

GENDER QUOTE IN THE KOSOVO ELECTORAL LAW

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ABSTRACT

This paper addresses the participation and position of women in the representative institutions of Kosovo. Legal Framework in general and in particular the legal framework for elections has delineated a quota of 30% of the seats in the institutions of representative for women. However, the ratio of the population census in Kosovo (2011) presents quite equal statistics between the two sexes (Women 863.925, Men v 875.900 distinction 101.4). General statistics of representation in Kosovo show for male-dominated institutions therefore political will is required for the inclusion and empowerment of women in decision making positions. The influence of political parties on increasing the representation of women is one of the most important determinants for the empowerment of women in governance while gender quotas or legal mechanism is a guarantee of representation and participation in political life, and other areas of social life. Gender equality is a fundamental element and barometer of democracy, pluralism and constitutional value in Kosovo and the foundation for building democratic society.

Keywords: Quotas, political parties, empowerment, gender equality, Advocacy.

INTRODUCTION

Promotion of women's political participation is recognized by the Constitution and international instruments that are directly applicable in Kosovo. Gender equality is a constitutional value specified in section seven, second paragraph of the Constitution of the Republic of Kosovo¹. The Kosovo institutions and society are continuously making effort to achieve gender equality, in particular the advancement of women in management positions in public institutions. After the war in Kosovo progress is noted in the commitment and determination of the women not only for her emancipation but also for her assessment and contribution to society, participation in governance and advancing her position in decision making. Local and international institutions² during this period have issued legal acts (such as the Law on Gender Equality) and have taken action to ensure equal opportunity and treatment without discrimination, including gender differences (Law Against Discrimination). Also, there are taken affirmative measures that lead to the achievement of gender equality such as gender quota setting or similar³.

¹ The Republic of Kosovo ensures gender equality as a fundamental value for the democratic development of society, equal opportunities for participation of women and men in political, economic, social, cultural and other areas of social life". Constitution of the Republic of Kosovo (with amendments I- XXIII) This edition includes the text of the Constitution of the Republic of Kosovo (Adopted on 9 April 2008) with Amendments I - XXII (Official Gazette of Republic of Kosovo No.25 dated 7 September 2012) and Amendment XXIII (Official Gazette of Republic of Kosovo No.7 dated 26 March 2013) http://www.gjk-ks.org/repository/docs/Kushtetuta_RK_ang.pdf (05/11/2015)

² The United Nations Interim Administration Mission in Kosovo (UNMIK) was established by the Security Council in its resolution 1244 (1999). <http://www.unmikonline.org/Pages/about.aspx> (8.11.2015)

³ The principles of gender equality will be respected in the judiciary and constitutional court
The Constitution of the Republic of Kosovo; Article 104; 108, paragraph 2; 110 paragraph 2 and 114 paragraph 1

Important steps have been made in Kosovo to increase the number of women in political leadership of the country. Although the number of women in management positions remains low, the presence of women with impact on a some of the key positions (presidency, the Constitutional Court, local administration) is affecting in changign public attitudes about women and is creating circumstances to increase women's leadership in the future. The implementation of the gender quota legislation, has created wider space for women's participation in politics and is helping women to overcome barriers to representation and participation in decision making.

The purpose of this paper is research and analysis of the legislation which guarantees representation and strengthens the position of women in representative institutions of Kosovo, experiences and good practices in Kosovo.

Normative framework that ensures f women representation in the Kosovo institutions - gender quota

Promotion and empowerment of women in decision making positions starts with the with the highest legal and political Act in Kosovo. The Kosovo Constitution stipulates that the sovereignty of the Republic of Kosovo stems from the people, belongs to the people and is exercised in accordance with the Constitution through elected representatives⁴ while Article 7, paragraph 2, of the Constitution provides gender equality as a fundamental value for the democratic development of society, equal opportunities for participation of women and men in political, economic, social, cultural and other areas of social life⁵. Other strengthening provision is Article 71, paragraph 2 of the Constitution, which requires that the composition of Parliament respects internationally⁶ recognized principles of gender equality.

Beside Constitutional principles⁷ in respect of gender equality as well the legislation enables and promotes the strengthening of gender equality, setting the affirmative action. In the framework of the legal system there are number of acts and provisions that promote gender equality, which oblige public institutions to undertake concrete actions, to ensure the implementation of gender equality in representation, employment and institutional management. Article 27, paragraph one (1) and Article 111 paragraph 6 of the Law⁸ on General Elections in Republic of Kosovo, which is one of the laws that promote and ensure gender representation in public institutions in Kosovo, sets a quota of 30 percent for gender representation in legislative bodies at central⁹ and local levels¹⁰. The law on Gender Equality¹¹ in Article 6 requires public institutions to take special temporary measures in order

⁴ Ibid, Article 2, paragraph 1

⁵ Ibid, Article 7, paragraph 2

⁶ Ibid article 71 paragraph 2

⁷ Ibid, Section 104; Article 108 paragraph 4; Pika4 Article 109, Article 110, paragraph 2 and 114 paragraph 1, principles of gender equality will be respected in the judiciary and the constitutional court.

⁸ Law no. 03 / L-073 on General Elections in Republic of Kosovo. Article 111 points6 http://www.kqz-ks.org/Uploads/Documents/ligji_per_zgjedhjet_e_pergjithshme_ne_republiken_e_kosoves_ibreqwhqh.pdf (5/11/2015)

⁹ Ibid. Quoted law. Article 27, paragraph 1 Gender Quotas, states: "The list of candidates of each political party at least thirty (30%) percent shall be male and at least thirty (30%) percent are women; with one candidate from each gender included at least once in each group of three candidates, counting from the first candidate on the list".

¹⁰ Law no. 03 / L-072 on Local Elections in Republic of Kosovo, article 7.2, http://www.kqz-ks.org/Uploads/Documents/ligji_per_zgjedhet_lokale_xhyfjjamis.pdf (11/07/2015)

¹¹ Law on Gender Equality, no. 05 / L -020, Official Gazette of the Republic of Kosovo / No. 16/26 June 2015 Pristina, Article 6, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10923> (04/11/2015)

to accelerate the realization of actual equality between women and men in those areas where there is inequality. These special measures include quote to achieve equal representation of women and men. Equal gender representation in all legislative, executive and judicial and other public institutions as a representation is reached when representation of both sexes is fifty percent (50%), including their governing bodies and decision-making. The Law Against Discrimination, Article 2, promotes the principle of fair representation of all persons and to all members of communities for employment within the public bodies at all levels¹². Law on courts in particular Article 5, paragraph 1, requires that the composition of the judiciary shall reflect the ethnic diversity of the Republic of Kosovo in accordance with the Constitution of Republic of Kosovo and internationally recognized principles of gender equality¹³. There are also a other laws, regulations that directly or in other forms promote gender equality¹⁴ in Kosovo.

Gender quota is a constitutional and legal framework for central and local institutions in Kosovo. The Constitution of the Republic of Kosovo defines gender equality as a fundamental value for the democratic development of society and equal opportunity for participation of women and men in political life¹⁵. Law on General Elections has defined that in each Political Entity's candidate list, at least thirty (30%) percent shall be male and at least thirty (30%) percent shall be female, with one candidate from each gender included at least once in each group of three candidates, counting from the first candidate in the list. This provision does not apply to lists consisting of one or two candidates¹⁶. However, All votes received by the candidates appearing on the open list of each Political Entity shall be counted separately. The candidate lists shall then be reordered in descending order based on the number of votes received by each candidate. But if after the allocation of seats to candidates on the list of a political party, the candidates of the minority gender have not been allocated at least 30% of the total seats allocated to that Political Entity, the last elected candidate of the majority gender will be replaced by the next candidate of the minority gender on the reordered candidate list until the total number of seats allocated to the minority gender is at least 30%. This paragraph does not apply to allocation of seats from a list consisting of one or two candidates¹⁷.

Electoral democracy in Kosovo is new. The first local elections were held in 2000 (National 2001) the last national ones on 8 June 2014. The application of the gender quota policy as a strategy or mechanism to increase the participation and representation of women in representative institutions and governance is applied in the first elections organized in Kosovo. This has brought positive changes affecting the growth of the overall representation of women in national and local level. This is reflected in Table. 1 Gender representation in the Kosovo Assembly of the first national elections in 2001 to the very last of 8 June 2014.

¹² Article 2 of the Law Against Discrimination, no. 2004/3 http://assembly-kosova.org/common/docs/ligjet/2004_3_al.pdf

¹³ Law no. 03 / L-199 on Courts, Official Gazette of the Republic of Kosovo / PRISTINA: YEAR V / no. 79/24 August 2010, Article 5

¹⁴ Gender Equality Agency / Office of the Prime Minister. The Action Plan on implementation of Resolution 1325, "Women, Peace and Security" 2013- 2015, March 2014, p 29 <http://abgj.rks-gov.net/Portals/0/ABGJ%20Plani%20i%20Veprimi%20p%C3%ABr%20Implementim%20t%C3%AB%20Rezolut%20t%C3%ABs%201325%20tre%20gjuh%C3%AB.pdf> (7/11/2015)

¹⁵ Ibid, the Kosovo Constitution Article 7, paragraph 2

¹⁶ Ibid, the Law on General Elections, Article 27

¹⁷ Law on Amending and Supplementing the Law no. 03 / L-073 on General Elections in Republic of Kosovo, Official Gazette of the Republic of Kosovo / PRISTINA: YEAR V / NO. 87/16 November 2010, Article 8

Gender	2001	2004	2007	2010	2014
Female	34	36	37	40	39
Male	86	84	83	80	81

Table 1. number of deputies by gender in the Assembly of Kosovo and a range over the period 2001-2014¹⁸

Setting Quota has given a positive result in increasing the representation of women in representative institutions. As a result of the quota determined by the Constitution and the law on elections to the Assembly¹⁹, by a total of 120 seats approximately one-third are women representatives. This is a good example to increase representation which is being reflected in the Presidency of the Assembly²⁰ as the Assembly²¹ from among its members elects a President and five Deputies composing the Presidency and two of them are women. From this aspect, we can say that appropriate action is done for empowerment and promotion of gender equality in the Assembly Presidency. Kosovo also has made significant strides in increasing the number of women in political leadership. Assembly on 7 April 2011 elected a woman head of state Mrs. Atifete Jahjaga, President of Kosovo²². The first woman to lead the state in the region. President of the Constitutional Court²³ is also woman and Central Election Commission (CEC)²⁴ is also headed by woman and there are two ministries²⁵ in government of Kosovo headed by women²⁶. In local elections of 2013, for the first time a woman was elected Mayor, Mrs. Mimoza Kusari Lila President of Gjakova municipality. One of the major causes that affects a negative result is un empowerment of women by the political parties and not setting women as their lead candidate in the elections or candidate for mayor. In those cases where candidates for mayor (case Gjilan, Gjakova) were woman competing

¹⁸ Kosovo: Overcoming Barriers to Participation of Women in Politics, National Democratic Institute (NDI) Pristina to 2015, <https://www.ndi.org/files/Gender-Assesment-report-ALB.pdf> (08/11/2015)

¹⁹ Agency for Gender Equality, Report of research participation, the role and position of women in central and local institutions, and political parties in Kosovo, 2014, p 19 <http://abgi.rks-gov.net/Portals/0/ABGJ%20Pjesmarrja%20roli%20dhe%20pozitat%20e%20grave%20ne%20institucione%20qendrore%20lokale%20dhe%20parti%20politike.pdf> (8/11/2015)

²⁰ The composition of the Assembly Presidency, <http://www.assembly-kosova.org/?cid=1.113> (5 .11.2015)

²¹ The Assembly has one hundred twenty (120) deputies Elected by secret ballot on the basis of open lists. The seats in the Assembly are distributed Amongst all Parties, coalitions, Citizens' Initiatives and Independent Candidates in proportion to the number of valid votes by Received say in the Election to the Assembly. In the framework of this distribution, twenty (20) of the one hundred twenty (120) seats are Guaranteed for representation of Communities That are not in the majority Is in Kosovo as Follows: Parties, coalitions, Citizens' Initiatives and Independent Candidates having declared themselves representing the Kosovo Serb Community scarf have the total number of seats won through the open Election, with a minimum ten (10) seats Guaranteed if the number of seats won is less than ten (10); Parties, coalitions, Citizens' Initiatives and Independent Candidates having declared themselves representing the other Communities scarf have the total number of seats won through the open Election, with a minimum number of seats in the Assembly Guaranteed as Follows: the Roma community, one (1) seat; the Ashkali community, one (1) seat; the Egyptian community, one (1) seat; and one (1) additional seat Will Be awarded to either the Roma, the Ashkali or the Egyptian community with the Highest overall votes; the Bosnian community, three (3) seats; the Turkish community, two (2) seats; and the Gorani community, one (1) seat f the number of seats won by Each community is less than the number Guaranteed. Ibid. Article 64

²² The Kosovo Assembly Proc es \ verbal plenary meeting of the Assembly of Kosovo, held on 7 April 2011, http://www.assembly-kosova.org/common/docs/proc/proc_s_2011_04_07_18_al.pdf

²³ The Constitutional Court, Press release 21 May 2015, <http://www.gjk-ks.org/?cid=1,28,424> (08/11/2015)

²⁴ Members of the CEC Mrs. Daka Valdete President of CEC, <http://www.kqz-ks.org/sq/valdete-daka> (6 .11.2015)

²⁵ Mrs Edita Tahiri, minister and Mrs. Bajrami Hykemete minister, <http://www.kryeministri-ks.net/?page=1,43> (5 .11.2015)

²⁶ See Central Institutions of Kosovo <https://www.rks-gov.net/sq-AL/Pages/InstitucioneteKosoves.aspx>

against a male candidate, political campaigns were considered of democratic culture as never before. Therefore the main reason for the unequal position of women in local governance are political parties that do not give enough space to women politicians and the lack of support from women themselves. However, it is the legal obligation for political parties that their acts are obliged to implement measures to promote equal participation of men and women in the bodies of the party²⁷, which ensure minimum representation of fifty percent (50%) for each gender.

Regarding the importance and the fulfillment of the principles and quotas, various debates were organized with the participants from representatives of institutions, civil society and experts in this field. A support for maintaining the quota in Kosovo is done by Drude Dahlerup professor at the University of Stockholm and expert in gender and quotas issues, who declared "Kosovo is a good case in regards to quota system ... that is about the best in the world ...". She recommends for Kosovo a chain system, which means 50/50 representation of women and men and their listing in the assembly by sequence, one female, one male²⁸. Today the world's systems by the electoral quota or representative are different, 20, 30, 40 or 50% for men as for women (50%). Quotas are intended to provide a representation by gender balance. Based to the jurisdiction in which the system of quota lies, they are divided into quotas provided for the Assembly or National level and the quota system provided for by the local government²⁹. Quotas are classified as system of constitutional, legislative quota and quotas set by political parties³⁰. Dahlerup³¹, says that the quota system, is a global trend and qualified women are needed by the parties. There are 102 countries in the world which have set gender quotas. Of them 52 countries use quota system established by law, while 50 other countries have imposed on a voluntary basis by political parties³². Practical implementation of quotas could become a reality only if the representation and political and institutional commitment of women becomes political tradition. The growth of democratic political culture and electoral legislation enhancements³³ is a way to a meaningful democracy and the best way to achieve fair representation of demographic reality in the country. Kosovo with Pristina Principles, issued by the International Summit for the Empowerment of Women, "Vows to strengthen monitoring of implementation of legislation and policies on gender equality, by completing the existing laws and social policies to meet the Principles of Pristina. It encourages the Government and the institutions of Kosovo to promote implementation the Pristina Principles in regional and global level".³⁴

²⁷ Ibid, the law cited for gender equality Article 14

²⁸ Koha Ditore, Kosovars want representation in decision-making 50 to 50 (gender quota debate and political Equal Representation of Women in Kosovo) Koha Ditore, 13 December 2011, quoted by Blerta Aliu <http://www.alg-prizren.com/presse/pdfs/2011-12-13-Koha-Ditore.pdf>

²⁹ Anastasi, A & Olldashi, E, Tirana 2006 electoral quota systems and the importance of their achievement of gender equality in public life, no magazines Legal Studies. 1/2006, University of Tirana, Faculty of Law, p 140

³⁰ Ibid, p 141

³¹ Drude Dahlerup, et al. (2011) Electoral Gender Quota Systems and Their Implementation in Europe Study; p 22,

<http://www.europarl.europa.eu/committees/fr/studiesdownload.html?languageDocument=EN&file=60648>; This document is available on the Internet at: <http://www.europarl.europa.eu/studies>

³² Ibid, Koha Ditore

³³ Shala Xhavit. The right to vote of women and the historical development of its "Constitution" No.2 / 2012 Magazine for legal and constitutional matters and parliamentary elections, p. 291 Pristina, 2012, ISSN: 1409-9862

³⁴ Pristina Principles of International Women's Summit: "Partnership for Change-Empowerment of Women", on 4-6 October 2012, in Pristina, http://www.assembly-kosova.org/common/docs/Rezoluta_per_fuqizimin_e_rolit_te_Gruas.pdf (10:11 .2015)

CONCLUSION

Quotas have increased and ensured number of women in representative institutions such as the Assembly of the Republic as well as in the Municipal Assemblies. For this purpose it is recommended political and institutional leadership to take action on appropriate constitutional and legal reform, to strengthen the position of women in decision making positions. It can be done in this way: where the Head is of either gender, the deputy has to be from the other gender in the Kosovo Assembly the election of chairman or chairwoman should be followed by deputy of the opposite sex; Political parties during the nomination for mayor, should at the same time nominate candidate for deputy mayor. If the candidate is female, deputy should be male or vice versa. To achieve this it is needed to do changes in the law on local government, and way of electing the Mayor and the Deputy Mayor. Party quota (statutory) and legal quota for municipal assemblies and the president's cabinet, would allow a fair reflection on gender equality and women's participation in political life. Political parties should undertake activities and draw up strategic programs aiming improvement of gender equality in the political party as well as promoting and strengthening the position and participation of women in local communities. Political parties in their statutes should open up to take action for equality, social justice, gender balance and gender awareness.

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