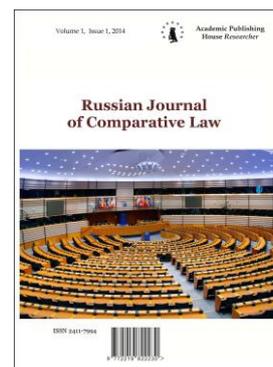


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Published in the Slovak Republic  
 Russian Journal of Comparative Law  
 Has been issued since 2014.  
 E-ISSN 2413-7618  
 2017, 4(2): 71-77

DOI: 10.13187/rjcl.2017.2.71  
<http://ejournal41.com>



## Gender Representation in Legislative 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 modern democracies. Efforts targeting this goal can be implemented in 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 guarantee gender representation in legislative and executive bodies in their constitutions while others in ordinary 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. In contemporary world due to establishing constitutional, legal, or party quotas a sufficiently satisfying percentage of females is actively integrated in public institutions, gaining mandates of MPs in representative bodies, as well as senior positions in government and other executive bodies. Through affirmation of female gender representation in public institutions in some countries of the world we have women as speakers of parliament, presidents of the states, prime ministers, and political party leaders. The focus of this article is on representation of women in legislative and executive bodies through constitutional, legal, and party quotas.

**Keywords:** gender representation, constitutional, legal, party quotas, public representation.

### 1. Introduction

The issue of elections is of significant importance for society. States that manage to organize fair and transparent election process are capable to build credible institutions (Dalipi and Sahiti, 2017). In this context, equal gender representation in the governmental institutions is the ongoing debate throughout the 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 and women in the parliament, the government or in other decision-making bodies.

The first step in assessing gender equality in representative and executive bodies nationally is estimating how such representation is defined: by the constitution, the laws, or other legal acts. These definitions come as a result of many elements, such as political culture, experience of political pluralism, historical past, national affiliation, religious affiliation, and gender. A number of states defined gender equality in the constitutions, some through electoral laws, and some

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through statutes of political parties. On the other hand, there are states that have not as yet set any criteria for gender equality in public bodies, except the general constitutional definition of equality before the law.

## 2. Materials and methods

The main sources for writing this article are the official documents of Kosovo, materials in journal publications, and archive materials. The study used basic methods of cognition: problem-setting, chronological analysis, historical and situational analysis, systemic method, and the methodology of comparative law. The use of historical and situational methods allows to reproduce the assessment approach to the problem of national law. Method of comparative law defines the difference in views on actual rules in national jurisdictions. Systematic method used in a variety of disciplines such as constitutional law, administrative law being accessible and comparable in modelling and determining the past and the future events.

## 3. Discussion

### Gender quotes through acts

During the twentieth century, continuous efforts have been made for recognitions of equality of women and their participation in public life through various quotas. Gender quotas reflect insights 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: gender neutral quotas, quotas for women, quotas for national minorities, and quotas according to religious affiliation (Kosovo Constitution, 2008; Šinko, 2006; Haxhiu, 2013).

Through quotas the states should include the principle of equality of men and women in their national constitutions or legal provisions. A series of international acts that define gender equality provisions such as the Universal Declaration of Human Rights (United Nations, 1948), 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) with its protocols, the Convention for the Protection of Human Rights and Freedoms (Council of Europe, 1950), or the Beijing Declaration and Action Plan (United Nations, 1995). The CEDAW establishes punitive measures if its principles are not respected which oblige the parties to the convention to adopt measures prohibiting any form of discrimination against women. Many states in their constitutions stipulate gender equality quotas in representative bodies and other decision-making bodies. Major differences between the 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 to include guarantees that citizens within the state are equal before the law and to prohibit discrimination on the grounds of sex. (OSCE/ODIHR, 2004). The CEDAW obliges the state parties 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 implemented by a variety of laws and acts of subordinate legislation (OSCE/ODIHR, 2004). In 1982 the Parliament of France adopted the law establishing gender quotas in the lists of political parties for elections. This law stipulated that there must not be more than 75 % of the candidates of the same gender in electoral rolls. Against the background of 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).

As for other examples of fixing gender equality in the constitutions, France changed its constitution to achieve the parity between husband and wife in 1989 (The Constitution of France, 1989). The Constitution of Portugal 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 of 1994 provides that 1/3 of the electoral list should be composed of women and that the number of candidates from the same sex can't 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 the parliaments was relatively small by 7-23 %. Thus, Slovenia elected women as MPs in the number of 13.3 %; Croatia 20.5 %; Bulgaria 22.3 % (Novosel, 2007).

In Macedonia for the first time a quota of 30 % of female candidates was applied in 2002 in order to ensure higher representation of women in the Assembly. The same pattern was used 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 in 1998 with the application of gender quotas was 7.5 %. Already in 2002 during parliamentary elections this number increased up 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 Kosovo states that at least thirty (30 %) percent of candidates in each Political Entity are male and at least thirty (30 %) percent are female (Law on Elections in 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 is ranked as the 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 demonstrate a lower level of female participation in parliaments. France is one of the countries with the oldest democratic traditions. Although it has reinforced the quota system by guaranteeing constitutional and legal quotas, it still has a low representation of women in parliament, i.e., 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 states not only gender quotas remain unapplied in the laws but basic legal guarantees of the right of women to participate in political life, in elections, and the right of women to be elected in representative and executive bodies are lacking. Worldwide, various constitutional and legal barriers are introduced for women preventing them from effective participation in elections and subsequently from being 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 in Europe to provide women with the right to vote in local elections. This was achieved in 1990 when two women from Appenzell Innerrhoden filed a lawsuit to the Swiss Federal Court and won the right for women to take part in elections. The law earlier deprived women this canton in their opportunity 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 females from participating in elections (Gay, 1994), given that a relatively large percentage of women are illiterate. In 2005 in Kuwait women finally got the right to elect and to be elected (Haxhiu, 2013). On January 11, 2013 Absolute King of Saudi Arabia Abdullah bin Abdul Aziz 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 Vatican the votes in the Pope's elections are only allowed for members of the Council of Cardinals which consists only of men (Knight, 2012). Brunei and the United Arab Emirates are the examples of 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 it happens in 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 (Blagojevic, 2003). In 1946 the proportion of

women elected to parliament decreased to 2 %. The results of parliamentary elections in Turkey from 1983-1999 show that in 1983 out of 450 elected MPs only 1.3 % were women, in 1991 women made 1.8 %, and in the 1999 parliamentary elections out of 527 elected deputies women made 1.21 % (Blagojevic, 2003). This symbolic number of women's representation in Turkey's parliament is the result of conservative political culture. Research results on women's representation in the parliaments in Central and East European states for the period 2007-2010 reveal that the three states where the position of women is the least favourable are: Turkey remaining at a constant percentage, Hungary where the said percentage decreased from 10.4 % to 9.1 %; and Montenegro allowing a fluctuation from 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.

### **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). Organization and registration of political parties is usually regulated by law yet under the general legal framework political parties often have wider freedoms to define their internal structures and procedures. In advanced democracies political parties vary at different levels in which they apply democratic principles within the party, for example, how party lists are drawn up to participate in elections and how their candidates can be elected. West European countries apply higher gender quotas in their party lists for parliamentary elections that have gained 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), eight others keep such representation at the rate between 20 and 30 % (Lichtenstein, Luxembourg, Lithuania, Bulgaria, Latvia, Poland, Estonia, United Kingdom) and the rest at less than 20 % (NDI, 2015). In Portugal, according to the Constitution, political parties contribute to organization and expression of the will of the people and must respect the principles of national independence and political democracy. Yet the Constitution does not explicitly define gender equality (Constitution of Portugal, 1976). In general, the more effectively the parties pursue democratic principles and transparent practices in their internal procedures, the better opportunities open up 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 for 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 can be fruitful and capable to increase the standards of representation of women in legislative and executive bodies (Anastasi and Olldashi, 2006).

The highest level of sanctioning quotas has not always been the most successful. Unfortunately, neither the constitutional nor legal quotas have proven their superiority over those cases when 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 in balanced gender representation. It is not a coincidence that the highest rates of representation of women in today's parliaments of Europe have been achieved by countries using the quota system from the political parties: 45,3 % in Sweden, 40 % in Austria, and 36 % in Denmark (Anastasi and Olldashi, 2006). In 2002 in France party quotas were introduced for women running for elections. Women accounted as 39 % of all the candidates in elections. In the second round only 24 % of female candidates qualified while eventually parliamentary mandates were won by only 12.3 % of them (Трипковић, 2007). Thus, a high percentage of women's candidacy to be elected and a low percentage in selected candidate comes as the result of applying the two-round majority election system.

The said quotas 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 states it has been used successfully in major systems. Indeed, even in the

proportional system quotas have been difficult to implement due to the weakness of political parties in the selection of candidates. In order to achieve success nationally, the electoral codes of the states should determine the allowance of a quota system along with the sanctions for their non-implementation.

### **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 institutions, political parties had played a decisive role in implementing this change. The increase in the number of women elected in many countries was preceded by changes within the political parties themselves. However, the analysts point at the difficulty in achieving gender balance within political organizations as one of the major barriers to increasing the number of women candidates run for election. Women face obstacles in access 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 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 concepts of representation. Although the number of European political parties claim that gender balance of general membership is increasing, their high instances rarely reflect that.

Contribution by women is significant for party mobilization and campaign support, but in internal organizational life women had 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 the head of the state is rare. When Margaret Thatcher ran for the post to lead the British Government in the 1970s, she found courage to say that she could politically fail. But during her government she proved to be a skillful in leader. The success of good governance in recent decades shows such female leaders as Tansu Çiller in Turkey; Benazir Butto in Pakistan; Corazon Aquino in the Philippines; Julia Gillard in Australia; Jozefina Topalli as a Parliament Speaker of Albania; Atifete Jahjaga as President of the Republic of Kosovo; Kolinda Grabar Kitarevic as President of Croatia; Cristina Fernandez de Kirchner as the President of Argentina; or Simonetta Sommaruga as the President of Switzerland.

Currently in two of the most powerful states in Europe the strong governments run by women show the particular examples of Theresa May in Britain and Angela Merkel in Germany. Angela Merkel, alongside the government leadership in two mandates, is playing a role in the international arena for housing refugees from the Middle East. Although not much anticipated, but still the election from ultra-nationalist and conquering political parties of Mrs. Ana Bunabic as the Prime Minister of Serbia succeeded in 2017 in Serbia. These and many other success of leading women in executive power led many states and political parties to intensify women's candidacy in public office.

Because of many historical, social, cultural, and economic factors, women are less engaged in leadership positions. That does not mean that women's engagement in decision-making is weak. If scrutinized carefully, the states with a higher representation of women in parliaments are among the most developed countries in Europe. This is certainly not a coincidence but an indicator of development, both as a result of meritocracy and not just imposed legal quotas. In the Nordic states women in parliament and government are approaching the most balanced representation while in South European countries limited presence of women in public institutions should still be further 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 %. In Germany, South Africa, Bosnia and Herzegovina, and Austria it is about 30 % while in Italy France and Bulgaria it barely reaches 12 % ([Della Porta, 2006](#)). 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.

#### 4. Results

Amidst the conditions where discriminatory practices and other barriers to effective participation of women in political decision-making are so highly classified, the quota system is a long-awaited and highly justified means of positive measures against discrimination. The experience of developed democracies shows that conditions for equal opportunities are not created mechanically and spontaneously but appear with the establishment and functioning of institutional and legal mechanisms.

#### 5. Conclusion

While there are no clear research results as for the determinants of success in balanced representation of women in legislative and executive bodies, constitutional, legal, and party quotas are desired to be applied. This should be done selectively where each state, depending on its political culture and architecture of representative democracy could decide on application or non-application of gender quotas. In line with the legal definition of gender quotas, political culture of citizens should constantly be raised so 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 over the last decades in the practices of governments in Britain, Germany, Turkey, India as well as in the practices of the country's leadership in Brazil, Kosovo, Croatia, Argentina, not to mention the practices of parliamentary presidency in Albania, Serbia, Switzerland, etc. The world was open to a success of women in politics and administration while world scholars bowed to humanitarian Mother Teresa.

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