

WHERE ARE WOMEN IN GOVERNMENTS?

REPRESENTATION OF WOMEN AND MEN IN THE EXECUTIVE BRANCH IN BIH

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1. INTRODUCTION

Article 20 (Law on Gender Equality BiH – consolidated version – “Official Gazette of BiH”, No. 32/10)

(1) State bodies at all levels of organizations of authorities, and local self-government bodies, including legislative, executive and judicial authorities, political parties, legal persons with public authorities, legal persons that are in the state's property or under the state's control, entities, cantons, cities or municipalities whose work is under control of a public body, shall ensure and promote equal gender representation in process of managing, decision making and representation. This obligation shall exist for all authorized proponents during elections of representatives and delegations to international organizations and bodies.

(2) Equal representation of women and men shall exist in case when one of sexes is represented with at least 40% in bodies from paragraph 1 of this Article.

(3) Discrimination on grounds of gender shall be considered situation in which there is no equal representation from paragraph 2 of this Article.

(4) Subjects given in paragraph 1 of this Article, in order to achieve equal gender representation are obliged to adopt temporary special measures prescribed with Article 8 of this Law.

Women are traditionally underrepresented in the governments in Bosnia and Herzegovina (hereinafter BiH) and none of the 14 governments in BiH (The Council of Ministers of BiH, entity, cantonal and the Government of the Brčko District of BiH) to date has been appointed in such a way that the goal from Article 20 from the Law on Gender Equality in BiH – consolidated version (“Official Gazette of BiH”, No. 32/10) was fulfilled. There are two women appointed in the current convocation of the Council of Ministers of BiH, four in the Government of the Federation of Bosnia and Herzegovina (hereinafter the Government of FBiH) while there is one woman prime minister and three ministers appointed in the Government of Republika Srpska (hereinafter the Government of RS). In the governments of the cantons there are no women appointed as prime ministers of the cantonal government, while the percentage of women ministers in cantonal governments was around 17.5%¹ (the number of women ministers varies from 0% to 25% depending on the canton). **The most drastic example is the government of the Zenica-Doboj Canton (hereinafter ZDC) where there is not even one woman appointed.**

1.1. *The Issue of Representation in the Executive Branch*

The demands for all forms and levels of government to be representative in regard to the structure of the electorate are legitimate. The citizens expect that all groups in the society influence the decision-making process, whether those groups in society have some common traits such as: ethnicity, skin color, race, gender and the like, or whether they have the same geographical origin. In the context of gender equality, the expectation of representation refers to the idea of **a critical mass which implies that there is a corresponding (critical) number of women in decision-making positions able to represent the interests of women as a group.**

The idea of a critical mass appears for the first time in regard to the representation of women as a traditionally underrepresented gender group in legislative bodies. It is based on the assumption that as the number of women in legislative bodies grows, so will they be in a better position to form strategic coalitions with one another. Even though numerous authors have contested this idea, including Drude Dahlerup² who is one of the creators of this idea of expecting equal representation of women and men in all processes, crucial social decision-making has become one of the basic focuses of all organizations.

Globally, the first document talking about the idea of a critical mass is the **Beijing Declaration and Platform for Action**³ which established **a goal of 30% of women**

- ¹ The data was gathered via official web presentations of the cantonal governments formed until April 2015 without the governments of the Herzegovina-Neretva Canton, the Central Bosnia Canton and Canton 10.
- ² Dahlerup, D. Using Quota's to Increase Women's Political Representation, in: Karam, A. (ed) (2002) Women in Parliaments: Beyond Numbers, Stockholm: International IDEA.
- ³ Beijing Declaration and Platform for Action, Fourth World Conference on Women <available at: <http://arsbih.gov.ba/wp-content/uploads/2014/01/04-PEKINSKA-DEKLARACIJA-kb.pdf> >

in decision-making positions in 1995. An even more ambitious **goal of 40%**⁴ was established with the changes and amendments of the **Law on Gender Equality in BiH** in 2009, which is also the goal established on the level of the Council of Europe in the Recommendation (2003)⁵ of the Committee of Ministers of the Council of Europe.

The focus of most analyses about the participation of women in decision-making positions is on the representation of women in legislative bodies. In the last decade, the approach which these analyses have had is on the influence which the elected women have on decision-making in the interest of women as a group and about the influence of female representatives on laws and policies which affect the improvement of the status of women as a group.

In addition to legislative bodies, a part of the analyses is directed at institutional mechanisms for gender equality and on their influence on the implementation of policies for gender equality on different levels. For the territory of BiH, Kadribašić⁶ found evidence that even with the existing numbers; the influence of women in legislative bodies is already visible.

However, the analyses on the influence of women in the executive branch, actually, in governments which had elected women in its convocation are not available.

1.2. Formation of the Executive Branch in BiH

The process of forming the government on all levels of authority after the election is an everlasting and exhausting process. After the 2014 General Elections, the very process of political agreement on the convocation of the Council of Ministers BiH, entity governments (especially the Government of FBiH), as well as cantonal governments lasted around 6 months. The main stumbling block of the political parties forming the coalitions on different levels is the issue of distributing positions in the executive branch. While the focus of political parties is the issue of distributing positions in the executive branch, not enough attention is devoted to the issue of equal representation.

The goal of 40% is established by Article 20 of the Law on Gender Equality in BiH when it comes to equal representation of genders in decision-making positions, including executive bodies. If this goal cannot be fulfilled, the same Law establishes the obligation to take special measures in accordance with Article 8 from the Law on Gender Equality in BiH, but they are also temporarily introduced in accordance with all international sources of human rights in order to actualize the real (*de facto*) gender equality, actually, in this case, in order to achieve the goal of 40%.

4 Law on Gender Equality in BiH – Article 20, consolidated version (“Official Gazette of BiH” No. 32/10)

5 Recommendation (2003)3 of the Committee of Ministers to Member States about the Balanced Participation of Women and Men in Political and Public Decision-Making <available at: http://arsbih.gov.ba/wp-content/uploads/2014/01/CM-Rec200717_prelom.pdf >

6 Kadribašić A. (2013) A Critical Analysis of the Level of Substantive Representation of Women Achieved with Quotas, Sarajevo: Open Society Fund BiH. <available at: http://www.osfbih.org.ba/images/Prog_docs/PDFP/pdftp_13/BHS_S_76_Adnan_Kadribasic.pdf >

The absence of women from governments who in the political system of BiH certainly have a significant (if not the most significant) influence on the decision-making processes has been problematized for years. However, so far the mechanisms to improve the condition have not been established.

This analysis attempts to analyze the significance of the executive branch in the constitutional and political system of Bosnia and Herzegovina, considers the possible models of achieving equal representation and finally, analyzes the potential influence of quota on the convocation of governments as the potential approach for achieving the goals established by the Law on Gender Equality in BiH.

2. DEFINING THE PROBLEM: EXECUTIVE BRANCH AND MEASURES FOR FULL GENDER EQUALITY

2.1. *What is the Executive Branch in BiH?*

The government in Bosnia and Herzegovina is divided between the legislative, executive and judicial authority since the principle of separating powers is one of the basic principles of all constitutions (e.g. the Constitution of Bosnia and Herzegovina, Articles IV and V). The executive branch in BiH consists from the Council of Ministers of BiH, Government of RS, Government of FBiH, cantonal governments and the Government of the Brčko District of BiH. The executive branch, actually, the government is a state collegial body consisting of ministers who are generally at the head of particular departments (ministries). In the parliamentary systems, the governments have developed into a significant body and most often, they hold entire executive power.

The members of the executive branch are not elected directly, but are appointed by the legislative bodies. In general, the legislative bodies can make the decision to dismiss members of the executive branch. In accordance with the constitutions, the executive branch implements policies and decisions made by the legislative branch and is liable to inform the legislative body about the results of its work.

Even though the legitimacy to represent citizens is in the hands of elected representatives, the executive branch is the part of government which has a far greater influence. The legislative bodies approve the budget of the competent institutions, **but the realization of the assets is most frequently under the jurisdiction of the ministries which form the executive branch.** The legislative bodies oversee the budget consumption as well as the very work of the ministry, but on the level of policy implementation, the executive branch is very much autonomous.

While the legislative branch is traditionally still the most important segment of authority, the general tendency in the contemporary development of political systems is the strengthening of the position of the role and power of the executive branch. In most countries, including BiH, the executive branch has almost entirely taken over the political and legislative initiative. More often, it delegates a part of its legislative authority by laws and other actions to the executive branch to regulate certain domains through the adoption of bylaws.

It is the comprehension of these tendencies, and especially the strengthening of the executive branch that is very significant for expectations in the domain of gender equality. **Understanding the role which the executive branch has in BiH will enable us to understand why the expected changes do not happen when it comes to gender equality,** even though an increase of women in the executive branch is recorded.

However, full understanding of the function of the executive branch will not be possible because there is not enough research to enable an insight into the political processes happening when it comes to decision-making by different governments. While the legislative bodies in BiH have already reached an enviable level of transparency in their activity, especially when it comes to public nature, the process of decision-making in the executive branch is still to a great degree invisible and inaccessible to the wider and expert public.

What can be concluded is that even formal rules which exist are not crucial for decision-making, even when it comes to propping the convocation of the government. Even though it is a general rule that the mandatory proposes members of other ministries, in reality, this decision depends on numerous other factors which are rarely available in written form and usually depend on the processes of political negotiations between different parties constituting the position. The unavailability of these rules precludes the analysis of the reason why women are always the underrepresented gender in processes of political agreements about the convocation of governments.

This brings us to the conclusion of why expecting the legislative branch where the number of women is increased to work as a corrective mechanism in case the proposed convocation of the government does not lead to the accomplishment of the goal from the Law on Gender Equality in BiH. In most cases, the representatives in the legislative branch only formally approve the political agreement reached between the political parties ahead of which they were elected. If those political parties have a sufficient number of representatives to confirm the appointment of government, generally, nothing will stop the process of the government being ratified by the legislative body. If we analyze the theory of “critical mass” which talks about the specific percentage of a group needed for that group to act together and present its interest, in this case, it demands the appointment of a government consisting of at least 40% of women and men, we would have to talk about the legislative body in which the parties that constitute the position have this percentage ensured. Nowadays, we cannot say whether women in that kind of situation would actually work together because such a legislative body in BiH has never existed. However, even in this kind of situation, it is questionable which identity would prevail with the elected representatives, the political one or the gender one.

2.2. Current Approach – Increase in Supply

Politics is a game of interests based on rules of supply and demand. Political parties offering political programs that most of the electorate expects always have a greater demand in the elections and better chances to get a higher number of votes. Also, during the internal decision-making within political parties on who is going to present the political programs in public, the decisions are generally made in regard to the political parties’ assumptions about the expectations of the electorate. Finally, when it comes to appointing the executive branch, the rules of supply and demand apply.

Political parties which can ensure the majority in the legislative body have

the opportunity to create coalitions and propose the convocation of the executive branch. When suggesting mandataries and ministers, political parties usually resort to their own membership and elect people they consider as being the best to implement the politics in accordance with the party's goals. Since they are generally limited to persons from their own political ranks, their supply is significantly limited because they are not in a position to suggest people they think of as being the most competent for a specific department.

Between these two extremes in this game of interests, there are surely numerous other processes happening and the result sometimes depends on pure luck, but applying the rules of supply and demand can help us to simplify these complex processes which are often hidden from the public eye.

If the political parties would not be limited just to their own membership, it is clear that there would be enough professional women to take over every department in all 14 governments. Women have been the more educated gender in the last 10 years.⁷ Over 60% of students graduate every year and with this trend, the number of female and male PhD students will be identical in 2017.⁸ Women are also more present in the justice sector and there is a higher number of women in positions of court presidents and chief prosecutors.⁹ Therefore, it is clear that the potential of experts who are not politically active remains unused, which in the context of BiH has a greater influence on women.

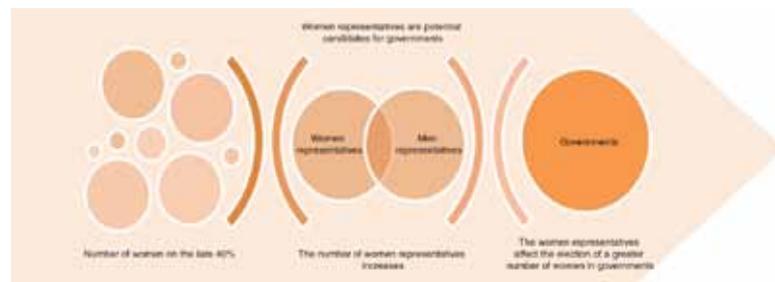


Figure No. 1: Overview of the current approach in BiH

Even within political parties, the number of women is relatively high ranging from 33% and higher, including the decision-making positions within parties.¹⁰ However, it remains unexplored how many women who are politically active had the chance to gain political experience the parties think of as necessary to be suggested for a decision-making position.

The approach of affirmative action is based on the need to invest into opportunities for women to build political careers¹¹ in the legal system of Bosnia and Herzegovina. It strives to increase the supply of professional and politically

7 Women and Men in Bosnia and Herzegovina, Agency for Statistics of Bosnia and Herzegovina, Sarajevo, 2013

8 Ibid

9 High Judicial and Prosecutorial Council of Bosnia and Herzegovina, Annual Report for 2013

10 Kadribašić A. (2013) A Critical Analysis of the Level of Substantive Representation of Women Achieved with Quotas, Sarajevo: Open Society Fund BiH.

11 In accordance with the Law on Gender Equality in BiH, Article 8, the affirmative measures are defined as "special measures that shall be introduced temporarily in order to accomplish substantive gender equality and shall not be considered discriminatory, including norms, criteria or practices that can possibly be justified by a legitimate goal, and have to be proportionate, appropriate and necessary.

experienced women who through the quota for candidate lists and the experience they gain in legislative bodies need to enhance their chances of being appointed into the convocation of the executive branch.

When it comes to the institutionalized approach for increasing women in the executive branch, the quotas in the Election Law of BiH – consolidated version (“Official Gazette of BiH”, No.18/13) can be considered as the approach that can lead to the increase in the supply of “politically experienced” candidates. In accordance with numerous analyses, the legislative approach in regulating this quota is one of the most advanced solutions in comparative law. Indeed, the quotas have led to an increase of women in legislative bodies. Even though it is difficult to talk about the percentages for women and men in case this quota is not introduced, what is known is that, before the introduction of the quota **in 1998, the number of women representatives in the Parliamentary Assembly of BiH was 2%, 2.4% in the National Assembly of RS and 5% in the Parliamentary of FBiH.**

This quota is based on the following premise: the increase in the number of women on candidate lists, including even the minimal second, fifth, eighth position etc. leads to a change in the awareness about women as potential representatives and increases the chances of women to be elected. Women representatives who are elected will gain a significant political experience and thereby will increase the number of potential female politicians of quality which the future mandatar will be able to take into consideration during the proposal of the government convocation.

However, to a large degree this approach depends on the written and unwritten rules related to the formation of the executive branch and disregards other elements of the constitutional and political system in BiH which questions the justifiability of this solution.

Principally, this refers to the fact that this approach is based on the model of Westminster democracies where there are no written rules about the distribution of political influence between different groups in society. **This is not the case in Bosnia and Herzegovina since the elements of the consociational democracy are embedded into the constitutions in BiH.** For example, so are the geographical quotas established by the Constitution of BiH (maximum of two thirds of all ministers can be appointed from the territory of the Federation, Constitution of BiH, Article IV.1) and according to the Law on the Council of Ministers of BiH (“Official Gazette of BiH”, No. 30/03, 42/03, 81/06, 76/07, 81/07, 24/08), the quota for constituent peoples was established (an equal representation of constituent peoples of Bosnia and Herzegovina will be ensured in the convocation of the Council of Ministers).

Similar solutions can also be found in other constitutions in the country. Because of this, the influence of the quota from the Election Law will be smaller than in the Westminster democracies since there are no mechanisms for the participation of (other) groups in the society. In these systems, the influence which this quota would have would be much greater because the number of political subjects would be smaller; actually, the smaller number of political parties would propose the

mandatary and the convocation of the government.

When it comes to unwritten rules, this principally refers to the number of political subjects participating in the formation of the governments, as well as the written rules about the formation of governments when it comes to gender representation of constituent peoples and the others. If we look at the previous convocation of the Parliamentary Assembly of BiH, we will notice that there were 42 representative seats split between 11 political subjects.¹² The Council of Ministers of BiH (mandatary and 9 ministries) suggested 6 political parties. Already from these numbers it is clear that the number of women representatives who could have been taken into consideration by these six political parties is lower than the total number of representatives elected in that or the previous mandate.

Next to this, the unwritten rule or the practice is that most of the members of the Council of Ministers of BiH are not elected representatives, but mainly people who performed other functions in the bodies of the executive branch. In this way, there was only one person appointed to the convocation of the Council of Ministers of BiH confirmed in March of 2015 who was an elected representative for the House of Representatives of the Parliamentary Assembly of BiH at the 2014 General Elections. (Vjekoslav Bevanda).

Therefore, the approach based on this legislative solution is questionable, at least when it comes to the increase of the number of women in the executive branch. Already during the negotiations about the new convocation of the Council of Ministers of BiH **after the 2014 General Election, the topics that dominated were about the political consensus on the number of positions in the executive branch and the need to ensure the representation of constituent peoples.**

Even though two women were appointed to the new convocation of the Council of Ministers of BiH (or 22%)¹³, once again, the thesis about the process of recruiting people for the executive branch was confirmed – it is based on recruiting people who had already performed functions in the executive branch. This fact confirms the thesis that the focus for achieving equal representation of women and men in the executive branch cannot be (just) on the quota in the Election Law of BiH.

2.3. Possible Solution – Increase in Demand

The previous analysis, but also the data about the current representation of women in the executive branch on all levels point to the conclusion that the system based exclusively on increasing the supply of expert women politicians did not lead to the wanted result. This is why it is necessary to consider the possibility of influencing the supply for the equal participation of women and men in decision-making positions.

¹² Website of the Parliamentary Assembly of BiH, https://www.parlament.ba/sadrzaj/poslanici/p/Archive.aspx?langTag=bs-BA&template_id=6&pril=b&m=2 (accessed on April 1, 2015)

¹³ The chairperson of the Council of Ministers of BiH, Decision on Appointing the Ministers, Deputy Ministers and Deputy Chairperson of the Council of Ministers of Bosnia and Herzegovina, No. 01-34-3-594-5/15 from March 31, 2015

What are the possible courses of action? **The most obvious example of special measures for achieving goals expressed in percentage are quotas.** The quotas on the context of equal representation refer to those provisions which define the proportional share which a specific group needs to actualize in a certain area of public life. Quotas as a way of achieving equal representation are still very controversial in most countries. Still, in the area of arranging election systems in the world, the quotas are one of the most common ways of achieving a greater number of women in legislative bodies. **The Inter-Parliamentary Union estimates that around half of the countries of the world have some form of quota in their election systems; Bosnia and Herzegovina is one of those countries.**¹⁴

In regard to the provisions which determine a specific goal and demand some kind of action in order to achieve this goal, the quotas unconditionally demand fulfilling of a certain percentage. The analysis of the laws which define the convocation of the governments can conclude that none of those laws define any kind of special measure for achieving equal representation of women and men in the convocation of governments. It can also be assumed that up until now, there were no other forms of introducing special measures such as criteria and practices for ensuring the equal representation of women and men in governments, especially if we take into account the current percentages of the participation of women in governments.

In Bosnia and Herzegovina, the quotas for ensuring the participation of groups in decision-making positions are not that controversial as in some other legal systems. When you analyze the provisions which regulate the system of governments, it is very easy to notice that **it is the quotas that are one of the dominant forms of achieving representation of governments when it comes to the proportional representation of constituent peoples (and others).** So for example, the Law on the Council of Ministers of Bosnia and Herzegovina establishes in Article 6 that an equal representation of constituent peoples of Bosnia and Herzegovina will be ensured in the convocation of the Council of Ministers. Such or similar provisions can be found in the provisions of entities, cantons and the Brčko District of BiH, and even in provisions which regulate the convocation of the leading appointed functions at the level of municipalities and cities.

¹⁴ International IDEA, Inter-Parliamentary Union and the Stockholm University, Global Database of Quotas for Women available at: <http://www.quotaproject.org/aboutQuotas.cfm> (Accessed: April, 1, 2015)

3. PROPOSAL OF THE SOLUTION TO THE PROBLEM: REGULATION OF THE QUOTA FOR THE LESS REPRESENTED GENDER IN THE EXECUTIVE BRANCH

The quotas in the context of legal standardization present special measures that are adopted with the goal of eliminating inequality. Their base is in the international law of human rights, and in the context of Bosnia and Herzegovina, they are regulated by domestic legislation.

The obligation of adopting special measures in case one of the genders is underrepresented is determined by the Law on Gender Equality in BiH in Article 20, paragraph 4. In this moment, no government is formed in such a way that there are at least 40% women and men ministers appointed. Women are still the underrepresented gender in all governments in BiH. It is also not clear whether any legislative body has considered the measures which would be appropriate to ensure the goal of 40% during the appointment of the mandatary or the ratification of the government.

Special measures in accordance with Article 8 of the Law, but also in accordance with all international sources of human rights are **introduced temporarily for the sake of achieving real (*de facto*) gender equality and are not considered discrimination**, and they refer to all norms, criteria or practices which are possible to be justified objectively by a legitimate goal, and they have to be proportional, appropriated and necessary.

This is how, for example, **the United Nations Committee on the Elimination of Discrimination against Women** in the Concluding Observations on the Combined Fourth and Fifth Periodic Report of Bosnia and Herzegovina recommended to Bosnia and Herzegovina to “*introduce procedures to ensure the implementation of Article 20 of the Gender Equality Law*” ... *through the use of temporary special measures where appropriate*”.¹⁵

Even though nothing prevents any legislative body to demand and ratify a government with at least 40% of ministers of both genders based on Article 20 of the Law on Gender Equality in BiH, there is no obligation to directly implement this article. From the previous analysis of Article 20, and especially Paragraph 4, it is clear that this is the provision which affirms the obligation to undertake special measures in accordance with Article 8.

Therefore, in this case even the advocacy of special measures in accordance with Article 20 should be directed at legislative bodies as the crucial decision-makers.

¹⁵ Committee on the Elimination of Discrimination against Women, Concluding Observations on the Combined Fourth and Fifth Periodic Report of Bosnia and Herzegovina, CEDAW /C/B1H/CO/4-5 <available at: http://arsbih.gov.ba/wp-content/uploads/2014/02/CEDAW_4-5.pdf >

According to its content, the quotas can be determined by acts of political parties or established by legal acts, obligatory or voluntary, with or without sanctions.

Since the quotas determined by legal acts dominate in BiH (for constituent groups and others), which are obligatory and which have sanctions in the sense of legitimacy and constitutionality, the standardization of quotas with those provisions that define the quotas for constituent peoples is imposed as the most optimal solution. It looks like that was the intention of the legislative bodies which have made the decisions on equal representation of women and men so far.

Therefore, the demands for regulating the equal representation of women in the convocation of governments through determining the quotas can be considered legitimate. In this way, it could be certainly ensured that the goal from Article 20 of the Law, but also from other international documents which determine the goals in this area would be achieved.

For example, **the quota as a special measure for achieving the goal from Article 20 of the Law was made when it came to appointing the collegium of the houses of the BiH Parliamentary Assembly.** Even though this quota refers to the convocation of the collegium in the legislative body, it can be seen as an analogous example for future solutions for appointing governments since the collegium is appointed by the legislative body, just like the government. The changes in the rules of procedure on the work of both houses¹⁶ established that they will try to ensure the representation of both genders in the convocation of both collegiums of the Houses. Even though it is clear that this is a flexible quota, the partial success is already measurable since the first woman representative is appointed to the convocation of the first collegium of the House of Representatives of the BiH Parliamentary Assembly. At the same time, there is not even one woman appointed to the convocation of the collegium of the House of Peoples even though the parties who form the position had two women delegates in their ranks.

In addition, **the provisions of the Election Law which define the convocation of the election commissions** are in an analogous state, at least when it comes to **appointing bodies with more members.** Articles 2.2 and 2.14 establish that the convocation of the election commission in general will reflect the equal representation of genders. The threshold of 40% was also confirmed. The supervision over the realizing this obligation when appointing commission of lower level of authorities is performed by the Central Election Commission which is obligated to annul the election of the commission members which does not fulfill this condition. This direction seems as the correct approach provided that the optimal solution would include defining the binding quota related to Article 20 of the Law.

The analysis of the existing approach for the regulation of the representation of constituent peoples in the executive branch points at the existence of an uneven approach on different levels. An overview of the condition in different legal provisions

¹⁶ Article 19, paragraph 2 of the Rules of Procedure of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina ("Official Gazette of BiH" No. 79/14) and Article 17, paragraph 2 of the Rules of Procedure of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina ("Official Gazette of BiH" No. 58/14)

can be found in the table in the appendix. These asymmetrical solutions create an unfavorable legal framework for any kind of intervention because it disenables an equal approach for each level of the executive branch. The different formulations of the same quota are necessary in order for the provision that determines it to agree with the text of the corresponding provision. We will define the possible formulation in different provisions on different levels below.

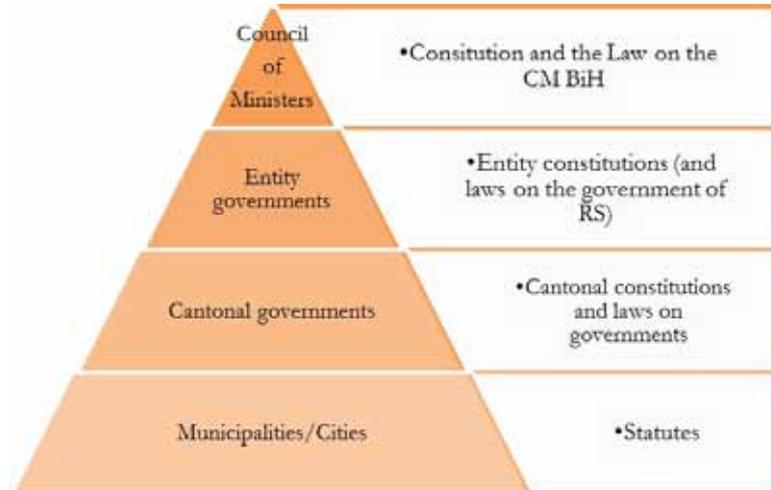


Figure No. 2 Levels of government and the documents which organize the quotas for constituent peoples in the executive branch

3.1. Council of Ministers of BiH

At the level of BiH, the quota is partially confirmed by the Constitution of BiH, and elaborated by the Law on the Council of Ministers of BiH. What can be seen from these provisions is that they confirm two kinds of quotas: geographical and ethnic. The geographical is expressed numerically and is definable from the very text of the constitutions (2/3 of ministers from the territory of FBiH and 1/3 from the territory of RS), while the ethnic quote is definable in regard to the convocation of the peoples of Bosnia and Herzegovina (census from 1991 until Annex 7, Decision of the Constitutional Court U 5/98 is implemented).

The adequate intervention in the sense of regulating the quota for the less represented gender is required in Article 6 where it is necessary to add a new paragraph which reads:

“The overall convocation of the Council of Ministers will maintain an equal gender representation throughout its entire mandate. The equal representation of both genders will be considered the convocation of the Council of Ministers where there are at least 40% of both genders appointed.”

For the purpose of a consistent implementation of this quota it is necessary to establish the obligation of the Parliamentary Assembly of BiH in case the proposal of the convocation of the Government is not delivered in accordance with this

provision. Therefore, it is suggested to define an additional paragraph in the same Article which reads:

“The Parliamentary Assembly of BiH will refuse to ratify the convocation of the Council of Ministers of BiH which does not maintain equal gender representation.”

In transitional and closing provisions, it is necessary to establish whether this provision will be applied during the first succeeding decision-making, actually, during the ratification of the first succeeding convocation of the Council of Ministers of BiH after the changes and amendments which introduce this quota come into force.

In this way, the quota related to the percentage of 40% is established, which directly contributes to the implementation of Article 20 from the Law on Gender Equality in BiH.

3.2. Government of FBiH

The Constitution of the Federation establishes the quota for constituent peoples. The Law on the Government of FBiH¹⁷ did not define the provision on the quota. Because of that, the regulation of the quota for the underrepresented gender in FBiH is especially problematic because if the existing solution was observed, it would be necessary to change the Constitution of FBiH. However, advocating the quota for the less represented gender does not necessarily have to follow the existing solution. This is why the solution for the convocation of the Government of FBiH can be the definition of the quota in the Law on the Government of FBiH in the following way:

“The overall convocation of the Government of FBiH will reflect equal representation of genders throughout its entire mandate. The equal representation of both genders will be considered the convocation of the Government of FBiH where there are at least 40% of both genders appointed.”

For the purpose of a consistent implementation of this quota it is also necessary to establish the obligation of the Parliamentary of FBiH in case the proposal of the convocation of the Government is not delivered in accordance with this provision. Therefore, it is suggested to define the additional paragraph in the same Article which reads:

“The Parliament of FBiH will refuse to ratify the convocation of the FBiH Government which does not reflect the equal representation of genders.”

Similar transitional and finishing provisions should define the implementation of this provision for all future convocations of the FBiH Government.

Even though there is no corresponding article in the Law on the Government of FBiH, the optimal solution seems to be adding the paragraph in Article 6 which

¹⁷ Law on the Government of the Federation of Bosnia and Herzegovina (“Official Gazette of the Federation of BiH”, No. 1/94, 8/95, 58/02, 19/03, 2/06 i 8/06)

regulates the number of ministers.

3.3. Government of RS

The Constitution of RS contains the symmetrical solution to the solution from the Constitution of FBiH. However, the Law on the Government of Republika Srpska (“Official Gazette of RS”, No. 55/2005, 71/2005) defined a part of the solution from the Constitution of RS by Article 6 in terms of pertaining to different constituent peoples of the president and the vice-president of the Government. Therefore, the optimal solution is to add a new paragraph to Article 6 which reads:

“The overall convocation of the Government of RS will reflect equal representation of genders throughout its entire mandate. The equal representation of both genders will be considered the convocation of the Government of RS where there are at least 40% of both genders appointed.”

For the purpose of a consistent implementation of this quota it is necessary to also establish the obligation of the National Assembly of RS in case the proposal of the convocation of the Government is not delivered in accordance with this provision. Therefore, it is suggested to define the additional paragraph in the same Article which reads:

“The National Assembly will refuse to ratify the convocation of the Government of RS which does not reflect the equal representation of genders.”

Similar transitional and finishing provisions should define the implementation of this provision for all future convocations of the RS Government.

3.4. Cantonal Governments

The regulations which organize the quotas for constituent peoples in the cantonal governments are generally also found in the cantonal constitutions and the laws on the governments of the cantons. However, in the Law on the Government of the Herzegovina-Neretva Canton (“Official Gazette of the HNC”, No. 3/01) and the Law on the Government of the Posavina Canton (“National Gazette of the Posavina Canton”, No. 1/96, 4/96, 8/00 i 2/07) there is no designated provision on the quota for constituent nations. Still, this does not have to be a limitation for defining the quota for the less represented gender similar to the solution for the Government of FBiH.

A similar solution to the one for the Council of Ministers of BiH and the governments of the entities is also suggested for the laws on cantonal governments:

“The overall convocation of the Government will reflect equal representation of genders throughout its entire mandate. The equal representation of both genders will be considered the convocation of the Government where there are at least 40% of both genders appointed.”

For the purpose of a consistent implementation of this quota it is necessary to also establish the obligation of the cantonal assembly in case the proposal of the convocation of the Government is not delivered in accordance with this provision. Therefore, it is suggested to define the additional paragraph in the same article which reads:

“The cantonal assembly will refuse to ratify the convocation of the Government which does not reflect the equal representation of genders.”

3.5. Units of Local Self-Government

The constitutional provisions on the representation of constituent peoples can also be found in provisions which regulate the convocations of units of local self-government (Brčko District, cities, municipalities in FBiH and municipalities in RS).

The provisions which contain the quotas generally refer to the crucial appointed functions on local level. Since the chiefs/mayors are elected directly, the provisions referring to the representation of the constituent peoples arrange the appointment of the deputy chief/mayor and council/assembly chairperson. Usually, these three functions are not performed by people pertaining to the same constituent nation. These provisions can be found in the statutes of units of local self-government, and in RS in the Law on Local Self-Government.

3.5.1. Local Self-Government in FBiH

It is interesting to notice that there is an already determined flexible quota for equal gender representation in a specific number of municipalities in FBiH included in this analysis. For example, this is determined in the Statute of the Municipality of Zenica:

Article 26, paragraph 4

During the proposal of the election of the chairperson, the chairperson deputy of the Council and the three members of the Presiding Council, the equal representation of the constituent peoples and others as well as gender equality will be ensured as much as possible.¹⁸

A similar regulation can be found in the Statute of the Municipality of Zavidovići when it comes to units of local self-government covered by this analysis. These provisions can be considered flexible quotas, actually, quotas which do not determine sanction.

This is why even in the statutes of the municipalities and cities in FBiH the advocacy for the introduction of the quota should head in the direction of regulating the quotas for gender equality in the following way:

“The mayor/chief, the chairperson and the chairperson deputy cannot be persons of the same gender.”

¹⁸ Statute of the Municipality of Zenica, Article 26, paragraph 4

3.5.2. Local Self-Government in RS

The optimal solution for the area of Republika Srpska would therefore be adding a new paragraph to Article 3 of the Law on Local Self-Government of RS (“Official Gazette of RS”, No. 101/04, 42/05, 118/05 i 98/13) which reads:

“The equal representation of both genders will be ensured during the appointment of the chief deputy of the unit of local self-government, the president of the assembly and the vice-president of the assembly of the unit of local self-government. The equal representation of both genders will exist in case that at least one of the appointed functions belongs to the less represented gender.”

To the statutes of the units of local self-government in RS in articles which determine the quota for constituent nations it is necessary to add a paragraph which reads:

“The mayor/chief, the chairperson and chairperson deputy cannot be persons of the same gender.

3.5.3. Brčko District

Similar as on the level of the units of local self-government in FBiH and RS, there is a quota for constituent peoples in the Statute of the Brčko District, provided in Article 47.

Therefore, it is necessary to add a paragraph to Article 47 which reads:

“The mayor, deputy mayor and the main coordinator cannot be persons of the same gender.”

4. INSTEAD OF A CONCLUSION

Not even one legislative body so far has considered the cause of the underrepresentation of women in the executive branch nor has it considered the possibility of adopting special measures from Article 8 from the Law on Gender Equality in Bosnia and Herzegovina with the goal of achieving equal representation of women and men. At the same time, none of 14 governments so far was created in such a way to meet the requirement of 40% in accordance with Article 20 from the Law on Gender Equality in BiH.

In the absence of progress, but also in the legal system of Bosnia and Herzegovina where group equality is mainly achieved through the introduction of quotas, the expectations that a similar solution will be achieved when it comes to the participation of women in governments are legitimate.

This analysis points at the potential approach to the regulation of this expectation in legal regulations which organize the rules of forming the governments, and has proposed a formulation of provisions to introduce the quota for both genders. It is expected that the newly-formed governments and legislative bodies will ensure the introduction of this special measure into the listed documents.

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Annexes

Annex No. 1: Overview of the Provisions Which Determine the Quota for Constituent Peoples with the Proposed Interventions

Document	Overview of the provisions which determine the quota for constituent peoples	Added article/paragraph
Constitution of BiH	<p>Article IV4.b) b) Maximum of two thirds of all ministers can be appointed from the territory of the Federation. The chairperson will also appoint deputy ministers (which will not be from the same constituent nation as their ministers) which will take office after the approval of the House of Representatives.</p> <p>Article IX3. 3. Officials appointed to the positions in the institutions of Bosnia and Herzegovina generally reflect the convocation of the peoples of Bosnia and Herzegovina</p>	Not applicable
Law on the Council of Ministers of Bosnia and Herzegovina	<p>Article 6: The total convocation of the Council of Ministers during their entire mandate will be fully in accordance with the Constitution of Bosnia and Herzegovina, especially its Articles V4.(b) i IX3., and in accordance with that will ensure the equal representation of the constituent peoples of Bosnia and Herzegovina in the convocation of the Council of Ministers. The chairperson of the Council of Ministers and the chairperson deputies are from different nations. From Article 24 of this Law, there has to be at least one position ensured for members of the others in the convocation of the Council of Ministers or for the duties of the Secretary General.</p>	<p>New paragraphs are added to Article 6 which read: “The overall convocation of the Council of Ministers will maintain an equal gender representation throughout its entire mandate. The equal representation of both genders will be considered the convocation of the Council of Ministers where there are at least 40% of both genders appointed.” The Parliamentary Assembly of BiH will refuse to ratify the convocation of the Council of Ministers of BiH which does not maintain equal gender representation.”</p>
Constitution of the Federation of Bosnia and Herzegovina Amendments I-CIX included	<p>Article 4: Minimal representation in the government of the Federation of Bosnia and Herzegovina in the transitional period until the full implementation of Annex 7. (1) The government of the Federation of Bosnia and Herzegovina (prime minister and sixteen ministers) consists out of eight ministers from the ranks of the Bosniak, five ministers from the ranks of the Croatian and three ministers from the ranks of the Serbian nation. The one minister from the order of others can be appointed by the prime minister from the quota of the most numerous constituent peoples. The government also has a prime minister who has two deputies from different constituent nations chosen from the ranks of the ministers. (2) After the complete implementation of Annex 7, at least 15% of members of the government have to be from a constituent nation. At least 35% members of the government have to be from two constituent nations. One member of the Government has to be from the rank of others.35)</p>	Not applicable

<p>Law on the Government of FBiH</p>		<p>New paragraphs are added to Article 6 which read: “The overall convocation of the Government of FBiH will reflect equal representation of genders throughout its entire mandate. The equal representation of both genders will be considered the convocation of the Government of FBiH where there are at least 40% of both genders appointed.” “The FBiH Parliament will refuse to ratify the convocation of the FBiH Government which does not reflect the equal representation of genders.”</p>
<p>Laws on the cantonal governments</p>		<p>Add the following to the corresponding Article: “The overall convocation of the Government will reflect equal representation of genders throughout its entire mandate. The equal representation of both genders will be considered the convocation of the Government where there are at least 40% of both genders appointed.”</p>
<p>Constitution of RS</p>	<p>Constituent nations and the group of others will be proportionally represented in public institutions in Republika Srpska.</p>	<p>Not applicable</p>
<p>Law on the Government of Republika Srpska</p>	<p>Article 6. (1) The government consists of the president, two vice-presidents and ministers (hereinafter: members of the Government), provided that the president and the vice-presidents cannot be from the rank of the same constituent nation.</p>	<p>New paragraphs are added to Article 6 which read: “The overall convocation of the Government of RS will reflect equal representation of genders throughout its entire mandate. The equal representation of both genders will be considered the convocation of the Government of RS where there are at least 40% of both genders appointed.” The National Assembly will refuse to ratify the convocation of the RS Government which does not reflect the equal representation of genders.”</p>

<p>Law on the Local Self-Government of Republika Srpska</p>	<p>Article 3 Based on the results of the last census, the units of local self-government provide, in accordance with this law, the proportional representation of constituent peoples and groups of Others in the organs of the unit of local self-government, including officials of the units of local self-government who are not elected directly: the deputy chief of the unit of local self-government, president of the assembly and the vice-president of the assembly of the unit of local self-government. The president of the assembly of the unit of local self-government and the chief of the unit of local self-government cannot be from the order of the same constituent nation and the groups of Others, except if one constituent nation has more than half of the majority according to the last census. The statute and provisions of the units of local self-government, including the provisions referring to the organization of the administrative service of the units of local self-government and employment in the administrative service establish the specific ways of ensuring proportional representation.</p>	<p>New paragraphs are added to Article 3 which read: “During the appointment of the chief deputy of the unit of local self-government, the president of the assembly and the vice-president of the assembly of the unit of local self-government the equal representation of both genders will be ensured. The equal representation of both genders will exist in case that at least one of the appointed functions belongs to the less represented gender.”</p>
<p>Statutes of municipalities and cities in RS</p>		<p>“The mayor/chief, the chairperson and the chairperson deputy cannot be persons of the same gender.”</p>
<p>Statutes of municipalities and cities in FBiH</p>		<p>“The mayor/chief, the chairperson and the chairperson deputy cannot be persons of the same gender.”</p>
<p>Statute of the BD</p>	<p>Article 47 The deputy mayor, the chief coordinator and heads of the departments (1) The deputy mayor, the chief coordinator and heads of the departments are elected or removed from duty based on professional criteria and they reflect the convocation of the population.</p>	<p>New items are added to Article 47 which read: “The mayor, deputy mayor and the main coordinator cannot be persons of the same gender.”</p>



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