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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT REPORT**

**ON**

**THE METHOD OF NOMINATION OF CANDIDATES  
WITHIN POLITICAL PARTIES**

**on the basis of comments by**

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## INTRODUCTION

1. In 2012, the Council for Democratic Elections adopted the "Report on Measures to Improve the Democratic Nature of Elections in Council of Europe Member States".<sup>1</sup> This document pointed out that democratic standards applicable to Europe's electoral heritage were "in greater or lesser detail, in the legislation of Council of Europe member states". It recognised, however, that practice showed a more complex reality. Among those issues which needed further development and study, the question of the methods adopted by political parties in the selection process of candidates was identified. In the Council meeting of December 2012, it was decided to launch the study on this topic and to prepare a questionnaire.

2. The questionnaire included two sets of questions. 27 countries replied, as well as some political parties concerning their internal practices. Based on an analysis of the questions received, as well as further research on the rules existing in another 23 states, a table was compiled.<sup>2</sup> This table contains information on the criteria for nominating candidates, including gender quotas, the regulation concerning the representation of minorities, youngsters and vulnerable groups, as well as procedural aspects (see CDL(2015)007).

3. The research reveals that the nomination of candidates by political parties varies significantly, both among countries and between political parties within each country. This diversity is partly a consequence of the legal treatment that political parties receive in each political system.

4. In contemporary democracies, two main principles rule the internal functioning of political parties. The first one is the principle of freedom, under which political parties are given autonomy in their internal and external functioning. According to this principle, political parties should be free to establish their own organisation and the rules for selecting party leaders and candidates. The second element is based on the principle of democracy. Since political parties are essential for political participation, they must respect this principle while establishing their internal organisation.

5. The influence of each of these principles differs in each system. Some countries stress the respect for the freedom of political parties, while others are more open to underline internal democratic requirements for political parties. The tension between these two principles could explain the different ways in which legal systems rule the nomination of candidates within political parties.

6. This report contributes to exploring, from a general perspective, the quest for finding a balance between, on the one side, the scope of autonomy granted to political parties under the principle of freedom of association and their self-governance and, on the other side, the degree of external constraints and regulations in their internal work.

7. The Venice Commission has assessed the essential role of political parties within a democratic society in many different texts, such as, among others, the Code of Good Practice in the Field of Political Parties (CDL-AD(2009)021), the Guidelines on Political Party Registration adopted jointly with OSCE/ODIHR (CDL-AD(2010)024) or the Guidelines on Prohibition and Dissolution of Political Parties and analogous measures (CDL-INF(2000)1). The importance of political parties in any democracy, considering that freedom of political opinion

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<sup>1</sup> CDL-AD(2012)005.

<sup>2</sup> The countries analysed for the purpose of this study are the following: Albania, Andorra, Argentina, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bolivia, Bosnia and Herzegovina, Bulgaria, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Malta, Mexico, Moldova, Monaco, Montenegro, Netherlands, Norway, Paraguay, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, Ukraine and Venezuela.

and freedom of association, including political association, represent fundamental human rights guaranteed by the European Convention on Human Rights, has been stressed.

8. Therefore, the present Report will be the first analysis by the Venice Commission on the internal rules of political parties for nominating candidates and the requirements for improving democratic decision-making and inclusiveness within each party. The Report will assess, more specifically, three different issues: the first chapter will describe the state of the art, examining the legal framework governing political parties and the different existing approaches on the rules influencing the internal functioning of parties and by the choice of candidates. The second chapter will explore the legal requirements on the methods of nominating candidates within political parties, including both procedural aspects of nomination of candidates as well as the rights of those candidates within political parties. The third chapter will focus on the different factors of measuring internal democracy within political parties, in particular on the requirement of gender balance, the representation of minorities, ethnic and vulnerable groups, including indigenous populations, as well as other possible factors which may have an impact on the internal functioning of political parties.

9. *The present report was adopted by the Council for Democratic Elections at its ... meeting (Venice, .. ... 2015) and by the Venice Commission at its ... Plenary Session (Venice, ... 2015).*

## CHAPTER I. REGULATING POLITICAL PARTIES: THE STATE OF THE ART

10. The European Court of Human Rights has held on several occasions in its case-law that political parties are a form of association essential to the proper functioning of democracy and that, in view of the importance of democracy in the European Convention on Human Rights system, an association, including a political party, is not excluded from the protection afforded by the Convention.<sup>3</sup>

11. The *Guidelines on Political Party Regulation* view political parties as private associations that play a critical role as political actors in the public sphere.<sup>4</sup> Although the document considers that “some regulation of internal party activities can be considered necessary to ensure the proper functioning of a democratic society”, such legislation must be “well-crafted and narrowly tailored” in order not to interfere with the freedom of association. However, the Guidelines recognise that:

“As parties contribute to the expression of political opinion and are instruments for the presentation of candidates in elections, some regulation of internal party activities can be considered necessary to ensure the proper functioning of a democratic society. The most commonly accepted regulations are limited to requirements for parties to be transparent concerning their decision making and to seek input from membership when determining party constitutions and candidates”.<sup>5</sup>

12. Moreover, the requirement of compliance with democracy is twofold: “Not only political parties’ speech and action *ad extra* must formally endorse the democratic principles and rule of law contained in constitutional and legal provisions of the country but their internal organisation and functioning must also substantially abide by the principles of democracy and legality. The basic tenets of democracy are not satisfied with formal adherence or lip-service paid by the statutes of the party but require substantial application of them *ad intra*.”<sup>6</sup>

13. In principle, the way in which constitutions refer to political parties may have a strong impact on the legislation on candidate nomination. In fact, when the constitution imposes

<sup>3</sup> *Guidelines on Prohibition and Dissolution of Political Parties and analogous measures*, CDL-INF(2000)001, para. 8.

<sup>4</sup> CDL-AD(2010)024, para. 6.

<sup>5</sup> CDL-AD(2010)024, para 98.

<sup>6</sup> *Draft Explanatory Report on the Draft Code of Good Practice in the field of Political Parties*, CDL-EL(2008)014, p. 5.

internal democracy, it mandates or, at least, allows the legislator to establish requirements and proceedings for candidate nomination, which bind all political parties. In this way, the constitution enables the law to limit political parties' freedom on the issue.

14. When the constitution does not refer to political parties or only recognises their freedom, the legislator must be more respectful of the proportionality principle. This does not mean that the law cannot rule on the method of nomination of candidates within political parties. Equality, freedom of expression, and democracy are also applicable to political parties, since these entities are the main channels through which citizens participate in public life. It means that, in this case, the requirements for limiting freedom imposed by the proportionality test are more demanding and imposed restrictively.

15. Some constitutions do not mention political parties at all, such as those of Belgium, Denmark, Ireland or the Netherlands, while others refer to them only with respect to rulings on elections. This is the case, for example, of the Austrian Constitution. Other constitutions shape political parties as a specific type of association. Article 49 of the Italian Constitution of 1947 recognises the right of all citizens to freely associate in parties to contribute through democratic processes in the determination of national policies. In this case, the constitution directly guarantees an individual right of association and, indirectly, it guarantees the existence of political parties, since they are essential in pluralistic systems.

16. When the constitution does not recognise political parties and only mentions the parties' role in elections, or when it just proclaims the parties' independence, then it follows the so-called "liberal theory". Political parties are regarded as private associations, which should be entitled to compete freely in the electoral marketplace and govern their own internal structures and processes. In these cases, any legal regulation by the state, or any outside intervention by international agencies, could be regarded as potentially harmful by either distorting or even suppressing pluralist party competition.<sup>7</sup> Traditionally, the United Kingdom or the United States have been reluctant to impose any regulation on political parties.

17. When the constitution establishes more detailed rules on political parties, rules may follow different patterns. Some constitutions not only grant freedom to political parties but also impose some duties on their structure and functioning. Article 21.1 of the German Basic Law requires that political parties' internal organisation conform to democratic principles.<sup>8</sup> According to this type of approach and legal framework, political parties play a vital role in the political system, since they contribute to the formation and expression of public opinion, and they are the main actors in the election of representatives. Due to their prominence, political parties must be regarded as associations of constitutional relevance. Therefore, the law can impose requisites and prohibitions on political parties, including legal requirements affecting the internal rules for nominating candidates, in order to guarantee their loyalty to democracy. For these reasons, laws on political parties are more common in countries whose constitution imposes internal democracy. Although in general these laws do not rule directly on the nomination of political parties, they establish general principles that affect it.

18. There are only a few constitutions that have gone far in regulating the methods of nomination of candidates within political parties. Most of the exceptions come from Latin America, where some constitutions not only impose internal democracy or gender equality, but also contain special norms on the nomination of candidates by political parties. Guatemala was the first country to include a reference to political parties in its Constitution.

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<sup>7</sup> Norris, P. Building political parties: reforming legal regulations and internal rules, Report commissioned by International IDEA, p. 20, [http://www.idea.int/parties/upload/pippa%20norris%20ready%20for%20wev%20\\_3\\_.pdf](http://www.idea.int/parties/upload/pippa%20norris%20ready%20for%20wev%20_3_.pdf)

<sup>8</sup> Other constitutions follow the same pattern. This is the case of Article 3.3 of the Portuguese Constitution; Article 26 of Andorran Constitution; Article 6 of the Spanish Constitution; Article 97 of the Costa Rican Constitution or Article 69 of the Turkish Constitution. Article 41.I. of the Mexican Constitution has a different meaning because, although it does not impose democracy, it declares that political parties are entities of public interest.

However, the content of these norms varies significantly from one country to another (see more details on this in *chapter III*).

## CHAPTER II. NOMINATION OF CANDIDATES WITHIN POLITICAL PARTIES: THE LEGAL REQUIREMENTS

19. Understanding the difference between the liberal model and other models can serve to understand better the way in which each democratic system addresses political parties in general.<sup>9</sup> However, over the years, many of the differences between the various patterns described above are diminishing.

20. During the last decade, many countries have evolved from a previously liberal point of view towards increasing the regulation of political parties. The principle of non-intervention that prevailed across the European continent from the very emergence of political parties seems no longer to be the dominant paradigm.<sup>10</sup> Moreover, in countries moving from a totalitarian regime towards a pluralistic approach, the constitutional references to the respect for the democratic principles became frequent.<sup>11</sup>

21. Indeed, not only the reference to specific rules on political parties has increased, but Europe is also witnessing a proliferation of specific laws on political parties or party laws. This is also the case in Latin America.<sup>12</sup> In 2012, twenty-four European countries had adopted a law on political parties.<sup>13</sup> Although these laws refer to different matters, such as political parties' registration or finances, some of them include provisions on internal democracy, with regulations concerning elections of party bodies, their accountability, and the resolution of party conflicts.<sup>14</sup> There therefore seems to be a growing trend in further regulating the methods for choosing candidates within political parties, as well as regulating their rights. According to this trend, there are three main categories of countries: those with specific legislation on political parties but no specific provisions on intraparty democracy; those with specific legislation on political parties and a focus on intraparty democracy, although the degree of detail may vary a lot from one case to another; and those which lack specific regulation on political parties and generally apply legislation on associations.<sup>15</sup>

22. The *Venice Commission Guidelines on Political Party Regulation* state that:

“Parties must have the ability to determine party officers and candidates, free from government interference. Recognizing that candidate selection and determination of ranking order on electoral lists is often dominated by closed entities and old networks of established politicians, clear and transparent criteria for candidate selection is needed, in order for new members (including women, and minorities) to get access to decision-making positions. Gender-balanced composition of selecting bodies should also be commended”.<sup>16</sup>

23. In general, national laws follow these principles and apply the basic rules of the democratic principle to the internal structure of the political parties. One of the most recent laws adopted in

<sup>9</sup> There is no law on political parties in Ireland.

<sup>10</sup> Casal-Bértoa, F., Romée Piccio, D., Rashkova E. R., *Party Law in Comparative Perspective, Party Law in Modern Europe, The Legal Regulation of Political Parties in Post-War Europe*, Working Paper 16, March 2012.

<sup>11</sup> Such as the Constitutions of Germany (Article 21), Spain (Article 6) and Portugal (Article 51.5).

<sup>12</sup> Bolivia, Chile, Costa Rica, Mexico, Paraguay, Uruguay and Venezuela among others.

<sup>13</sup> Armenia, Austria, Bulgaria, Croatia, Czech Republic, Estonia, Finland, Georgia, Germany, Hungary, Latvia, Lithuania, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, The Netherlands, Turkey, Ukraine and the United Kingdom. *Ibidem*, p.4.

<sup>14</sup> *Ibidem*, p. 7. Particularly, see Armenia, Georgia, Germany, Kyrgyzstan, Latvia, Lithuania, Portugal, Romania, Serbia, Spain, The Netherlands, Turkey and Ukraine.

<sup>15</sup> This is the case, in Europe, of only 12 countries: Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Georgia, Ireland, Liechtenstein, Luxembourg, Malta, Sweden and Switzerland.

<sup>16</sup> CDL-AD(2010)024, para 113.

this field has been the Italian Decree-Law of 28 December 2013. This is the first general norm that regulates political parties in Italy. However, the new Decree-Law does not impose internal democracy and transparency on all political parties, but only on those parties that run for national, European and regional elections. Therefore, the Law aims at establishing a link between the rights and duties recognised in the new regulation, and the effective representation of political parties.<sup>17</sup>

24. The requirements for candidate nomination are in most of cases not specifically stated in the laws on political parties. However, they can be deduced from the general rules stated by the legislation on party organisation and proceedings, and from the principles that the constitution proclaims, such as the principle of internal democracy, non-discrimination, and the recognition of universal suffrage. In other cases, the requirements are stated in the electoral law, as is the case for the Federal Elections Act of the German Republic (FEAG),<sup>18</sup> since its Article 21 establishes detailed provisions for the election of the members of the Bundestag.

25. Some of the laws, however, establish specific rules on the nomination of candidates within political parties. This is the case of Article 17 of the German Law on Political Parties of 24 July 1967 (GL)<sup>19</sup> and Article 33 of Portuguese Organic Law 2/2003 on Political Parties (PL)<sup>20</sup>. In Latin America, many of the States analysed have in their legislation specific rules on the nomination of candidates within political parties, such as Argentina, Bolivia, Costa Rica, Chile, Mexico, Paraguay, Peru, Uruguay or Venezuela. The lack of strong intra-party structures seems to have fostered the adoption of detailed legislation as a way to strengthen internal democracy inside political parties. For example, Transitory Provisions W and Z of Chile's Constitution regulate the primary elections of the President and Vice President of the Republic. Article 67 of the Constitution of Venezuela establishes that political associations must follow democratic methods of organisation, functioning and direction; and "their governing organs and candidates for elective office shall be selected by internal elections with the participation of its members". Article 95.8 of the Costa Rica Constitution states that the law must establish guarantees for the designation of public authorities and candidates of political parties, according to the democratic principles and without gender discrimination.

26. Departing therefore from the existing legislation, three different issues can be assessed: the body that shall nominate the candidates (section A); the procedure to follow in order to make the decision (section B), and the rights of party members during the selection (section C).

#### **A. Requirements concerning the nominating bodies**

27. Some laws state that the main decisions must be made by the party general assembly (composed of all the members of the party), or by an assembly composed of delegates. That is the case, for example, of Article 7.2 of Spanish Organic Law 6/2002 (SL),<sup>21</sup> which establishes that political parties must have a general assembly composed of all their members, or of their delegates. This assembly can act directly or through delegates, and must make the principal decisions of the party according to the procedures established in the parties' statutes.

<sup>17</sup> Allegri, M.R. "Prime note sulle nuove norme in materia di democraticità, trasparenza e finanziamento dei partiti politici", Osservatorio costituzionale, marzo 210, AIC, <http://www.osservatorioaic.it/prime-note-sulle-nuove-norme-in-materia-di-democraticita-trasparenza-e-finanziamento-dei-partiti-politici.html>.

<sup>18</sup> Federal Elections Act, version as promulgated on 23 July 1993 (Federal Law Gazette I pp. 1288, 1594), as last amended by Article 2 of the Act of 3 Mai 2013, (Federal Law Gazette I p. 1084). The English translation of the Law in [http://www.bundeswahlleiter.de/en/bundestagswahlen/downloads/rechtsgrundlagen/bundeswahlgesetz\\_engl.pdf](http://www.bundeswahlleiter.de/en/bundestagswahlen/downloads/rechtsgrundlagen/bundeswahlgesetz_engl.pdf)

<sup>19</sup> English version published at <http://www.bundestag.de/blueprint/servlet/blob/189734/2f4532b00e4071444a62f360416cac77/politicalparties-data.pdf>.

<sup>20</sup> Lei dos Partidos Políticos, Lei Orgânica n.º 2/2003, de 22 de Agosto, com as alterações introduzidas pela Lei Orgânica n.º 2/2008, de 14 de Maio, [http://www.parlamento.pt/Legislacao/Documents/Legislacao\\_Anotada/LeiPartidosPoliticos\\_Anotado.pdf](http://www.parlamento.pt/Legislacao/Documents/Legislacao_Anotada/LeiPartidosPoliticos_Anotado.pdf).

<sup>21</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2002-12756>.

28. Article 21 of the Federal German Act is more precise, because it specifically rules on the selection of party candidates. Its first paragraph allows the direct election of candidates by all the members of the party, or the indirect election by member representatives. Therefore, this Article states that “A person may only be named as a candidate of a party in a constituency nomination if he or she is not a member of another party and has been elected for this purpose at a members' assembly convened to elect a constituency candidate or at a special or general delegates' assembly”. The same Article establishes that the assembly of members can only be composed of members of the party who, at the time of their meeting, are eligible to vote in the German Bundestag elections in their constituency. Therefore, primary elections are not allowed. Furthermore, the electoral Law recognises that the executive committee of the level of the party involved in the selection has the right to veto the decision on candidates. In this case, the election shall be repeated.<sup>22</sup>

29. Constitutions in Latin American countries often contain requirements for candidates of political parties, which include references to age, nationality, residence, experience or occupation. In Costa Rica, for example, the Constitution enounces that the appointment of officials and candidates of political parties must respect the principles of democracy without discrimination on grounds of sex (Article 95. 8). In Paraguay, the Constitution contains requirements for candidates to run for office as President, Vice-President, Senator, Congressman, Governor, etc. as well as the rules on possible incompatibilities preventing the exercise of such a function. The Electoral Code of Paraguay establishes mandatory elections to nominate candidates within political parties, the rules to be observed during the internal electoral process and deadlines, the procedure to challenge the nominations and the rules governing the replacement of candidates.

30. Once the eligibility criteria are fulfilled, the nomination stage for the candidates may start. In Chile, for example, the Constitution enounces that the electoral process will be public, which has an impact on candidates of political parties, who are placed in the same position as independent candidates in order to present candidates for the elections. The Chilean Electoral Act further states that political parties have to follow a system of primary elections to nominate the candidates for President, MPs and mayors, for which certain rules are established:

- a) Political parties can participate in the primary election to nominate candidates for the different posts, alone or together with other political parties and independent candidates, forming an electoral block;
- b) A list of candidates must be submitted by each of the electoral constituencies;
- c) The procedure for the primary election must cover all constituencies.

## **B. Requirements on the nomination procedure**

31. The democratic requirement serves to establish the main principles that guide the procedure within political parties for the selection of candidates. Article 17 of the German Law establishes that the nomination must be done by secret ballot. The Portuguese Law is more detailed, and its Article 33 not only imposes secret ballot, but also the personal ballot in all the elections and referenda organised within the parties. Furthermore, Article 34.1 of the Portuguese Law sets out a number of general rules on electoral procedures that are applicable to the nomination of candidates. Firstly, the Article establishes that electoral rolls shall be drawn up, and access to them shall be guaranteed within a reasonable period of time; secondly, the Article states that every candidature shall be given equal opportunities and treated impartially. The secret ballot is also required in Peru's electoral legislation.

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<sup>22</sup> Art. 21.4 FEAG literally says: “The executive committee of the Land branch or, where such Land branches do not exist, the executive committee of the next lower regional branch in whose area the constituency lies or another body provided for this purpose in the party's statutes may object to the decision of a members' or delegates' assembly. If such an objection is raised, the ballot shall be repeated. Its result shall be final.”



32. Transparency is a principle also imposed on the nomination procedure by a number of electoral laws. That is, for example, the case of Serbia. Article 9 of the *Law on elections of members of Parliament* establishes the right of citizens to be fully informed about the nominated candidates.<sup>23</sup>

33. The importance of political pluralism and the right to participate in public affairs are also the underlying principles of the procedure for the nomination of candidates, as defined by the constitutions of Argentina, Chile, Costa Rica, Mexico or Spain, among others.

34. In most of the States under analysis, the existing legislation on political parties leaves the final decision to them. Some will be quite “centralised”, and party leaders have extensive powers in choosing their candidates, as it is still the case in most Central and Eastern European countries. In the most decentralised parties, the decisions are taken by grassroots party members, if there are closed primaries, or in public decisions if there are open primaries. The level of internal democracy of the political party will depend therefore on the “degree of centralisation” (how much power is given to regional, district and local bodies in the selection process), the “scale of participation” in the nomination and the “scope” of the decision-making.<sup>24</sup> Mechanisms of direct democracy have been introduced in the status and internal regulations of some political parties, such as the Green Federation in Italy, the Reform Movement and the Socialist Party in Belgium, the Union for a Popular Movement and the Socialist Party in France, as well as by the Green Party in Ireland.<sup>25</sup> Inclusive mechanisms are maintained according to the general rule of representative democracy by other parties, where the right to vote is restricted to the members’ delegates and eligibility is more limited.<sup>26</sup>

35. In Germany, the regulation on intraparty democracy, originally enacted because of the international political pressure after the war, has established detailed rules on candidate selection and leadership elections. In Finland, all political organisations are regulated by law, including the candidate selection and leadership elections issues.<sup>27</sup> Spain,<sup>28</sup> Portugal<sup>29</sup> and Venezuela<sup>30</sup> have also included rules on leadership and internal decision-making in their laws.

### C. Requirements concerning party members’ rights

36. Finally, the party member’s rights recognised by the laws are also applicable to the nomination procedure; rights such as equality, the right to participate in the activities and organs of the party, the right to vote, and the right to run for party offices.<sup>31</sup> For example, Article

<sup>23</sup> Law on the Elections of Members of the Parliament, (“Official Gazette of RS”, no. 35/2000, 57/2003 – decision of CCRS, 72/2003 – oth.law, 75/2003 – correction of oth. law, 18/2004, 101/2005 – oth. law, 85/2005 – oth.law, 28/2011 – decision of CC and 36/2011). At <http://www.legislationline.org/topics/country/5/topic/6>. According to this article, “In the context of this Law, the suffrage shall include the right of the citizens to the following, in the manner and according to procedures determined by this law: to elect and to be elected; to nominate candidates and to be nominated as candidates; to make decisions concerning both nominated candidates and electoral lists; to publicly ask nominated candidates questions; to be promptly, truthfully, completely and impartially informed about both the programs and activities of submitters of the electoral lists and candidates on those lists, as well as to have other rights foreseen by this law.”

<sup>24</sup> Norris, Pippa, *Building political parties: reforming legal regulations and internal rules*, Report commissioned by International IDEA, 2004, pp. 20 and ff., [http://www.idea.int/parties/upload/pippa%20norris%20ready%20for%20wev%20\\_3\\_.pdf](http://www.idea.int/parties/upload/pippa%20norris%20ready%20for%20wev%20_3_.pdf).

<sup>25</sup> See Tanchev, Evgeni, “Internal functioning of political parties: the issue of intra party democracy or still we have not found what we were looking for”, Conference on “political parties in a democratic society”: legal basis of organisation and activities, Saint Petersburg, 2012, CDL-EL(2014)003.

<sup>26</sup> In Spain, the General Coordinator of United Left, the Secretary-General of the Spanish Socialist Workers’ Party and the President of the People’s Party are elected by the delegates’ assembly and the two latter parties require candidates to obtain previous support of a significant part of the delegates to enter competition for the post. The Labour Party in Ireland and the Liberal Democrats in the United Kingdom restrict eligibility for the post of leader to members of the parliamentary group of the party. The Labour Party in the United Kingdom presents a kind of mixed mechanism where the Commons members of the Parliamentary Labour Party act as *gatekeepers* (candidates must be members of this group or have their support) but a party-wide ballot is conducted for the selection among nominees. Tanchev, *Ibidem*.

<sup>27</sup> See Political Parties Act of Finland.

<sup>28</sup> Constitution, Article 6.

<sup>29</sup> Law Governing Political Parties, Article 5.

<sup>30</sup> Law on Political Parties.

<sup>31</sup> For example, Article 8 SL In Germany, the basic principles of Art 38 of the Constitution - which addresses the election of the members of the Bundestag- are applicable to the nomination procedure as well. This means that the election must be general

21.3 of the Federal Electoral Act of Germany sets out a number of requirements for the election of members of the Bundestag aimed at guaranteeing democratic debate within the assembly that nominates candidates. It imposes that every eligible person attending the assembly be entitled to submit a proposal. Furthermore, this Article proclaims the right of the candidates to introduce themselves and present their programme.

37. The laws analysed above establish several requirements for internal democracy. However, the norms are quite respectful of the freedom of political parties. For this reason, these laws refer to the statutes or constitutions of political parties in order to set out in detail the principles and requisites established by the laws themselves.<sup>32</sup>

38. When the Constitution does not impose internal democracy of political parties, the level of independence of political parties is higher. In some cases, for example, the law allows the executive board of the party to determine the procedures for the nomination and election of representatives.<sup>33</sup> In other cases, the law leaves to the parties' own statutes the establishment of the organs, procedure, and the electoral rights of party members in the nomination of candidates.<sup>34</sup>

39. In order to evaluate the real impact of the nomination rules analysed above, it must be observed that the flexibility of some norms and the difficulties in verifying their compliance entail significant differences between the *de jure* and the *de facto* nomination procedure. Determining the 'main location' of decision-making in the nomination procedure has its limitations, the difficulties being greater "in poorly-institutionalised" parties where democratic rulebooks and procedures exist on paper but are not always followed in practice".<sup>35</sup>

40. One of the most problematic aspects of the nomination of candidates is the kind of control established to verify the fulfillment of the requirements imposed by the laws and by the statutes of the party. In this matter, the liberal theory leads to the conclusion that political parties, as private associations, are free to follow their own rules. According to this point of view, the voters will reward or punish the parties for the decisions made in the selection of candidates. The approach to the problem is different when the legal system imposes requisites on internal democracy. In this case, it is possible to establish different types of control over the compliance of political parties with the rules stated in the constitution, the law or their own statutes. The most common rule is to leave the monitoring to an internal organ which would act as an arbiter in the appeals against nomination of candidates.<sup>36</sup> In other countries, there is not a clear answer, because the competence of ordinary judges on the matter is still under discussion.<sup>37</sup>

41. Other systems follow a different pattern. In Portugal, ordinary judges and the Constitutional Court can verify whether the party has complied with the requirements imposed by the legal system.<sup>38</sup> This is also the case in Germany. In this country, the constituency nomination must

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(prohibition of an unjustified denial of the right to vote), free, equal, and secret. Furthermore, the basic principles require that each party member who is eligible must also have the right of proposal and the right to decide (at least by electing delegates) on the party's candidates. (Federal Constitutional Court of Germany, BVerfGE 89, p. 251; Judgment of the Constitutional Court of the City of Hamburg, NVwZ 1993).

<sup>32</sup> For example, Article 21.5 of the Federal Electoral Act of Germany states that "Further details regarding the election of delegates for the delegates' assembly, the convening and the quorum of the members' or delegates' assemblies as well as the procedure for the election of the candidate shall be set forth in the parties' statutes".

<sup>33</sup> This is the case of Article 32 of the Latvia Party Law.

<sup>34</sup> Article 3 of the Italian Decree Law of 28 December 2013, n°13; Article 10 of the Romanian Party Law.

<sup>35</sup> Building political parties: reforming legal regulations and internal rules, Report commissioned by International IDEA, 2004, p. 28, [http://www.idea.int/parties/upload/pippa%20norris%20ready%20for%20wev%20\\_3\\_.pdf](http://www.idea.int/parties/upload/pippa%20norris%20ready%20for%20wev%20_3_.pdf)

<sup>36</sup> This is the case of Italy, for example, according to art. 3.a) of the Decree Law of 28 December 2013, n° 2013.

<sup>37</sup> That is the case of Spain, where parties are private associations of public relevance. As associations, Civil Courts should be competent to verify the obedience of the parties to their own statute. Pérez-Moneo, Miguel, La selección de candidatos electorales en los partidos. Madrid, 2012, pág. 319.

<sup>38</sup> Article 34. 2 of the Portuguese Law establishes that electoral procedural acts shall be subject to challenge before the applicable jurisdictional organ by any party member who is an elector or a candidate. Definitive decisions handed down under the terms of the previous paragraph shall be subject to appeal to the Constitutional Court.

be submitted to the Constituency Returning Officer with a copy of the record of the candidate's election. The record must include details of where and when the assembly took place, the form of the invitation, the number of members present, and the result of the ballot.<sup>39</sup> If the nomination does not meet these requirements, it shall be rejected by the Constituency Electoral Committee<sup>40</sup>.

### **CHAPTER III. EVALUATING SPECIFIC ELEMENTS OF INTRA PARTY DEMOCRACY: ON SUBSTANTIVE DEMOCRACY**

#### **A. Requirements of gender balanced representation**

42. The most demanding requirements on the selection of candidates by political parties are those aimed to ensure equal gender representation. The Guidelines on political parties recognises that "the small number of women in politics remains a critical issue which undermines the full functioning of democratic process".<sup>41</sup> Hence, "electoral gender quotas can be considered an appropriate and legitimate measure to increase women's parliamentary representation".

43. The Venice Commission, in its *Code of Good Practice in Electoral Matters*, considered that the legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered contrary to the principle of equal suffrage if they have a constitutional basis.<sup>42</sup>

44. The analysis of the electoral gender quota systems and their implementation in Europe<sup>43</sup> shows that some type of electoral gender quotas for public elections is in use in 30 countries. Thirteen countries (Albania, Belgium, Bosnia and Herzegovina, France, Greece, Ireland, Montenegro, Poland, Portugal, Serbia, Slovenia, Spain and The former Yugoslav Republic of Macedonia) have introduced legislated quotas that are binding for all political parties. Voluntary party quotas have been implemented in 22 countries, meaning that at least one of the political parties represented in parliament has written electoral gender quotas into its statutes.<sup>44</sup> In six countries, no gender quotas are in use for national elections.<sup>45</sup>

45. From the start, the establishment of legal electoral quotas has been polemical in many countries. In France, which was the first state in the world to introduce a compulsory fifty per cent gender parity provision,<sup>46</sup> the Constitution had to be changed in 1999. In Italy, the Constitutional Court ruled against the quotas on 12 December 1995, and this led to the constitutional reform of 2001.<sup>47</sup>

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<sup>39</sup> Article 21.6. The same Article states that "the chairperson of the assembly and two members present designated by it shall give the Constituency Returning Officer an assurance in lieu of an oath to the effect that the requirements specified in subsection (3), first to third sentences, were observed. The Constituency Returning Officer shall be responsible for accepting such an assurance in lieu of an oath; he shall be considered an authority within the meaning of Section 156 of the Penal Code".

<sup>40</sup> Article 26.2 Federal Electoral Act of Germany.

<sup>41</sup> Para. 99.

<sup>42</sup> *Code of Good Practice in Electoral Matters* (CDL-AD (2002)023rev), point I.2.5.

<sup>43</sup> Freidenvall, L., Dahlerup, D., "Electoral Gender Quota Systems and their implementation in Europe, Update 2013", European Parliament, Directorate-General for Internal Policies, Policy Department, Citizens' Rights and Constitutional Affairs, 2013, [http://www.europarl.europa.eu/RegData/etudes/note/join/2013/493011/IPOL-FEMM\\_NT\(2013\)493011\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2013/493011/IPOL-FEMM_NT(2013)493011_EN.pdf). For the purpose of this report, more recent data have also been used, including the ACE project database in gender quotas.

<sup>44</sup> Austria, Croatia, Cyprus, Czech Republic, France, Germany, Greece, Hungary, Iceland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom.

<sup>45</sup> There are no quotas in Bulgaria, Denmark, Estonia, Finland, Latvia and Liechtenstein.

<sup>46</sup> Law No. 88-227, Article 9(1). See <http://www.quotaproject.org/uid/countryview.cfm?country=53>.

<sup>47</sup> Judgement No. 422. The first step was the reform of Art 117 of the Constitution. The new paragraph declares that "Regional laws shall remove any hindrances to the full equality of men and women in social, cultural and economic life and promote equal access to elected offices for men and women". (Constitutional Law of 18 October 2001 n° 3). Later, Art 51 of the Constitution was also modified. This article recognizes the right of access to elected positions and public offices on equal terms. Constitutional Law of 30 May 2003 n° 1 added a new sentence which declares that "To this end, the Republic shall adopt specific measures to promote equal opportunities between women and men".

46. In Spain, Organic Law 3/2007 on Effective Equality between Women and Men imposed a balanced composition to the electoral list, introducing the new Article 44.bis into Organic Law 5/1985, on the General Electoral System<sup>48</sup>. The first paragraph of this Article establishes that the electoral list “shall have a balanced proportion of women and men, so that candidates of each sex make up at least 40% of total membership. Where the number of seats to be covered is less than five, the ratio between women and men shall be as close as possible to equal balance”. In addition, paragraph 3 of the same Article states that the lists of substitutes must respect the same rules as set for candidates<sup>49</sup>.

47. One of the most polemical issues of balanced electoral lists was that the law had been enacted without previously changing the Constitution. According to this opinion, balanced lists were an imposition on those political parties that were against quotas, since they held a different idea of equality. The Constitutional Court<sup>50</sup> rejected this criticism using Art 9.2 of the Spanish Constitution, which imposes on public power the duty to promote a real and effective equality<sup>51</sup>. From the Constitutional Court’s point of view, political parties enjoy freedom of functioning and are free to form and express their ideology. And, of course, they are also free to elaborate and to present their lists of candidates. But this freedom is not absolute. The law-maker can limit it by imposing conditions, such as requirements regarding eligibility or closed and blocked lists. Thus, balance between the sexes is just another limitation, the constitutional basis of which is the mandate to foster equality imposed by the supreme norm.

48. Legislated quotas are more respectful of political parties’ freedom when they only impose a certain percentage of female candidates in the electoral list.<sup>52</sup> When the proportion of women must be respected in groups of seats, the limitation is higher.<sup>53</sup> The most demanding system is the zipper list because, in this case, men and women must alternate. However, this kind of list seems to be the most effective for representing women.

49. In any case, the European experience shows that, although gender quotas are an effective tool for increasing women’s presence in political bodies, they do not automatically result in an equal representation of women and men. Quotas must include rules about rank order and sanctions for non-compliance.<sup>54</sup> According to the Study of the European Parliament of 2013, quota provisions must incorporate rules about the placement of candidates on the list. Indeed, a quota system that does not include such rank-order rules may have no effect at all: “If the 40 per cent of a party’s candidates on the electoral list in a PR system are women but they are placed at the bottom of the list, this may result in no woman being elected at all. In plurality/majority electoral systems, rules are needed with regard to the gender distribution of “winnable” or “safe” seats”.<sup>55</sup>

50. Furthermore, the effectiveness of quota provisions depends on the existence of institutional bodies that supervise the application of quotas and impose sanctions for non-compliance<sup>56</sup>.

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<sup>48</sup> English version of the Law at

<http://www.juntaelectoralcentral.es/portal/page/portal/JuntaElectoralCentral/JuntaElectoralCentral>.

<sup>49</sup> See, on the Spanish case, Biglino Campos, P., “Equal representation in Spain: Lessons learned from balanced electoral lists”, in IDEA, *Improving Electoral Practices. Case Studies and Practical Approaches*, 2014, pp.203-224.

<sup>50</sup> Sentence 12/2008 of 29 January.

<sup>51</sup> This article states that “it is the responsibility of public authorities to promote conditions ensuring that freedom and equality of individuals ... are real and effective, to remove the obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life.”

<sup>52</sup> This is, for example, the case of Portugal. Art 2 of Organic law 3/2006 requires a minimum 33% representation of each sex in candidate lists.

<sup>53</sup> As stated above, in Spain the proportion between women and men must be respected in brackets of five seats.

<sup>54</sup> Dahlerup, D., Freidenvall, L. et alii, *Electoral Gender Quota Systems and their implementation in Europe*, European Parliament, Directorate-General for Internal Policies, Policy Department, Citizens’ Rights and Constitutional Affairs, 2008, p. 38. <http://www.europarl.europa.eu/document/activities/cont/200903/20090310ATT51390/20090310ATT51390EN.pdf>

<sup>55</sup> Freidenvall, L., Dahlerup, D., “Electoral Gender Quota Systems and their implementation in Europe, Update 2013” cit. p. 38.

<sup>56</sup> Ibidem.

51. The result of breaching the quotas can be different. In some cases, they consist of financial penalties. This is the case for Portugal and France. In the latter, for example, non-compliance with 50% parity rule will result in a decrease of public funding provided to the parties.<sup>57</sup> In Spain, the consequences of breaching the requisites imposed by law for the nomination of candidates are heavier. Indeed, the electoral commission cannot accept candidatures unless they meet the requirements set out on a balanced list. For this reason, electoral lists that do not respect the proportion of women and men must be rejected.<sup>58</sup>

52. In Latin America, the use of gender quotas has been quite systematic, which is reflected in the fact that the American continent reaches a representation of 26,6 % of women in Parliaments. Argentina, Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Uruguay have introduced gender quotas for their legislative elections.

53. In particular, Bolivia, Costa Rica and Mexico have introduced a 50-50 quota. Nicaragua has also adopted this rule. Mexico established that the 50% is applicable to the candidates' list and the substitutes' list.<sup>59</sup> Both Bolivia and Costa Rica have introduced the zipper list into their laws, alternating one candidate of each sex.

54. Argentina and Peru have a gender quota of 30 percent for women. Argentina established that party electoral lists are required to have a minimum of 30% women among their candidates for all national elections with real chances to be elected.<sup>60</sup> Peru established that the electoral lists must include at least 30% of men or women among the candidates.<sup>61</sup>

55. In Paraguay parties should ensure that one in every five candidates in primary elections is a woman. This represents a quota of 20 percent.<sup>62</sup> In Uruguay, candidates of both sexes must be represented in every three places on electoral lists, either throughout the entire list or in the first 15 places. Where only two seats are contested, one of the two candidates must be a woman.<sup>63</sup>

56. Argentina was the first country to introduce a gender quota in its electoral law (1991). Paraguay, Peru and Bolivia followed in the 90s. Mexico adopted the gender quota in 2002. Uruguay and Costa Rica adopted them in 2008. Chile and Venezuela have not yet introduced a gender quota into their laws.

57. Concerning sanctions applied to gender quotas, Bolivia ruled that if political parties do not comply with the legislated quota, the electoral management body may reject the registration of candidates. Argentina and Mexico established a 48 hours deadline to make the necessary changes. In Argentina, if the political parties do not change the selection of candidates to meet the goal that candidates of different sexes are in the first three places of the list, the electoral authority itself can make the appointment. In Mexico, after an additional 24 hours, the electoral authority may reject the registration of the list.

## **B. Requirements on minorities representation**

58. Ensuring an inclusive participation of minorities, essential for intra-party democracy, is not often considered in candidates' lists within political parties. Indeed, in general, there are no

<sup>57</sup> Art 9.1 of Law n° 88-227 of 11 March 1988 on Financial Transparency of Political Life. More information on the issue in <http://www.quotaproject.org/uid/countryview.cfm?country=53>

<sup>58</sup> Art 47.4 Organic Law 5/1985.

<sup>59</sup> General Law of Institutions and Electoral Proceedings, Articles 232, 234.

<sup>60</sup> Electoral Code, Article 37.

<sup>61</sup> Electoral Law, Article 116 and Law No. 28094 regulating Political Parties, Article 26

<sup>62</sup> Electoral Code, Article 32.

<sup>63</sup> Article 2 of Law No. 18.476.

binding rules in Europe on the nomination of candidates aimed at ensuring the presence of minorities in parliament. The same can be said of Latin America. However, political participation of minorities should be promoted, especially in those countries where the requirements for minimum membership and regional representation could restrict the possibilities of persons belonging to national minorities, or where political parties based on ethnicity or region are prohibited.<sup>64</sup>

59. The Venice Commission, in its *Guidelines on Political Party Regulation*, referred to the rights of members of minorities to be elected. Measures should be taken within the electoral process, therefore, to ensure that national minorities have an equal opportunity to be elected and represented in parliament.<sup>65</sup>

60. In its *Study on Electoral Law and National Minorities*, the Venice Commission refers to two main elements to be considered by the legislative body:

- a) When lists are not closed, a voter's choice may take into account whether the candidates belong to national minorities. The freedom of choice may have favourable or unfavourable results with respect to minorities, and this depends on many factors.
- b) When the minority population is the majority in a territory, there may be the right to be represented by someone of the same group.<sup>66</sup>

61. All laws should consider the need to provide a measure to help minority representation. Indeed, the Venice Commission has stated that:

- a. "Parties representing national minorities must be permitted. Yet the participation of national minorities in political parties is not and shall not be restricted to the so-called ethnic based parties (...)
- b. Special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat allocation criteria for parties representing national minorities (for instance, exemption from a quorum requirement) do not in principle run counter to equal suffrage.
- c. Neither candidates nor voters must find themselves obliged to reveal their membership of a national minority.
- d. Electoral thresholds should not affect the chances of national minorities to be represented.
- e. Electoral districts (their number, the size and form, the magnitude) may be designed with the purpose to enhance the minorities' participation in the decision-making processes."<sup>67</sup>

62. The possibilities are therefore very wide: reserved seats, lower electoral thresholds, special parliamentary committees, adapted constituency boundaries, etc. In Europe, some laws include the possibility of reserving a certain number of parliamentary seats,<sup>68</sup> or of waiving the threshold

<sup>64</sup> As it is the case in Bulgaria or in Russia, see CDL-EL(2008)014.

<sup>65</sup> *Guidelines on Political Party Regulation*. Role of candidates and parties "Minority Candidates". See paras. 106 and ff.

<sup>66</sup> CDL-INF(2000)004, *Study on Electoral Law and National Minorities*, adopted in 2000, at <[http://venice.coe.int/docs/2000/CDL-INF\(2000\)004-e.asp](http://venice.coe.int/docs/2000/CDL-INF(2000)004-e.asp)> (hereinafter "Study on Electoral Law and National Minorities"), p. 8. This is the case for example in Italy, Slovakia or Spain.

<sup>67</sup> CDL-AD(2005)009, *Report on electoral rules and affirmative action for national minorities' participation in decision making process in European countries*, adopted in 2005, at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)009-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)009-e).

<sup>68</sup> This is the case, for example, of Croatia. Article 15 of the Constitution guarantees "equal rights for the members of all national minorities". A quota for national minorities in Parliament has been established by the Act on the Rights of National Minorities in the Republic of Croatia 2002 (amended in 2010). According to Article 19(2), a minimum of three seats in the Croatian Parliament shall be reserved for representatives of those national minorities which, on the effective date of this Constitutional Law, account for more than 1.5 percent of the population of the Republic of Croatia and which achieve their right to representation on the basis of universal suffrage, by election from the party slates of such minorities or slates proposed by voters belonging to such minorities, in compliance with legislation governing the election of deputies to the Croatian Parliament. National minorities which account for less than 1.5% of the population of the Republic of Croatia shall, in addition to their right to exercise universal suffrage, be entitled to the special right to

of the number of votes received for obtaining representation in parliament in the case of national minorities.<sup>69</sup>

63. Some European constitution's guarantee the presence of minorities in the national chamber. That is the case, for example, in Romania. Article 62.2 of the Constitution states that "organisations of citizens belonging to national minorities, which fail to obtain the number of votes for representation in Parliament, have the right to one Deputy seat each, under the terms of the electoral law. Citizens of a national minority are entitled to be represented by one organisation only".<sup>70</sup> However, this provision is not applicable to the internal nomination of candidates.

64. The most common model is the protection of minorities under the general principle of equality.<sup>71</sup> In some countries, their presence in parliament is ensured by the way in which electoral districts are drawn. That is, for example, the case of Switzerland where pluralism is guaranteed by the fact that the Cantons are the constituencies. In "the Former Yugoslav Republic of Macedonia", special districts may be established to enable the election of certain minorities, such as members of the Roma community.<sup>72</sup>

65. In spite of the fact that there are 522 indigenous peoples representing more than 28 million people<sup>73</sup> in Latin-America, the standards for the presentation of candidates are not yet very developed. Peru is an exception, as it has established that 15% of the nominations are reserved for representatives of native communities and indigenous peoples, for their provinces and regions. Venezuela has reserved three seats for Indigenous Congressmen (Organic Law on Electoral Processes, Article 180). Bolivia decided to make special electoral boundaries for native indigenous peoples representing ethnic minorities in the country. They are allowed to nominate candidates according to their own ethnic traditions.<sup>74</sup> In Mexico, the Electoral Code does not establish an indigenous quota, but as result of a constitutional amendment, the State has to promote the political participation of the indigenous groups; in order to do so, it has allowed the drawing of special electoral boundaries where the indigenous people exceed 40% of the population.<sup>75</sup>

## CONCLUSIONS

66. The legislation concerning the method for nominating candidates within political parties varies considerably between different countries and is not yet fully developed. The liberal model, which favours the freedom of political parties, is still predominant, although this model seems to be losing ground due to the fact that legislation has increasingly been developed in this area over the last two decades.

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vote enabling them to elect five deputies belonging to such national minorities from within their own special constituencies, all in compliance with legislation governing the election of deputies to the Croatian Parliament and without the possibility of impinging upon the acquired rights of national minorities." Bosnia and Herzegovina also has a system of reserved seats, mainly in the field of local elections: members of all national minorities which make up to 3% of the total population of a municipality shall be guaranteed at least one seat in a Municipal Council/Municipal Assembly (Article 13A of the Election Law).

<sup>69</sup> This solution is applied in Germany, where the 5% threshold is not applied for political parties representing minorities, in Denmark or in Poland.

<sup>70</sup> According to Art 9.1 of Law 35/2008, the organizations of citizens belonging to a national minority, which are legally established and do not win parliamentary representation in either chamber, are entitled to one seat each in the Chamber of Deputies on the condition that the organization obtains at least 10% of the average number of valid votes casted for an elected Deputy. There is no upper limit on the number of seats reserved for minority organizations. <http://www.ipu.org/parline-e/reports/2261.htm>.

<sup>71</sup> This is the case of Ukraine, where Art. 9 of the Law on National Minorities states that Ukrainian citizens who belong to national minorities are granted the right to be equally elected to any position, in particular, to legislative bodies and local self-government.

<sup>72</sup> Law on Election of the Members of the Parliament, "Official Gazette of the Republic of Macedonia No. 42/2002 ; Source: <http://www.dik.mk>.

<sup>73</sup> UNICEF, "Indigenous peoples in Latin-America", 2012.

<sup>74</sup> Law No. 026.

<sup>75</sup> Constitution Amendment Decree August 14th 2001, Article third.

67. There is a trend to regulate through legislation the application of basic rules of democracy (including the principles of transparency and equality) to the internal structure of political parties. Intra-party democracy requires the establishment of a link between the rights and duties of candidates and the latter's effective representation in political parties. There is also a direct link, when States have legislated on these matters, between the legislative regulation on the nomination of candidates and the electoral system. Nevertheless, any legislative measure needs adequate control measures in order to be effective.

68. Notwithstanding the legislative measures that have been taken to improve the method of nomination of candidates, important challenges remain. Legislative regulation is not the only factor that can improve inclusive participation in electoral processes. However, the progress of intra-party democracy needs legal requirements. From a procedural point of view, these concern the internal mechanisms to choose candidates within political parties, the composition of nominating bodies and their rights. The substantial requirements should facilitate the inclusion of all members of society.

69. Among those countries that have regulated this issue, there are two main elements of "substantive" intra-party democracy which can be identified:

- There is a growing majority of countries that have included gender quotas in their legislation. Quotas within candidates' lists are preferred, as opposed to reserved seats in constituencies.
- As to the rules on the representation of minority, ethnic and vulnerable groups, there seems to be an opposite trend: there are reserved seats or special constituencies, resulting in "guaranteed mandates" as a way of ensuring such groups' representation.

70. Europe has taken steps to ensure the participation of women and minorities, ethnic and vulnerable groups in recent times and this has set a trend since 2000. In Latin-America, such rules have existed since the 90s. In general, the so called "legislated quotas", which mainly concern the representation of women, have been preferred in recent changes over the so-called "voluntary quotas" in the electoral legislation of most countries that were analysed.