship for Women*, Paper workshop International Institute for Democracy and Electoral Assistance (IDEA) Jakarta, Indonesia, 25 September 2002, p.2.

⁴¹ D.Dahlerup & L.Freindenvall, *Electoral gender quota system and their implementation in Europe*, European Parliament: Directorate-General for Internal Policies Policy Department C Citizens' Rights and Constitutional Affairs, PE 408.309, September 2008, p.21.

From the legal perspective, there is a right to be protected from discrimination of both men and women regarding their political rights. According to Article 25 of ICCPR:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 [which includes among others sex] (...) to vote and to be elected at genuine periodical elections.⁴²

However the principle of discrimination as emphasized in various important international conventions is not unlimited and exceptions can be drawn for a “reasonable and objective reason”⁴³ when the limitation comes from the state measure i.e. quota enforced by law.

Also CEDAW accepts that measures of differential treatment are not in violation of the principle of non-discrimination as long as these measures are temporary until the structural barriers for women have been eliminated as cited below.

In the Article 4 of CEDAW is stated:

*Temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.*⁴⁴

Women face structural barriers to join politics and Parliament. It is true in a large number of countries, the fact that female candidates' chances to win are smaller than those of male candidates running for elections. This is easily proved by the domination of men in actual Parliaments all around the world and statistics. Voters also are more skeptical to support a female

⁴² Article 15, International Covenant on Civil and Political Rights.

⁴³ Human Rights Committee, *General Comment 25 (57)*, UN Doc. CCPR/C/21/Rev.1/Add.7, 1996, para. 4 and 15.

⁴⁴ Article 4, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

candidate instead of a male one in many occasions. Also female candidates' qualifications are often underestimated in comparison to male candidates even from their own party.

Even though quota seems to be in contradiction with the equal treatment principle, because it differentiates men and women running for elections based on the sex criterion and not on meritocracy or any other quality of the candidate, its application is considered in large as an acceptable deviation from the formal application of equality principle. When quota are enforced as a law or constitutional principles differently known as legislative quota, there is a greater necessity for a legal justification of the measure. In such a case "electoral quotas constitute an admissible restriction upon formal gender neutrality and nondiscrimination if they are based in a *formal law, are narrowly framed, and are temporary.*"⁴⁵

1.5. Quota efficiency and types of quota

Quotas are not the only tool for equalization of parliamentary representation of genders.

However quotas' popularity as an appropriate tool for this purpose is partly due to the fact that when they are applied correctly they are able to bring a fast increase in women's representation in parliament and often an overturn of the situation of underrepresentation.

Quota efficiency for the purpose of this research can be defined as the capacity of a quota measure to achieve the predefined numerical representation of women in parliament within a specific time frame. Since quota is qualified as a measure that aims to bring an immediate

⁴⁵ A.Peters & S.Suter, 'Representation, discrimination and democracy: A legal assessment of gender quotas in politics' in LC.Mcclain & JL.Grossman, *Gender equality, Dimensions of women's equal citizenship*, Cambridge University Press, New York 2009,p.187.

change in the number of female representatives, an efficient quota is expected to reach its goal in its first time of implementation in the case of a legislative quota⁴⁶, unless the law defines it differently.⁴⁷ Legislative quotas are those types of political quotas that are enacted by law or a constitutional provision. Another popular type of political quotas is the party quota or differently known as voluntary quotas. As such they are voluntarily implemented by the political parties. In difference from the legislative quota, compliance with the party quotas is not a legal obligation. For the purpose of this research we will focus more on the legislative type of quota, both in this subchapter and in the following parts of this work.

It is important to clarify for the purpose of this research that the scope of efficient quota is the achievement of the descriptive aspect of female representation in parliament which is an easily measurable parameter and not of the substantive one which is not directly a quota aim. Based on the definition of efficient quota, an inefficient quota instead is to be considered a measure that for different reasons has failed to achieve its targeted level of representation within the foreseeable time. The foreseeable time in the case of a legislative quotas would be the first elections after their enactment, unless is foreseen otherwise by the law.

In male-dominated parliaments often the resistance to preserve the *status quo* is fierce which makes it harder for the quota measures to be efficient in their first time of application. Efficiency of legislative quota depends on the political parties as to both enactment and implementation of the quota provisions.

⁴⁶ Chapter Three and Four of this research will be based exclusively on the analysis of legislative quota efficiency.

⁴⁷ L.Freindevall & D.Dahlerup 'Quotas as a "Fast Track" to Equal Representation for Women: Why Scandinavia is no longer the model' in *International Feminist Journal of Politics*, March 2005, p.36.

The proposal and approval of the legislative quota in Parliament is expressions of political parties' will.⁴⁸ By being able to define the features of the legislative quota, the sanctions, the ranking rule etc the political parties in parliament shape early on the chances of the quota to either bring a change in the parliamentary representation of women or to simply fail its aim. How possible is for a male-dominated political class (parliamentarian parties) to *not* transfer its skepticism against women in politics by enacting an inefficient legislative quota? Can the political parties in Parliament enact an efficient quota when perhaps there has never been a previous political will to bring more women in parliament?

This issue will be further developed in Chapters III and IV of this work, with the purpose to demonstrate how gender equality in politics becomes a difficult task when there is no way of accountability for the political parties as to the failure of quota project since in its enacting process. Country experiences of Albania, Bosnia and Herzegovina, Macedonia and Croatia in different ways (in Chapter III and IV) aim to demonstrate that at least the descriptive aspect of female representation is in the hand of political parties.

⁴⁸ Friendevall L.& Dahlerup D. 'Gender Quotas in Politics: A constitutional challenge' in S. H. Williams.(ed.) *Constituting equality: Gender Equality and comparative constitutional law*, Cambridge University Press, New York 2009, pp. 29-52.

CHAPTER II Comparative overview of the fast and incremental track (Sweden and Albania)

While the previous chapter served to position quota in respect to the main in connection with which the quotas operate such as equality, non-discrimination, democracy and political parties. The aim of this chapter is to confront quotas as a relatively successful tool for increasing gender equality in politics with another similarly successful but not as popular method of the same purpose as the *incremental track* approach (typical for the Scandinavian countries).

The terms *incremental* and *fast track* approach are firstly used by the quota author D. Dahlerup, to qualify these two important approaches based on their main feature respectively to *gradually* and *rapidly* increase women's parliamentary representation. However the terms are often used in the quota literature. The comparison puts greater emphasis on the remarkable contrast between these two models as a reason of their greater or inferior popularity as a gender equality approach. Quotas or the *fast track* method even though highly controversial have had an increasing popularity in the last two decades while the opposite happened with the Scandinavian or *incremental track* approach. The comparative overview of these two approaches serves to define the most prospective method and the reasons of being so.

2.1. Incremental and fast track approach

Incremental and *fast track* are the terms describing two globally used approaches for increasing women's parliamentary representation. *Incremental track* approach includes a gradual increase

of the female representation in politics throughout long-term and parallel measures of intervention in many other life spheres besides politics, typical for the Scandinavian countries. *Fast track* approach refers to a rapid increase of the female representation in politics and gender equality throughout the implementation of measures of differential treatment such as quota and affirmative action. When successfully implemented quota can bring rapid changes that would overturn the situation of female parliamentary representation from one election to the other.

Besides their main feature, these two methods differ a great deal from each-other in other important aspects such as in the list of factors they blame for the underrepresentation of women in parliament and the respective solution they offer to this issue.

Incremental track explains the underrepresentation of women in Parliament with the lack of women's involvement and their lack of political means as the main reason. According to this approach women's political empowerment is part of the overall social, cultural empowerment of women, and application of quota alone is seen as an insufficient measure for improving women's empowerment in politics.⁴⁹ In the *incremental track* approach, the situation is improved by increasing women's support and their engagement in every sphere of life including politics. The system seems to "blame" women's lack of involvement in politics and not political parties (as in the case of quota) for the situation of women's underrepresentation in parliament.⁵⁰ The approach is focused on women as the root of the problem and solution, as actors which should be provided with resources to join politics. Therefore according to *incremental track* method, if the

⁴⁹ ML.Krook, *Quotas for women in politics, Gender and Candidate selection reform worldwide* Oxford University Press , New York ,2009, pp.108-132.

⁵⁰ D.Dahlerup, *What are the effects of electoral gender quotas? From studies of quota discourses to research on quota*, Paper for the International Political Science Association's World Congress, Research Committee 19. Session: "Gender Quotas and Electoral Democracy", Fukuoka, July 2006,pp.4-5.

problem of providing women with more resources is fixed, then gender equality will come as a natural consequence.

In contrary, *fast track* approach is based in the argument that the reason for the misbalanced representation of genders does not have to do with providing women with more resources (social, political etc) but rather correcting a bigger discriminatory political mechanism of exclusion and its effects of women's underrepresentation.⁵¹ For this reason, such approach legitimizes usage of measures of differential treatment as quota or affirmative action, as a response to structural barriers which women cannot overpass no matter their level of commitment. The difference between these two approaches is also related with the fact that *incremental track* is based on the concept of formal equality while quota on the concept of substantial equality.⁵² Incremental track includes measures to strengthen the position of women in politics and in other life spheres but without supporting their differential treatment during the elections. The opposite seems to apply in the case of quota and *fast track* approach which openly differentiates between genders in order to favor the disadvantaged group by means of affirmative action. Furthermore, the behavior of political parties is the subject of change in the case of quota and the *fast track* approach rather than that of the women in the first place.⁵³

⁵¹ For a more detailed information on fast and incremental track see : L.Freindevall & D.Dahlerup 'Quotas as a "Fast Track" to Equal Representation for Women: Why Scandinavia is no longer the model' in *International Feminist Journal of Politics*, March 2005, pp. 26–48 and Dahrelup D. & Freindenvall L., *Electoral gender quota system and their implementation in Europe*, European Parliament: Directorate-General for Internal Policies Policy Department C Citizens' Rights and Constitutional Affairs, PE 408.309, September 2008.

⁵² Dahrelup D. & Freindenvall L., *Electoral gender quota system and their implementation in Europe*, European Parliament: Directorate-General for Internal Policies Policy Department C Citizens' Rights and Constitutional Affairs, PE 408.309, September 2008, pp.21-22.

⁵³ ML.Krook, *Quotas for women in politics, Gender and Candidate selection reform worldwide* Oxford University Press , New York ,2009,pp.111-112.

Quota has been subject of increasing popularity in the last 3 decades all around the world including the Scandinavian countries since in 1980⁵⁴, while the *incremental track* has started to lose its popularity as an efficient gender equality approach with the development of democracy features towards a more representative and inclusive one.⁵⁵ Gender equality goals have become “actual” requisitions of democracy and more and more countries now are increasing their awareness towards methods of rapid changes in the political representation of genders. Even if incremental track approach has proved successful in achieving high levels of gender equality in politics especially in the Scandinavian countries, when it comes to the adoption of this method in other countries there seem to be this important obstacle. In the following subchapters are reflected the challenges of countries in development like Albania that have taken steps towards gender equality in politics which unavoidably were of a *fast track* nature. The reason for this will be explained later on in this chapter.

2.2. Comparing and contrasting gender equality challenges

Sweden is the best representative example of the *incremental track* approach. Actually Sweden is globally ranked at the second place after Rwanda for the higher level of female representation in Parliament and in the first place in Europe with a level of female representation of about 47.3 % (in the elections of 2006).⁵⁶ While Albania represents the example of a country with a communist

⁵⁴ L. Freidenvall, ‘Women’s Political Representation and Gender Quotas – the Swedish Case.’ *The Research Program: Quotas – a Key to Equality?*: Working Papers Series 2003:2. Stockholm University, Stockholm, 2003 and see also International IDEA, *Global Database of Quotas for Women* available at <http://www.quotaproject.org/> . (accessed 12 February 2012).

⁵⁵ A. Philips, *Politics of Presence: Oxford Political Theory* , Clarendon Press & Oxford University Press, Oxford & New York, 1995, pp.72-79.

⁵⁶ Inter-Parliamentary Union, 2008, <http://www.ipu.org> and International IDEA and Stockholm University, 2008, <http://www.quotaproject.org> . (accessed 12 February 2012)

past, a relatively new democracy and dealing with gender equality as a result of negotiations for accession with the European Union⁵⁷.

Only in the last five years (2005-2010), in Albania it can be noted a greater attention from the government and political parties regarding gender equality standards. A legal reform was initiated concerning gender equality by enacting first the law “For gender equality in society”⁵⁸ and then changes in the Electoral Code⁵⁹ changing the system into a proportional system of voting and inserting the quota of 30% regarding women in the parties’ candidate lists.

In difference from Sweden where the necessity to gender equality came from women’s internal structures⁶⁰, in Albania international pressure exercised through EU and UN structures and other organizations as OSCE or similar, played an important role in pushing gender equality issues into the government’s and parliament’s agenda⁶¹. In these circumstances, all the measures in regard to gender equality in Albania are focused around the aim of bringing a rapid change regarding the situation of discrimination, and *incremental track* approach for these reasons it is not considered as a possible option. The problem of gender discrimination is an old one in Albania and rather difficult to eradicate, however it was especially due to the recent political attention to it that brought some changes of the situation but still not realization of the legislative quota scope. (Albanian quota mechanism and the reasons of failure are explained in detail in Chapter III)

⁵⁷ Since June 2006 there is in place a temporary agreement between Albania and EU (Stabilization and Association Pact) in the context of negotiations for joining the EU.

⁵⁸ Law enacted with the Parliamentary Act Nr. 9970 on 24.07.2008 it was a modification of a previous Law “On Gender Equality” enacted in 2004 which remained quite symbolic without any implementation effect in practice regarding gender relations.

⁵⁹ Changes in the Electoral Law approved by Parliamentary act Nr. 10019 on 29.12.2008

⁶⁰ ML.Krook, *Quotas for women in politics, Gender and Candidate selection reform worldwide* Oxford University Press, New York, 2009, pp.107-114.

⁶¹ ML.Krook, *Quotas for women in politics, Gender and Candidate selection reform worldwide* Oxford University Press, New York, 2009, p.208.

Other countries in Balkans (Macedonia, Bosnia and Herzegovina and Croatia) are faced with similar challenges in regard to gender equality initiatives and they have all considered the *fast track* approach to tackle this issue in compliance with the international and national circumstances.

Many international documents and conventions, including EU, emphasize the necessity and “emergency” of women’s involvement in politics as the condition which will bring for the democracy to

(...) acquire a true and dynamic sense when women and men together define the values they wish to uphold in their political, economic, social and cultural life, and together take the relevant decisions.⁶²

In these conditions an increasing number of countries seem to prefer measures that can bring a fast change to the situation of underrepresentation of women.⁶³ *Incremental track* approach even though successful in achieving gender equality in politics, does not apparently fulfill the profile of the effective tool to tackle this issue anymore. Global application of quota has redirected the concept of equality towards the substantial or *de facto* one regarding parliamentary representation of genders⁶⁴ and formal equality measures as the basis of incremental model apparently does not tackle the situation properly.

There are social, institutional and political reasons why in Sweden female representation raised in a meaningful way under the incremental track and before quota application. Soon after women

⁶² Charter of Rome, adopted at the European summit “Women for the Renewal of Politics and Society” on May 18, 1996 and CEDAW Committee, General Recommendation no. 23 (1997), at para. 14

⁶³ D.Dahlerup & L.Freindenvall, *Electoral gender quota system and their implementation in Europe*, European Parliament: Directorate-General for Internal Policies Policy Department C Citizens' Rights and Constitutional Affairs, PE 408.309, September 2008, pp.22.

⁶⁴ D.Dahlerup, ‘Electoral Gender Quotas: Between equality of opportunity and equality of result’ *Representation Journal*, Vol. 43 No.2, 2007, p.88.

enfranchisement in 1921, women started to mobilize in order to increase their number as parliamentary representatives. Therefore since in 1920-30 women began to organize in civil society structures and demand from political parties to collaborate for more women in politics.⁶⁵ In 1970⁶⁶ in Sweden a supportive legal, educational and social environment regarding women's engagement in politics was already formed and functional such as the proportional system of voting, a favoring welfare system, high level of women's education etc. however, the level of women's in parliament continued to remain around 14 %⁶⁷ despite the pressure of women's organizations against political parties. In the elections of 1974 it was the biggest increase in the number of female representatives in Parliament, from 14% into 21.2 %.⁶⁸ The favorable institutional and social factors did not change during all this time including the elections of 1970 and 1974 however what did change was the predisposition of political parties towards female candidates.

According to Freidevall referring even to the *incremental track* approach state that "women's political representation depends on whether or not political parties have a strategic incentive to promote women."⁶⁹ In addition, the competition to get more voters between the parties and especially the pressure exercised by an already functional civil society in support of women's parliamentary representation were two main factors that initiated the raise trend in the elections of 1974.⁷⁰

⁶⁵ ML Krook, *Quotas for women in politics, Gender and Candidate selection reform worldwide*, Oxford University Press, New York, 2009, p. 109.

⁶⁶ G. Wallin 'The Status of Women in Sweden' *The American Journal of Comparative Law*, Vol. 20, No. 4 (Autumn, 1972), pp. 622-629, retrieved 27.09.2011, JSTOR Database <http://www.jstor.org/stable/839033627>

⁶⁷ Krook., pp 109-110.

⁶⁸ Krook., p.113.

⁶⁹ L. Freidevall, 'Women's Political Representation and Gender Quotas – the Swedish Case.' *The Research Program: Quotas – a Key to Equality?: Working Papers Series 2003:2*. Stockholm University, Stockholm, 2003, p.5.

⁷⁰ ML.Krook, *Quotas for women in politics, Gender and Candidate selection reform worldwide*, Oxford University Press, New York, 2009, p.112.

Measures of gender equality in Sweden differ in one important aspect from the Albanian gender equality platform because they originated from within the Swedish social and political structure (not as a result of international circumstances) and they became successful in the moment where political parties realized the political importance of more female candidates.⁷¹ It is important to reemphasize at this point the role of the political parties as the reason of change in the women's parliamentary representation both in the *fast* and *incremental track* approach almost independently from other factors. Civil society organizations on the other hand served as an incentive for this change by continually exercising pressure on the political parties and pushing forward gender equality agenda.⁷² In countries with no long tradition of civil society organizations and women's structures, the role of pressuring factor is often vacant or either is filled up by the international organizations delegations as in the case of Albania.

Negotiations with European Union have set up many challenges towards development for Albania and they are not easily surmountable but similarly hard as to replace in a short time the old traditional values with modern ones. In Albania women's enfranchisement has happened quite earlier in comparison to some other countries, specifically in 1920⁷³ however the conditions in favor of women to exercise the right to vote and to be voted in Albania had been scarce for a long time. Until 1945 when the communist regime was installed in the country, the level of illiteracy was very high, 90% of female population in the country was illiterate.⁷⁴ The situation however radically improved in this regard during communism (in the period 1945-1989) when

⁷¹ Freidenvall., pp.4-5.

⁷² ML.Krook, *Quotas for women in politics, Gender and Candidate selection reform worldwide*, Oxford University Press, New York, 2009, p.112.

⁷³ J.Katro & L. Pernaska, *Balanca gjinore ne jeten politike-Nje domosdoshmeri per shoqerine shqiptare*, United Nations Development Programme, Tirana, September 2000, p.8.

⁷⁴ F.Tarifa, 'Disappearing from politics: Social change and women in Albania' in M. Rueschemeyer (ed.) *Women in the Politics of Postcommunist Eastern Europe*, M.E. Sharpe Inc., New York, 1998, p.268.

female students reached and even later surpassed the number of male students in the universities and a similar increase was noted in the women's engagement in different work sectors next to men.⁷⁵ In politics during communism existed the political quota of 30 % and Women's Union of Albania was the only women's organization of a social and political nature. It could certainly not represent women's interest in difference with the party-state politics and women's role inside and outside this organization was not meaningful regarding the strengthening of their own political position.⁷⁶ Despite steps forward were done during this time, they could not resist to the regime changes in 1990. Democracy in Albania is relatively young in comparison to Western Europe. The pluralist regime was installed in 1990 and political gender equality even though an old problem, it started to gain attention from the political structures particularly in the last decade 2000-2010 while for decision-making structures this happened especially during the period 2005-2010 when the most important legal changes took place.

During the period 1990-2000 in the context of various national concerns like the high unemployment level of women, the difficult economical situation, the high immigration rate of male family members, the extended transition period, the Kosovo crisis in 1999, the fragile political stability etc. have all affected remarkably women's absence in the political realm and especially the governmental and political parties' attention to this issue.

A relatively inexperienced civil society could not devote much attention either to the issue of gender equality in the face of other socio-economic concerns of the country. Gender equality for a long time was considered as an issue "imported with the international agreements"⁷⁷ and remained rather theoretical one for a considerable period of time after pluralism installation.

⁷⁵ *ibid.*, pp.269-270.

⁷⁶ *ibid.*, p.270.

⁷⁷ Zyra rajonale e PNUD-it per Europen Qendrore dhe Lindore dhe CIS-in Qendra e mbeshtjtes rajonale Sllovaki, *Hartimi i Legjislacionit me kendveshtrim gjinor*, Sllovaki, Janar 2003.

The major changes in Albania in the area of gender equality in society and politics have happened in two political moments which were particularly important for the international status of the country. Firstly, it was the introduction of the voluntary party quota⁷⁸ in 2005 elections and secondly the introduction of legislative quota (through the changes in the Electoral Code 2008)⁷⁹ applied for the first time in the general elections of 2009. In both cases they have been initiated as a result of international pressure from the UN and EU structures in Albania rather than as an internal development and necessity of the Albanian women's organizations as in the case of Sweden. This means that steps have been undertaken towards gender equality in politics but society itself (including political parties) perhaps were not prepared as yet for the changes and for this reason while quota results were disappointing.

In Sweden gender equality movements were reflected on many other life spheres besides politics. In Albania women's engagement in the working sector parallel to men happened only after IIWW and this was not followed by a simultaneous strengthening of their political situation due to the conditions mentioned above. Women in Sweden instead started early on to compete in the professional sphere with men, trying to occupy positions of influence in the job hierarchy which were traditionally granted to men. In 1972 the law provided protection to women's job positions at the workplace. "It should also be noted that social legislation provides significant benefits and protection in connection with childbirth: e.g. a working woman may not be discharged on

⁷⁸ Voluntary party quota is the political quota undertaken in a voluntary basis by the political parties to enhance women's representation in parliament or in other political offices.

⁷⁹ Changes in the Electoral Code enacted with the Parliamentary Act No.10019 on 29.12.2008

grounds of pregnancy”.⁸⁰ In Sweden law on social services managed to facilitate women’s participation in work force in more equal terms with men and their job place became protected by law when it comes to pregnancy leave. Also divorce was already recognized by law by the early seventies, which is another feature that speaks about the degree of autonomy of women in the Swedish society.⁸¹ The parallel development of issues that facilitated women’s life and position in society assisted for building up women’s confidence to compete on equal terms with men without the necessity of quota in politics.

In Albania during the period of communism, women’s engagement in the work sector similar with men, in contrary created for them a double burden as the familiar relations continued to be the traditional patriarchal ones.⁸² Furthermore, the progress done regarding the strengthening of women’s political position during communism, did not sustain the regime change in 1990.

Women almost vanished from the political arena during the period of transition. Despite the installation of pluralism in place since 1990, only in the last 5 years the important decision-making structures got engaged with gender equality issues by undertaking a legal reform, a governmental strategy and establishing monitoring bodies for the issues of gender equality in society and politics. The legal reform regarding gender equality changed the voting system into a proportional one, included electoral legislative quota of 30% and the law “For gender equality in society”⁸³ was enacted, together with a national strategy for gender equality.

⁸⁰ G. Wallin’ The Status of Women in Sweden’ *The American Journal of Comparative Law*, Vol. 20, No. 4 (Autumn, 1972), pp. 622-629, retrieved 27.09.2011, JSTOR Database <http://www.jstor.org/stable/839033627>

⁸¹ *ibid.*

⁸² F.Tarifa, ‘Disappearing from politics: Social change and women in Albania’ in M. Rueschemeyer (Ed.) *Women in the Politics of Postcommunist Eastern Europe*, M.E. Sharpe Inc., New York, 1998, p.272-273.

⁸³ Albanian Law “For gender equality in society”, Act No.9970 enacted on 24.07.2008

Actually speaking however, no matter the legal reform and the insertion of legal quota of 30%, in the general elections of 2009 female representatives could not occupy more than 16.4 percent or 23 of the parliamentary seats.⁸⁴ Despite the legal changes, there seems to be a lack of political parties' willingness to include more women in their structures due to lack of programs for female candidates, parties' trend to evade quota application and the actual low number of female candidates in parliament. Political parties' skepticism towards gender equality quota can be tracked back even during the process of quota enactment in Parliament. For example light sanctions in the Albanian quota did not properly oblige political parties' compliance with the electoral quota. (For more see Chapter III)

2.3. Comparing and contrasting respective approaches to quota

The approach to quota between countries that have implemented *fast track* and *incremental track* measures is different because they respectively focus on substantial and formal equality for the eradication of gender discrimination.⁸⁵ However in time it seems that quota have gained ground also among countries belonging to the *incremental track* approach. Despite quota continues to be a controversial issue in these countries, *fast track* measures are applied voluntarily by the political parties. This trend has increased especially in the last 3 decades as in the case of Sweden, which despite a representative of *incremental* model category of countries, started to apply voluntary political quota in 1980⁸⁶. In Sweden, political parties have started to apply

⁸⁴ International IDEA, *Global Database of Quotas for Women* available at <http://www.quotaproject.org/> (accessed 12 February 2012)

⁸⁵ L.Freindevall & D.Dahlerup 'Quotas as a "Fast Track" to Equal Representation for Women: Why Scandinavia is no longer the model' in *International Feminist Journal of Politics*, March 2005, pp.26-48.

⁸⁶ L. Freidenvall, 'Women's Political Representation and Gender Quotas – the Swedish Case.' *The Research Program: Quotas – a Key to Equality?: Working Papers Series 2003:2*. Stockholm University, Stockholm, 2003.p.2.

individually voluntary political quota despite they try to avoid the usage of the term as such.⁸⁷

The process of quota adoption in Sweden started as a political decision of the small parties and spread out as a “contagion” or chain reaction which indirectly *obliged* bigger parties to take similar measures in order not to lose the female voters.⁸⁸ The level of female parliamentary representation was already high when quota started to be implemented despite they remained controversial and in contradiction with the principle of formal equality at the foundation of *incremental* model.

These measures however were and still are totally dependent to the political party and every party justifies the necessity of women’s representation according to their political ideology for this reason these two systems have cohabited successfully with each other in the case of Sweden.

Political parties believed that quota will not work for giving women more political power, without strengthening first women’s position in different life spheres.⁸⁹ However quota was successful in increasing further women’s parliamentary representation towards approaching the level of 50% for both genders. Actually in Sweden female parliamentary representatives occupy 47.3 % of the seats.⁹⁰ Insertion of quota in Sweden made gender equality progress more systematic and political parties did not need to negotiate the number of women on every election. This is because once the percentage of female candidates was defined by the internal regulation of the party; the political party could not make steps back in this aspect and lower the number of

⁸⁷ ML.Krook, *Quotas for women in politics, Gender and Candidate selection reform worldwide*, Oxford University Press, New York, 2009, p.112.

⁸⁸ L. Freidenvall, ‘Women’s Political Representation and Gender Quotas – the Swedish Case.’ *The Research Program: Quotas – a Key to Equality?*: Working Papers Series 2003:2. Stockholm University, Stockholm, 2003.

⁸⁹ L.Freindevall & D.Dahlerup ‘Quotas as a “Fast Track” to Equal Representation for Women: Why Scandinavia is no longer the model’ in *International Feminist Journal of Politics*, March 2005, pp.29-30.

⁹⁰ International IDEA, *Global Database of Quotas for Women* available at <http://www.quotaproject.org/> (accessed 12 February 2012)

female candidates without consequences on the number of votes. In addition, quota rules became a stronger guarantee for women's positions in the parties' lists therefore they were less sensitive to the momentary political parties' will.⁹¹

Countries that have adopted a *fast track* approach consider quota and affirmative action as the appropriate way to rectify discrimination of women by the political structures.⁹² Since only through differential treatment the existing structural barriers can be surpassed by women and stereotypes can be broken. However sometimes long-term structural barriers are so difficult to eradicate that in certain cases influence even the decision-making level. This is pretty much the recent situation in Albania, after the Parliament enacted a legislative quota that did not manage to achieve the 30 % female representation in the general elections of 2009 due to flaws in the legislative quota design. Before the enactment of the legislative quota,⁹³ voluntary quotas were applied by the main political parties especially due to the pressure of the international organizations such as the UNDP presence in Albania. However they had a very small impact in gender equality in parliament as women's parliamentary representation did not rise above 7%⁹⁴ of the seats (General elections of 2005).

Legislative quota in Albania was postponed for a long time and finally applied as a last resort measure for it required a political consensus among the parliamentary parties for including the

⁹¹ J.Ballington & RE.Matland, *Political Parties and Special Measures: Enhancing Women's Participation in Electoral Processes*, United Nations Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI), EGM/ELEC/2004/EP.8, 16 January 2004.

⁹² Dahlerup, p.29.

⁹³ Albanian Parliamentary Legislation, Laws No.9970 on 24.07.2008 and No.10019 on 29.12.2008 respectively "For gender equality in society" and "Changes in the Electoral Code".

⁹⁴ Albanian Centre for Economic Research (ACER) and Albanian Social Economic Think Tank (ASET) Survey, *Public perception of women's participation in elections in Albania*, United Nations Development Fund for Women, Albania 2008.

proportional system of voting and enacting a new law in the field of gender equality in society. Due to the legal nature of the quota, it was expected to have the greatest binding force for the political parties as the sanctions were legal obligations to comply with.⁹⁵ However features of this legislative quota apparently were not properly designed to serve quota purpose, by “mistake” or intentionally from the political and parliamentary parties.

Even legislative quota can be considered failed as to its aim of 30% of female representation; still it managed to double the number of female representatives in the present Parliament. This is also the highest level of female representation in politics since the installation of democracy in the country of about 16.4 % of the seats belonging to the female representatives⁹⁶. Also quota enactment obliged the political parties to start looking seriously and in the long term for female candidates in every election, in order to comply with the law requisition presently and in the future. For the first time the government and parliament enacting such a law, acknowledged the existence of a discriminatory recruiting mechanism regarding women in politics and imposed a legal sanction for the political parties that would not comply with the quota in their candidate lists. This sent out the important message to the political parties that women can no longer be excluded from politics and they would have to abide to such rules in every election round.

2.4. Gender equality and political parties' role

Political parties' attitude are more in focus in the *fast track* approach with the application of quota and less in the *incremental track* approach due to mechanism features; however in both

⁹⁵ For comparative features of legislative quota with other quota types, see D.Dahrelup & L.Freindenvall, *Electoral gender quota system and their implementation in Europe*, European Parliament: Directorate-General for Internal Policies Policy Department C Citizens' Rights and Constitutional Affairs, PE 408.309, September 2008, pp.29-30.

⁹⁶ International IDEA, *Global Database of Quotas for Women* available at <http://www.quotaproject.org/> (accessed 12 February 2012)

cases the role of the parties is essential in equalizing gender representation in parliament as the example of Sweden and Albania demonstrated above.

In the *fast track* approach this happens, independently from the type of quota undertaken, because the *fast track* tries to adjust faults of the recruiting system starting with the political parties' behavior⁹⁷ as the generators of discrimination. This is different from the *incremental track* approach which aims to correct women's attitude towards politics without interfering in the recruiting system⁹⁸ or judging the fairness of its outcome (the male representatives' domination). In the *incremental* system women are encouraged to strengthen their position in society in order to "deserve" without the necessity of any affirmative action, their position as parliamentary representatives similar to men.

In the case of Sweden mentioned above during the implementation of *incremental track*, it is interesting to bring into attention that the biggest increase in the women's parliamentary representation (in the elections 1974) did not happen as a consequence of change in any of major factors influencing women's political behavior or their social position. The "big leap" rather happened due to the change in the political parties' attitude towards female candidates.⁹⁹ From the experience of both *incremental* and *fast track* approach, it results that no matter the system of measures in place, it is the behavior of political parties that would finally make the bigger difference in gender equality issues.¹⁰⁰

⁹⁷ ML.Krook, *Quotas for women in politics, Gender and Candidate selection reform worldwide*, Oxford University Press, New York, 2009, p.111.

⁹⁸ D.Dahlerup, *What are the effects of electoral gender quotas? From studies of quota discourses to research on quota*, Paper for the International Political Science Association's World Congress, Research Committee 19. Session: "Gender Quotas and Electoral Democracy", Fukuoka, July 2006, pp.4-5.

⁹⁹ L. Freidenvall, 'Women's Political Representation and Gender Quotas – the Swedish Case.' *The Research Program: Quotas – a Key to Equality?: Working Papers Series 2003:2*. Stockholm University, Stockholm, 2003, pp.5-6.

¹⁰⁰ D.Dahlerup, *What are the effects of electoral gender quotas? From studies of quota discourses to research on quota*, Paper for the International Political Science Association's World Congress, Research Committee 19. Session:

Their role appears so relevant in the process that the success of a gender equality policy seems not to be influenced by the other factors as much neither by the type of the approach itself. L. Freindenvall writing about Scandinavian electoral system and gender equality in politics, states that:

(...) although the institutional, socio-economic and cultural factors mentioned are important, indeed, one has to consider efforts taken by the political parties in increasing women's numerical representation in the national legislature.¹⁰¹

This seems logical considering the great role that political parties play in almost every step of the recruiting process of the candidates. "Parties are entrusted with perhaps the most strategic responsibility in democracy – to prepare and select candidates for election and to support them in positions of leadership and governance"¹⁰² Furthermore their decision-making power extends beyond the issues inside their political structures including the national platforms in the parliament and government as well. Political parties can influence not only the process of candidates' selection according to their gender preferences but also they can until some point influence voters' choice. "Although voters may be able to choose candidates, they do so only after political parties have limited the options. Thus, parties are the real gatekeepers to public decision-making bodies."¹⁰³

"Gender Quotas and Electoral Democracy", Fukuoka, July 2006 and M.L Krook, *Quotas for women in politics, Gender and Candidate selection reform worldwide* Oxford University Press, New York, 2009.

¹⁰¹ L. Freindenvall, 'Women's Political Representation and Gender Quotas – the Swedish Case.' *The Research Program: Quotas – a Key to Equality?: Working Papers Series 2003:2*. Stockholm University, Stockholm, 2003, p.5.

¹⁰² J.Ballington & R.E.Matland, *Political Parties and Special Measures: Enhancing Women's Participation in Electoral Processes*, United Nations Office of the Special Adviser on Gender Issues And Advancement of Women (OSAGI), EGM/ELEC/2004/EP.8, 16 January 2004. p.2.

¹⁰³ D.Dahrelup & L.Freindenvall, *Electoral gender quota system and their implementation in Europe*, European Parliament: Directorate-General for Internal Policies Policy Department C Citizens' Rights and Constitutional Affairs, PE 408.309, September 2008.

Furthermore, political parties that tend to promote male domination in their candidate lists will not only affect Parliamentary representation of genders but shape voters' preferences in the long-term towards strengthening male-dominated structures and increasing skepticism towards female presence in decision-making.

The role of the political parties is crucial to be acknowledged and considered in every gender equality measure in politics.

Affecting the behavior of political machines vis-a-vis gender issues and understanding how competition changes these dynamics could thus be the keys to improve female chances at equal participation.¹⁰⁴

This realization takes a particular importance in regard to defining the features of quota when designing these measures, in order to rectify and monitor as much as possible the political parties' behavior regarding their compliance with quota and their possibility for quota evasion. In countries facing numerous challenges towards modernization and development, like the case of Albania, Bosnia and Herzegovina, Macedonia and Croatia (subject of Chapter III & IV) "curbing" political parties' will towards gender equality is the preliminary step of successful implementation of quota. The role of the political parties is discussed more in detail in Chapter III with the practical example of Albania.

¹⁰⁴ PC. Arce & A.Saiz, *Women and power: Unwilling, ineffective or held back?*, IZA Discussion Paper No. 5645, April 2011, SSRN Database, available at <http://ssrn.com/abstract=1812530> (Retrieved on 20 November 2011)

CHAPTER III Implementation of legislative quota in Albania

The development of this chapter relies on the arguments drawn from Chapter II. These are, first that quotas *actually* constitute a relatively suitable approach regarding gender equality in politics, despite their controversially, in comparison to other gender equality approaches. Secondly political parties' behavior is crucial regarding gender equality in politics no matter the methodology or approach implemented.

Societies in search of a new more modern and developed identity as Albania, Bosnia and Herzegovina, Macedonia and Croatia at the gates of EU are in a crossroad of values where contradiction between the old and the new is often unavoidable. In front of these contradictory influences are often found even political parties. On one hand their competence is to precede social development but on the other they are a product of society patterns they belong to.

This chapter brings the example of a quota project deemed indispensable for gender equality progress but which on the other hand seems to be “designed to fail” its aim due to political parties' skeptical attitude towards women. The only way to “failure proof” a quota project is to look for the prerequisites of an efficient legislative quota in its design. The example of Albanian legislative quota¹⁰⁵ in this chapter is to illustrate, that in societies with strong enrooted female discrimination, gender equality policies are more exposed to risk of failure¹⁰⁶ due to political

¹⁰⁵ For the purpose of this research, all the references to quota in this chapter shall refer to legislative quota.

¹⁰⁶ There are different views on the role of culture and gender equality and political parties as reflecting society values. According to Norris there can be no gender equality without developed culture, but as this can be considered

parties' hesitation to accommodate change. Since the process of quota enactment is more difficult to monitor than that of quota implementation, therefore this research points out the quotas' *prerequisites* (i.e. ranking rule, sanction) that political parties (collectively in Parliament) should comply with in order to have the basis for a efficient legislative quota.

First part of this chapter describes the legal environment and the “building pressure” against political parties to enact such a legislative project. While the second and the last part of it describes the situation during quota implementation and what obviously lacked to the existing legislative quota that sent to failure the project or simply produced the “wanted result” from the political parties.

3.1. International legal basis for government positive action

The enactment of legislative quota in Albania (2008) was the finalization of a long overdue legal change in the field of gender equality in the country. This legal change however was not initiated neither from the women's organizations and neither from the political parties but rather as a necessity of developing international circumstances affecting Albania, which is touched in the previous chapter but described below more in detail.

Gender equality in the Albanian society have had done little progress until the legal reform in 2008. For a long time the situation of female representation in parliament has been merely ornamental. Before quota enactment, the two main political parties attempted to implement

as extreme case in the view of this research, the role of culture in political parties' attitude and subsequently in gender equality is undeniable. For more on gender and culture debate see P.Norris & R.Inglehart, *Rising Tide: Gender Equality and Cultural Change around the World*, Cambridge University Press, New York, 2003.

voluntary quotas which did not increase female parliamentary representation more than 7%.¹⁰⁷

For a long time there was no interest neither from the political parties or government to involve more women in politics reflected in the political platforms or governmental initiative of any kind in this field. Legislative quota enacted in 2008 doubled the representation of women at the level of 16.4 %¹⁰⁸ however it did not reach the “promised” objective of 30%.

The condition of gender discrimination was and still is deeply enrooted in the construction of the Albanian society and political parties unfortunately seem to have perpetuated the skepticism towards women’s capacities even during quota enactment. From the examples of two main approaches to gender equality in Chapter II, was concluded that political party directly influence gender equality despite the approach applied but quota approach emphasizes their role even more. It is all about the rules they apply regarding female candidates’ recruitment.¹⁰⁹

According to Murray¹¹⁰ the connection between political parties and quotas is crucial and should be considered in a particular way along a quota project, this is for quota enactment and implementation starts and ends with the action of political parties either individually and collectively in parliament, their role is unavoidably essential in the quota success and their impact direct.¹¹¹ Political parties are the key actors able to promote and enhance gender equality or *vice versa* the cause of women’s underrepresentation in politics.¹¹²

¹⁰⁷ For more information see International IDEA, *Global Database of Quotas for Women*, available at <http://www.quotaproject.org/> and Inter-Parliamentary Union, <http://www.ipu.org>, (accessed on 12 February 2012).

¹⁰⁸ *ibid.*

¹⁰⁹ L.Freindevall & D.Dahlerup ‘Quotas as a “Fast Track” to Equal Representation for Women: Why Scandinavia is no longer the model’ in *International Feminist Journal of Politics*, March 2005, p.30.

¹¹⁰ R. Murray, Parties, *Gender quotas and candidate selection in France*, Palgrave Macmillan, London, 2010.

¹¹¹ L. Friendevall&D. Dahlerup, ‘Gender Quotas in Politics: A constitutional challenge’ in SH. Williams (ed.) *Constituting equality: Gender Equality and comparative constitutional law*, Cambridge University Press, New York 2009, pp.50-51 and R. Murray, Parties, *Gender quotas and candidate selection in France*, Palgrave Macmillan, London, 2010.

¹¹² R. Murray, Parties, *Gender quotas and candidate selection in France*, Palgrave Macmillan, London, 2010, p.4.

In Albania, political parties have neglected the issue of gender equality for a long time and for this reason Albania has been continually ranked as the country with the lowest female parliamentary representation in Southeastern Europe.¹¹³ The political class still needs to increase its awareness regarding the importance of women's presence in politics. In these last two decades (1990-2010) political parties have not been concerned of losing women's votes due to these discriminatory practices since it happens that even women vote better for male candidates as they believe that politics is a "manly job"¹¹⁴ and they are reluctant to support women instead of men in politics.

After quota enactment, political parties simply found themselves "obliged to look" for more women in order to comply with the law on quota but perhaps highly unprepared and unwilling to face the change and give in more political space to women.

By being member of CEDAW since 1993, Albania has engaged to provide not only for the *de jure* equality between genders but also for the *de facto* one. This did not bring many changes in the situation of gender discrimination especially in politics because the discussion of this issue remained in the theoretical level with very little impact in politics or legal practice¹¹⁵. CEDAW is directly applicable in the Albanian legal system and courts are supposed to refer to it when deciding a case, apply the convention when in contradiction with a lower level law and interpret national laws in compliance with it. In reality CEDAW related types of cases have not been ever sent to courts so far despite *de jure* the possibility to raise them exists. CEDAW's implementing

¹¹³ Presently Albania is ranked at the 73rd place below most of Balkan countries including Bosnia and Herzegovina, Macedonia and Croatia. Only Montenegro is ranked below Albania presently, for more see Inter-Parliamentary Union <http://www.ipu.org> (accessed on 12 February 2012).

¹¹⁴ E. Dragoti, I. Tahsini, E. Dhembo & J. Ajdini, *Monitorimi i hapave te Shqiperise drejt barazise gjinore: Rasti i quoteve gjonore ne politike*, Regional Research Promotion Programme in the Western Balkans (RRPP), Tirana, 2011.

¹¹⁵ Udhezues i Shkolles se Magjistratures, *Ceshtjet e barazise gjinore ne standartet ligjore dhe jurisprudence kombetare dhe nderkombetare*, UNFEM dhe Ambasada Spanjolle, Tirana, 2010.

mechanisms do not have the legal power to interfere in the internal legal system and oblige the government to take certain type of measures for example quota. According to the formulation of the CEDAW state's obligation towards prohibiting women's discrimination and promoting gender equality (Article 2), the nature of the obligation is rather an *obligation of result* and not of *conduct*.¹¹⁶ This means that member states shall take *all the necessary measures* (types of measures are not obligatory as the results, they can vary and include also the legal ones) to achieve the undersigned gender equality standards of the convention stated in the above mentioned article. *Necessary measures* do not exclude the affirmative action as well in order to promote equality in practice or *de facto* equality of genders however there is no obligation to undertake them. In the Article 4(1) of CEDAW, it is foreseen that:

*Temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.*¹¹⁷

Albania ratified CEDAW in 1993 and only in 2008, the political parties (collectively) in Parliament were able to enact legislative quota and changes in the Electoral law¹¹⁸ and the Law "For gender equality in society"¹¹⁹ due to country steps towards EU accession and added pressure regarding this issue.

¹¹⁶ According to the Article 2 (e) of CEDAW, member states among others engage "To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise".

¹¹⁷ According to Article 4 paragraph (1) of CEDAW, it is established the implied support of the convention regarding quota if necessary to promote substantial equality (de facto situation) between women and men.

¹¹⁸ Changes in the Albanian Electoral Law, Legislative Act No. 10019 on 29.12.2008

¹¹⁹ Albanian Law "For gender equality in society" Legislative Act No. 9970 on 24.07.2008

In the conditions of a male-dominated politics in the Albania¹²⁰ a new circumstance is created which puts gender equality in the attention of the government. In 2006 Albania ratifies the Stabilization and Association Agreement with the European Union. Realization of gender equality in society and politics was defined as an essential task for the Albanian government and political class, in order to join EU. According to the Stabilization and Association Pact, in the Articles 77 and 99, Albania engages in the obligation to ensure equal opportunities between women and men related to working conditions and social cohesion.¹²¹

During the period of work (2006-2010) of the European Commission, gender equality in decision-making positions was expressed as one of the main six areas of interests¹²² and gender equality as one of the basic principles applying all over the EU institutions.¹²³ Due to the supranational character of the EU, the binding power of EU norms is greater than in the case of international mechanisms, towards both member states and aspiring ones. Gender equality as a fundamental right and common EU value has created extra obligations for the Albanian government and *confined political parties' will (in Parliament) as well within a certain timeframe and around the purpose of gender equality reform in politics.*

¹²⁰ Presently Albania is ranked in the 73rd place according to the actual women's parliamentary representation with 16.4 %, while in the previous elections of 2005 female representation was only 7 %, For more see Inter-Parliamentary Union, <http://www.ipu.org> (accessed on 12 February 2012).

¹²¹ Stabilization and Association Pact between the Member States of the European Communities and Republic of Albania, 2006.

¹²² Dahrelup D. & Freindenvall L., *Electoral gender quota system and their implementation in Europe*, European Parliament: Directorate-General for Internal Policies Policy Department C Citizens' Rights and Constitutional Affairs, PE 408.309, September 2008.

¹²³ For more see European Commission Recommendation 96/694/EC on the balanced participation of women and men in the decision-making process, 1996.

3.2. Legislative quota enactment and the role of political parties

Quota outcome depends on many diverse factors.¹²⁴ However the purpose of this research is to emphasize the determinant role of the political parties in the first place through quota projects. We can divide the factors affecting quota efficiency in two main categories political and non-political ones, they certainly interact with each-other affect in different levels quota outcome. "Parties are pivotal actors in explaining women's under-representation and the effectiveness of quotas in increasing women's presence."¹²⁵

On the other hand however, the political parties are influenced from the non-political factors in a continual way. Considering that "the party system is clearly a reflection of the society from which it has come; in it the politicians reproduce the styles and conduct of society"¹²⁶ In countries like Albania apparently neither the social factors or the political parties have been in favor of gender equalized parliament so far, however if social structure cannot be modified within a short time, social change can be preceded by quota. According to Ballington and Matland¹²⁷ the advantage of quota is that it can give women a *temporary* chance, and in difference from the cultural context and women's position in society, features of the electoral system can be changed which easier and adapted to the context.

¹²⁴ For more see: M.L Krook, *Quotas for women in politics, Gender and Candidate selection reform worldwide*, Oxford University Press, New York, 2009, p.p.208-210.

¹²⁵ R. Murray, Parties, *Gender quotas and candidate selection in France*, Palgrave Macmillan, London, 2010, p.4.

¹²⁶ International IDEA, *The Implementation of Quotas: Latin American Experiences Workshop Report*, Stockholm 2003, p. 108.

¹²⁷ Ballington J. & Matland RE., *Political Parties and Special Measures: Enhancing Women's Participation in Electoral Processes*, United Nations Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI), EGM/ELEC/2004/EP.8, 16 January 2004, p.6.

Gender equality targets depend on the efficiency of quota projects and the latter ones are highly determined by the will of the political parties either individually or collectively.¹²⁸

In this context, political parties in front of EU requisitions for gender equality, found themselves “unprepared” and unwilling to accept more women in their lists and in parliament. This requisition has limited political parties’ will in time and in purpose and has put political parties in a controversial position between the social composition they come from and the change they must represent in the field of gender equality. For this reason the situation resulted in the enactment of a defective quota project.

According to P.Norris and R.Inglehart¹²⁹ society culture and women’s political presence influence each-other in a correlated way; however culture is the factor that determines more women’s presence in politics rather than the opposite situation. If we consider this to be true, the mechanism trying to contradict “unfavorable” and discriminatory cultural patterns should be able to overcome the obstacles in order to promote and sustain social change. Legislative quota in Albanian proved that this is not an easy task to monitor or implement.

It seems that the political parties (collectively) are charged with the important mission of preceding social change (according to the historical circumstance) but quota efficiency is impeded when political parties are skeptical towards more women in parliament and not capable of conducting such a task properly. In the Albanian context of legislative quota enactment, the most important but difficult goal was to hamper these structural barriers to be transported in the decision-making process of the political parties.

¹²⁸ R. Murray, Parties, *Gender quotas and candidate selection in France*, Palgrave Macmillan, London, 2010 pp.108-109.

¹²⁹ P. Norris & R. Inglehart, *Rising Tide: Gender Equality and Cultural Change around the World*, Cambridge University Press, New York, 2003, pp.9-10.

Legislative quota project as a product of the political parties' will be affected by the situation of gender discrimination in society and these views may be reflected in two levels: firstly, during the designing process of legislative quota and secondly during the implementation of quota by the political parties. The most difficult situation is created in the case when political parties' skepticism towards women is reflected in the designing level, for that is the most complex process to monitor in order to "curb" discriminatory attitudes of political parties'.

Legislative quota in Albania was applied as remedy to the previous failure of voluntary quota. Voluntary quotas in Albania applied by the main political parties did not manage to raise the level of parliamentary representation above 7% ¹³⁰(2005) while legislative quota brought the level of 16.4%¹³¹ despite unable to achieve the foreseen level of 30% of the parliamentary seats. Besides the complexity of factors that may influence either legislative or voluntary quota, there are some quota prerequisites that should not be lacking since in their designing process.

In the case of legislative quota, due to its legal nature the basic criteria of efficiency are the compulsory percentage, the ranking rule and the sanction. This is certainly not an exhaustive list of factors but it is a list of conditions *sine qua non* efficiency will not be possible. Presence of these features in the design of the legislative quota would be a greater warranty against the enactment of only a ornamental quota project.¹³² Exploration of these features is possible in the context of legislative quota due to the public character of the law; therefore the following subchapters will focus on the analysis of the basic criteria of quota efficiency based on the experience of the Albanian legislative quota.

¹³⁰ General elections in Albania in 2005, for more info see Inter-Parliamentary Union, <http://www.ipu.org>, (accessed on 12 February 2012).

¹³¹ For more info see Inter-Parliamentary Union, <http://www.ipu.org>, (accessed on 12 February 2012).

¹³² L.Freindevall & D.Dahlerup 'Quotas as a "Fast Track" to Equal Representation for Women: Why Scandinavia is no longer the model' in *International Feminist Journal of Politics*, March 2005, p. 42.

3.3. Legislative quota features

The origin of legislative quota or affirmative action in a country often derives from formulation of equality in the national constitution. This was not the case for the Albanian legislative quota. The Albanian Constitution¹³³ uses neutral and generalized terms like “people”, “person” and “everyone” etc. along the provisions which are formally non-discriminatory to either of sexes. In the Article 18 paragraph (2), is established the legal basis for the “positive action” in case there are “objective and reasonable reasons” for this action, this served as the constitutional basis to enact legislative quota as affirmative action in politics, however there is no particular emphasis to equality principle and besides this, the Constitution does not use *gender* as a category in general along its text.

Only in the Article 54 (1) this category is mentioned in the context of “Children, pregnant women and young mothers enjoy the right of a special protection from the state”. As with regard to the national legal framework, the Albanian legislation is modern and based in the developed legal models of western democracies. However, the inherited problem of equality and non-discrimination in the Albanian legal system is that, *de jure* and *de facto* situations constitute almost two different realities.¹³⁴

Failure of Albanian legislative quota demonstrated moreover, that not every type of legislative quota would be successful as to gender equality targets, especially in a traditional and

¹³³ Constitution of Republic of Albania enacted with the Law nr.8417, dt.21.10.1998 and changed with the Law No.9675, dt 13.01.2007 and Law No.9904, dt.21.04.2008

¹³⁴ Udhezues i Shkolles se Magjistratures, *Ceshtjet e barazise gjinore ne standartet ligjore dhe jurisprudence kombetare dhe nderkombetare*, UNFEM dhe Ambasada Spanjolle, Tirana, 2010.

conservative context as the Albanian one. The legislative quota needs to be adapted with the given context it applies and be provided with certain features that ensure the functionality of quota mechanism towards the quota aim.¹³⁵ According to Dahlerup quotas without ranking rules and effective sanctions, and those that does not adapt to the context where enacted, are totally emptied from their scope and merely formal.¹³⁶

3.3.1. The ranking rule

The evidence of the reason for quota failure is often identifiable from the analysis of the quota features embedded in the law. For this reason this subchapter will focus on the technical aspect of the legislative quota introducing the basic criteria to be scrutinized.

In order to open the way to the enactment of legislative quota it was necessary to made amends in the existing voting system, to transform it into a proportional one as a technical necessity.¹³⁷

Changes in the Electoral Code were introduced with the legislative Act No. 10019 on 29.12.2008 with the purpose of implementing the standards set in the law “For gender equality in society”¹³⁸

In the Article 4 (5) of this law is foreseen “‘Equal gender representation’ as the representation of every gender with not less than 30 % in every institution of the decision-making level, elected organ, political parties.”

In respect to the above-mentioned provision, the Electoral Law foresees in the Article 67(5) that:

¹³⁵ D. Dahlerup, *What are the effects of electoral gender quotas? From studies of quota discourses to research on quota*, Paper for the International Political Science Association’s World Congress, Research Committee 19. Session: “Gender Quotas and Electoral Democracy”, Fukuoka, July 2006, p.9.

¹³⁶ L.Freindevall & D.Dahlerup ‘Quotas as a “Fast Track” to Equal Representation for Women: Why Scandinavia is no longer the model’ in *International Feminist Journal of Politics*, March 2005, p.37.

¹³⁷ Legislative quota cannot be applied in a majority system due to its functioning mechanism of candidate election.

¹³⁸ Law enacted with the Parliamentary Act No. 9970 on 24.07.2008.

At least 30 % of the list candidates *and/or* one of the *first three names* in the list shall belong to both genders. In the elections of the local government one in every three places in the list shall belong to each gender.¹³⁹

In this circumstance the required criteria with which political parties are required to comply with was not able to produce the desired outcome of the quota project. This is because first of all the law does not require the political parties (during the general elections) to comply with both conditions such as the ranking rule and a required percentage. This composition influences a great deal the election of the female candidates since even if the political parties have been able to comply with the 30% in the candidate lists, nothing will change out of it if women are placed at the bottom of the list and never will have chance to enter parliament.¹⁴⁰ Political parties are left with much discretion to decide between the ranking rule and “one of the first three names in the list to belong to both genders” which separately applied do not have any meaningful impact on the female representation in parliament. In the Albanian context, such type of quota may be considered as not matching with the difficult situation of gender discrimination, because it does not respond properly to the “unwillingness” of political parties to involve more women in politics and does leave space for evasion of the quota effect. *In order to be successful and to enhance female parliamentary representation the legislative quota should have been provided with a ranking rule and a compulsory percentage to be applied by the political parties both in the general and local elections.*

¹³⁹ Amended Albanian Electoral Law No. 10019 on 29.12.2008

¹⁴⁰ Dahrelup D. & Freindenvall L., *Electoral gender quota system and their implementation in Europe*, European Parliament: Directorate-General for Internal Policies Policy Department C Citizens' Rights and Constitutional Affairs, PE 408.309, September 2008, p.32, for more on the role of the political parties see also: Ballington J. & Matland RE., *Political Parties and Special Measures: Enhancing Women's Participation in Electoral Processes*, United Nations Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI), EGM/ELEC/2004/EP.8, 16 January 2004.

The law foresees that political parties complying with the 30% requisition does not have to comply with the ranking rule, in which case political parties behaved as there was no quota at all putting all the women at the end of the list. On the other hand, those political parties that decided to apply the ranking rule were released from the compulsory 30%, category which did not promise any better prospective of outcome either.

The quota rule is even weaker than appears in the first place. Its failure does not stand only in the fact that the requirements are discretionary for the political parties, to choose between the ranking rule and the 30%, but in a closer look there is no ranking rule as such.

If all the political parties would have complied with *only* the partial ranking rule of “one of the first three names in the list to belong to both genders” from each parliamentary party could not be elected more than 2 women (the rest of the ranking order is up to the political party) making the aim of 30% apparently unrealistic.

If we sum up the hypothetical outcome number of female candidates elected out of the category of the political parties that chose to apply the 30 % criterion only, at the bottom of the list together with the outcome from the parties category that would apply the other option of first top-three places on list (in whatever proportion with each other), the aim of the quota is obviously an unreachable objective.¹⁴¹

Such a conclusion is not necessary to be tested before in the field (during election) since this quota formula does not mathematically support the quota objective therefore it is not unexpected that legislative quota in Albania failed its scope.

The legislative quota apparently is already defective at the level of its formulation while we have not yet pondered the role and impact of its sanctions as another important feature of quota

¹⁴¹ Albanian Centre for Economic Research (ACER) and Albanian Social Economic Think Tank (ASET) Survey, *Albania's 2009 Parliamentary Election: Monitoring the implementation of gender quota and women's participation*, United Nations Development Fund for Women, Tirana, 1 September 2009, pp.12-13.

efficiency. However with this type of quota formulation, it can be said that no matter the sanction in place there is no way to correct the primary defect of the quota unless its formulation is corrected.

For the local elections the legislator, aware of the mild effect of the previous quota regulation, has extended the ranking obligation all over the candidates' list. Article 67 paragraph (5) referred also above foresees that "In the elections of the local government one in every three places in the list shall belong to each gender"¹⁴².

This quota formulation perhaps would have proved more efficient than the quota formulation in the general elections, however this did not seem to be the intention of the legislator since political parties could still could avoid "in a legal way" abiding the quota due to a far lighter sanction imposed, of a monetary fine about 250 Euro. In both cases the formulation of quota demonstrates a level of skepticism towards more women in parliament and this was reflected in its design by the legislator and consequently in its outcome.

3.3.2. The sanctions for non-compliance

In the Article 67 (6) and Article 175 of the Electoral Code are defined the sanctions for quota non-compliance. In general elections the sanction is defined as rejection of the political parties' candidate lists until they comply with the quota requisition. While in the local elections the sanction is a fee payment of approximately 250 Euro in case of non-compliance with the local quota rule.

¹⁴² Amended Albanian Electoral Code enacted by Parliamentary Act No. 10019 on 29.12.2008.

The sanction is one of the most important elements of the legislative quota which distinguishes it from the voluntary quota.¹⁴³ However its role diminishes in case when the formulation of the obligation is not appropriate in itself as concluded above. Ranking rule and sanctions for non-implementation seems to be the main tools that direct the “politics” of quota towards its aim in an efficient or inefficient way. The legislator has directed quota outcome by combining the effect of ranking rule and sanctions at the same time. In the Albanian legislative quota, for fear of the rapid change in the parliamentary composition, the legislator has enacted an “easy” ranking rule followed by a strong sanction for the general elections, and a “strong” ranking rule followed by a “light” sanction during the local elections, and this has only equaled the weak outcome of the given quota.

In both cases political parties are not put in difficulty to comply with the quota provision, even when the sanction is “rejection of the list” as imposed by the law because the quota rule in itself is not strong in itself as referred above. In the case of general elections, the legislator requires the political parties to comply with only one of the requisitions, and under this “light quota” formulation perhaps there was even no need to apply such a strong sanction as the rejection of the political party’s list.¹⁴⁴

Additionally in the case of local elections the fine that the legislator has imposed may affect only the small political parties with a small budget and that is apparently the political parties’ category which “attitude” is targeted for change. Big parties could totally avoid the quota application by paying the fine. Application of quota from the small political parties causes the quota impact to be small also or inexistent.

¹⁴³ L.Freindevall & D.Dahlerup ‘Quotas as a “Fast Track” to Equal Representation for Women: Why Scandinavia is no longer the model’ in *International Feminist Journal of Politics*, March 2005, p.39-40.

¹⁴⁴ L.Freindevall & D.Dahlerup ‘Quotas as a “Fast Track” to Equal Representation for Women: Why Scandinavia is no longer the model’ in *International Feminist Journal of Politics*, March 2005, p.39-40.

All this knowledge was available to the political parties enacting such a quota mechanism and embedding it into law, producing a defective one, but the Albanian traditional society and most of all the political parties seemed not to be ready for a gender equalized political representation as yet. Moreover, a problem which affects more profoundly this issue is the lack of implementation of the laws in Albania including those of gender equality and there is often a discrepancy between the theoretical standards of the law and its application in practice.

CHAPTER IV Comparison of quota projects and the role of political parties

One of the conclusions in the Third Chapter was that political parties had played a crucial role in the Albanian legislative quota, emphasis added regarding the process of quota “design”. In comparison with the Albanian legislative quota, in this chapter are brought additionally the quota experience of *Bosnia and Herzegovina*, *FYR of Macedonia* and *Croatia*. All these countries have adopted legislative quota (with the exception of Croatia). Common countries’ experiences with quota represent a favorable opportunity to “single out and observe” better the role of *political parties* in these countries, considering the common origin, historical background, neighboring circumstances, similar high level of gender discrimination in all these countries, and especially the challenge for all of them to rapidly improve gender equality standards in the context of EU negotiation. Through the application of the *prerequisites list* of efficient quota, which basic elements were defined in the previous chapter, will be explored below the reasons of legislative quotas’ success or failure. The comparison adds a greater emphasis on the connection between political parties and quota design, considering that all these countries have adopted legislative quota with different results due to different quota design which represent as well articulation of political parties will to this issue. The same response seems to be for the question of why all other countries have failed in applying voluntary party quota, Croatia has applied them arguably successfully as it will be explained in the last subchapter.

It is beyond the scope of this work to represent an exhaustive list of all quota features that impact quota efficiency and are a result of political decision, however this chapter’s aim includes

presenting the conditions *sine qua non* it becomes obsolete to speak about gender equality targets in parliament. Behind every inefficient quota seems to be a “skeptical” political class towards women and behind every successful one, political parties that are open to more women in public-offices.

This chapter by comparing and contrasting quotas’ outcome with the respective quota design, articulated in law or in political party regulations (Croatia), examines the political parties’ will as to gender equality standards according to the degree they have complied with the basic quota prerequisites for efficiency. The conclusions of this and of the previous chapter serve not only to evaluate the causes of quota inefficiency but also foresee the appropriate changes necessary for the defective legislative quotas (i.e. Albania and Bosnia Herzegovina).

4.1. Cultural setting influence and political parties

Cultural settings are difficult to change in a short period of time while countries like Albania, Bosnia and Herzegovina, FYR of Macedonia and Croatia are faced with the common challenge of improving gender equality in society and politics, under the influence of international circumstances. In all listed countries women are continually faced with different challenges due to the traditional, religious or ethnical social doctrines that have justified discrimination since the fall of communist regimes in these countries. Similarly in all of them seems that gender equality has always been considered a second-hand problem to be solved by politics and therefore deserving of little political attention in comparison to other national concerns. Despite “*suffering*” from similar patterns of gender discrimination (which require a long time to

change¹⁴⁵), it is interesting to explore the main reason why these countries have advanced differently in the field of gender equality in politics.

Cultural setting and political parties' views are considered to be closely-related to each other in every social context. In most of the cases, culture's influence is stronger on the political parties than the other way around. In this way are shaped also the political parties' attitude towards different social issues including gender equality.¹⁴⁶

When this influence becomes problematic to the disadvantaged position of women in society and politics, logically it would take a stronger effort from the political parties to break the circle of influence from the cultural pattern. This is the case when (gender equality) legislative reform precedes social change and quota is successful in bringing the proclaimed change. In a contrary circumstance however, when political parties are not "interested" in recruiting more women for their lists or structures, the *vicious circle* of gender discrimination is only perpetuated by enacting a defective legislative quota.¹⁴⁷

Albanian society and that of the surrounding neighbor countries still fight with the remaining stereotypes and structural barriers of gender equality because as S.Meznaric and M.Ule state that "(...) women's emancipation in these East European societies has kept pace with their modernization; they are both delayed."¹⁴⁸ The Albanian society still faces difficulties in leaving behind its gender-layered features which has given to men bigger social prerogatives especially

¹⁴⁵ For a better insight on the relation of culture, modernization and politics see P.Norris & R.Inglehart, *Rising Tide: Gender Equality and Cultural Change around the World*, Cambridge University Press, New York, 2003.

¹⁴⁶ P.Norris & R.Inglehart, *Rising Tide: Gender Equality and Cultural Change around the World*, Cambridge University Press, New York, 2003, pp.9-10.

¹⁴⁷ All the reference to the term of quota in this chapter refers to the legislative (candidate) quota model unless differently specified.

¹⁴⁸ S.Meznaric and M.Ule, 'In Pursuit of a Framework: Delayed Modernization and the Emancipation of Women in the Balkans' in M.Rueschemeyer (ed.) *Women in the Politics of Postcommunist Eastern Europe*, M.E. Sharpe Inc., New York, 1998, p.196.

after the fall of communism.¹⁴⁹ In a similar way, the nationalist dogma and the ethnical divisions in Bosnia and Herzegovina¹⁵⁰ continue to honor women who serve the nation as child bearers and mothers in the first place.¹⁵¹ In Croatia, the predicate of the Catholic Church according to which women shall focus mostly on their families rather than outside it, has played the same role of alienating women from politics and putting them away from political power.¹⁵² In these contexts, even women themselves in these unfavorable social circumstances have tended to stay away from politics since occasionally it is considered aggressive and a “manly-job”.¹⁵³

Unfortunately, the development at present of gender culture in South East Europe, in spite of changes in legislation, the acceptance of international conventions and institutional changes, remains, according to indicators, examples and analyses presented here, a failure.¹⁵⁴

These characteristics reflect the social structures but also the level of interest and disinterest from the political parties to include more women in politics.

Many of these factors continue to influence the social composition of these countries despite their progress in the field of gender equality in politics. No matter the actual result, the bigger

¹⁴⁹ F.Tarifa, 'Disappearing from politics: Social change and women in Albania' in M.Rueschemeyer (ed.) *Women in the Politics of Postcommunist Eastern Europe*, M.E. Sharpe Inc., New York, 1998, pp.271-272.

¹⁵⁰ NM.Bamburac, 'The unbearable lightness of stereotypes' in NM.Bamburac, T.Jusic, A.Isanovic (Eds.) *Stereotyping representation of women in print media in South East Europe*, MediaCentar, Sarajevo, 2006, p.12.

¹⁵¹ B.Andjelkovic, 'Reflections on Nationalism and Its Impact on Women in Serbia' in M.Rueschemeyer (ed.) *Women in the Politics of Postcommunist Eastern Europe*, M.E. Sharpe Inc., New York, 1998, pp.240-242.

¹⁵² J.Irvine' Public Opinion and the Political Position of Women in Croatia, in M. Rueschemeyer (Ed.) *Women in the Politics of Postcommunist Eastern Europe*, M.E. Sharpe Inc., New York, 1998, pp. 216-218.

¹⁵³ J.Ballington & RE.Matland, *Political Parties and Special Measures: Enhancing Women's Participation in Electoral Processes*, United Nations Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI), EGM/ELEC/2004/EP.8, 16 January 2004,p.4.

¹⁵⁴ NM. Bamburac, 'The unbearable lightness of stereotypes' in NM.Bamburac, T.Jusic, A.Isanovic (eds.), *Stereotyping representation of women in print media in South East Europe*, MediaCentar, Sarajevo, 2006, p. 31.

challenge towards substantial gender equality is the own development of society. Still the main question remains the same: why some countries have succeeded more than others?

Krook¹⁵⁵ and Dahlerup¹⁵⁶ state that quota approach is the methodology which emphasizes the role of the political parties as the main responsible actors in the process of candidate recruitment and consequently even for the condition of female underrepresentation when applicable. Not denying the impact of the contextual factors in each country including even on political parties, political decisions are ultimately determined by the political parties alone. Enactment of legislative quota is a political parties' decision (collective) and also a potential tool to embrace (or not) gender equality changes in politics. With this in mind, several legislative quota designs will be object of comparison later on in this chapter.

4.2. Legislative quota and political parties (Basic prerequisites of efficient quota)

Legislative quotas in the context of this chapter are the political quotas enacted by means of law or constitutional provision. Voluntary quotas in the same context are the political quotas implemented in a voluntary way from the political parties. Both voluntary and legislative quota have proved to be effective in achieving gender equality, however they differ from each-other in some aspects. Legislative quotas due to their legal nature have a binding effect on all the political parties which is different from the voluntary quota that brings changes only through individual

¹⁵⁵ ML.Krook, *Quotas for women in politics, Gender and Candidate selection reform worldwide*, Oxford University Press, New York, 2009, p.5.

¹⁵⁶ D.Dahlerup, 'Electoral Gender Quotas: Between equality of opportunity and equality of result', *Representation Journal*, Vol. 43, No.2, 2007, p.87.

application from the political parties. Also the mechanism of implementation in the case of legislative quota is the legal sanction that does not consider the political parties' willingness to comply or not voluntarily with quota. Referring to the candidate type of quotas¹⁵⁷, both legislative and voluntary, they depend on certain prerequisites easily to identify in the case of legislative quota. According to Krook¹⁵⁸, Dahlerup¹⁵⁹, Peters and Suter¹⁶⁰ a quota project and in particular legislative quota shall be provided with the "warranty features" since in its designing process, as an important aspect of effective quota.

Effective quota is considered the quota which is successful achieving a rapid increase of female representation in parliament.¹⁶¹ For this reason, quota mechanism is expected to bring such a change as soon as it implemented (during the first elections after enactment). This is to clarify that when despite quota application, only a gradual increase of female representation takes place, it means that quota mechanism is not serving the purpose that is enacted for.

First, it is necessary that the quota have an obligatory level of presence regarding female representation in the candidate lists.¹⁶² In addition, this requisition shall be followed by a proper ranking rule which does not allow for the political parties to place female candidates at the bottom of the list with no chance to be elected. A strong sanctioning system shall be in place in

¹⁵⁷ All reference to quotas in this chapter refers to the measures that are introduced in the level of candidates' selection in the political parties' lists.

¹⁵⁸ ML.Krook, *Quotas for women in politics, Gender and Candidate selection reform worldwide*, Oxford University Press, New York, 2009, p.11.

¹⁵⁹ D. Dahlerup & L. Freidenvall, 'Quotas in Politics: A Constitutional Challenge', in SH.Williams (ed.), *Constituting Equality: Gender Equality and Comparative Constitutional Rights*, Cambridge University Press, Cambridge, 2008, pp.45, 47.

¹⁶⁰ A.Peters & S.Suter, 'Representation, discrimination and democracy: A legal assessment of gender quotas in politics' in LC.Mcclain & JL.Grossman, *Gender equality, Dimensions of women's equal citizenship*, Cambridge University Press, New York, 2009, pp.198-199.

¹⁶¹ D.Dahrelup & L.Freindenvall, *Electoral gender quota system and their implementation in Europe*, European Parliament: Directorate-General for Internal Policies Policy Department C Citizens' Rights and Constitutional Affairs, PE 408.309, September 2008, p.29-30.

¹⁶² *ibid.*, p.198.

order to ensure compliance with the quota. The sanctions can be monetary or not. The sanction of rejection of the candidate list is among the successful ones as Dahlerup point out.¹⁶³

These features takes particular importance especially in societies with high records of gender discrimination, where quota if properly implemented can provide women with a space and time to behave outside their confined traditional spaces. Still this is up to the political parties to take the progressive steps towards the meaningful change.

Murray states that political parties are the responsible actors directly involved with the process of quota enactment and implementation.¹⁶⁴ Taking this into consideration the monitoring process, in order to ensure that they will produce an effective quota model, becomes difficult to monitor or influence outside of the political arena.

A prerequisite list composition serves for mapping out quota's success and political parties' outlook on it at the same time. Political parties' intentions towards *de facto* gender equality are deducted from the level of compliance with the list of requisitions as well.

Due to the close link between political parties and quota, persistent low levels of gender equality show an open or hidden unwillingness of the political parties to essentially change the situation of gender imbalance in Parliament, even with the application of different type of quota. The case of the Albanian legislative quota (see Chapter III) seems not to be isolated, but very similar to the situation in the neighboring countries also. Through the comparison of the Albanian legislative quotas design with the legislative quota of Bosnia and Herzegovina, Macedonia in

¹⁶³ L.Freindevall & D.Dahlerup, 'Quotas as a "Fast Track" to Equal Representation for Women: Why Scandinavia is no longer the model', *International Feminist Journal of Politics*, March 2005, p.40.

¹⁶⁴ R. Murray, Parties, *Gender quotas and candidate selection in France*, Palgrave Macmillan, London, 2010, pp.4-8.

respect to their outcome, the reasons of their success or failure will be demonstrated to derive from design flaws but perhaps does not fall outside of political expectations either.

Actually none of the listed countries have achieved yet the aim of legislative quota to increase female representation in Parliament with 30%, but some countries like Macedonia have come nearer to this aim for the reasons that will be referred below. Croatia as a country with similar background history, has applies voluntary quotas instead, a measure failed in all other referred countries herein. So far, Albania and Bosnia and Herzegovina are under the level of 20% of female representation while Macedonia has achieved in the last elections a female representation of 30.9%¹⁶⁵ and Croatia is at 23.8 %¹⁶⁶. The reason as anticipated has to do with the political parities willingness to enact an efficient quota starting from the designation of main quota features.

4.3. Comparison of quotas design

In Albania and the other neighboring countries like Bosnia Herzegovina, Macedonia and Croatia, the interest of the political parties has remarkably increased only with the starting of the negotiation procedures for joining European Union. Since the fall of the communist regime in the region during which women's representation was at least 30% in politics¹⁶⁷ women never manage to achieve the same result in politics up to date. Political elites are still not aware of the

¹⁶⁵ Inter-Parliamentary Union, Women in Parliament Database, available at <http://www.ipu.org/wmn-e/classif.htm> (accessed 12 February 2012)

¹⁶⁶ Ibid.

¹⁶⁷ E. Dragoti, I.Tahsini, E.Dhembo & J.Ajdini, *Monitorimi i hapave te Shqiperise drejt barazise gjinore: Rasti i quotave gjinore ne politike*, Regional Research Promotion Programme in the Western Balkans (RRPP), Tirana, 2011, pp.8-9.

women's relevance in politics.¹⁶⁸ Records show that political parties in the post-communist countries have learned to make politics excluding women. This has affected the behavior of women and voters as well, besides political parties, while strengthening the male-dominance making discrimination more difficult to eradicate. But what happens if in these circumstances, political parties are required achieve gender equality.

Krook¹⁶⁹ recognizes international pressure as one possible incentive for quota enactment, which according to Krook is the case when these organizations influence the internal process of quota enactment in a given country by strongly influencing their governments to do so. Krook does not analyze however the related consequences in such a case, but a possible one is that all important actors including political parties (since quota initiative does not originate from neither of them) may be found “unprepared” , in front of the possibility for rapid change¹⁷⁰ as Dahlerup refers.

In such a case, this condition becomes a reason of contradictory trends development between the EU requisition on one hand and own political parties' convictions on the other which apparently (in the case of Albania and Bosnia Herzegovina) in some cases have finalized with the enactment of defective legislative quotas.

The following subchapters' aim will be to compare these quotas provisions, their formulation and design in respect to their level of outcome efficiency as indicators of political parties' willingness to achieve gender equality.

¹⁶⁸ G.Pascall & A.Kwak, *Gender regimes in transition in Central and Eastern Europe*, Polity Press, University of Bristol, Bristol, 2005, p.63.

¹⁶⁹ ML.Krook, *Quotas for women in politics, Gender and Candidate selection reform worldwide* Oxford University Press , New York ,2009, pp.41-42

¹⁷⁰ D.Dahlerup & L.Freindenvall, *Electoral gender quota system and their implementation in Europe*, European Parliament: Directorate-General for Internal Policies Policy Department C Citizens' Rights and Constitutional Affairs, PE 408.309, September 2008, p.29.

4.3.1. Legislative quota in Bosnia and Herzegovina

Bosnia and Herzegovina is among the Balkan countries where the path towards gender equality has been more challenging due to the troubled history of conflict and war between Bosnians and Serbs (terminated on December 1995). Tensions between different ethnicities, economical problems, violence against women, and women's unemployment and salary discrimination in the job market just are some of the issues that have further deteriorated the underrepresentation of women in politics.¹⁷¹ Gender equality issues in Bosnia and Herzegovina seems to come after the ethnical and other types of national concerns.¹⁷² However judging from the present level of women's percentage in Parliament (16.7% in the elections of 2010 for the lower House of Parliament)¹⁷³ the result is similar (slightly higher) to the Albanian quota outcomes¹⁷⁴ obtained from the first election after quota enactment. While in the Upper House the percentage of female officials is even smaller at the level of 13.3 %¹⁷⁵

Regarding gender equality legal framework in the Bosnian Constitution the landscape is not favorable to gender equality reforms. The constitution is part of an international document known as the Dayton Agreement signed at the end of the Bosnian December 1995. Despite that it is a very complex document; it is created at the end of an ethnical conflict, fact that is reflected in

¹⁷¹ NLSofronic (Dr), *Bosnia and Herzegovina today*, Gunda Werner Institute: Feminism and Gender Democracy, 15 July 2010, retrieved on 12 February 2012, available at <http://www.gwi-boell.de/web/democracy-women-rights-bosnia-herzegovina-today-violence-gender-equality-3047.html>

¹⁷² Global Rights Partners for Justice, *NGO's Shadow Report on the implementation of CEDAW and Women's Human Rights In Bosnia and Herzegovina Presented to the UN CADAW Committee*, 2004, p. 64.

¹⁷³ Inter-Parliamentary Union, Women in Parliament Database, available at <http://www.ipu.org/wmn-e/classif.htm> (accessed 12 February 2012)

¹⁷⁴ International IDEA, *Global Database of Quotas for Women*, available at <http://www.quotaproject.org/> (accessed 12 February 2012)

¹⁷⁵ Inter-Parliamentary Union, Women in Parliament Database, available at <http://www.ipu.org/wmn-e/classif.htm> (accessed 12 February 2012)

the rights, its structure and mechanisms it applies.¹⁷⁶ In any case its provisions are not capable of accommodating the gender equality challenges by means of positive measures. The situation is with no changing perspective as the process of Constitutional amending is not totally specified and incomplete about the subjects that can actually propose the amends¹⁷⁷.

Bosnia has been among the first countries in Balkans to enact Gender Equality Law (2003)¹⁷⁸ later on the Law on Protection from Domestic Violence¹⁷⁹ (2005) and more recently the Law on Prohibition of Discrimination (2009).¹⁸⁰ The Parliament of Bosnia and Herzegovina (the Lower House) is presently composed of 42 seats in total (from the elections of 2010) and 7 out of them are women. Elections are conducted on the basis of proportional system and parties are required to include women candidates in the level of 30 % with an obligatory ranking rule all through the list. The ranking rule is stronger than the Albanian quota provisions which include the ranking rule as obligatory only for the first three names of the list.¹⁸¹

According to the Bosnian Electoral Code as amended in 2006, Article 9.14 at the fourth paragraph defines the percentage that should be occupied the underrepresented sex (approximately one-third of the list names). However the flaw of this legislative quota, despite being changeable and articles of it have been amended in total 13 times (2001-2008) the final sanction for quota non-compliance is discretion of the *Election Commission* of Bosnia and Herzegovina.

¹⁷⁶ Bosnia and Herzegovina Constitution, part of The General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement) Annex 4

¹⁷⁷ Ibid, Article X.

¹⁷⁸ Law on Gender Equality in Bosnia and Herzegovina published on 21 May 2003.

¹⁷⁹ Bosnia and Herzegovinian *Law on Protection from Domestic Violence*, published on 29 March 2005.

¹⁸⁰ Bosnia and Herzegovinian *Law on Prohibition of Discrimination*, published on 23 July 2009.

¹⁸¹ Article 67(5) of the Amended Albanian Electoral Law No. 10019 on 29.12.2008

In this regard Article 4.6 in the third paragraph states:

If the Central Election Commission of BiH identifies incorrect or incomplete information, *or if it identifies any other deficiency or irregularity in the application in the sense of this law or of an act issued by the Central Election Commission of BiH, after the date of receipt of such notification* it shall notify the applicant thereof, who shall be bound to correct the information within two (2) days. Upon the expiration of this deadline *in the event that the political party fails to remove the deficiency or irregularity from the application, the Central Election Commission of BiH shall not certify the application of that political party for participation in the elections, the Election Commission of BiH shall decide whether or not to certify or reject the application for participation in the elections.*¹⁸²

As with regard to the ranking rule, this is foreseen in the Article 4.19 paragraph 4, which states:

Every candidates list shall include candidates of male and female gender. The minority gender candidates shall be distributed on the candidates list in the following manner. *At least one (1) minority gender candidate amongst the first two (2) candidates, two (2) minority gender candidates amongst the first five (5) candidates, and three (3) minority gender candidates amongst the first eight (8) candidates et seq. The number of minority gender candidates shall be at least equal to the total number of candidates on the list, divided by three (3) rounded up to the closest higher integer.*¹⁸³

¹⁸² Article 4.6.(3) of Bosnia and Herzegovinian Election Law, originally enacted on 23 August 2001, partially amended 13 times, last time in 2008.

¹⁸³ Article 4.19.(4) of Bosnia and Herzegovinian Election Law, originally enacted on 23 August 2001, partially amended 13 times, last time in 2008.

The ranking rule seems slightly more complicated than one from the minority gender in every three candidates all through the list as the Albanian ranking rule for the local elections. However the law restates the requisition of 30 % additionally to the ranking rule. Apparently the weakness of this quota stands in the lack of clear and strong sanction in case of non-compliance.

While the Albanian electoral code defines expressively that in case of non-compliance with the quota, candidate lists shall be rejected, the Electoral Code of Bosnia and Herzegovina does not specify it leaving it to the discretion of the Election Commission.¹⁸⁴ In this case the sanction takes the same importance with the rest of electoral procedures, feature that makes quota formulation only symbolic without legal force.¹⁸⁵

Additionally inefficiency of this type of sanction is proved by the fact that for Bosnia and Herzegovina legislative quota has been already implemented twice with the same and even a lower result. In 2006 there were 8 female representatives elected in the Bosnian Parliament, in the elections of 2010 only 7 female representatives were elected.¹⁸⁶

The aim of the legislative quota (unless foreseen differently by law) is to achieve the defined level of female representation on the first time of application in order to be considered successful.¹⁸⁷ Albanian legislative quota has been implemented only once in the general election in 2009 and perhaps until next general elections appropriate amendments will be done to its design.

However in both cases of Bosnia and Herzegovina and Albania, quota provisions should be

¹⁸⁴ Article 67 (6) and Article 175 of the Amended Albanian Electoral Law No. 10019 on 29.12.2008

¹⁸⁵ D. Dahlerup & L. Freidenvall, 'Quotas in Politics: A Constitutional Challenge', in SH. Williams (ed.), *Constituting Equality: Gender Equality and Comparative Constitutional Rights*, Cambridge University Press, Cambridge, 2008, p.47.

¹⁸⁶ For more information on women in parliament see (Bosnia) in International IDEA, *Global Database of Quotas for Women*, available at <http://www.quotaproject.org/> (accessed 12 February 2012)

¹⁸⁷ L. Freidenvall & D. Dahlerup, 'Quotas as a "Fast Track" to Equal Representation for Women: Why Scandinavia is no longer the model', *International Feminist Journal of Politics*, March 2005, pp.35-36.

considered unsatisfactory to fulfill their aim and corrective measures should be undertaken in both cases in order to correct their outcome. Interestingly so, even the process of amending the quota would require a new consensus from the political parties in Parliament, therefore quota *destiny* is permanently placed in the “hands” of the political parties in every “meaningful moment”.

4.3.2. Legislative quota in Macedonia, Former Yugoslav Republic (1993)

As one of the Balkan countries applying the legislative quotas, Macedonia actually seems the one that has applied it in a more efficient way towards reaching the level of 30% of female representation. The efficient application of quota provisions derives in the first place from an appropriate design of the provisions which include all the relevant elements for successful implementation.¹⁸⁸ This seems to be the obvious reason of quota efficiency in Macedonia.

As with regard to the Constitutional framework the changes done in 2001 were quite important in terms of citizens rights. In the Article 8 (2) (amended) of the Constitution equality is defined as a fundamental value articulated as “Equitable representation of persons belonging to all communities in public bodies at all levels and in other areas of public life”¹⁸⁹. Gender or sex as a basis for discrimination is mentioned in the Article 9 of the amended Constitution. Despite there is no specific formulation about gender equality in the Constitution, the position of equality principle at the center of the constitutional values (which it is characteristic also for Croatia)

¹⁸⁸ L.Friendevall & D.Dahlerup 'Gender Quotas in Politics: A constitutional challenge' in SH. Williams.(ed.) *Constituting equality: Gender Equality and comparative constitutional law*, Cambridge University Press, New York 2009, p.44.

¹⁸⁹ Article 8(2) of the FYR Macedonian Constitution, as amended in 2001.

illustrates commitment of the political elite regarding a substantial level of equality between different social categories.

In the general elections of 2011, women candidates managed to be elected with a percentage of 28 %¹⁹⁰ or 34 for seats out of a total of 123 of the Parliament. Macedonia has a PR system and quota was enacted as legislative measures in the year 2008.

Quota provisions are similar to those enacted in Albania and Bosnia and Herzegovina but improved in the crucial elements and therefore even in its efficiency. The law foresees rank ordering obligation all through the list followed by the sanction of list rejection in case of party incompliance and they are both clearly stated by the law with no delegation of competences.

The rule includes that in every three names of the list, one shall be of the underrepresented gender, which means that at least thirty percent of the names in the list will be from the underrepresented gender even though the law does not mention it expressively. The political will is clearly translated into legislative quota for which the political elite is aware that it can achieve its aim based on the careful selection of its prerequisite features.

Albania, Bosnia and Herzegovina and Macedonia being three neighboring countries, with similar problematic but different quota projects, have obtained remarkably different results out of legislative quotas. As a matter of fact, Macedonian quota provisions seem to represent the improved version of the Albanian and Bosnian quota. Moreover, the Macedonian legislative quota due to project similarities may well serve as an example for the necessary changes in both these countries, in case the political class is willing to improve the quota policies in Albania or Bosnia and Herzegovina.

¹⁹⁰ Inter-Parliamentary Union, Women in Parliament Database, available at <http://www.ipu.org/wmn-e/classif.htm> (accessed 12 February 2012)

The ranking rule is defined according to Article 64 (5) of the Macedonian Electoral Code

In the submitted list of candidates for Members of Parliament from paragraph (2) of this Article and list of candidate for Member of Council of the municipality and the City of Skopje from paragraph (3) of this Article, in every three places at least one will be reserved for the less represented gender.¹⁹¹

The clear sanction of rejection of the list is stated in the Article 67(4)

Should the State i.e. Municipal Election Commission i.e. Election Commission of the City of Skopje establish that the lists have not been submitted timely, i.e. the irregularities and the omissions have not been eliminated by the list submitters within the deadline set in paragraph 2 of this Article, *the submitted lists shall be rejected with a decision within 24 hours from the receipt of the lists.*¹⁹²

At this point, it seems obvious that the legislative quotas are very similar in the three country examples and one or two alterations in the project seem to have made a huge difference between quota efficiency and inefficiency. As resulted from the examples of the three countries every single aspect of the quota mechanism plays an important role in their outcome and when one or more of the elements like the rank ordering, the sanctions, the obligatory percentage are lacking, the quota project will be incomplete and very likely to fail as the case of Albanian and Bosnia and Herzegovinian quota.

It is important to emphasize that this knowledge it is certainly available to the parliamentary political parties enacting such a law. For this reason it can be said that when enacting a

¹⁹¹ Article 64(5) of the Amended Macedonian Electoral Code on 29 October 2008.

¹⁹² Article 67(4) of the Amended Macedonian Electoral Code on 29 October 2008.

legislative quota, political parties (male-dominated parliaments) are already informed about the law effects that its design will produce focusing on the above mentioned criteria.

4.3.3. Voluntary quota in Croatia

In this subchapter, differently from the previous examples of legislative quota, is brought the example of a voluntary quota, with the purpose to demonstrate that the issue of efficiency gender equality methodologies in politics more than a problem of approach, is ultimately an issue of political determination. The prerequisite condition of efficiency to every type of quota is fundamentally the political determination towards gender equality.

Croatia is the only country in the South Eastern Europe that does not have legislative quota. In all the other Ex-Yugoslavian countries, experiences with voluntary quotas have not proved successful; however in Croatia it has provided a level of female representation of about 23.5 %¹⁹³ in the general elections of 2007 which is expected to increase further based on the individual engagement of political parties to recruit more female candidates. As mentioned previously in this research the difference between legislative and voluntary quota is mainly the legal character of sanctions and the general binding power of the rule. Voluntary quotas are based on the same basic list of quota features¹⁹⁴ as the legislative quota but in this case, the design and

¹⁹³ Inter-Parliamentary Union available at <http://www.ipu.org/wmn-e/classif.htm> and International IDEA, *Global Database of Quotas for Women*, available at <http://www.quotaproject.org/> (accessed 12 February 2012)

¹⁹⁴ L.Friendevall & D.Dahlerup 'Gender Quotas in Politics: A constitutional challenge' in SH. Williams.(ed.) *Constituting equality: Gender Equality and comparative constitutional law*, Cambridge University Press, New York 2009, pp.51-52.

implementation procedure of quotas are totally subject of the political parties' internal regulation.

The reason of the relative success of voluntary quota in Croatia goes deeper than the individual quotas projects that political parties might have implemented. The political determination regarding gender equality in politics derives from the positioning of gender equality principle at the center of the constitutional and legal order. Gender Equality Act ¹⁹⁵(2008) is not only an expression of the political parties' commitment (collectively) to gender equality but a concretization of a constitutional basic value. Even though not explicitly, the formulation of the Croatian Constitutional provisions on equality and rights refers to the substantial aspect of equality principle in the field of gender among other fields. Perhaps this nature is also influenced by the multiethnic character of the nation as a reason why the Constitution tries to promote *de facto* equality among its citizens. This can be noticed in the Article 3 and 14 of the Constitution which cite as follows:

Article 3 : Freedom, *equal rights*, national equality, peace, *social justice*, *respect for human rights*, inviolability of ownership, conservation of nature and the human environment, the rule of law and a democratic multiparty system are *the highest values of the constitutional order of the Republic of Croatia*.

Article 14: Citizens of the Republic of Croatia shall enjoy *all rights and freedoms* regardless of race, color, *sex*, language, religion, political or other opinion, national or social origin, property, birth, education, social status or other characteristics. ¹⁹⁶

¹⁹⁵ The law regulating gender equality in society, Croatian "Gender Equality Act" published on 15 July 2008.

¹⁹⁶ Article 3 &14 of the Croatian Constitution, 22 December 1990.

The application of gender equality principle in its substantial form, is enforced further by the “Gender Equality Act” which besides reconfirming gender equality as a very important value it implicitly encourages affirmative action in this field.

In the Article 1 of “Gender Equality Act” is stated that:

This Act lays down a general framework for the protection and promotion of gender equality as a *fundamental value* of the constitutional order of the Republic of Croatia and it defines and regulates the method of protection from discrimination on grounds of sex and establishment of equal opportunities for women and men.¹⁹⁷

Due to this normative framework it is evident that the *political parties* (collectively) have done more essential steps towards promotion of *real* gender equality by enclosing it as part of the national Constitution and giving to this principle the role of a “fundamental value”¹⁹⁸ In “Gender Equality Act” is foreseen also the obligation of the political parties to undertake positive measures against the monetary sanction of approximately 4000-7000 Euro which is considered to be quite strong sanction.¹⁹⁹ The obligation of the political parties to take positive measures that support substantial equality between genders²⁰⁰ regarding their candidate lists is foreseen in the Article 12 and 15 of this law.

¹⁹⁷ Article 1 of Croatian Gender Equality Act, published on 15 July 2008.

¹⁹⁸ Article 1 of Croatian Gender Equality Act, published on 15 July 2008.

¹⁹⁹ Article 35 (Sanctions) of Croatian Gender Equality Act, published on 15 July 2008.

²⁰⁰ Article 15(2) of Croatian Gender Equality Act, published on 15 July 2008.

According to Article 12 (3) of “Gender Equality Law” defines gender equality standard that political parties should consider to apply:

When persons are appointed to government bodies and bodies of local and regional self-government and other legal entities vested with public authority, *due care shall be taken that both genders are equally represented.*²⁰¹

It is still a political parties’ competence to regulate the number of female candidates in their list according to “Gender equality Act” however more interesting than the implementation of the law by individual parties in this case, was to emphasize the political parties’ commitment as to gender equality all through the legal hierarchy of the norms.

²⁰¹ Article 12(3) of Croatian Gender Equality Act, published on 15 July 2008.

Conclusions

Quotas constitute such a complex topic of study due to their controversial nature and intricate links with many other disciplines (i.e. politics), which makes it difficult to single-out the object of study without touching upon other related mechanisms. The aim of this work however was to bring an updated view on the much-debated and controversial issues of gender quotas and an in-depth insight on the issue of quota efficiency, by relying mainly on the contemporary literature and the legal analysis of quota provisions and their implementation in practice.

The First chapter concludes that gender quotas are controversial measures but despite that, their popularity has only increased in the political realm. In this chapter is particularly emphasized the assertion that quotas as a form of affirmative action, despite in tension with formal equality principle, intends to strengthen the equality standards and deliver justice by aiming substantial equality or equality of outcomes. The arguments in the chapter implies that in the conditions of increased popularity, arguments concerning quotas efficiency have become a more important object of study rather than quotas legitimacy. Everyday more countries are interested to apply an efficient quota, while the literature so far has relied more on the theoretical approach of these measures.

The conclusions drawn from Chapter Two consist in the following issues: the global trend of gender equality in politics is directed towards measures that can introduce powerful changes and can rapidly increase female representation in politics. Moreover, quotas widespread application has redirected the democratic systems to be more inclusive and have replaced the principle of

formal equality with that of the substantial one. The comparison of the two approaches justifies the last conclusion from the chapter that despite the gender equality approach in place (incremental or *fast track* approach); it is the political parties which ultimately decide on the number of female representatives in parliament.

Countries' experiences with quota seems to suggest that it is not a matter of casual combination of factors that determines legislative quota's efficiency but most of all an issue of appropriate quota features for success. In this context, Chapter Three concludes that there must be a compulsory percentage specified in the quotas provision; an effective and strong sanction and an appropriate ranking rule in order for a quota project not to be defective even before its implementation phase. These are prerequisites that every legislative quota must embody in its design in order to be successfully implemented. The Third Chapter concludes also that political parties play the primary role in the design of quota provisions i.e. in the Albanian legislative quota the obligatory percentage, the ranking rule and the sanctions are defined by the political parties in parliament. Due to this *exclusive* capacity of the political parties, the application of standard prerequisites as quota features serves to inspect any "defective" political will or to correct them when necessary.

The Fourth Chapter is built on the conclusion drawn in the Third Chapter, that the basic prerequisites of quota efficiency are a strong sanction, an appropriate ranking rule applied all through the list, and certainly a compulsory representation level which may vary from 30-50%. All the country quotas analyzed in this chapter proved that these criteria are similarly important, and lack of any of them in a given quota provision would cause the quotas outcome to suffer the consequences. Moreover, the different quotas examples serve to demonstrate that the impact of these three basic criteria is simultaneous to the quotas outcome and their efficiency. On top of

this however, it should be kept into consideration that with regard to quotas efficiency political parties are the main actors in establishing the basic criteria of any gender quota and standardized efficiency criteria (set out in Chapter III&IV) would prove useful to evaluate and monitor political parties' intentions (expressed through quota provisions or voluntary quotas) in compliance with gender equality aim. This conclusion takes particular importance in countries like Albania and Bosnia and Herzegovina where the (male-dominated) political parties are still "unprepared" to recede from the position of power in order to accept more women in politics.

As emphasized before in this paper, the list of efficiency criteria of quotas provisions presented as one of the conclusions of this paper are not exhaustive. There are numerous ways in which political parties can influence gender equality besides through quota provisions, and multiple levels in which these two concepts link with each other, however not all of them translate into written rules that can be subject of change and monitoring as quotas provisions.

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