



A human rights perspective on the right to participate in public affairs - equal participation of women¹

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Abstract: *The present paper aims to analyse the right to participate in public affairs from a human rights perspective, a right that paves the way for other human rights, with a focus on women's participation, at EU level, in the context of ensuring gender equality and non-discrimination. This article is qualitative research, starting from the documentary and legislative analysis of this right, as it is perceived at the level of international organizations, going up to a comparative approach of statistical data on women's participation in political life in the European Union, in the last legislature (2019-2024), with a focus on the situation in Romania. The question of the article is whether the right to participate in public affairs, an essential human right, manages to contribute to the exercise of other human rights, such as freedom of opinion and expression, freedom of association and freedom of peaceful assembly, the right to equality and non-discrimination etc., influencing them and guaranteeing their effective contribution to ensuring democracy and the rule of law in the European Union. It is concluded that the protection, respect and implementation of the right to participate in public affair and other related rights, which are mutually reinforcing, ultimately succeed in achieving this result, even if there are still challenges to be faced, continuing to be as current the need to strengthen confidence in participation in political life and public affairs.*

Keywords: *the right to participate in public affairs, human rights, gender equality, European Union, women political participation.*

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1. Introduction

Respecting and promoting human rights as widely as possible is a priority both for Romania and for the international community (international, regional or continental organizations, states, etc.), becoming a certainty that, only in this way, the challenges (peace and security, economic and social development, etc.), which contemporary society faces, can identify appropriate solutions that benefit everyone. If we refer to the fact that in a political regime established on the principle of rule of law, democratic values and principles are regulated in a rigorous legal framework, aligned with international treaties and conventions, it can be stated that human dignity, the rights and freedoms of citizens, equality and political pluralism represent some of the ultimate values, being duly guaranteed (Raiu, 2021, pp. 116-117).

To begin with, it must be emphasized that according to the UN (2022, p.15), participation represents "a right that paves the way for the realization of all human rights", consequently, it's imperative to make sure "legal recognition of the right to participate in public affairs and of related rights", considering that "the mere formal legal recognition of the right to participate in public affairs is, however, insufficient for people to exercise this right and enjoy it". It is up to states to implement legal obligations and political commitments (Raiu, 2021, p. 96), and "decision-making processes that affect people's lives should be guided by international human rights law and ensure transparency, access to information and participation at local, national and international" UN (2022, p.15).

The right to participate in public affairs has raised a number of challenges over time, especially in terms of its implementation, in order to ensure equal political participation in political and public affairs. Participation in public life is relevant at the local, regional, national and international levels, and within international organizations (UN, 2015, p.10), the focus has been constantly placed on ensuring and promoting this right, the benefits offered by participation processes public being obvious, adding to them "an improved quality of political and legislative decisions that reflect real needs", experience, expertise, an increased potential "and, finally, an increased trust of the public in state institutions". Thus, perhaps one of the most followed processes that highlight participation in political life and public affairs is found at the level of the European Union and consists in the manner in which the citizens of the EU member states directly elect their

representatives in the European Parliament, complemented by the monitoring at the national level of the compliance and implementation of the legislation on gender equality in the EU, which attracts the same benchmarks at the level of the member states. About this aspect, we will make more clarifications in the second part of this article, considering the fact that through its treaties (Lisbon, in particular), the European Union guarantees the right of every citizen to take part "in the democratic life of the Union".

1. International legal framework (United Nations, Council of Europe, Organization for Security and Co-operation in Europe, European Union)

Starting from the fact that there are states that enshrine, in their own national law (Constitution, national legislation, etc.), principles and rights that guarantee the proper execution of the right to participate in public affairs, in the following we will exhaustively analyze some of international regulations, with reference to the UN, the Council of Europe (with small references to the OSCE) and the European Union.

.Article 21 of Universal Declaration of Human Rights - "a milestone document in the history of human rights" stipulates on the entitlement to political and public participation that "everyone has the right to take part in the government of his country, directly or through freely chosen representatives. [...] The will of the people shall be the basis of the authority of government; [...]". In this context, Morsink (1999) appreciates that the drafting of this article represents "a revolution within a revolution", and it is considered that "the rights of the individual are equal and inalienable in relation to his state", establishing that "the authority of the government must be based on the will of the people" and on "a system of democratic participation with equal political rights for every citizen". We are therefore discussing the citizen, since the individual can only enjoy political rights as a citizen of a state, political rights of "citizens, as members of a certain political community", their rights - political rights and civil liberties, which, together with article 2 of the Declaration, regarding the prohibition of discrimination based on political opinion, mark the implicit need for a multiparty system. According to Hurst Hannum (1995) "despite the arguments of some that a "right to democracy" may be emerging as a norm of international

customary law, it is apparent that many states have not accepted article 21's guarantee of the right to participate in the political life of one's country".

UN (2015, p. 3) appreciates that "participation is a distinctive sign of democracy", that it legitimizes the exercise of state power, and to respond to the challenges, "examples of good practices and experiences" are needed, which they offer, of otherwise, also formulating recommendations. This right is considered to be "a prerequisite of democracy", insufficient however, which requires processes from which it follows that society has a say in establishing the decision-making process (UN, 2013, p.7). As seen from the standpoint of the human rights approach, it is also important to remember the UN Report (2014) on the factors that prevent equal political participation and ways to overcome these challenges, which examines "the human rights framework and the jurisprudence of the UN human rights mechanisms in related to participation in public affairs".

Next, as a legal framework there is also article 25 of International Covenant on Civil and Political Rights that stipulates that every citizen will have the following rights and opportunities, lacking any of the restrictions or differentiations outlined in article 2:

"(a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country."

Compared to other civil and political rights, exercising one's right to take part in public affairs can be analyzed by observing how well social, economic, and cultural rights are upheld and safeguarded (Raiu, Mina-Raiu, 2022). This article, the content of which can be visibly structured into two delimited parts (one detailing the right to vote - granting and exercising it, as well as some details regarding the organization of elections, including the right to participate in public affairs, and another which concerns ensuring equality in accessing the public service), comes to regulate, recognize and protect each citizen's right to vote, to participate in the administration of public affairs, and to to have access to the public service, imposing on the states the adoption of

legislative measures in order to effectively ensure these rights to citizens. It is about individual rights, granted to every citizen, regardless of race, color, sex, language, religion, politics or others, the eventual conditioning of the exercise of these rights being subject to objective and reasonable criteria (UN, 1996). As for "the management of public affairs, referred to in letter (a), it is a broad concept that refers to the exercise of political power, especially the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, as well as policy formulation and implementation at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise their right to participate in the conduct of public affairs protected by Article 25 should be determined by the constitution and other laws" (UN, 1996). As a result, direct participation in the management of public affairs is achieved when they exercise power as members of legislative bodies or hold executive positions, "when they elect or change their constitution or decide public issues, or when they participate in the management of public affairs through freely elected representatives" (UN, 1996).

Paragraph 1 of Article 25 of the ICCPR emphasizes the significance of nondiscriminatory behavior in relation to the right to participate in public affairs, which implies on the part of the state the fulfillment of the condition to refrain from discrimination, to prevent and to take measures for the full participation of citizens, to proactively encourage this participation.

Article 25 lays out particular guidelines for citizens' participation in public affairs management as candidates or voters, with the obligation of states to take the necessary measures in order to utilize one's right to vote, with respect for freedom of expression, assembly and association, including freedom of choice and the right to stand for election.

The Convention on the Elimination of All Forms of Discrimination Against Women's Articles 7 and 8 specifies that all the necessary measures will be picked up by the states party to the Convention, in order to eliminate discrimination against women in both, political and public life of the country, but above all, to ensure them equal conditions with men, including representing their country's government internationally and participating in the activities of international organizations. Thus, the Convention states in letter a) that they have the right to vote in all public elections and referendums and to be elected in all publicly eligible bodies; b) the right to participate in the development of state policy and its implementation, to hold public positions and

exercise all public functions at all echelons of government; c) the right to take part in groups and non-governmental organizations that are involved in the nation's public and political life.

Article 5(c) of International Convention on the Elimination of All Forms of Racial Discrimination declare that in line with the essential duties outlined in the article "States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...] Political rights, in particular the right to participate in elections - to vote and to stand for election - on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service".

Article 29 of Convention on the Rights of Persons with Disabilities (CRPD) regards participation in public affairs for all disabled individuals who have this right too.

The right to participate in public affairs is closely related to the complete fulfillment of the right to access information, which implies for states to pursue its guarantee and effective application, including in the 2030 Agenda for sustainable development emphasizing this.

Regarding the restrictions on the right to participate in public affairs, it is appreciated that "although they are allowed, they must be objective, reasonable, non-discriminatory and provided for by law" (UN, 1999, p.6). Therefore, limitations must be regarded as exceptional, be necessary and proportionate (UN, 1999, p.6). In the context of the COVID-19 pandemic, the measures taken (sometimes disproportionate) also affected full, equal and significant participation in public affairs, and in the "lack of predetermined, inclusive and significant participatory mechanisms" (UN, 1999, p.6), made it even more difficult to "participate, especially for women, people with disabilities, indigenous peoples, people living in poverty, minorities and other marginalized groups"(UN, 1999, p.6).

In addition to the regulatory framework provided by the UN, considering the circumstances provided by the Council of Europe, the ECHR's articles 10 and 11 regarding freedom of expression and freedom of assembly and association also have an impact on the right to participate in public affairs, as well as Protocol No. 1 of the ECHR, Article 3, that imposes the obligation "to organize, at reasonable intervals, free elections with secret ballot, under conditions

that ensure the free expression of the people's opinion regarding the election of the legislative body". According to the ECHR (2018), this article involves subjective rights (the right to vote - "active" aspect; and the right to run for elections - "passive" aspect), and the content "differs from the other provisions of the Convention and its protocols in that it guarantees certain rights in the sense that they oblige the member states to organize elections under conditions that ensure the free expression of the people's opinion, not a certain right or a certain freedom". At the same time, to these are added a series of regulations that concern certain categories (e.g. persons with disabilities, national minorities, women, etc.) as well as Article E (non-discrimination) of the European Social Charter. Regarding the above-mentioned categories, specifically national minorities, people with disabilities and women, it should also be mentioned that at the level of the Organization for Security and European Cooperation, various documents (OSCE) have been adopted regarding the right to participate.

Finally, arriving at the level of the European Union, where under the section "Provisions on democratic principles" of the Lisbon Treaty (art. 9-11) it is mentioned that The European Union upholds the principle of citizen equality, that the principles of representative democracy, citizens' direct representation in the European Parliament, and everyone's right to take part in the EU's democratic life form the foundation of the EU's functioning, thereby including the right to take part in public affairs, where choices are made as transparently and as near to the citizen as possible. As stipulated in Article 6, the European Union acknowledges the freedoms, rights, and principles outlined in the European Union Charter of Fundamental Rights. Additionally, the EU recognizes fundamental rights, which form the cornerstone of EU law and are protected by the European Convention on Human Rights, as well as fundamental freedoms, Convention to which the EU proposed to accede. Articles 39 and 40 of the Charter concern the right to vote and to be elected in the European Parliament and the right to vote and to be elected in local elections, from their content it emerges that under the same circumstances as state citizen, "any citizen of the Union has the right to vote and be elected in the elections for the European Parliament, in the Member State in which he resides", by direct, free and secret universal suffrage or to vote and be elected in the local elections in the Member State where he resides.

2. Participation in public affairs – women's participation

Elections represent the most common and efficient way of citizens' participation in public affairs, which is why there is a need for priority regulation of the right to vote and electoral rights and, in parallel, a strong legal foundation for its implementation. In this regard, the features of election systems have a major impact on participation in public affairs, the facilitation of participation being among the goals that each state pursues, through alternative voting methods, based on a solid legal basis.

Political will is one of the fundamental factors that contribute to "the creation of a favorable environment that encourages participation" (UN, 2022, p.15), for the most effective and visible results, this will need "to be accompanied by openness, inclusion, transparency and accountability on the part of public authorities" (UN, 2022, p.15), including recognition of the legitimate and vital role of civil society.

Of course, an increasingly important role in ensuring the exercise of this right is played by information and communication technologies (ICT), which offer new "tools for participation, which expand the space for civic engagement and have the potential to promote more responsible and more responsible" (UN, 2018, p. 11), encouraging the promotion of a "greater and more diversified participation of civil society actors at the international level" (UN, 2018, p.11), an aspect highlighted especially during the COVID- 19. As a result of COVID-19 pandemic, "restrictions were imposed on rights, such as the rights to freedom of movement, freedom of expression and freedom of peaceful assembly and of association, which need to be guaranteed for the exercise of the right to participate in public affairs. Often, the restrictions imposed did not meet the requirements of necessity and proportionality (Raiu, 2022), had a negative impact on the enjoyment of the right to participate in public affairs, shrank the civic space and had additional gender-specific impacts, especially on women and girls"(UN, 2021, p. 7).

Gender equality (Moroianu Zlătescu & Marinică, 2020, pp.61-67), a fundamental value of the European Union, governed by Article 8 of the Treaty on the Functioning of the European Union ("... the Union shall aim to eliminate inequalities, and to promote equality, between men and women"), encourages the promotion of gender equality, including "achieving an equal Europe between women and men where gender-based violence, sexual discrimination and structural inequality between women and men are a thing of the past" (EU Strategy on gender equality).

Part of this discussion may also be equal participation in society and its leadership, the participation of women in political and public affairs, on which "states reported that they encouraged political parties to adopt effective measures to ensure that women are placed in the first positions on candidate lists, so that they have a better chance of being elected, as well as being fully represented in leadership positions in party structures" (UN, 2015, p. 17). Gender equality cannot be fully ensured if the right of women to participate in public affairs under equal conditions with men is not taken into account, so states must take concrete measures in this regard. Therefore, the greater the share of women in the decision-making process, the more the hypothesis of the adoption and implementation of legislation that promotes gender equality increases. Women's equal participation in political and public life are essential also to achieving the Sustainable Development Goals by 2030, until now women are underrepresented worldwide.

A democratic governance cannot be implemented without ensuring the participation of women in the decision-making process (Raiu, Mina-Raiu, 2023); despite this aspect, the minority presence of women continues to be found in decision-making processes, which confirms the lack of equal representation in positions of power and leadership. Promoting the full and equal participation of women in decision-making and leadership positions, from local to national level, also contributes to the need to ensure quotas or various other measures whose role is to balance the proportion between the sexes and reduce gender discrimination, for a better future.

The existence of quotas, their regulation and role, highlight the importance of this instrument in supporting and increasing women's participation, an instrument that can only prove to be effective if its application is also concrete, in the sense that the simple provision of quotas, but in ineligible positions, causes the regulation to remain without the intended effect. It is essential to make greater and more consistent efforts for equal representation and participation of women in decision-making, by understanding the political, social and cultural factors that influence and determine women's resistance to participating in public affairs. As an example, in Romania, it is aimed that 30% of the candidates must be women, there are legislative proposals regarding the establishment of a representation quota of at least 30% in local/parliamentary elections, with or without the conditioning of their eligible position or not on lists. A possible lack of eligibility could be confirmed by the small number of women on the lists, who reach the Parliament, in Romania being registered a percentage of 18% female presence in the Parliament, out of a total of

466 senators and deputies, only 88 they are women. Compared to the other states in the European Union, Romania is at the bottom of the ranking, compared to Sweden, Finland, Denmark and Belgium.

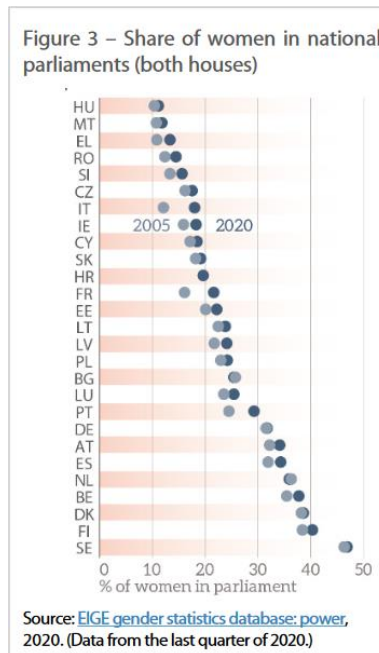


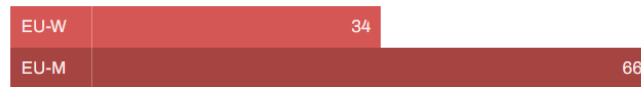
Fig.1: The presence of women in national parliaments (source: Shreeves & Boland, 2021, p.3)

When it comes to the European Union, statistics confirm that women are still underrepresented in the political decision-making process, the gender gap being visible, in the graphs below you can find the proportions offered through the Index created by the European Institute for Gender Equality between the representation at the level of the European Union of women in the political field compared to Romania (the last graph), at the level of 2023.

Fig.2: The presence of women at the level of central public administration (ministries) in the member states (source: <https://eige.europa.eu/gender-equality-index/2023/domain/power>)

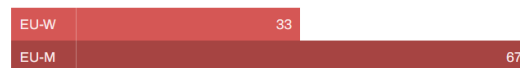


Share of ministers (%) ⓘ



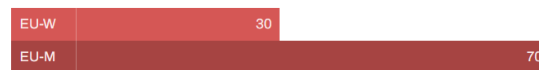
Source: EIGE, Gender Statistics Database, WMID, 2nd quarter 2023. EIGE's calculation.

Share of members of parliament (%) ⓘ



Source: EIGE, Gender Statistics Database, WMID, 2nd quarter 2023. EIGE's calculation.

Share of members of regional assemblies/local municipalities (%) ⓘ



Source: EIGE, Gender Statistics Database, WMID, 2023. BG, EE, IE, CY, LT, LU, MT, SI: Local municipalities, 2022. EIGE's calculation.

Fig.3: The presence of women at the level of national parliaments and local public administration in the member states (source: <https://eige.europa.eu/gender-equality-index/2023/domain/power>)

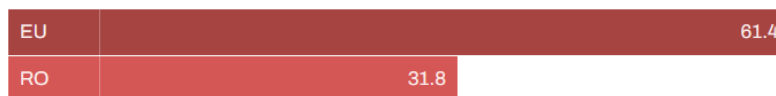


Fig.4: The presence of women in the field of political decision-making in the European Union and Romania (source: Comparing Power / Political scores in 2023: EU level and Romania available at <https://eige.europa.eu/gender-equality-index/2023/domain/power>)

At the European Parliament level, for the 2019-2024 legislature, the percentage of men and women is 39.3%, the representation of Romania is weak, at the bottom of the ranking (5 women/28 men, out of a total number of 33 mandates), alongside countries such as Slovakia (3 women/11 men, out of a total of 14 mandates) and Greece (5 women/16 men, out of a total of 21 mandates), as a whole, at the opposite pole being Sweden (12 women/9 men, out of a total of 21 mandates), Slovenia (4 women/4 men, out of a total of 8 mandates), France (39 women/40 men, out of -a total of 79 mandates) with women representing less than a quarter of MEPs, which demonstrates that there is still a large gender gap.

Following an analysis carried out for the year 2014, it was discovered that "women had been popular with the electorate and, where voters could express a preference for individual candidates, they appeared more likely to select women. In countries with a low proportion of female Members elected to the European Parliament, one key reason was the low share of women in the candidate base" (Shreeves & Boland, 2021, p.3). These appreciations, we believe, also hold for the current state of women's presence in the sphere of participation in political life.

3. Conclusions

The right to participate in public affairs is an essential human right and, at the same time, an "instrument of exercising other human rights" (UN) protected also at international and national level (e.g. freedom of opinion and expression, freedom of association and freedom of peaceful assembly, the right to equality and non-discrimination, etc.), which continues to face a series of challenges determined both by the evolution of society and by some "unreasonable and discriminatory restrictions, whether they are based on race, color, sex, disability, language, religion, political or other opinion, national or social origin, wealth, birth or other status"(UN) and which "illegitimately limits the exercise of this right"(UN).

The challenges this right faces (e.g. "insufficient political will to allow full public participation, legal or practical measures to discourage participation and limit the democratic space" (UN), discrimination, etc.) make that for its exercise special attention is paid to transparency, access to information, equal access to the public service and openness to the element of novelty, induced by the current new forms of participation, "such as citizens' initiatives and electronic government, as well as through the use of information and communication technologies" (UN).

Ensuring gender equality improves the government function, the executive power becomes more responsive and responsible towards the public interest, and the public administration is inclusive and responsible, so that policies need to be gender-responsive and recognize women's right to be decision makers.

Following the events of recent years (the COVID-19 pandemic), it can be appreciated that there is a need to strengthen confidence in participation in political life and public affairs by

strengthening the rule of law, creating a favorable environment for improved responses to these challenges, to ensure effective participation in public affairs, efficient judicial systems, ensuring access to justice and strengthening the role of civil society. We appreciate that, in the context of the COVID-19 pandemic, the representation and equal participation of women in the decision-making process, decisions regarding responses to COVID-19, is fundamental to meeting the needs and demands of society.

Concluding, throughout this article, some clarifications have been provided regarding some essential aspects regarding the regulation of the right to participate in public affairs, its correlation with other human rights, how its content can be interpreted, reported to non-discrimination, insisting on women's participation in political life in the European Union, but also on the need to adopt and encourage new forms of participation in the democratic life of society.

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