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Debate entre o público e o privado

Political participation: women's human right between the public and the private

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Abstract

Gender quotas in politics are affirmative measures for achieving a more equal context between men and women in power spaces, which has the 1979 Convention on the Elimination of All Forms of Discrimination Against Women as its international law basis. Public policy aimed at development and gender equality is related to legal challenges in the country that do not only fall within the scope of public law, such as electoral law – they necessarily involve challenges linked to the autonomy of political parties, legal entities governed by private law, and the institute of fraud in law itself. Therefore, the implementation of this inclusive policy requires a dialogue between the branches of public law and private law. In the face of frauds and the so-called 'orange candidacies,' a mockery of the exercise of women's human right to political participation, we began to address political party autonomy, as well as the concept of abuse of power and fraud as private law institutes, in order to analyze issues of public law through a civil law approach. It was found that the parties break the law by fraudulently filling in the candidacy quotas, committing abuse of political party power; by unbalancing the electoral process, they increase and perpetuate the exclusion of women from formal politics, and this can characterize institutional violence.

Key words human rights; public policy; political parties; candidacy quotas; fraud.

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Participação política: direito humano da mulher entre o público e o privado

Resumo

As cotas de gênero na política são medidas afirmativas para alcançar um quadro mais paritário entre homens e mulheres nos espaços de poder, que encontra respaldo normativo internacional na Convenção sobre a Eliminação de Todas as Formas de Discriminação contra a Mulher, de 1979. As políticas públicas de desenvolvimento e igualdade de gênero perpassam desafios jurídicos no país que não se encerram apenas no âmbito do direito público, como o direito eleitoral – envolvem, necessariamente, desafios referentes à autonomia dos partidos políticos, pessoas jurídicas de direito privado, e o próprio instituto da fraude no direito. Portanto, a efetivação dessa política de inclusão exige um diálogo entre os ramos do direito público e do direito privado. Diante das fraudes e das chamadas "candidaturas laranja", uma burla ao exercício do direito humano de participação política da mulher, passou-se a abordar a autonomia partidária, assim como o conceito de abuso de poder e de fraude enquanto institutos de direito privado, a fim de analisar questões de direito público a partir de uma abordagem civilista. Constatou-se que os partidos burlam a lei ao preencher fraudulentamente as cotas de candidatura, cometendo abuso de poder político-partidário; ao desequilibrar o pleito eleitoral, aumentam e perpetuam a exclusão das mulheres da política formal, o que pode caracterizar violência institucional.

Palavras-chave direitos humanos; políticas públicas; partidos políticos; cotas de candidatura; fraude.

Participación política: derecho humano de la mujer entre lo público y lo privado

Resumen

Las cuotas de género en la política son medidas afirmativas para lograr un contexto más igualitario entre hombres y mujeres en espacios de poder, que tiene como base la Convención sobre la Eliminación de Todas las Formas de Discriminación contra la Mujer, de 1979. Las políticas públicas de desarrollo e igualdad de género están relacionadas con los retos legales en el país que no solo se encuentran dentro del ámbito del derecho público, como el derecho electoral, sino que también implican retos relacionados con la autonomía de los partidos políticos, entidades legales de derecho privado, y el propio instituto del fraude en derecho. Por lo tanto, la implementación de esta política inclusiva requiere un diálogo entre las ramas del derecho público y del derecho privado. Ante los fraudes y las llamadas "candidaturas naranja", una burla del ejercicio del derecho humano de participación política de la mujer, se comenzó a abordar la autonomía partidaria, así como el concepto de abuso de poder y de fraude como institutos de derecho privado, con el fin de analizar cuestiones de derecho público desde un abordaje civilista. Se constató que los partidos infringen la ley al rellenar fraudulentamente las cuotas de candidatura, cometiendo abuso de poder político-partidario; al desequilibrar el proceso electoral, aumentan y perpetúan la exclusión de las mujeres de la política formal, lo que puede caracterizar violencia institucional.

Palabras clave derechos humanos; políticas públicas; partidos políticos; cuotas de candidatura; fraude.

Introduction

A study conducted by the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) in 2017 ranks Brazil in the 154th position in terms of women's participation in the National Congress, in a universe with 174 countries (Nações Unidas no Brasil [ONU Brasil], 2017). In 2018, the statistics were as follows: 55 out of the 513 seats in the Chamber of Deputies (10.7%) and 13 out of the 81 seats in the Federal Senate are occupied by women (16.0%).

Since the 1990s, electoral legislation has been adopting a series of legal measures to include more women in politics, especially in elective political positions. Despite the adoption of public policies in this way, the inequality between men and women in terms of occupation of these positions is still very evident, as demonstrated.

One of the causes of this persistence of inequality, as already pointed out in previous studies (Almeida, 2018), was attributed to political parties, which are, as shown, the main detractors of this public policy. Almeida (2018) also analyzed violence against women in politics as one of the tactics to dissuade women's participation in power spheres by investigating the process to remove former President Dilma Rousseff, which was labeled as violent, due to gender and political reasons, by the political scientist Flávia Biroli (2016).

Specifically in the case of political parties, there is no doubt about their importance in the electoral process[1] , since the convention, going through the candidacy registration and the electoral campaign. It is noticed, by means of documentary analysis of positive legislation, that the party association emerges as the main target of the policy for inclusion and promotion of women's political participation, according to the current legislation.

A relevant empirical data is related to filling in the candidacy quotas. Since the 2009 electoral reform, instituted by the Lei n. 12.034 (2009), which requires the candidacy quotas, at each election, complaints about their fraudulent or even fictitious filling in began to appear – hence the phenomenon of the so-called female 'orange candidacies.' Also, women have reported and denounced the countless personal, professional, and legal losses of having been used by party associations, often without being fully aware, as orange candidacies (Deutsche Welle [DW], 2018).

1 J. J. Gomes (2016, pp. 246-247, our translation) differentiates the electoral process in the strict and broad senses. In the latter approach, *electoral process* would mean "the complex relationship established between Electoral Justice, candidates, political parties, coalitions, Public Prosecutor's Office, and citizens with a view to achieving the sacrosanct right of suffrage and choice, legitimate, of those occupying the public-elective positions in dispute." In the strict sense, in turn, "the expression electoral process designates electoral jurisdictional process (= electoral litigation)." It is, therefore, the one established by exercising the right of action, with a view to solving a concrete and individualized action. In fact, to a certain extent, such a meaning coincides with that of Elio Fazzalari (1996), according to whom the term *process* can encompass not only the contentious proceeding, but also that articulated set of actions in which the interested party's participation is relevant as a legitimation means.

For the 2018 elections, it is worth highlighting a recent complaint involving the party Rede Solidariedade (REDE), concerning the application for candidacy registration of two women who reported having been registered as candidates by the party without their authorization. The case took place in Ceará and it is under investigation by the Federal Public Prosecutor's Office (Ministério Público Federal – MPF) (Dornelles, 2018).

Following the adoption of a rule of conduct that requires political parties to maintain the minimum proportionality of 30% and 70% for each gender, calculated by having the total number of applications for registration as a reference, frauds, in order to circumvent the rule's purpose, started being observed.

As verified, both fraud and abuse of power in electoral law are institutes whose theoretical roots lie on private law. For a correct analysis of these institutes in the electoral process, it is necessary to establish a dialogue between the public and private law branches, whose theoretical dichotomy has already been even put into question, mainly in face of the understanding of freedom, a fundamental right and a foundation of private autonomy, which has human being's dignity both as the departing and arriving point (Alves, 2017).

Thus, this study aimed to investigate – by means of an approach that overcomes the dichotomy between public law and private law, based on bibliographical, documentary, and jurisprudential research – the relation between party autonomy, the political party's duty to promote fundamental rights, and the association's abuse of power to cheat the law. Also, we analyzed the extent to which the party association commits institutional violence against women by cheating the public policy aimed at promoting and protecting women's human right to political participation.

Between the public and the private: party autonomy and the duty of promoting fundamental rights

Law, as a set of laws produced by the competent authority governing a given State, is united. However, for the purposes of study, is basically divided into two branches: public law and private law. In spite of its didactic usefulness, this dichotomy, according to Alves (2017, p. 19, our translation), is overcome and there is no such incommunicable relation between public law and private law; this relation involves, first of all, complementarity:

> Every historical approach to this bipartition – as well as almost every historical approach to Western law as *civil law* – points out its origin in Roman law (sometimes with the observation that there was a previous approach to the theme by the Greeks), with Ulpiano, who provides public law with the substance of what concerns the – Roman – State, and private law refers to what concerns the

relations between citizens – and this distinction, in these terms, to this day, has a significant doctrinal and academic repercussion.

According to Nery (2002), the distinction between public law and private law lies on the fact that the first might encompass the set of standards related to the power structure itself, therefore, they are unavailable rules, while private law might consists of standards aimed at protecting human beings, which may be subject to agreement and negotiation within the scope of private autonomy.

The electoral process – in a broad perspective, the set of acts and procedures that the Electoral Justice, in the exercise of an intense administrative function, adopts so that it is possible to choose representatives through periodic elections (J. J. Gomes, 2016) – is related to the very power structure, thus it should be governed by public law standards.

The complexity of the electoral process and the diversity of its procedures and authors shows that it is not so simple to think of such a process only through the public-driven matrix, since choices made before the process, such as party deliberations about who will be a candidate, are surrounded by a set of standards that, traditionally, come from private law. Even during the electoral process, themes historically belonging to the private-driven sphere, such as honor, image, personality rights – like name use –, among others, are also at the core of legal disputes that electoral law needs to take a look at. Hence, it is noticed that the electoral process is governed by a set of standards and institutes that also permeates traditional private law, so that a theoretical proposal of dichotomous overcoming, such as that by Alves (2017), helps analyzing the theme of this research.

The object of this study, i.e. candidacy quotas aimed at the inclusion of more women in power spaces, is an example of public policy whose realization and achievement of satisfactory results are circumvented by acts practiced by political parties, in the exercise of their private autonomy, with direct impacts on the public electoral process – as exposed below.

First, there is a need to notice that, based on the analysis of Brazilian reports sent to the committee established by the 1979 Convention on the Elimination of All Forms of Discrimination against Women, it was noticed that promoting gender equality in politics is a State policy. Both the Lei n. 9.504 (1997) – the General Election Law, which established candidacy quotas by gender[2] for all election levels (municipal, state, and federal) – and the Lei n. 12.034 (2009) – which changed the normative text of Article 10, § 3, of the Lei

2 Although the legislative text contains the term *sex*, the Higher Electoral Court (Tribunal Superior Eleitoral – TSE) thinks that it should be interpreted as *gender*, also covering the protection of *transgender persons* (Almeida & Machado, 2018). *Sex* is related to biological aspects of the body, while *gender* is "culturally constructed" and corresponds to "cultural meanings taken by the body." Such a distinction was made, as Judith Butler (2003, p. 24, our translation) observes, to put into question the "idea that biology is destiny."

n. 9.504 (1997), making it mandatory that the parties fill in quotas – were highlighted in the reports as measures adopted by the Brazilian State in order to achieve a more equal parliamentary space between men and women.

Second, it is imperative to notice that political parties "are characters indispensable to the democratic debate"[3] and their importance, in Brazil, "is even greater in view of the legal impossibility of having a single candidacy, and the TSE [Higher Electoral Court] and the STF [Supreme Federal Court] have also affirmed that the term of office belongs to the political party, in relation to positions belonging to proportional elections," as already written down (Machado, 2016, p. 97, our translation).

From this perspective, the Constituição da República Federativa do Brasil (CF, 1988) guarantees, in its Article 17, § 1, autonomy for political parties to define their internal structure and establish rules on the choice, formation, and duration of their permanent and provisional bodies, as well as on their organization and functioning and the adoption of criteria to choose coalitions. The CF (1988, Article 3, IV) also defines as one of its foundations the promotion of good for all, without prejudices of origin, race, sex, color, age and any other forms of discrimination.

According to Robert Dahl (2001), the political institutions of the new democracy are: elected officials; free, fair, and frequent elections; freedom of expression; diversified sources of information; autonomy for associations (such as political parties and groups of stakeholders); and inclusive citizenship concerning the means and rights needed to access representative institutions. Therefore, freedom is at the core of the design of contemporary political institutions.

Party autonomy is a guarantee of the democratic rule of law itself and the political pluralism that the CF (1988) lists as one of its foundations.

According to the current legal system, political parties are legal entities governed by private law (Lei n. 10.406 [Código Civil], 2002, Article 44, V; Lei n. 9.096, 1995, Article 1), and, except for compliance with some cogent standards, stemming from horizontal realization of fundamental rights and provisions contained in the CF (1988) and in the legislation, they are free as for the organization and functioning modes.

Pursuant to Articles 1 and 2 of the Lei n. 9.096 (1995) – the Political Party Law –, party associations must advocate fundamental rights, which are, alongside national sovereignty, the democratic regime, multiparty system, and human being's dignity, the constraints imposed to free creation, merger, incorporation, and extinction of political parties and the establishment of party programs. The freedom of party's will autonomy only takes place when the values referred to above are not disregarded. When they are disregarded, there is no need to speak of exercising this freedom, but rather in engaging in an action contrary to law, which is, as mentioned above, united.

3 On the parties' importance in the electoral process and their legitimacy crisis, see Cabral (2014).

There is no doubt that political participation, provided for both in the Brazilian legal system and in the international legal system, has the nature of *fundamental right* (Lopes & Nóbrega, 2011) and *human right*[4] , respectively. As pointed out by Ingo Sarlet and David Almagro Castro (2013), political rights are fundamental rights and also elements of legitimation in the democratic regime. Political rights owe their validity to the democratic regime and popular sovereignty. According to the studies conducted by the authors on the state of the art of political rights, the latter are related to the *status activae civitatis*, as proposed by G. Jellinek (Sarlet & Castro, 2013).

Like any fundamental right, at the present time it is not simply a matter of mere State self-limitation for individual action in the private sphere, since the economic and social dynamics itself has shown that, for enjoying any fundamental right, an active role is required of public powers (Silva, 2013), and political participation depends, for its full effectiveness, on public power's action aimed at guaranteeing freedom and equality so that everyone can have the opportunity of exercising it under the same conditions. Therefore, in order to put political participation into practice and foster it, especially among vulnerable groups, State public policies are needed (Aith, 2006).

In the case of women, the Brazilian State instituted a series of specific standards in order to concretize women's political participation and gender equality in politics, providing parties with the socio-political role of putting these rights into practice.

Thus, the relation between political party autonomy and fundamental rights is noticed. Both of them are key foundations for the democratic rule of law and they provide a tone to the work of party associations – which cannot refuse to comply with fundamental rights.

Fraud to candidacy quotas in the electoral process

The study on fraud, as well as on abuse of power, has its roots in private law. A concern with the electoral process fairness, so that it runs free from 'fraud' and 'abuse of power,' has a constitutional basis.

In the chapter on political rights, Article 14, §§ 9 and 10, of the CF (1988) is devoted to establishing the minimum constitutional guidelines with a view to preserving the normality (debate of ideas) and legitimacy of elections (equality between candidates and freedom of voting) (Machado, 2016) against the influence of economic power or abuse in the exercise of function, position, or job in direct or indirect administration (CF, 1988, Article 14, § 9), authorizing the impugnation and even removal from the term of office when fraud to the electoral process is proved.

4 Political participation is considered a *fundamental right* because it is provided for in the CF (1988) and a *human right* due to the fact of being positivized in international treaties.

Article 187 of the Código Civil (2002, our translation) stipulates that "the holder of a right who, in exercising it, manifestly exceeds the limits imposed by its economic or social purpose, by good faith or by good morals, also commits an unlawful act"[5] .

Fávila Ribeiro (1998, p. 19, our translation) emphasizes that the phenomenon of abuse of power in electoral law has its legal roots in private law – lucidly, the author ponders that "abuse is the illicit use of powers, faculties, situations, causes, and objects." Thus, abuse deviates the legitimate exercise of subjective rights from the purposes attributed to it by the legal system.

The issue of abusive exercise of law and power, as well as the practice of fraud, takes greater relevance when this occurs at the expense of legal rights and unavailable rights. This is the case of abuse of power and fraud committed to the electoral process, for instance.

The legal system contains provisions aimed at ensuring that the electoral process takes place in a legitimate and normal manner, i.e. by means of a debate of ideas in which all candidates can have equal opportunities to gain the voter's political preference and, consequently, her/his vote.

Electoral law, as a traditional branch of public law, is a recent branch and it is based on the democratic and republican regime. Thus, it is developed through the emergence of the rule of law and the adoption of the democratic regime. As a branch of the most recent law, some classic institutes were imported from civil law, of long and historical tradition.

That was the approach to fraud. Initially, the electoral right was concerned with avoiding and punishing the fraud that could have an impact on voting and vote counting. This was the concept of fraud adopted by the Higher Electoral Court (Tribunal Superior Eleitoral – TSE) in its judgments until 2015, when it came to see within the concept of fraud, which led to removal from the term of office by means of a proceeding to impugnate an elective term of office (CF, 1988, Article 14, § 10), the filling in of gender quotas. This new interpretation of the term *fraud* by the TSE, in the light of Article 14, § 10, of the CF (1988), is in line with the long civil law tradition devoted to studying the institute.

The private-driven concept of fraud, the female orange candidacies, and institutional violence

O. Gomes (2007) points out the occurrence of fraud to the law, although by legal means, when purposes not within the standard's scope are accomplished. In turn, Carnelutti (2004) expresses his idea about fraud to the law by claiming that it contains two elements, i.e. non-compliance with the law and concealing this violation. Fraud, as a phatic-transgressive phenomenon, emerges as a consequence of establishing a mandatory rule of conduct. Thus, fraud and legislative norm have a relation of contemporaneity.

5 On the abusive exercise of a right, see Carlos Valder do Nascimento (2013, pp. 62-102).

In the case of a legal object under discussion, it is put into practice in the Brazilian legal system by a set of standards that constitute the *Brazilian model of protection to women's political participation,* which aims to comply with the international pacts (1953 Convention on the Civil and Political Rights of Women and 1979 Convention on the Elimination of All Forms of Discrimination against Women) and to deploy the constitutional precepts, with an emphasis on Article 5, I, of the CF (1988), which establishes the principle of equality.

The party associations are at the core of this legal right and it is from these standards that their political and social role of protecting women's political participation in the context of Brazilian positive law is extracted.

It is found out that out of the 4 standards established by the model, 3 are addressed to political parties and only 1 has the TSE as recipient (Table 1).

Table 1 – Brazilian model of legal protection to women's political participation

Protection mechanism(s)	Legal provision	Legislative text	Recipients	Purpose
Candidacy quotas by gender	Article 10, § 3	Lei n. 9.504 (1997) – General Election Law	Political parties	Establishing a reserve of positions for candidacies of each gender in politics.
Promoting and disseminating women's political participation	Article 44, head, V, and §§ 5 and 7	Lei n. 9.096 (1995) – Political Party Law	Political parties	Creating and maintaining programs to promote and disseminate women's political participation.
Institutional advertising	Article 93-A	Lei n. 9.504 (1997)	Higher Electoral Court	Encouraging the participation of women, youngsters, and the black community in politics.
Minimum funding reserve from the Partisan Fund for female candidacies	Article 9	Lei n. 13.165 (2015) – 2015 Political Reform	Political parties	Funding for female candidacies.

Source: Prepared by the authors.

The first inclusion measure adopted by the Brazilian legal system was named as *candidacy quotas*[6] . Since the Lei n. 12.034 (2009), any association wishing to compete in

6 Although the Brazilian model does not expressly choose quotas that have women as overt and direct recipients, as it is inferred from the legislative text of Article 10, § 3, of the Lei n. 9.504 (1997), which speaks generically of *sex,* quotas in politics are instruments that have been used since the 1970s (Miguel, 2014), initially by European countries, in order to promote women's inclusion – in Brazil, today, this protection extends to trans women, as decided by the TSE on March 1, 2018 (Almeida & Machado, 2018) – in the formal power spaces, especially in the Legislative Branch, in face of their exclusion and the female underrepresentation in this space. These initiatives consist in true affirmative actions (Miguel, 2014; Biroli & Miguel, 2014; Piovesan, 1998).

the electoral process must request, until August 15 in the electoral year, the registration in the Electoral Justice of its candidates approved by convention, obeying the proportion of 30% and 70%, at least, for each gender, under penalty of rejection of the whole *regularity statement to political party acts* (demonstrativo de regularidade de atos partidários – DRAP).

Compliance with gender quotas is an obligation for electoral registration enforced by legislation to party associations/coalitions and, although not explicitly included in the list of Article 11, § 1, of the Lei n. 9.504 (1997, our translation)[7] , if not complied with, it results in rejection of the DRAP.

It is noticed that the normative text has imposed an obligation on the party association/coalition to be observed at the time of formalizing the application for registration, otherwise it will not be granted.

The cause, as an objective and socially verifiable interest (Betti, 2008) for the practice of *filling in the candidacy quotas* in accordance with the percentage fixed by law, seeks to safeguard a minimum space for female candidacies in the electoral process. According to Roberto de Ruggiero (1999, p. 360, our translation), the cause is the "economic and social purpose recognized and guaranteed by law;" this is what "represents the law's will in face of the private will."

It is worth mentioning the importance of candidacy quotas by gender in the Brazilian context of women's under-representation in politics, since, when guaranteeing a space for the minority gender in the electoral process, this affirmative action seeks to guarantee a minimum presence of women, who are going to introduce their ideas and their political projects, thus increasing their capillarity and their power to gain the elector's political preference. Presence and ideas intertwine and, in this context of under-representation, introducing these ideas and projects becomes much more feasible due to safeguarding the presence in that process.

In order to lead the legislation's purpose to fulfill its social function, it is necessary that the candidacies registered by political parties are, at least, real and viable. It is not enough for the party to cast 30% of female candidacies only to comply with a formal criterion; it is necessary that these candidacies evolve or, at least, have the potential to evolve, and it is up to the party to provide the minimum conditions for this.

7 "Article 11. The parties and coalitions request the Electoral Justice to register their candidates until 7 p.m. on August 15 in the year in which the elections are held. § 1 The application for registration should be accompanied by the following documents: I – a copy of the minutes to which Article 8 refers; II – candidate's authorization, in writing; III – proof of party affiliation; IV – property declaration, signed by the candidate; V – copy of the electoral title or certificate, provided by the electoral registry, that the candidate is an elector in the jurisdiction or has applied for registration or electoral domicile transfer within the period to which Article 9 refers; VI – certificate of electoral settlement; VII – criminal records, provided by the distribution bodies of the Electoral, Federal, and State Justice; VIII – candidate's photograph, within the dimensions established in the Electoral Justice's guideline, for the purpose to which § 1 of Article 59 refers; IX – proposals advocated by the candidate for Mayor, State Governor, and President of the Republic."

This is not what we have seen in practice. In the 2016 elections, 14,498 women candidates did not receive any votes in the run for municipal councils, although they were formally qualified before the Electoral Justice. According to Mazotte and Rossi (2016), this percentage is equivalent to 10% of female candidacies. Different, however, is the male reality, since only 0.6% of all candidates did not receive any votes.

According to the Tribunal Superior Eleitoral (TSE, 2016), the main indication of the occurrence of frauds emerges when the women candidates do not receive any vote.

So, it is concluded that, following the reinforcement of the quota policy provided by the Lei n. 12.034 (2009), which established that it is mandatory to fill in this minimum and maximum percentage by sex, many female candidacies are registered by political parties in a fictitious manner, not for the purpose of increasing women's participation in politics and investing in the candidates, but for the sole purpose of complying with a requirement for electoral registration and ensuring that 70% of the male candidacies applied are going to be deferred and viable.

Therefore, a law that came into existence to legally protect women and their right to political participation started being cheated so that male candidacies, for the most part, became viable.

The phenomenon of normative transgression is found out there, and it has long been observed by the civil law doctrine. After the emergence of a rule that established a mandatory conduct, fraud to the commands of such a standard is detected.

Female candidacies for fraudulent filling in of quotas by political parties were named as 'orange candidacies' (Mazotte & Rossi, 2016). In interviews, some women confessed they only launched their candidacies in order to reach the minimum percentage.

The electoral practice reveals that fraud to the legislation takes on two meanings for 'orange,' i.e. both of people aware that they are breaking the law by agreeing with the party associations, for free or for a charge, and of people being illegally co-opted by parties without even being aware of what is happening (Juvêncio, 2013).

Both conducts constitute an abuse of power/right, because if party associations are the only ones that have the power to register candidacies and they fraud the filling in of quotas, moving away from their social function of protecting and fostering women's political participation, they abuse their power to register candidacies, thus committing an unlawful act that affects the normality (debate of ideas) and legitimacy of elections (equality between candidates and freedom of voting) (Machado, 2016).

Analyzing the fraud, it is verified that candidacy quotas restrict the candidates' freedom. By repeatedly adopting such a conduct, parties encourage institutional violence against a group.

This type of violence may be regarded as "a way of restricting the freedom of a person or a group of people, repressing and offending physically or morally" (Teles & Melo,

2002, p. 15, our translation). In the case of violence against women, this refers to patriarchal gender relations and the disproportionality they establish in the interaction relationship. According to Bourdieu (2003), domination relationships based on gender are naturalized, thus they are invisible to the human eye.

There is a need to recognize and analyze the various contexts where women are exposed to violence, and also to analyze the factors that may contribute so that vulnerability and risk are strengthened due to the gender condition and aggravated by the other social inequality markers.

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994) – the Convention of Belém do Pará – recognizes that "the elimination of violence against women is essential for their individual and social development and their full and equal participation in all walks of life." In its Article 1, this convention defined as violence against women "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere."

The practice of fraud by an institution that is at the core of the electoral process and is responsible for protecting and fostering women's political participation causes irreparable damage to them, that is why we regard it as an institutional violence.

This issue makes us think through law as a public and private phenomenon. As Alves (2017, p. 74, our translation) highlights, "the private world has been turned into a public world" and the "public world has been privatized." The will's autonomy, a structural value of private law, depends on a set of material conditions, such as political and social equality itself, so that a person can exercise it. Freedom is only realized in equality and the contemporary democratic theories have citizens' participation on their axis.

Final remarks

Candidacy quotas by gender are examples of public policies instituted to foster women's inclusion in formal power spaces. Political parties are at the core of the Brazilian model of legal protection for women's political participation, which is a human right.

Pursuant to Articles 1 and 2 of the Lei n. 9.096 (1995) – the Political Party Law –, party associations must advocate fundamental rights, which are, alongside national sovereignty, the democratic regime, multiparty system, and human being's dignity, the constraints imposed to free creation, merger, incorporation, and extinction of political parties and the establishment of party programs. Thus, compliance with fundamental rights on the part of the main players in the electoral process shows to be as important as safeguarding and guaranteeing political party autonomy.

The Lei n. 12.034 (2009) has forced political parties to fill in a minimum of 30% and a maximum of 70% of their candidacies with each gender. What is evidenced in the Brazilian empirical framework is that political parties and coalitions, as recipients of the standard provided for in Article 10, § 3, of the Lei n. 9.504 (1997) and the other legislative norms aimed at protecting women's political participation, except Article 93-A of the Lei n. 9.504 (1997), are not striving to fulfill this institutional and legal mission, and this becomes clear after the fact that several complaints have been investigated, in courts, concerning frauds committed by party associations when filling in candidacy quotas.

Through a civil law approach to the concept of fraud to the law and abuse of rights, it is realized that fraudulent filling in of female quotas by means of orange candidacies is a mode of fraud to the law, since they aim only at complying with a numerical requirement imposed by the legislative norm so that male candidacies become viable.

The legal basis for considering candidacy frauds as an abuse of political party power, an unlawful act, lies on Article 187 of the Código Civil (2002). Here, we notice the integrity and unity of law, as a system, and that the rules of public law and private law, instead of being dichotomic, are in fact complementary, from this perspective, since they unite for the sake of making the actual women's freedom to participate in the Brazilian electoral-political process a reality.

By becoming detractors of the quota policy, political parties damage gender equality in politics and practice institutional violence against this group, mainly because they are the main recipients of these legislative norms and due to the fact that they are at the core of the Brazilian electoral process.

This issue makes us think through law as a public and private phenomenon, since law is united, as well as to think about freedom, which is only realized in equality – and the contemporary democratic theories have citizens' participation as their axis.

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