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CONSTITUTIONAL AFFAIRS

Spanish policy on gender equality: relevant current legislation and policies

NOTE

Abstract

This paper explores the main current Spanish legislation and policies relating to gender equality. Spain has moved in approximately three decades from being a 'latecomer' to being a 'pioneer' in gender equality policies. During this time Spain has consolidated its institutional machinery on gender equality policies (section 1.1). It has developed a strategy to promote gender equality based on equal opportunities, positive actions (2.3), and gender mainstreaming (2.2), and has adopted both plans and laws as policy instruments (2.1). It has approved a comprehensive law against gender violence that frames it as a public matter of high political priority and an issue of Human Rights (3.1), and an equality law that covers a broad range of issues, from paternity leave to a more gender-balanced political representation (respectively in 3.2 and 3.3). It has improved gender equality in politics, through a parity government and an increase in women's political representation (3.3). It has placed the issue of reconciliation of work and family on the political agenda (3.2). The Spanish government is currently working on new laws such as a law on sexual and reproductive health and an equal treatment act covering different inequalities. Despite this progress, many challenges still lie ahead for Spanish policy on gender equality, some of which will be tackled in this briefing note.

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1. SPANISH INSTITUTIONAL MACHINERY AND POLITICAL CONTEXT OF GENDER EQUALITY

1.1 The consolidation of the Spanish institutional machinery on gender equality

In about three decades, Spain has moved from being a dictatorship and a latecomer in gender equality policies to being one of the European pioneers in the promotion of gender equality.

Between Franco's death in 1975 and Spain's entry in the European Community in 1986, the national agency for gender equality, the Woman's Institute¹, was created in 1983. From that moment, the starting point for Spanish state feminism and public policies on the issue, gender equality policies and the institutional framework created around them have developed very quickly in Spain both at the national and regional levels, with the creation of gender equality agencies in the Spanish Autonomous Communities and the consolidation of the national equality machinery².

The institutional framework around gender equality policies at the national level was progressively strengthened with the creation of the Equality Policies General Secretariat³ in 2004, which is of a higher rank than the Woman's Institute, and the establishment of the Ministry of Equality⁴ in 2008. These institutional changes reinforced the gender framework but also allowed the adoption of a broader perspective and the inclusion of other inequalities⁵. In Spain, there are currently separate equality agencies for each inequality in Article 13 of the EC Treaty except sexual orientation⁶. However, steps are being taken within the Ministry of Equality to deal with all inequalities mentioned in Article 13 of the EC Treaty (sex, race or ethnicity, age, sexual orientation, religion or belief, and disability) within a single body that is likely to be the current Ministry of Equality. The consolidated character of the Spanish gender equality machinery is noticeable in the fact that the Woman's Institute will be maintained as a structure to promote gender equality, together with the future body that will cover all six inequalities, including sex⁷.

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¹ *Ley 16/1983, de 24 de octubre de 1983*. See Bustelo and Ortals 2007; Valiente 1995.

² This overview of the main recent policies and legislation, for reasons of brevity, is by no means exhaustive. It can only tackle a selection of issues of the Spanish gender equality policy. Moreover, despite the relevance of the regional policy level when addressing gender equality in Spain, in this paper the national level is the main object of analysis.

³ *Real Decreto 562/2004, de 19 de abril de 2004; Real Decreto 1600/2004, de 2 de julio de 2004*.

⁴ *Real Decreto 438/2008, de 14 de abril de 2008; Real Decreto 1135/2008, de 4 de julio de 2008*.

⁵ The two EU anti-discrimination directives 2000/43/EC and 2000/78/EC have been partially transposed through the *Ley 62/2003 de medidas fiscales, administrativas y sociales*. See Bustelo 2009.

⁶ On gender the Woman's Institute and the Equality Policies General Secretariat; on race and ethnicity, the Council for the Advancement of Equality of Treatment and no Discrimination of People on the grounds of Racial or Ethnic Origin, the Forum for the Social Integration of Immigrants, the Spanish Observatory on Racism and Xenophobia, and the Council of Roma People; on disability, the National Disability Council; on age, the Youth Institute; on religion the Advisory Commission on Religious Freedom and the Directorate General of Religious Affairs within the Ministry of Justice.

⁷ Bustelo 2009.

1.2 The political context of Spanish gender equality policies

The political context is crucial to understand developments in gender equality policies in Spain. At the national level, the main factor for the creation of the Woman's Institute in 1983 was the initiative of the Socialist Party in government at the time and the activism of feminist socialist women⁸. Thus, up to the mid 1990s national gender policies in Spain were identified with the Socialist Party. However, in 1996 the Popular Party took office and women's agencies and gender policies were also supported then by the new Cabinet. United Nations (IV World Conference in Beijing) and European Union (EU) pressures were key factors in the maintenance of state feminism in Spain⁹. After eight years of conservative government, in March 2004 there was an important political change. The new socialist government, led by Rodríguez Zapatero, had a considerable impact on gender policies with measures such as a parity government, the creation of the Equality Policies General Secretariat, and the approval of important laws such as the Law 1/2004 against gender violence¹⁰, the reform of the Civil Code which allows same-sex marriage (Law 13/2005)¹¹, the 'Dependency law' (Law 39/2006)¹², and the Law 3/2007 on Substantive Equality between Women and Men (from now on referred to as the Equality Law)¹³. The re-election of Zapatero in 2008 has brought further change to the equality machinery and legislation, such as the creation of the mentioned Ministry of Equality and a recent law proposal on sexual and reproductive health and voluntary interruption of pregnancy¹⁴. The Ministry of Equality is also preparing an Equal Treatment Act to combat discrimination, on which an Expert Group created by the Ministry is currently working¹⁵.

2. POLICY INSTRUMENTS AND STRATEGIES FOR GENDER EQUALITY IN SPAIN

2.1 Policy instruments: equality plans and laws

Prior to the approval in the last decade of equality laws and gender units within public administrations and ministries (see sections 3 and 2.2), **plans** had been the main policy instrument employed to implement public policies on gender equality in Spain. Gender equality plans, formulated by public bodies entrusted with the promotion of gender equality policies such as the Woman's Institute and adopted by the Cabinet, include measures and goals that different governmental departments, and sometimes also civil society organisations, need to implement during a specific period of time¹⁶. The

⁸ Valiente 1995.

⁹ Lombardo 2004.

¹⁰ *Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género.*

¹¹ *Ley 13/2005, de 1 de julio, por la que se modifica el Código Civil en materia de derecho a contraer matrimonio.*

¹² *Ley 39/2006 de 14 de diciembre de 2006 de promoción de la autonomía personal y atención a las personas en situación de dependencia.*

¹³ *Ley Orgánica 3/2007, de 22 de marzo, para la igualdad efectiva de mujeres y hombres.*

¹⁴ *Proyecto de Ley Orgánica de salud sexual y reproductiva y de la interrupción voluntaria del embarazo (121/000041).* This law proposal aims at guaranteeing Fundamental Rights in sexual and reproductive health, regulating conditions of the voluntary interruption of pregnancy that protect women's rights and do not discriminate women (among the provisions is the exclusion of abortion from the Penal Code, the enabling of it until the first 14th week if a woman asks for it, and until the 22nd week for health reasons), and establishing public obligations of information, education and provision of assistance by the National Health System. See www.congreso.es (accessed 30/09/2009).

¹⁵ Bustelo 2009.

¹⁶ Bustelo and Ortals 2007.

introduction of equality **laws**, approved first in the Autonomous Communities and later at the national level, shows the consolidation of gender equality policies in Spain. Unlike plans, gender equality laws entitle individuals to take judicial action to claim their rights in courts. The 2007 Equality Law and other important Spanish laws, such as the Law on Gender Violence, will be discussed in section 3.

Equality plans and laws are now **complementary instruments** in developing gender equality policies in Spain. Both may enable a transversal approach to policymaking, as they may tackle different areas. The Equality Law 3/2007 legitimises the use of policy plans as key instruments in gender equality policy, in addition to laws. The current plan, which implements the 2007 Equality Law, is the Strategic Plan of Equality of Opportunities 2008-2011¹⁷, which is based on principles of equality and non-discrimination and includes measures in 12 priority areas such as socio-political and economic participation, co-responsibility in family and work tasks, education, knowledge, health, attention to diversity and social inclusion, violence, development, media, and protection of the right to equality.

2.2 Policy strategies: gender mainstreaming

Gender equality policy plans and laws in Spain have been guided not only by the principle of equality of opportunities between the sexes, but also by policy strategies, such as gender mainstreaming and positive actions, that aim at achieving a broader equality of outcome. Gender mainstreaming is the strategy adopted by the EU through Articles 2 and 3(2) of the EC Treaty to ensure that policymakers introduce a gender perspective into all policies and processes, by analysing *ex ante* the potential impact that policy proposals on, for instance, finance or research could have on women and men and by formulating public policies that in their specific sectors promote gender equality. Spanish gender equality policy plans have adopted a transversal approach, as they require different governmental departments to adopt gender policy measures included in the plan. However, the institutionalisation of gender mainstreaming has been explicitly formalised in the 2007 Equality Law (especially, but not only, in Title II Article 15), which requires public administrations to **mainstream gender in the adoption, implementation, and budgeting of all policies**. To evaluate *ex ante* the potential impact of laws from a gender perspective, and ensure that legislative proposals on issues such as transport or education do not create or maintain gender inequalities but rather promote gender equality, Law 30/2003¹⁸ requires policymakers to draft a report to assess the **gender impact** of all governmental laws. The 2007 Equality Law (Title II, Article 19) extends the requirement to draft a gender impact assessment report prior to the adoption of policy measures also to policy plans of special economic, social, artistic, and cultural relevance, which is particularly important considering the key role of plans as privileged policy instruments in Spain. In order to provide the necessary expertise for mainstreaming gender into all policies, the Equality Law prescribes the creation of **gender units** within all Ministries (Title VII, Article 77) so that experts in both gender and the policy field of each specific Ministry may help in the design and implementation of policies with a gender perspective and in the collection of data and elaboration of studies. Finally, to help policymakers acquire the competence needed to plan, implement, and evaluate public policies taking gender into account, the Equality Law requires the State General

¹⁷ <http://www.inmujer.migualdad.es/mujer/politicas/aqui.html> (accessed 30/09/09).

¹⁸ *Ley 30/2003 del 13 de octubre*. Laws in the Catalan (*Ley 4/2001*), Andalusia, (*Ley 18/2003*), and the Basque (*Ley 4/2005*) regional contexts also prescribe gender impact assessment.

Administration to organise **gender training** for all public administration personnel and to introduce gender issues in the exam for becoming civil servants (Title V, Article 61).

While at the formal level important steps towards the institutionalisation of gender mainstreaming have been taken in Spain, implementation is slower. Gender units within all Ministries have been created, though with organisational and personnel differences - according to data of the Ministry of Equality (2009). Gender impact assessment of a number of laws and plans has been performed¹⁹ while a gender impact assessment of the National **Budget** Law has been conducted for the first time for the 2009 Budget Law²⁰. The latter analyses gender inequalities in each ministerial area (though not always documented through gender disaggregated statistical data), the budget lines dedicated to gender, and the plans for employing the budget to correct gender inequalities. Gender experts and activists have appreciated the gender impact assessment of the 2009 Budget Law as a good first step yet in need of improvements, as, for instance, it does not include the gender impact of tax systems and does not analyse the invisible unpaid work that women perform to care for dependant and ill relatives²¹. According to research performed in the EQUAPOL project, the Spanish decentralised model has given regions a degree of autonomy that has enabled some of them to make progress in gender mainstreaming prior to the national level of government²². This can be noticed, for example, in the experiences of gender budgeting in the Andalusian and the Basque regions. The Andalusian government has created a Budget Commission that has elaborated gender impact assessment reports of the Andalusian budget since 2006²³. Emakunde, the Basque Women's Institute, conducted a pilot experience of gender budgeting in 6 governmental departments from 1996 to 2004²⁴.

Gender **training** of public administrations is increasing in Spain, though training practices are not systematically conducted in all public administration departments²⁵. The gender training of public administration personnel by the Andalusian Gender Equality Unit was a pioneering experience in the implementation of gender mainstreaming through the training of civil servants and the elaboration of manuals to help public administrators incorporate a gender perspective in their daily work²⁶. Gender disaggregated statistical data are in process of development, and the Ministry of Equality, the Ministry of Public Administrations and the National Institute of Security and Hygiene at Work are making some progress in this direction²⁷. One limitation of the Spanish gender mainstreaming model is its scant emphasis on the participation of women's organisations, which can be seen in the lack of institutionalised channels for women's participation in policymaking in a country where gender equality policies began more than 25 years ago. An indicator of this lack of participatory approach is, for instance, the fact that the Council of Woman's Participation announced in the Equality Law has not yet been created²⁸.

¹⁹ Ministerio de Igualdad 2009.

²⁰ See <http://www.meh.es/es-ES/Paginas/Home.aspx> (accessed 26/10/2009).

²¹ See <http://impactodegeneroya.blogia.com/> (accessed 27/10/09).

²² Clavero and Daly 2004.

²³ See http://www.juntadeandalucia.es/economia/hacienda/planif_presup/genero/informe.htm (accessed 28/10/09).

²⁴ <http://www.emakunde.euskadi.net/u72-home/es/> (accessed 28/10/09)

²⁵ Espirito Santo et al 2007.

²⁶ See <http://www.unidadgenero.com/default.cfm> (accessed 28/10/09).

²⁷ Ministerio de Igualdad 2009.

²⁸ The Council of State, on the 8th October 2009, has analysed the proposal to regulate functions, competencies and composition of the Council of Woman's Participation. *Proyecto de Real Decreto por el que se regula el régimen de funcionamiento, competencias y composición del Consejo de Participación de la Mujer (Dictamen núm. 1.500/2009)*, <http://www.consejo-estado.es/asuntos.php> (accessed 16/10/09).

2.3 Policy strategies: positive actions

Positive actions seek to correct the initial disadvantage of women, taking gender into account in establishing the criteria for hiring and promoting personnel, and for participating in decision-making institutions. In all of these situations, the application of a compensatory measure means favouring, in cases of equal merit, a woman over a man. The EU legal basis for positive actions measures is Article 141(4) of the EC Treaty. The Equality Law in its Article 11 encourages Public Authorities to adopt **positive actions** 'in favour of women to correct obvious cases of inequality of outcome in relation to men'. The Equality Law also introduces positive actions in the area of political representation (see section 3.3).

3. LEGISLATION AND POLICIES ON GENDER EQUALITY IN SPAIN: MAIN CURRENT DEVELOPMENTS

3.1 Violence against women: 'a public matter'²⁹

The first law approved by the Zapatero Cabinet in 2004 was the **Organic Law 1/2004 on Comprehensive Protection Measures against Gender Violence**³⁰. The law, which was approved with the support of all Spanish political parties, shows that the problem of violence against women in Spain is not only a 'public matter' but also a high political priority. Gender violence has shifted from being a 'private matter' to being a public issue that concerns women's Human Rights and that the state is responsible for solving. The increasing public recognition of the problem of gender violence that led to the approval of Law 1/2004 is a result of the mobilisation of the feminist movement in favour of a comprehensive law on violence against women since 1993³¹.

The Organic Law 1/2004 against gender violence is considered as a 'pioneering' law at least for five reasons. Firstly it defines gender violence as a problem of *gender* inequality -'the most brutal symbol of gender inequality'- as the Preamble states. Thus, it overcomes the previous framing of the issue as 'domestic violence', which located violence against women in a neutral 'domestic' space that did not specify relations of inequality and the position of men and women in this space. Violence against women is clearly defined in the 1/2004 Law as the result of patriarchal structures or the unequal gender power hierarchies that place men in a privileged situation over women. The law establishes Special Courts to deal with crimes of gender violence, where professionals are trained for such cases. Secondly, the law makes clear that gender violence is a public matter, explicitly bringing out this 'invisible crime'³² from the private sphere where it had been placed for so long ('violence is not an issue that belongs to the private sphere' states the Preamble of the law). Thirdly, the law adopts a comprehensive approach to solve the problem, which includes a variety of legal, penal, judicial, social, health, and educational measures, together with measures for recognising women's rights and coordinating among different policy actors to prevent violence and protect victims. Fourthly, the law creates two bodies located within the Ministry of Equality: a Governmental Delegation on Gender Violence³³, with the aim of promoting and coordinating governmental policies against gender violence, and a State Observatory on

²⁹ Bustelo, López and Platero (2007: 67).

³⁰ *Ley Orgánica 1/2004, de Medidas de Protección Integral contra la Violencia de Género.*

³¹ Bustelo, López and Platero 2007.

³² Bustelo, López and Platero 2007: 92.

³³ http://www.inmujer.migualdad.es/violencia-mujer/Index_Delegacion.html (accessed 28/10/09)

Violence against Women³⁴ which collects data on gender violence and produces studies on the evolution of the phenomenon. Finally, by drawing on the legal definition of gender violence as that which is directed against women due to the mere fact of being women, the law penalises men and women differently for the crime of violence against their partners, with stronger measures reserved for male perpetrators.

Despite its progress, the Law on violence has some limitations. Concerning policy design, the law was criticised for its limited definition of 'gender violence', which encompasses only violence within partnerships and ex-partnerships, rather than including also sexual harassment³⁵, rape, trafficking in women, sexual violence outside partnerships, sexist language, and so on³⁶. Migrant women victims of violence have more difficulties in receiving public protection. Amnesty International in 2005 denounced the fact that *sans papier* migrant women victims of violence could not access economic benefits and shelters provided by the Law 1/2004³⁷. Law 14/2003³⁸ offers some protection to battered migrant women whose residence permit depends on their perpetrator-spouse as it enables them to obtain an independent residence permit, after the judge has issued a protection order. Regarding policy implementation, one of the problems of the law is that most of the measures must be implemented by the Autonomous Communities, and this leads to different levels of protection in the regions. Insufficient economic resources for the law have also been criticised³⁹. In its 2008 Evaluation Report, the Ministry of Equality conducted a first assessment of the effects of the application of the Law on the struggle against gender violence⁴⁰. The report states that the Spanish government, since the adoption of the Law 1/2004, has spent almost 800 million euros in policies aimed at preventing and tackling gender violence. It enumerates a great variety of policy measures introduced to comply with the law. These include: educational, information, training and awareness-raising actions targeted at different collectives; institutional actions of the Government Delegation on Gender Violence and the State Observatory on Violence against Women (such as the production of an annual report on the situation of gender violence and the implementation of the Violence Law, and the elaboration of indicators of gender violence to enable a more efficient collection of data)⁴¹, and the setting up of 59 Violence Units in the Delegations and Sub delegations of the Government to coordinate actions on violence in the whole territory; judicial assistance to victims through the coordinated work of special police and judicial professionals and judicial response and penalisation of perpetrators; and social assistance to victims. According to the Ministry of Equality (2008), the number of reports on gender violence has increased by 72.1% from 2002 to 2007 and the percentage of homicides due to gender violence has decreased by 8.7% since the adoption of the Violence Law. Nevertheless, the Government Report on the Evaluation of the Law also admits that 3 years is too short a

³⁴ See <http://www.inmujer.migualdad.es/violencia-mujer/Observatorio.html> (accessed 28/10/09).

³⁵ Sexual harassment has been prohibited by the Equality Law 3/2007, transposing the EU Directive 2002/73/CE.

³⁶ See Bustelo, López and Platero 2007 and CEDAW Shadow Report of the feminist Platform 'Impacto de género ya' (<http://impactodegeneroya.blogia.com/>) (accessed 26/10/09).

³⁷ *Inmigrantes indocumentadas. ¿Hasta cuándo sin protección frente a la violencia de género?* Amnistía Internacional, 2005, www.es.amnesty.org (accessed 28/10/09).

³⁸ *Ley Orgánica 14/2003, de 20 de noviembre, de Reforma de la Ley orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social. Real Decreto 1162/2009* in its Article 96.3 enables victims of violence to obtain a residence and work permit before the required 1 year legal residence.

³⁹ See Platform 'Impacto de género ya' <http://impactodegeneroya.blogia.com/> (accessed 26/10/09).

⁴⁰ Ministerio de Igualdad 2008.

⁴¹ Documents are available in English at <http://www.inmujer.migualdad.es/violencia-mujer/Observatorio.html> (accessed 28/10/09).

time period to evaluate a law that deals with a very complex structural problem. In any case, the limitations in the policy design and in the implementation of the 1/2004 Law do not overshadow the advances of a law that has represented a milestone in the public action to end violence against women in Spain.

3.2 Reconciliation of work and family life and care issues

Reconciliation of work and family life has entered the Spanish political agenda in the last decade. Issues of reconciliation of work and family life in Spain have mainly been framed as policies necessary for improving women's employability in the labour market and for protecting the family rather than for promoting greater gender equality and equal sharing of care responsibilities between the sexes⁴². However, recent developments introduced by the Equality Law 3/2007 on an individual right to paternity leave of two weeks and the Law 9/2009 on the extension of the fathers' leave to four weeks show some progress towards a more equitable redistribution of roles between women and men.

The Popular Party, in government from 1996 to 2004, placed the issue of reconciliation of work and family life on the agenda. The main aims of policies adopted in this period are promoting an efficient labour market and protecting the family, but not always fostering gender equality. The Law 39/1999⁴³ known as '**Reconciliation Law**' was adopted to transpose the EU Parental Leave Directive 96/34/EC. It advanced in aspects related to maternity leave, but it failed to promote more equal gender roles in childcare. The lack of an individual right to paternity leave in the 39/1999 Law, which disregarded indications included in the EC directive, contributed to perpetuate women's roles as main caregivers and men as 'secondary' in the care of their children⁴⁴. Women appeared to be the ones who needed to reconcile work and family life, while men were not asked to do so. As part of the Comprehensive Plan for Family Support (2001-2004), the government adopted a tax measure through Law 46/2002⁴⁵, which enables 'working mothers' (not fathers, and not mothers who are unemployed or working in the underground economy) to receive a subsidy of 100 euros per month for each child below 3 years of age. The increasing political attention to the issue is also indicated by the inclusion, in the Third and the Fourth Plan for Equal Opportunities between Women and Men (1997–2000 and 2003-2006), of a section on reconciliation of work and family life.

The Zapatero government kept reconciliation high on the political agenda and presented it as an issue of gender equality. It introduced a series of measures, such as the 2005 '**Plan Concilia**' to help Public Administration personnel reconcile their work and personal/family life through the introduction of flexible working times and longer parental leaves⁴⁶. The greater steps towards a more equal sharing of gender roles in care were taken by the Equality Law that introduced an **individual right to two weeks of paternity leave**⁴⁷. The recognition of the role of fathers in care issues represents progress towards achieving a greater gender equality, despite the fact that the length of

⁴² Peterson 2007.

⁴³ *Ley 39/1999, de 5 de noviembre, para promover la conciliación de la vida familiar y laboral de las personas trabajadoras.*

⁴⁴ Peterson 2007; Lombardo 2004.

⁴⁵ *Ley 46/2002, de 18 de diciembre, de reforma parcial del impuesto de la renta de las personas físicas*

⁴⁶ http://www.mpt.es/documentacion/iniciativas/mejora_de_la_administracion_general_del_estado/funcion_publica/concilia.html (accessed 19/10/09).

⁴⁷ The Law 2/2008 has extended the paternity leave to 20 days in case of birth or adoption of a child on the part of large families or when there is a disabled person in the family.

the leave and its non-binding character have been criticised by gender experts for being 'a symbolic rather than substantial change'⁴⁸. However, the right to paternity leave has recently been **extended to four weeks through the Law 9/2009** that will enter into force on the 1st January 2011⁴⁹ with the aim of promoting men's involvement in family responsibilities. According to data of the Ministry of Equality, since the adoption of the Equality Law, 80% of new fathers have benefited from the two weeks' leave⁵⁰. While the Equality Law frames reconciliation as a matter of gender equality, the promotion of an increased participation of women in the labour market is maintained as a key political goal. Moreover, demographic concerns about the low birth-rates rates in Spain (fertility rate was 1.40 in 2007, the lowest one was 1.16 in 1996)⁵¹ have moved the government in 2007 to adopt an assistentialist birth-promoting measure through the Law 35/2007, that assigns a 2500 euro subsidy or tax deduction for every child born or adopted⁵². Thus, while the government placed a greater emphasis on gender equality in dealing with the issue of reconciliation of family and work, they maintained the former focus on the labour market and the protection of families.

Care issues were introduced in the agenda with the approval in 2006 of the 39/2006 'Law for the Promotion of Personal Autonomy and Attention to Persons in Situations of Dependency'⁵³. The so-called '**Dependency Law**' was presented as the fourth pillar of the Spanish welfare state as it assigned some state responsibility in the provision of care for elderly, disabled, and dependent people⁵⁴ within the Spanish context, where public spending on elderly and other recipients of care is below the EU average⁵⁵. The Dependency Law promotes the creation of public care services and introduces the option of paying an allowance to the 'non professional carer', that is, the person who is caring for dependent family members. However, the law does not change the reality that the family remains the main agent responsible for care, while the state merely holds a subsidiary role in care. Feminist organisations such as *Asamblea Feminista* have criticised the 39/2006 Law not only because of the insufficient funding provided but also due to the risk that the allowance for the family care-giver would maintain women (*de facto* the main family carers⁵⁶) in the traditional position of being those responsible for care⁵⁷. The implementation of the Dependency law has also been criticised for being uneven across the different regions, with delays in some regions in the attribution of benefits⁵⁸. Overall, the law does not solve the problem that most of the work of care in Spain is either performed by women for free⁵⁹, or carried out by migrant domestic workers, mostly

⁴⁸ Peterson 2008: 17.

⁴⁹ *Ley 9/2009, de 6 de octubre, de ampliación de la duración del permiso de paternidad en los casos de nacimiento, adopción o acogida.*

⁵⁰ Ministerio de Igualdad 2009.

⁵¹ Eurostat 2009, Demographic changes: Total fertility rate.

⁵² *Ley 35/2007, de 15 de noviembre, por la que se establece la deducción por nacimiento o adopción en el IRPF y la prestación económica de pago único de la Seguridad Social por nacimiento o adopción.*

⁵³ *Ley 39/2006, de 14 de diciembre, de promoción de la Autonomía Personal y Atención a las personas en situación de dependencia.*

⁵⁴ Bustelo and Peterson 2007.

⁵⁵ Social benefits for family and childcare was 1.2% of the GDP in Spain in 2006, while EU-27 average was 2.1%; public expenditure on elderly care in 2006 was 0.34% of Spanish GDP, while EU-27 average was 0.48%; total public expenditure on social protection was 20.9% of GDP in Spain while EU-27 was 26.9% (Source: Eurostat 2009).

⁵⁶ According to data of the Ministry of Equality (2009), 83% of non professional care-givers are women.

⁵⁷ López 2008.

⁵⁸ *El País* 6/10/2009, www.elpais.com (accessed 6/10/2009).

⁵⁹ Durán 2000; Carrasco 2006.

women, whose work is regulated by a Special Regime of social security that provides less protection than that offered to other workers⁶⁰. The reform of the Special Regime of Domestic Workers, recently announced by the government, is currently under discussion by different social actors⁶¹.

Despite the criticisms to care and reconciliation measures from the perspective of advocates of a greater gender equality, Spanish policies on reconciliation of work and family life show some progress towards the achievement of a greater gender equality.

3.3 Women's political representation: parity government and the '40-60 share'⁶²

Over the last years, Spain has joined the ranks of states with a high number of women in elected political positions. While until the end of the 1980s women made up about 6% of the MPs in the Spanish national Parliament, during the 1990s their number rose to 15%, reaching 28% in 2000, 36% in 2004, and 36.29% in 2008⁶³. In some of the regional parliaments, the percentage of women's political representation in 2009 is higher than 40%⁶⁴. Reasons for this increase can be related mostly to the introduction of voluntary party quotas in the left-wing parties, and partly to the approval of a parity provision in the 2007 Equality Law (see next paragraph), and the adoption, on the part of a number of regional governments, of parity legal provisions that establish minimum shares for women and men on candidate lists⁶⁵. In addition to the struggle of female politicians within political parties to promote gender equality in politics, especially from the left⁶⁶, the role of some male political leaders has been highlighted as crucial to bringing about changes in women's political representation⁶⁷.

Progress for women's political representation at the national level came in March 2004, when Zapatero won the general elections and created the first **parity government** in Spain, appointing an equal number of female and male Ministers (8 of each sex) and a female Vice-President of Government. This decision was maintained when Zapatero repeated his victory in the 2008 general elections, and the current government is composed of 9 female Ministers and 8 male Ministers. However, below the ministerial level only 4 out of the 17 Ministries respect a 40-60 percentage of women and men among personnel of the General State Administration⁶⁸. After the 2004 elections, the number of women MPs reached 36% in the Congress (Lower House). To make such changes more long-lasting, the government approved a provision in the **Equality Law** that requires political parties to respect a share of **no more than 60% and no less**

⁶⁰ Peterson 2008.

⁶¹ See INSTRAW-Spain <http://www.un-instraw.org/es/md/global-care-chains/agenda-politica-espana.html> (accessed 27/10/09).

⁶² See Lombardo and Bustelo 2009.

⁶³ Source: Woman's Institute http://www.inmujer.migualdad.es/mujer/mujeres/cifras/poder/poder_legislativo.htm (accessed 5/10/09).

⁶⁴ Source: Woman's Institute <http://www.inmujer.migualdad.es/mujer/mujeres/cifras/index.htm> (accessed 9/10/09).

⁶⁵ See www.democraciaparitaria.com (accessed 29/09/09). The Basque Law 4/2005 for Equality of Women and Men is the most advanced regional law as concerns provisions on parity. It affects not only electoral laws, by establishing an obligation that in electoral lists for the Basque Parliament there is to be a quota of at least 50% of women (whereas other regional laws prescribe a 40-60 share), but also Government Law, making it mandatory that the Cabinet be composed of at least 40% of representatives from each sex. See Elizondo and Martínez 2007.

⁶⁶ Valiente 2005.

⁶⁷ Threlfall 2007.

⁶⁸ See www.democraciaparitaria.com (accessed 9/10/09).

than 40% of either sex on candidate lists in each group of five candidates⁶⁹. The Equality Law also establishes the principle of **'balanced presence' (40-60)** for appointments of people for leading positions within the General State Administration, bodies involved in the selection of personnel, and boards of directors of companies where the state is involved. Although in June 2007 the Popular Party took the provision on parity to the Spanish Constitutional Court with the accusation of unconstitutionality, the Constitutional Court, with its sentence of 29 January 2008, has rejected this claim, giving its approval to the parity provision of the Spanish Equality Law.

However, the March 2008 general elections have shown a limited implementation of the parity provision in the Equality Law, with a percentage of 36.29% female MPs (only 0.29% above the 36% reached in 2004), and a higher increase in the percentage of female Senators (31.73% in 2008 and 25.96% in 2004)⁷⁰. The small increase in the number of elected women in the Parliament from 2004 to 2008 could be due to the fact that political parties have placed female candidates in more disadvantageous positions on the list, while giving male candidates better positions in order to favour their election (for instance, in each group of five candidates, a woman opened and closed the list or two women were placed at the end, while men were placed in central positions). We can draw at least two conclusions from these electoral results. Firstly, they show that the legal formula of 40-60% for each group of 5 candidates, without a provision regulating the position of candidates on the list to ensure equal possibilities to be elected (the so called 'zipper' system that alternates a woman and a man on the list), could disadvantage women. This is because parties tend to assign women the lowest proportion of candidature, that is the 40%, and to place men in the higher ranks of the five top positions in the list and women in the less favourable positions⁷¹. Secondly, they indicate that, in spite of the undeniable achievements of a parity government and a 40-60 share, more needs to be done to challenge the pervasiveness of patriarchal political cultures embedded in existing institutional frameworks and to achieve an effective implementation of the parity provision of the Equality Law.

⁶⁹ The provision also applies to local elections in city councils with more than 5000 inhabitants.

⁷⁰ See data of the Spanish Ministry of Interior <http://www.mir.es/DGPI/Elecciones/index.html> (accessed 12/10/09).

⁷¹ See Verge forthcoming.

CONCLUSIONS: SPAIN, FROM 'LATECOMER' TO 'PIONEER' IN GENDER EQUALITY POLICIES⁷²

From being a 'latecomer' in gender equality policies, Spain has moved, in three decades, to becoming a country with a parity government, with a relatively good ranking in women's political representation (36%) among European countries, and with an avant-garde Law against gender violence. Spain has consolidated its institutional framework around gender equality policies at the national level with the creation of the Woman's Institute, an Equality Policies General Secretariat and a Ministry of Equality. It has developed political strategies of equal opportunities, positive actions, and gender mainstreaming. It has implemented gender equality policies through instruments such as equality plans and, more recently, laws. It has adopted in 2007 an Equality Law which, through the use of the three strategies mentioned, covers a wide range of issues, from paternity leave to a more gender balanced political representation. This young 'pioneer' in gender policies, however, has many challenges ahead. These include, among others, a better implementation of the Laws on Gender Violence, Dependency, and Equality, including an increase in the budgetary support for the laws, the introduction of a longer and binding paternity leave so that men will more equally share care responsibilities with women, the development of a universal and quality public care system for children and dependants to discharge women from their main role of carers, the need to improve the formulation and implementation of the parity provision of the Equality Law, a greater participation of women's organisations in policymaking, and a more systematic implementation of positive actions and gender mainstreaming to ensure equality of outcome in all social areas and gender equality in all public policies and processes.

⁷² See Lombardo and Bustelo 2009.

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