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Quotas for Gender Representation in Kosovo's Election Rules

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In our latest brief on the upcoming elections, ECMI Kosovo is looking at the controversy that has arisen surrounding gender representation and legal provisions that try to ensure a minimal level of representation of women in the overall election process and in the next Assembly of Kosovo.

Kosovo has a number of mechanisms to ensure representation of vulnerable and marginalized groups in public institutions. Under Kosovo's constitutional and legal framework minority communities benefit from a wide range of mechanisms that aim at protecting and promoting their rights.¹ Women's issues also are at the core of many provisions.

In a statement released on 19 May, the Ombudsperson expressed the view that, in light of the Law on Gender Equality, "*provision of equal opportunities and without discrimination on any bases*" is mandatory, while it is expected that all "*political entities participating in this election [...] respect the principle of equality where representation of 50% for each gender is guaranteed*".²

Furthermore, the Kosovo Women's Network has issued a statement that all parties whose lists are not equally divided between male and female candidates have violated the Law on Gender Equality and that the CEC has also violated said law "*by not objecting the lists submitted by political entities and [...] not requesting their amendment*". In response, they are calling on all citizens to vote for female candidates.³

¹ For more please refer to reports prepared by ECMI Kosovo at <http://www.ecmikosovo.org/en/Kosovo's-Legal-Framework>, <http://www.ecmikosovo.org/en/Institutional-Framework>, <http://www.ecmikosovo.org/uploads/11.Kosovo%20snap%20elections%20background%20and%20predictions%20A%20Zeqiri.pdf> and <http://www.ecmikosovo.org/uploads/26English2.pdf>.

² The Ombudsperson's full statement is available at <http://www.ombudspersonkosovo.org/en/news/OMBUDSPERSON%E2%80%99S-STATEMENT-CONCERNING-EQUAL-GENDER-REPRESENTATION-IN-CANDIDATES%E2%80%99-LIST-BY-POLITICAL-ENTITIES---1511>.

³ The Kosovo Women's Network's full statement is available at <http://www.womensnetwork.org/documents/20170607122826944.pdf>.

What does the Law on Gender Equality say?

Article 6 of Law No. 05/L-020 on Gender Equality, states that *“Public institutions shall take temporary special measures in order to accelerate the realization of actual equality between women and men in areas where inequities exist”* (Paragraph 1). Among the possible *“special measures”* listed in this article are *“quotas to achieve equal representation of women and men”* (Paragraph 2.1).

Article 6 also states that *“Legislative, executive, judicial bodies at all levels and other public institutions shall be obliged to adopt and implement special measures to increase representation of underrepresented gender, until equal representation of women and men according to this Law is achieved”* (Paragraph 7). It then goes on to clarify that *“Equal gender representation in all legislative, executive and judiciary bodies and other public institutions is achieved when ensured a minimum representation of fifty percent (50%) for each gender, including their governing and decision-making bodies”* (Paragraph 8).

On elections and lists of candidates, Article 14 of the same law states that *“Political parties with their acts are obliged to implement measures to promote equal participation of men and women at authorities and bodies of the parties in accordance with provisions of Article 6 of this Law.”*

In short, the Law on Gender Equality, which was adopted in May 2015, obliges the Assembly of Kosovo and political parties to undertake measures to encourage 50-50 representation. However, it does not specify how this should be done. In other words, while it does create a legal requirement, this is a requirement for the adoption of additional special measures in the future.

To date no such measures have been introduced, so the elections continue to be governed by Law No. 03/L-073 on General Elections in the Republic of Kosovo, adopted in 2008, and its subsequent amendments. Article 27 of this law specifies 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.”*

Moreover, Article 111.6 of this law stipulates that at least 30% of MPs from the 100 seats allocated to Albanian political parties must be from *“the minority gender within a Political Entity”*. This is done by firstly allocating the total number of seats to a political entity, and then if the 30% of quota is not achieved, *“the last elected candidate of the majority gender will be replaced by the next candidate of the opposite gender on the reordered candidate list until the total number of seats allocated to the minority gender is at least 30%”*. The practical effect of this rule is that, on average, a seat for a male MP is earned with 5000-7000 votes, while a seat for a female MP comes from 3000-5000 votes. Thus, if it were not for this provision, the representation of women in the Assembly would be considerably lower.

What is the gender balance in the current list of candidates of political parties and entities?

Of the 26 parties and coalitions competing in the upcoming elections, six fall slightly below the 30% minimum required by the Law on General Elections. The official party lists of the LDK-AKR coalition and Vetëvendosje are each 29% female, while in the grand coalition led by the PDK and the AAK, women represent just 27% of candidates. The other parties whose lists are less than 30% female are Za Prosperitet Kosovo (29%), Kosova Demokratik Türk Partisi (24%) and GI Eromendje Alternativa, whose three candidates are all male.

Only two parties (Grasđanska Inicijativa Srpska Lista and Partija Kosovskih Srba-Aktivna Gradjanska Inicijativa) have an exact 50-50 gender distribution in their lists, while in one party (Pokret Za Gora) women are overrepresented, with five out of nine candidates female.

Considering all the parties and coalitions together, 322 out of 971 candidates, or 33%, are women. Similarly, the average across parties and coalitions is 34%.

The requirements for candidate lists and distribution of seats are the same for the parties representing minority communities and competing for the 20 guaranteed seats. However, due to the small number of seats being targeted, the rules cannot always be applied like they are for Albanian parties. Specifically, the rule about seat distribution can be applied to the Serb community, with 10 seats, and to the Bosniak community, with 3 seats, but not to the other communities, who only have 1 or 2 seats each. In the 2014 elections, the minority community with the highest proportion of female MPs was the Bosniaks, with two of their three seats going to women. The Serb community was also above the quota, with four of their ten MPs female, as was the Turkish community, with a female representative in one of their two seats. The rest of the communities only had one MP each, so the quota could not be applied to them, and in all of these cases the MP was male. The fact that the Serbs, Bosniaks and Turks were all considerably above the legal minimum suggests that they did not need the gender quota.

Conclusions

Kosovo has had rules requiring 30% representation of women both in party lists and in the Assembly ever since 2000, when new electoral rules were developed under the UN Administration in collaboration with representatives of Kosovar political parties and civil society. This was then maintained in the subsequent legal framework adopted by the Assembly after the Declaration of Independence in 2008. As we have seen from previous legislatures, the 30% quota has worked to the benefit of women. It has allowed many female MPs to be represented in the Assembly, who may not otherwise have been present.

In light of the gender balance in the current party lists, it is unlikely that the share of women in the Assembly will go significantly above one third as a result of the upcoming election. This means that there is still considerable progress to be made before the Assembly is equal as defined by the Law on Gender Equality and the Ombudsperson.

POLICY BRIEF

There is an ongoing debate, in Kosovo and more widely, about the merits and effectiveness of using quota systems to ensure representation of marginalized groups. ECMI Kosovo strongly believes that, in a society where women are still structurally disadvantaged, special measures such as quotas are a suitable mechanism to promote participation of women in public life. This is in line with the recommendations and conclusions found in the OSCE's 2016 *Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region*⁴ and the *UN Women's Strategic Plan 2014-2017*.⁵

Finally, while the requirement to move towards 50-50 representation is clearly established in the Law on Gender Equality, exact provisions have not yet been incorporated into the current legal framework. Nonetheless, ECMI Kosovo encourages political parties, civil society and government institutions to work together to meet these legal requirements in the future and initiate a process of amending the electoral law to bring it in line with the Law on Gender Equality.

About ECMI Kosovo

ECMI Kosovo is the principal non-governmental organisation engaged with minority issues in Kosovo, with the overarching aim to develop inclusive, representative, community-sensitive institutions that support a stable multi-ethnic Kosovo. ECMI Kosovo contributes to the developing, strengthening and implementation of relevant legislation, supports the institutionalisation of communities-related governmental bodies, and enhances the capacity of civil society actors and the government to engage with one another in a constructive and sustainable way.

⁴ Available at <http://www.osce.org/odihr/224206?download=true>

⁵ Available at <http://undocs.org/en/UNW/2013/6>