

## Gender Representation in Representative and Executive Bodies through Constitutional Quotas, Legal and Political Parties

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**Abstract:** Gender representation in public institutions is an immediate goal in contemporary democracies. These efforts are being implemented through various forms of lobbying such as: international women's mobility for gender equality, international gender equality associations or through the definition of domestic legislation by applying constitutional, legal and party quotas for the representation of women in public institutions. Some states represent gender representation in executive and executive bodies with constitution, while others with laws. Gender representation in representative bodies through constitutional quotas is more advanced than gender mainstreaming in executive bodies. The efforts of women to be represented in public institutions through voluntary contributions from political parties have encouraged women to be an active part of public life through political parties. Today in the contemporary world, by establishing constitutional, legal or party quotas, a sufficiently satisfying percentage of female gender has been actively integrated into public institutions, gaining mandates of MPs in representative bodies as well as senior positions in government and other bodies executive. Through affirmation of female gender representation in public institutions in some countries of the world we have: Speaker of Parliament, President of the State, Prime Minister and Political Party Leaders. The focus of our work is the manner and level of representation of women in representative and executive bodies through constitutional, legal and party quotas.

**Keywords:** gender representation; constitutional; legal; party quotas; public representation

### 1. Introduction

The issue of election is of paramount importance in a society. Countries that manage to organize a fair and a transparent election process are capable to build credible institutions. (Dalipi & Sahiti, 2017) In this context, equal gender

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representation in the governmental institutions is the ongoing debate throughout countries in the world. Gender quotes are the means and methods through which a better gender representation in representative and executive bodies can be made. The gender quota system sets a mandatory minimum of seats to be held by men or women in Parliament, Government or other decision-making bodies.

The first step to assessing gender equality in representative and executive bodies in one country is how their representation is defined: by constitution, laws, or other legal acts. These definitions come as a result of many elements, in the first place: political culture, experience of political pluralism, historical past, national affiliation, religious affiliation, and gender. A number of states have defined gender equality in the constitutional bodies, some through electoral laws, and some through statutes of political parties. But on the other hand, there are countries that have not set any criteria for gender equality in these bodies, except the general constitutional definition, that all citizens are equal to the constitution.

## **2. Gender Quotes through Acts**

During the twentieth century, continuous efforts have been made for the equality of women and its participation in public life through various quotas. Gender quotas provide us with insight into the overall situation of women in society and the political arena. (OSCE/ ODIHR, 2004)

They do not automatically imply women's equality with men. Quotes have a more comprehensive character, because they can be understood as quotas: gender, neutral, for women, quotas for national minorities and quotas according to religious affiliation. (Kosovo Constitution, 2008; Šinko, 2006; Haxhiu, 2013)

States through quotas should include in their national constitutions or legal provisions, the principle of equality of men and women. A series of international acts that define gender equality provisions such as the Universal Declaration of Human Rights (United Nations, 1948), the Beijing Declaration and Action Plan (United Nations, 1995), the Convention for the Protection of Human Rights and Freedoms (Council of Europe, 1950), The International Covenant on Civil and Political Rights (OHCHR, 1976) and, in particular, the Convention on the Elimination of Discrimination against Women - CEDAW (OHCHR, 1979) and its protocols. CEDAW establishes punitive measures if its principles are not respected,

requiring the signatory states of the convention to adopt measures to prohibit any form of discrimination against women.

Many states with constitution foresee gender equality quotas in representative bodies and other decision-making bodies. Major differences between states reflect political and cultural traditions, on the basis of which the reality of equal rights for women lags far behind promises, even in countries where gender equality is envisaged by the Constitution. It is common for the constitutions are to include guarantees that citizens within the state are equal before the law and prohibit discrimination on grounds of sex. (OSCE/ODIHR, 2004). The Convention on the Elimination of Discrimination against Women - The CEDAW obliges the signatory States Parties to this Convention to embody the principle of equality of men and women in their national constitutions or in their legislation.

In addition to the constitutions, equal rights for women and the extension of women's participation in the electoral process can be realized by a variety of laws and sub-legal acts. (OSCE/ODIHR, 2004) In 1982, the French Parliament adopted the law on the establishment of gender quotas in the lists of political parties for elections. By law it was foreseen that on the electoral rolls there must not be more than 75% of the candidates of the same gender. Against this law, the Constitutional Court proceeded to evaluate whether it was in accordance with the Constitution. The Court took the decision to abolish this law based on Article 6 of the Convention on Human and Citizens' Rights of 1879 which equate citizens with the law. (Трипковић, 2007)

France changed its constitution to achieve parity between husband and wife in 1989. (The Constitution of France, 1989) The Portuguese constitution states that it is the duty of the state to promote equality between men and women. (The Constitution of Portugal, 1976) The Belgian law of parliamentary elections in 1994 obliges that 1/3 of the electoral list is composed of women and that the number of candidates from the same sex cannot exceed 2/3 of the total number of seats to be elected. During 1990, following the fall of communism in Southeast European states, the proportion of women in parliament was relatively small by 7-23%. Thus, Slovenia had elected women MPs 13.3%; Croatia 20.5%; Bulgaria 22.3% and so on. (Novosel, 2007)

In Macedonia, in 2002, to ensure higher representation of women in the Assembly, for the first time a quota of 30% of female candidates was applied. The same pattern was used even during the 2006 parliamentary elections and in the 2008

early parliamentary elections. (Parliament of Macedonia, 2014) Thus, in Macedonia, due to the application of gender quotas, the number of women elected to parliament by 7.5% that were elected in 1998 with the application of gender quotas in parliamentary elections in 2002 increased to 18.3%. (European Court of Human Right, 2010) Under the constitution of the Republic of Kosovo, the composition of the Assembly of Kosovo respects the principles of gender equality which are accepted in accordance with international principles. (Constitution of Kosovo, 2008).

The Law on Elections in the Republic of Kosovo states that at least thirty (30%) percent of candidates in each Political Entity are male and at least thirty (30%) percent are women. (Law on Elections in the Republic of Kosovo, 2008)

Kosovo is above the average of EU countries, respecting the level of 30% of women elected in parliament in 2007. (Central Election Commission in Kosovo, 2007); 33.3% in the parliamentary elections of 2010. (Central Election Commission in Kosovo, 2010); 31.6% in 2014, (Central Election Commission in Kosovo, 2014); and also 31.6% in 2017. (Central Election Commission in Kosovo 2017). Macedonia in Southeast Europe is ranked second after Kosovo, with a 32.5% share of women represented in parliament in 2011. (Assembly of Republic of Macedonia, 2017)

States like Italy or France have a very low level of female participation in parliament. Meanwhile, France, one of the countries with the oldest democratic traditions, although it has reinforced the quota system by guaranteeing constitutional and legal quotas, has a low representation of women in parliament of only 12.3%. (Трипковић, 2007)

Women currently account for only 17% of the US Congress. Of the 244 representatives elected by the Democratic Party in both chambers, 61 are women, and out of 289 representatives elected by the Republican Party in both chambers, only 9 are women. Of the more than 1,700 women serving in state legislatures, about 60 percent are members of the Democratic Party. (Political Party, 2017)

In some countries, not only did they not apply gender quotas but these countries have not even recognized the elementary right of women to participate in political life, the right to participate in elections and to be elected in representative and executive bodies. Worldwide, various constitutional and legal barriers have been

introduced for women, to participate in elections and subsequently to be elected to parliament. In Switzerland, in Canton Appenzell Innerrhoden, women waited to participate in elections until 1991. (Gay, 1994)

Appenzell Innerrhoden was the last canton in Switzerland and the last of Europe to give women the right to vote for local elections. This was achieved in 1990, where two women from Appenzell Innerrhoden filed a lawsuit at the Swiss Federal Court to win the right of women to take part in the election, which case they won. A law earlier detained women in this canton to vote in local elections. This law was changed in 1991 after the Swiss federal court ordered the canton to give women the right to vote. (Le News, 2017)

In Egypt, male citizens are required to enroll in voter registers, while women in the country must apply for registration. This in some way prevents the female from participating in the elections, (Gay, 1994) given that a relatively large percentage of women are illiterate.

In Kuwait in 2005, women finally got the right to choose and to be elected. (Haxhiu, 2013) Absolute King of Saudi Arabia Abdullah bin Abdul Aziz on January 11, 2013 issued a historic decree that allowed women to be elected members of the Shura Council for the first time. According to this decree the king appointed 30 female deputies or 20%, out of 150 deputies as there are in Saudi Arabia's parliament. (Alarabiya News, 2013)

In Saudi Arabia, however, neither women nor men are elected by the people but are appointed by the absolute monarch. In the Vatican, the Pope's election vote is only allowed for members of the Council of Cardinals that make up only men. (Knight, 2012) Brunei and the United Arab Emirates are states where neither men nor women have the right to vote (Inter Parliamentary Union, 1994). In Lebanon, women have applied the education census, while all adult men are required to vote. (Haxhiu, 2013)

Unlike the Arab states, in Turkey, women for the first time gained the right to vote in local elections in 1930. In the 1935 elections when the formal quota system was applied, out of the 395 elected MPs, only 4.6% were women. (Blagojevici, 2003)

In 1946, the proportion of women elected to parliament fell to 2%. Based on the results of the parliamentary elections in Turkey from 1983-1999 it turns out that: in 1983, out of 450 elected MPs, only 1.3% were women, in 1991 only 1.8%, in the 1999 parliamentary elections were elected 527 deputies from to whom 23 women,

or 1.21%. (Blagojevic, 2003) This symbolic number of women's choice in Turkey's parliament is the result of conservative political culture with oriental prejudices. From a research on women's election in parliament in some central and eastern European countries for the period 2007-2010, the three worst-hit countries are Turkey, which has remained at a constant percentage, Hungary having a percentage down from 10.4% to 9.1%; and Montenegro, with a fluctuation of 8.6% to 11.1%. (Blagojevic, 2003) It should be noted that a large number of international organizations for gender equality are trying to orient the world's states towards affirmation of the minimum level of gender representation in representative and executive bodies at a 30% quota.

### **3. Voluntary Quota System by Political Parties**

With the exception of independent candidates, the majority of women aspiring to be elected in public posts are dependent on political party structures for their support, both during the campaign and after their election. (OSCE/ODIHR, 2004) The organization and registration of political parties is usually regulated by law, but within the law, political parties often have wide freedom to define their internal structures and procedures. Even in advanced democracies, political parties vary widely at different levels in which they apply the democratic principles within the party, for example: how party lists are drawn up to participate in elections and how they can be elected.

Western European countries apply high gender quotas in their party lists for parliamentary elections that have achieved high success rates of representation in legislative bodies. 10 out of 30 European countries have more than 30% representation of women in parliament (Sweden, the Netherlands, Finland, Denmark, Spain, Belgium, Austria, Germany, Iceland, Portugal), 8 others have between 20 and 30% (Lichtenstein, Luxembourg, Lithuania, Bulgaria, Latvia, Poland, Estonia, United Kingdom) and the rest less than 20%. (NDI, 2015) In Portugal, according to the constitution, political parties contribute to the organization and expression of the will of the people and must respect the principles of national independence and political democracy, but do not explicitly define gender equality. (Constitution of Portugal, 1976)

In general, as much as parties pursue democratic principles and transparent practices in their internal procedures, the more opportunities will be available for women to run as candidates and that issues of particular concern to women will emerge as serious campaign issues. (OSCE/ODIHR, 2004) This is also the most widespread system in Europe (Germany, Italy, Norway, Sweden, England, etc.), consisting of rules set by political parties to include a compulsory percentage of women as candidates in the elections. In this case, it is the will of the political parties to set gender quotas without legal obligations.

It may happen that in some countries, all political parties have provided quotas, while in some other countries only one or a few of them can set quotas. However, if most political parties in a country use quotas, this system results to be quite fruitful and increases the standards of representation of women in representative and executive bodies. (Anastasi & Ollashi, 2006)

The highest level of sanctioning quotas has not always been the most successful. Unfortunately, neither the constitutional nor the legal quotas show us any superiority over the cases when the political party quotas have been placed. Meanwhile, it has been fully verified that the key to success in achieving the best standards in gender representation remains the conviction within the political parties and civic culture for balanced gender representation. It is not a coincidence that the highest rates of representation of women in today's parliaments in Europe have been achieved by countries using the quota system from the political parties: Sweden: 45, 3% Austria: 40% Denmark 36%. (Anastasi & Ollashi, 2006) In 2002 in France, party quotas were placed for running women in the election. Women accounted for 39% of all candidates in the election. In the second round, only 24% of female candidates qualified, while eventually parliamentary mandates only won 12.3% of them. (Трипковић, 2007) This high percentage of women's candidacy to be elected and so low in selected women comes as a result of the application of the two-round majority election system.

Quotas also initially set some democratic impetus. Quotas operate in different ways in different electoral systems. It is clear that in the proportional system, their placement is easier. However, in many places it has been used successfully in major systems. Indeed, even in the proportional system, quotas have been difficult and not strong, due to the weakness of political parties in the selection of candidates. In order to achieve success in states, the electoral code should

determine the allowance of a quota system along with the sanctions for their non-implementation.

#### **4. Representation of Women in Public Functions**

Starting in 1970, women's representation in public functions has profoundly changed in Europe. As a recruiting basis for public functions, political parties have played a decisive role in realizing this change. The increase in the number of women elected in many countries was preceded by changes within the political parties themselves. However, analysts point to the difficulty of achieving gender balance within political organizations as one of the major barriers to increasing the number of women candidates run for election. Women face some obstacles to participation in political life. Structural barriers through discriminatory laws and institutions still limit women's opportunities to run for public office. Capacity gaps imply that women are less likely than men to have the education, contacts, and resources needed to become effective leaders (UN Women, 2011).

Parties constantly revise their positions on gender diversity in politics. They develop discussions on new ways to develop democracy, focusing on the best conceptions of representation. Although the number of European political parties claiming the gender balance of general membership is increasing, their high instances rarely reflect that.

The woman is vital to party mobilization and campaign support, but in internal organizational life she has rarely been elected to high party functions. In fact, around the world, female party leaders are less than 11%. (FCZB, 2000) While their number elected to the post of chief of government or state is quite rare. When Margaret Thatcher ran to lead the British government in the seventies of the last century, he had the courage to say that he would politically fail. But during her government because she proved to be skillful in leadership, especially during the British leadership in the battle with Argentina for the Malvine Islands, she received the nickname "The Iron Lady". Good Governance successes in recent decades have shown Tansu Çiller in Turkey; Benazir Butto in Pakistan; Corazon Aquino in the Philippines; Julia Gillard in Australia; Jozefina Topalli, Parliament Speaker of Albania; Atifete Jahjaga President of the Republic of Kosovo; Kolinda Grabar Kitarevic, president of Croatia; Cristina Fernandez de Kirchner, president of

Argentina; Simonetta Sommaruga, president of Switzerland. Currently, in the two most powerful states of Europe, governments governed by women: Theresa May in Britain; and Angela Merkel in Germany. Angela Merkel, alongside the government leadership in two mandates, is playing a special role in the international arena for housing refugees from the Middle East. It was a little anticipated the election of Mrs. Ana Bunabic, Prime Minister of Serbia this year (2017), from ultra-nationalist and conquering political parties in Serbia. This symbolic figure of leading women in executive power has led many states and political parties to engage in women's choice of public office.

Because of many historical, social, cultural, and economic factors, women are less engaged in leadership positions. But that does not mean that women's engagement in decision-making does not exist. If viewed carefully, countries with a higher representation of women in parliament are among the most developed countries in Europe and this is certainly not a coincidence, but an indicator of development, both as a result of meritocracy and not just imposed legal quotas. In Scandinavian countries women in parliament and government are approaching balanced representation, in southern European countries, the limited presence of women in institutions can still be investigated. (Della Porta, 2006) While in the Swedish Parliament there are 43% women, in Denmark, Finland, Norway, Holland and Iceland women's participation in parliament is between 35-37%, Germany, South Africa, Bosnia and Herzegovina and Austria is about 30% while in Italy France and Bulgaria barely reach 12% (Donatella, Della Porta, (2006, pp. 176-182) In Albania, low women's participation in political life has resulted in low representation of women in decision-making structures. This non-representation is also due to the lack of quotas or other similar criteria that encourage women's participation in politics or in decision-making structures (USAID, 2005) or because of the electoral system or political culture in which men are more worthy to represent the will of the people in parliament and executive power.

## **5. Conclusion**

Under the conditions where discrimination and barriers to women's participation in political decision-making are so highly classified, the quota system is a long-awaited and highly justified "positive discrimination". The experience of developed democracies shows that conditions for equal opportunities are not

created mechanically and spontaneously, but with the establishment and functioning of institutional and legal mechanisms.

So, while there are no results that naturally represent women in representative bodies, constitutional, legal and party quotas should be applied. This should be done selectively, where each country, depending on the political culture and the degree of construction of representative democracy, must decide on the application or non-application of gender quotas. In parallel with the definition of gender quotas, the political culture of citizens must be constantly raised that women can take responsibility as well as men to make decisions about the destiny of the nation to the state and humanity. This has been proven very much over the last decades as a head of government: in Britain, Germany, Turkey, India as the country's president: in Brazil, Kosovo, Croatia, Argentina as parliamentary president: Albania, Serbia, Switzerland, etc. The world was amazed by a successful woman, while world scholars bowed to humanitarian Mother Teresa.

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