

**Are European democracies good
for Muslim women?
The challenging question of Muslim women's
political participation and representation
in European constitutional states***

Maria Chiara Locchi

TABLE OF CONTENTS: 1. Introductory remarks. – 2. «European Islam» and «European Muslim women»: some clarifications. – 3. The political participation and representation of Muslim women in Europe: political and legal conditions. – 3.1. Political participation. – 3.2. Political representation. – 4. Concluding observations.

1. Introductory remarks

The opportunity to reflect on the issue of Muslim women's political participation and representation in Europe is given by the ELaN Final Conference dedicated to «Access to Justice: A Gender Perspective» and, in particular, by the Panel devoted to the challenging connection between access to justice, gender and multiculturalism. Such a connection evokes two main fields of analysis: on the one hand, the actually crucial role played by (constitutional, supranational and international) courts in responding to the claims of historically marginalized minorities and groups in multicultural societies; on the other hand, ADR (Alternative Dispute Resolution) processes as instruments of «privatizing diversity»¹ and, more generally, the recognition of cultural and religious minorities as (even just *de facto*) autonomous legal orders and jurisdictions.

Within the rich academic literature about the impact of the increasing cultural and religious diversity on European immigration countries' political and legal systems, the question of minority women's (and especially of Muslim women's) condition is indeed central, with a focus on the tension between some cultural and religious traditions and practices and fundamental principles and rights protected by both

* The article has been subjected to double blind peer review, as outlined in the journal's guidelines.

* The paper is the result of a study developed within the research project PRIN 2017 «From Legal Pluralism to the Intercultural State. Personal Law, Exceptions to General Rules and Imperative Limits in the European Legal Space» (PI-prof. Lucio Pegoraro–CUP J34I19004200001).

¹ A. Shachar, *Privatizing Diversity: A Cautionary Tale from Religious Arbitration in Family Law*, in *Theoretical Inquiries in Law*, 2008, p. 573-607.

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

international and constitutional law. Nevertheless, the issue of women's rights in relation to cultural/religious diversity is comparatively less addressed, especially by law scholars, with regard to the political sphere – namely to the impact on political participation and representation in European pluralistic and multicultural democracies. Given the lack of consolidated studies in the field, is it possible and, eventually, useful to use the lens of access to justice as a frame of reference?

The answer is obviously related to the semantic extension of the notion «access to justice», which, in its narrow sense, refers to having a case heard in a court law. Nevertheless, if we use access to justice as an expression encompassing all the elements needed to enable citizens to demand that their rights are upheld, the political sphere is likely to fall within its definition, to the extent that access to justice can be understood as the access to a full and effective involvement in the democratic circuit.

As a matter of fact, speaking about religious minority and migrant women in Europe (and, in particular, about Muslim women), maybe the answer is even simpler than that and there is no need to make any effort of reconceptualization in light of a formalistic justification. Keeping together access to justice, Muslim women and political participation/representation is intended to show that there is a problem: in fact, Muslim women hopefully succeed in having their rights protected (and, even before that, in being acknowledged as citizens) in the legal/judicial domain, so that the courts are confirmed as the ultimate (if not unique) defenders of the fundamental rights and liberties for those subjects who are, formally or substantially, prevented from participating in the political process. However, as it is well known, the exclusion of a significant part of the population from the process of discussing and adopting those decisions that will also affect their own condition, and that of their communities, indicates that there is a tension, if not a short-circuit, between access to justice, rights' protection, democracy, gender and cultural/religious diversity.

The aim of the paper is to contribute, with some preliminary considerations from a public comparative law perspective, to the debate on the problematic political dimension of minority rights' protection (and especially of Muslim women's rights) in European constitutional States. To do that I will preliminarily focus on the relevant aspects of some concepts that mark the perimeter of the analysis of Muslim women's political participation and representation (par. 2) and, subsequently, try to map the conditions of Muslim women's active presence in the political arena by identifying some political and legal factors that affect both its quantitative and qualitative dimension (par. 3); some final considerations will be made in par. 4 by way of conclusion.

2. «European Islam» and «European Muslim women»: some clarifications.

As of mid-2016 the Pew Research Center estimated the Muslim population in Europe (to this end including the United Kingdom, Norway and Switzerland) at 25.8

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

million (4.9% of the overall population), a number that has increased since 2010 (when it was 19.5 million - 3.8%) and is expected to further rise by the 2050, even with a «zero migration» scenario (to 7.4%)².

Providing a comprehensive picture of this population of almost 30 million people proves to be impossible since the highly differentiated features of European Islam prevents the identification of unitary trends; in fact, not only the origins of Muslim communities' presence in European countries are marked by relevant differences (in terms of the time of their creation and the geographical areas of origin of the population), but the complex processes of interactions and reciprocal adaptations with ethnic and religious majority population as well as with the legal and political institutions of European States have also contributed to increase this diversity³. The inner plurality of European Islam, which stands for a fluid and porous conception of cultural and religious identity, is also reflected by the syncretism of theological doctrines and religious practices: as Zahalka effectively remarks, European Muslims «might pray at a mosque with a *salafi* imam, seek the answers to their questions from *wasati* leaning religious adjudicators, and read *sala* literature, all while imitating the general, non-Muslim population in their everyday lives»⁴.

The distinctive feature of European Islam is being a minority Islam, in terms of Muslim communities residing in non-Islamic countries. Nevertheless, this very fact has been differently conceptualized by those Muslim intellectuals who have been reflecting, in particular, on the relationship between European Muslim communities and Western State institutions and on the role of Islam in the public and political space of European States⁵. While Hashas, for example, argues that «European Islam is possible theologically and politically», to the extent that Islamic theological and theoretical concepts are reinterpreted and recontextualized in European politics and societies⁶, Cesari hopes that the concept could mean the «symbolic integration of the Islamic heritage and cultural practices within different European national cultures without endangering the basic principle of equality between citizens»⁷.

European Muslim communities thus appear diversified with regard to their organization, public discourse as well as typology and extension of their demands to the State. This differentiation surely depends on their internal debate about the

² Pew Research Center, *Europe's Growing Muslim Population*, November 29, 2017, <https://www.pewforum.org/2017/11/29/europes-growing-muslim-population/>.

³ See the monographic issue of *Oasis*, 28 (2018), dedicated to *Musulmani d'Europa. Tra locale e globale* and, in particular, J. S. Nielsen, *L'Islam europeo. Tendenze e prospettive*.

⁴ I. Zahalka, *Shari'a in the Modern Era. Muslim Minorities Jurisprudence*, Cambridge, 2016, p. 139.

⁵ For a thorough analysis of European Islamic theology's contribution to the debates related to secular-liberal democracies of Western Europe see M. Hashas, *The Idea of European Islam. Religion, Ethics, Politics and Perpetual Modernity*, London, 2019.

⁶ M. Hashas, cit., p. 3.

⁷ J. Cesari, *Conclusion: Is There a European Islam?*, in J. Cesari (ed.), *The Oxford Handbook of European Islam*, Oxford, 2015, p. 805.

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

conditions and characteristics of a possible adaptation of Islamic principles and rules to the specific and local context in which Muslims are a minority population⁸, but it is also affected by the various models of both State-religion relationships⁹ and integration policies in Europe¹⁰.

In France, as is well known, the fundamental principle of secularism, in its militant version (*laïcité de combat*), has been interpreted as implying: on the one hand, that the State does not recognize any religion and must be neutral towards all denominations and, on the other hand, that no one can use his religious creed in order to overcome the common norms governing the relationship between public authorities and individuals¹¹. As a consequence, the focus on the *assimilation* to the Republican values results in the active opposition to (the alleged) Muslims' tendency to communalism, in terms of creating their own Islam-based associations (such as mosques or schools) and following religious values and rules instead of (or even in addition to) State law¹².

⁸ The difficulty of taking a position on the very controversial issue of «creative» interpretation of scriptures, so as to derive general principles from specific rules given in scriptures and adapt them to the local context and present time, appears to be higher in those countries where the public expression of cultural and religious identity is stigmatized, if not prohibited.

⁹ The constitutional model of Religion/State relations deeply shapes not only the formal rights and duties of religious (minority) communities, but also the perception of their actual presence in the social and political domain. The Italian case is emblematic in this regard: due to political and socio-cultural reasons – related to both the history of Italy as a «country with a strong dominant religion and weak state institutions» (A. Ferrari – S. Ferrari, *Religion and the Secular State: the Italian case*, in *Religion and the Secular State: National Reports* (ICLRS 2010), Madrid, 2014, p. 432) and the peculiarity of the Italian thematization of «secularism» (*laicità*) – the «institutional» dimension of religious freedom is relevantly marked by the instrument of the bilateral agreement between the State and religious denominations. For many different reasons, including the intrinsic characters of Islam in terms of the lack of a unitary organization, the Italian State has not been able to reach a formal agreement with the articulated reality of Italian Muslim communities so far, with growing tensions affecting Muslims' relationship with the State, see A. Pin, *The Legal Treatment of Muslim Minorities in Italy. Islam and the Neutral State*, London and New York, 2016.

¹⁰ The complex and controversial term «integration» has been undoubtedly at the centre of European States' policies on migration-related cultural and religious diversity since the beginning of the twenty-first century. In fact, the securitarian turn post 11/9 has reoriented both public discourse and legislations in Western immigration states, especially with regard to Muslim migrants: the focus is now on social cohesion as implying the integration into the national community in terms that, at least in the mainstream version sanctioned by immigration laws, seem indissociable from cultural homology.

¹¹ Dec. 2004-505 of the French Constitutional Council, 19 Novembre 2004, par. 18. Nevertheless, as a liberal and democratic constitutional State, France protects religious freedom as a fundamental right, under both national constitutional and international provisions.

¹² The 2021 «Law strengthening the respect for the principles of the Republic» (*Loi n° 2021-1109 du 24 août 2021 confortant le respect des principes de la République*) may be considered as the last piece, on the State side, of the complex *puzzle* of French model of Muslims' integration. For some critical considerations on the law see, among others, F. Khosrokhavar, *Le débat censuré*, in *Orient XXI*, 2020, <https://orientxxi.info/magazine/le-debat-censure.4262>. The issue of political participation has been also debated in the context of this legislative process: in March 2021 the French Senate had amended

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

The British model of State-religion relationship and integration of diverse communities is based on a profoundly different approach, which may be framed as pluralist or multicultural to the extent that it tries to promote an open and inclusive citizenship while enforcing cultural rights of minority groups. The British legal system can thus be viewed as oriented to both eliminating *de facto* discriminations by ensuring equal opportunities and taking ethnic, cultural and religious differences into account¹³. Cultural rights and equal opportunities for minority communities, in particular, have been mostly developed at the local level, thanks to the crucial contribution of religious and ethnic-based associations¹⁴. The British experience has been therefore marked by a relevant presence of minority groups in civil society and the political arena; Muslims have been politically active since their arrival in Britain, back in the 19th century, even if their political engagement has risen as a reaction to growing Islamophobia in 1988-1989 (after the *The Satanic Verses* affair) and more recently after 9/11 and the 'War on Terror'¹⁵.

Germany and Italy are, for their part, characterized by yet another different migration history and integration policies.

In Germany the differentialist turn of the 1980's and 1990's deeply questioned the concept of assimilation, with all its burdensome legacy in terms of forced germanization¹⁶. The *focus* of cultural and religious minorities' integration policies was on social rights, and in particular on school (with the introduction of a specific curriculum on immigrants' language and religion of origin) and social welfare (engaging immigrants' associations and communities, including Muslim ones, to provide for social benefits)¹⁷. Nevertheless, the increasing visibility of Islam and its place in German civil society and public space, especially from the 1990's, led to a growing identification with Islam among immigrants themselves: from this perspective, «the growing interest of Muslims in becoming members of political parties and contributing

the text introducing an explicit, and highly controversial, ban on «communitarian lists», identified in relation to one or more candidates having made public statements contrary to the principles of national sovereignty, democracy or secularism in order to support the demands of a «portion» of the people based on the ethnicity or religious affiliation. The ban wasn't ultimately included in the final draft of the *loi*, whose Art. 35-1 forbids to hold political meetings as well as to display, distribute or disseminate electoral propaganda in facilities normally used as a place of worship.

¹³ A. Rinella, *La shari'a in Occidente. Giurisdizioni e diritto islamico: Regno Unito, Canada e Stati Uniti d'America*, Bologna, 2021, p. 73-74 and 177 ff.

¹⁴ See C. Joppke, *Immigration and the Nation-State: The United States, Germany, and Great Britain*, Oxford, 1999, p. 208 ff., and Id., *Is multiculturalism dead?*, Cambridge, 2017, p. 127 ff.

¹⁵ T. Peace, *Muslims and Political Participation in Britain*, London, 2015, p. xv.

¹⁶ On the side of citizenship's acquisition, in 1999 the nationality law was reformed by relaxing the right of blood (*ius sanguinis*) in favor of the right of birthplace (*ius soli*), facilitating residence-based naturalisation and allowing, albeit in exceptional circumstances, dual citizenship; as for integration policies, the communitarian approach implemented within the *Gasterbeiter* model has proved to be functional to a detached tolerance and institutionalized separation between nationals and immigrants.

¹⁷ A. Rinella, cit., p. 70-71.

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

to the media as well as the developing influence of Islamic associations in public life can be interpreted as an increasing naturalization of Islam in German society»¹⁸.

The Italian approach to the integration of Muslims is hardly correspondent to a real model: the Italian non-strategy, based on a non-aggressive version of secularism, quite paradoxically has allowed Muslim migrants to integrate themselves into society in a relatively natural way. The absence of harsh conflicts with State institutions in the integration process of Muslim migrants, on the other hand, does not automatically mean the dilution of their religious identity, which, on the contrary, can be mobilized as a resource for civic and social action, thus investing public space and contributing to change it¹⁹. However, while in recent years the activism of the various associations aiming at representing the Italian Muslim community has led to the intensification of the institutional dialogue with the State, political participation and representation does not seem to have undergone any significant development²⁰. In fact, the existing scholarship on Italian Muslims suggests that, even though they are more involved with political activities than they were two decades ago²¹, their political participation remains «surprisingly limited»: Italian Muslim communities remain less engaged compared to Muslims in France and the UK and face strong and growing anti-Muslim sentiment, without their political activism leading to a notable impact in national politics²².

Lastly, the variegated picture of European Islam is also related to the different ways of its institutionalization, an articulated concept that encompasses the plurality of political and institutional actors aiming at representing Muslim communities'

¹⁸ G. Nordbruch, *Germany: Migration, Islam and National Identity*, Center for Mellemsøstudier, 2011, p. 11. These developments have not occurred without resistance, as demonstrated by public debates on the (alleged) threat to German «lead culture» («*Leitkultur*»), «Christian-Occidental culture» («*christlich-abendländische Kultur*») or «Judea-Christian civilization» («*Jüdisch-christliche Zivilisation*») posed by cultural and religious minorities' practices and demands.

¹⁹ M. Brignone, *L'Islam in Italia, tra partecipazione civica e reti transnazionali*, in *Quaderni di diritto e politica ecclesiastica*, 2019, p. 18.

²⁰ In 2017 an «Islamic constituent (assembly)» (*Costituente islamica*) has been instituted, in order not to act as a political party but to represent Italian Muslims as an «ente esponenziale» (a representative body aiming at protecting collective interests); as of March 2021, however, the *Costituente islamica* does not seem to be operational. In 2020 the creation of a new Islamic electoral list, the *Nuova Italia*, was announced: the new political movement, based in Magenta (in the metropolitan area of Milan), has run for the 2022 administrative elections but gained no local councilors.

²¹ For example, protests and non-electoral means of participation, voting and running for office, building Muslim civic and political organizations (such as the UCOII – Union of Islamic Organizations and Communities in Italy; the COREIS – Islamic Religious Community; the GMI – Young Muslims of Italy; the ASMI – Association of Muslim Women in Italy).

²² J. Pupcenoks, *The Difficulties of Italian Muslim Political Mobilization: Anti-Muslim Sentiment and Internal Fragmentation*, in *Journal of Muslim Minority Affairs*, 2021, p. 233-249. The main challenges to participation, in particular, are represented by the extremely negative popular opinion of Islam and discrimination against Muslim as well as by great internal fragmentation within the Italian Muslim communities themselves.

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

interests and demands²³. These different instruments and subjects may range from Muslim public actors freely active within Muslim communities in European countries²⁴ and associations spread out from a strong civil society mobilization²⁵ to Islamic representative bodies and/or forums for dialogue aiming at consulting with the State on matters affecting Muslim communities²⁶ and organizations institutionally linked to migrants' countries of origin²⁷.

Within the notion of European Islam, the very concept of European Muslim women – as well as the many, specific, implications of the issues already discussed on Muslim women – prove to be marked by an even greater complexity, which this paper doesn't aim to systematically explore.

What it is useful to stress, in the context of our analysis, is the specific vulnerability of European Muslim women, who are often immediately identifiable as belonging to a cultural/religious minority because wearing a religious symbol (e.g. a headscarf – which may consist in a *hijab*, a *niqab* or a *burqa*) and are therefore more exposed to discriminatory treatment and harassment in a broad range of contexts not only as women, but also as minority members²⁸. Their experience of discrimination must therefore be understood as intersectional, to the extent that it «cannot be

²³ For a taxonomy «on the basis of the approach used by state or promotion of these bodies» see S. Silvestri, *Public policies towards Muslims and the institutionalization of 'Moderate Islam' in Europe. Some critical reflections*, in A. Triandafyllidou (ed.), *Muslims in 21st Century Europe*, London, 2010, p. 51.

²⁴ Bowen identifies different types of Islamic public actors, «each with specific claims to legitimacy and specific bases in social institutions, particularly religious schools, mosques (imams), and Islamic associations», since the traditional Islamic institutions that define specific authorities (such as *muftis*, *ulamā*, and *faqīhs*) are «virtually absent from Europe», J. R. Bowen, *Can Islam be French? Pluralism and Pragmatism in a Secularist State*, Princeton, 2010, p. 24.

²⁵ The CEM (Council of European Muslims), based in Brussels, for example, defines itself as a «cultural organization», «the largest Islamic organization in Europe», bringing together hundreds of varied associations with the aim of «publicising Islam, inspiring and supporting Europe's Muslims to practise the rituals of their faith, and participate effectively in the varied aspects of life, within a frame of moderate understanding and a reformist, innovating approach». For a critical analysis of the CEM see G. Spanò, *Islamic activism: between representation and representativeness. Two case studies in Europe*, in *Revista General de Derecho Público Comparado*, 2021, p. 1-31.

²⁶ In the 1980's and 1990's many European governments (e.g. France, the Netherlands, Belgium and Germany) tried to find ways to organize Muslim representation: although these attempts were not always successful, they had the benefit of being a good learning experience for both government and Muslim groups, see F. Fregossi, *L'Islam en Europe, entre dynamiques d'institutionnalisation, de reconnaissance et difficultés objectives d'organisation*, in *Religions, Droit et sociétés dans l'Europe Communautaire*, 2000, p. 91-117.

²⁷ See, for example, the interesting case of the Moroccan Council of 'Ulamā' for Europe (and its Brussels-based local section – the European Council of Moroccan Ulema) as part of the Moroccan diaspora policies, F. Tamburini, *The Moroccan Council of 'ulamā' for Europe: the development of a 'remarkable model' of Islam for Europe or just another form of state control on religion?*, in *Revista General de Derecho Público Comparado*, 2021, p. 1-27.

²⁸ Academic research indicates that Muslim women, and especially women with migrant background, face multiple or intersectional discrimination in the fields of employment and education, and particularly face barriers in accessing healthcare services.

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

regarded as solely based on their religion» but has to be «recognised as additionally situated on the grounds of gender and ethnic origin»²⁹. Recent surveys by the FRA (European Union Agency for Fundamental Rights) confirm Muslim women's increased exposure to the risk of having their fundamental rights (e.g. the right to manifest one's religion or belief, in worship, teaching, practice and observance; the prohibition of discrimination on ground of religion or belief) violated³⁰.

Ayelet Shachar very effectively depicted minority women's difficult condition in terms of «multicultural vulnerability», a paradoxical situation entailing that some individuals within minority groups (in particular, women and minors) suffer disproportionate costs for preserving their group's identity: either they agree to be protected as individuals (in the light of a re-universalized citizenship that gives precedence to individual freedoms at the cost of cultural and religious identity) or they are rather recognized by state authorities as minority members (bearing those unavoidable costs related to the compression of individual rights and liberties)³¹. In fact, for Muslim women being protected from discrimination and violence as individuals, State policies and law often seem to require them to renounce to their personal identity, which is (not only, but also) thematized in more visibly cultural and religious terms as members of minority groups. As the Open Society Institute reports, many Muslim women perceive their only options as being «to accept their exclusion from mainstream employment or to remove their headscarf»³².

The ambiguous and contradictory position of Muslim women can be appreciated also from a different viewpoint. Western States policies, as well as public and political discourse, are marked by both paternalism and securitization: Muslim women, typically ethnicized so as to intensify their perception as Others, are portrayed as, at the same time, religious fundamentalist and in need to be saved – where being saved from the

²⁹ C. Donegan, *Thinly Veiled Discrimination: Muslim Women, Intersectionality and the Hybrid Solution of Reasonable Accommodation and Proactive Measures*, in *European Journal of Legal Studies*, 2020, p. 144-145. On the concept of intersectionality in antidiscrimination theory see K. Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, in *University of Chicago Legal Forum*, 1989, p. 139-167.

³⁰ See European Union Agency for Fundamental Rights, EU-Midis II, *Second European Union Minorities and Discrimination Survey – on Muslims* (2017) and *Migrant Women* (2019). The EU-Midis II Survey on Muslims, in particular, shows that «just under one third (31 %) of Muslim women who wear a headscarf or niqab in public experienced harassment because of their ethnic or immigrant background, compared to just under one quarter (23 %) of women who do not wear a headscarf or niqab. More than one third (39 %) of all Muslim women who wear a headscarf or niqab in public experienced inappropriate staring or offensive gestures in the 12 months before the survey because they did so, with more than one fifth (22 %) experiencing insults or offensive comments. Two percent were physically attacked», p. 13.

³¹ A. Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights*, Cambridge, 2001, p. 3-6.

³² Open Society Institute, *Muslims in Europe: A Report on 11 EU Cities*, 2010, p. 127.

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

oppression actually means «being more like us in the West»³³. The many judicial decisions, by both national and international courts, on Islamic veil show this short-circuit finally resulting in the violation of women's fundamental rights; from this perspective, «the desecuritization of the veil involves removing covered Muslim women from the political and legal security agenda. Desecuritization might best be practiced through creative, every-day micro practices and the production of counter-narratives»³⁴ that challenge the monolithic image of Muslim women³⁵.

From the specific standpoint of political participation and representation, it is confirmed that traditionally ethnic and religious minority women have undergone a specific disadvantage due to the «multiple jeopardy» of intersectional discrimination³⁶. In the next paragraph some specific considerations about the legal constraints affecting minorities' political rights will be developed; what it is important to stress here is that Muslim women suffer the limits of political participation/representation due to their double condition of women and members of a religious minority.

As for the controversial issue of gender discrimination in politics, it is well known that, although gender equality is sanctioned as a fundamental principle by international and European law as well as national constitutions, women are generally still under-represented at all levels of decision-making worldwide, and, for what interests us most, in the EU³⁷. No EU-wide research exists on diversity of women in politics, but the data available suggest that women groups such as ethnic and religious minorities (or LGBTI women, older or younger women, women with disabilities) are under-represented³⁸; the same can be concluded with regard to women's political

³³ N. Mustafa, *Muslim Women don't need saving. Gendered Islamophobia in Europe*, Amsterdam, 2020, p. 5.

³⁴ A.J. Edmunds, *Precarious bodies: The securitization of the 'veiled' woman in European human rights*, in *The British Journal of Sociology*, 2020, p. 324, who additionally observes: «To counter the securitization of the veil and the complicity of judicial human rights in this, there needs to be relentless rebellion rooted in the combined resistance of human rights groups, Muslim women of various persuasions, feminists, the left and anti-racists through realizing that framing the bans on the veil in terms of national security and gender oppression has served to disguise the neo-colonial agenda underpinning them and to decolonize the language of security which has demanded assimilation and an enforced 'whiteness' of the public space dependent on age-old regulation of women's bodies under colonialism», p. 325.

³⁵ For a critical perspective on the dichotomy between the liberal modernity and the illiberal and anti-modern traditional practices, resulting in the conceptualization of personal autonomy necessarily in opposition to religious groups' autonomy, see the interesting analysis of S. Bano, *Agency, Autonomy and Rights. Muslim Women and Alternative Dispute Resolution in Britain*, in S. Bano (ed.), *Gender and Justice in Family Law Disputes. Women, Mediation and Religious Arbitration*, Waltham, 2017.

³⁶ V. Purdie-Vaughns - R.P. Eibach, *Intersectional invisibility: The distinctive advantages and disadvantages of multiple subordinate-group identities*, in *Sex Roles: A Journal of Research*, 2008, p. 377–391.

³⁷ For an updated gender statistics database see https://eige.europa.eu/gender-statistics/dgs/browse/wmidm/wmidm_pol.

³⁸ European Parliamentary Research Service, *Women in politics in the EU. State of play*, Briefing, March 2021, p. 5.

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

participation other than representation in parliaments, that is still marked by persisting gender inequalities³⁹.

As for the other relevant issue of cultural and religious minorities' political participation/representation, although «scholarship on minority representation in Europe is in its infancy»⁴⁰, the existing research on the topic, and especially on Muslim minority representation, is «unanimous in diagnosing the underrepresentation of Muslim minorities in almost all the Western legislatures»⁴¹. As reported by a 2020 study⁴², the UK has a comparatively higher percentage rate of parliamentarians with minority background (65 MP's – 10% of the *House of Commons*) than that of other important European immigration countries such as Germany (58 – 8,2% of the German Federal Parliament) and France (35 – 6,4% of the National Assembly⁴³); however, if the *House of Commons* reflected the UK population (14.4% ethnic minorities in 2019) there would be around 93.

These brief remarks make it clear that the political participation and representation of European Muslim women in EU constitutional States represents a highly articulated field of analysis, not only in relation to the complexity of the concepts involved but also because they interrelate in innovative ways. In fact, most Muslims in sociological terms⁴⁴ «do not take active roles in debates about Islam, do not always highlight that dimension of their identity in their everyday lives»⁴⁵; but, if they wish to do so, they are likely to face multiple challenges and discriminations at both the political and legal level, that will intensify with respect to women because of intersectional discrimination.

³⁹ F. Kostelka - A. Blais - E. Gidengil, *Has the gender gap in voter turnout really disappeared?*, in *West European Politics*, 2019, p. 437-463, recording lower levels of interest in politics among women and their lower levels of knowledge about politics, especially when it comes to second-order elections.

⁴⁰ I. Bloemraad - K. Karen Schönwälder, *Immigrant and Ethnic Minority Representation in Europe: Conceptual Challenges and Theoretical Approaches*, in *West European Politics*, 2013, p. 565.

⁴¹ S. Aktürk - Y. Katliarou, *Institutionalization of Ethnocultural Diversity and the Representation of European Muslims*, in *Perspectives on Politics*, 2021, p. 391.

⁴² E. Uberoi - R. Lees, *Ethnic diversity in politics and public life*, London, 2020.

⁴³ At the 2022 elections there has been a slight decline and now minority representatives are 32.

⁴⁴ That is to say people whose cultural and religious background is related to the Islamic tradition, even if they are not actual «practicing believers».

⁴⁵ J. R. Bowen, cit., p. 11.

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

3. *The political participation and representation⁴⁶ of Muslim women in Europe: political and legal conditions.*

3.1. *Political participation*

The presence of Muslim politicians, and Muslim female politicians in particular, within European political parties, both secular and religiously oriented, is a multifaceted issue with many legal, political, and sociological implications.

As for secular parties, Muslims may wish to join a political party expressly mobilizing as Muslims, that is to say declaring their Islamic background and supporting an Islamic oriented political agenda, or not. This second option is the prevailing one, to the extent that «generally the representation of Muslims in political positions, like municipal councils, parliaments or government, is [...] often not on a religious ticket as 'Muslim', but on a political ticket such as socialist, liberal and even Christian Democrat»⁴⁷.

The possibility for Muslim women to get involved in party politics (in terms of being a party member, participating in election campaigns, standing as a candidate on behalf of a party, etc.) appears to be affected by two main factors.

A first one is related to the attitude of political parties towards the inclusion of cultural and religious minority. A research on Muslim women's participation in political process and structures in France and Great Britain shows that, although in both countries the majority of Muslim women claimed a high or fairly high level of interest in political life, when it comes to party political activism, they tend to be «occasional participants»⁴⁸. In Germany Muslim women are also underrepresented due to several reasons, including insufficient efforts by political parties; moreover, within a challenging context that makes it difficult for migrant female politicians to participate

⁴⁶ For political participation I mean the ability to join and be active within both political parties and cultural or religious associations operating in the civic and political domain; political representation refers to the possibility for someone to be enabled to speak and act with authority on behalf of someone else.

⁴⁷ See M.S. Berger, *A Brief History of Islam in Europe: Thirteen Centuries of Creed, Conflict and Coexistence*, Leiden, 2014, p. 211.

⁴⁸ D. Joly - K. Wadia, *Muslim Women and Power. Political and Civic Engagement in West European Societies*, London, 2017, p. 128, 130. In France, «while a small number of women of Muslim background [...] have held significant posts in French government, these have been the gift of incumbent presidents (Sarkozy and Hollande) wishing to be lauded as promoters of ethnic diversity. These women have also run for and won elections at the municipal and regional level but it is noteworthy that none, apart from Rama Yade [...] were selected as candidates by their respective party to run in a parliamentary election», p. 130-131.

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

in politics and be represented, religion appears to be a «category of difference» that does not overlap with and cuts across migration background⁴⁹.

The fact that Muslim women, by wearing a headscarf or a veil, visibly show their (cultural and religious) identity generally triggers a sort of presumption of being culturally and religiously connotated. Muslim women are therefore automatically ascribed to a controversial group exposed to an «anxious scrutiny»⁵⁰ – a group that is defined in religious (or rather, fundamentalist religious) terms, but is also affected by a process of ethnicization that involves being trapped in a specific ethnic and/or religious identity determining how that person is represented and what topics she can address⁵¹. This complexity, that is nearly always neglected on the political level, has been highlighted in the following terms: when actively engaged, Muslim women are «coopted because they are a good sample of secular Muslims (*i.e.*, they do not wear the *hijab*, they do not wear modest clothes)», or, on the contrary, they are «involved *because* they are veiled and can therefore become a good vehicle in order to win the support both of the Muslim community and of its sympathizers»⁵².

The second factor is about the legal obligations related to the principle of non-discrimination, since political parties may, directly or indirectly, exclude or disadvantage persons as Muslims.

Generally speaking, in consolidated democracies this doesn't happen; in fact, political parties' statutes and internal regulations do not generally contain restrictive clauses on the basis of ethnic or religious affiliation. In the United Kingdom, for instance, there is a specific legislation aimed at guaranteeing an equal access to political parties' membership and parties are also allowed to undertake positive actions to overcome the under-representation of particular groups within elected bodies. Also in light of these legal obligations, the main British parties have adopted internal codes of conduct that bind members of the parliament, party officials and party members to respect equality, diversity, tolerance⁵³. Obviously, the lack of formal restrictive clauses on party membership does not automatically imply that Muslim citizens, and Muslim women in particular, actually do have an effective space for political participation on

⁴⁹ A. Jenichen, *Muslimische Politikerinnen in Deutschland: Erfolgsmuster und Hindernisse politischer Repräsentation*, in *Femina Politica*, 2018, p. 70-82.

⁵⁰ S. Mullally, *Civic Integration, Migrant Women and the Veil: at the Limits of Rights?* in *The Modern Law Review*, 2011, p. 28, who observes that «Muslim women have been placed at the center of such scrutiny».

⁵¹ M. Nadim, *Ascribed representation: ethnic and religious minorities in the mediated public sphere*, in A.H. Midtbøen - K. Steerjohnsen - K. Thorbjørnsrud (eds.), *Boundary Struggles: Contestations of Free Speech in The Norwegian Public Sphere*, Oslo, 2017, p. 230.

⁵² A. Vanzan, *Veiled Politics: Muslim Women's Visibility and Their Use in European Countries' Political Life*, in *Social Sciences*, 2016, p. 21.

⁵³ See the Appendix 9, dedicated to the *NEC Codes of Conduct*, of the *Labour Party Rule Book 2020* and the *Code of Conduct for Conservative Party Representatives*. The *Labour Muslim Network (LMN)* is an inclusive organisation which seeks to promote British Muslim engagement with the *Labour Party* and in the political process; in July 2021 the first «Islamophobia code of conduct» in the history of the *Labour Party* has been adopted, supplementing the aforementioned Appendix 9.

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

equal terms; as already noted, even if the situation is quite diversified in EU countries, they generally have scarce visibility in European political parties.

As for European Islamic oriented parties⁵⁴, the landscape is really diversified in respect of both party ideological manifestos and electoral performances. In fact, if the equation between Islamic oriented party and Islamist party must be rejected⁵⁵, some of the Islamic oriented parties active in European countries have not yet participated in elections or never succeeded in electing their candidates, while other have already elected their representatives at both the national and the local level⁵⁶. From a legal point of view, it can be stated that, within the context of Western contemporary constitutionalism, Islamic oriented parties, as well as other forms of Islamic presence at the political level, are in principle legitimate thanks to fundamental principles and rights, such as: the principle of democracy; freedom of expression, thought, belief and religion; freedoms of assembly and association. Therefore, any restrictions and prohibitions may be considered acceptable as proportionate exceptions to those principles and rights, to the extent that they prove to serve to the protection of other constitutional principles and interests (e.g. the principle of democracy itself and the integrity of the constitutional order; the principle of equality and prohibition of discrimination; the defense of national security and public order). In any case, the presence of Islamic oriented parties, as is obvious, does not automatically entail an effective political participation of Muslim women⁵⁷.

Another important aspect to consider when we talk about political participation and representation, as we will see in the next paragraph, is the legal status of Muslim women as national citizens or foreigners. Anyway, specifically regarding political

⁵⁴ The very definition of «Islamic oriented parties» – namely, those political parties and movements that aim to represent the interests of Muslim citizens and residents in European countries – is quite challenging. See L. Lage, M.C. Locchi, *Political Participation and Representation of the Muslim Population in Europe*, in *Comparative Law Review*, 2020, p. 109-141.

⁵⁵ The catch-all term Islamist, associated to organizations, movements and political parties, is likely to be controversial, see P. Mandaville, *Islam and Politics*, London, 2020, p. 73-74, who stresses how Islamists greatly differ in methods and priorities. While many of them have taken the form of political parties and social movements seeking to achieve an Islamic political order «via political (electoral, legislative, power-sharing) or social (civil society, informal networking) means», radical Islamists combines «a vision of Islamic political order that rejects the legitimacy of the modern sovereign-state and seeks to establish a pan-Islamic polity or renewed caliphate» with «an emphasis on violent struggle (*jihad*) as a primary or even the exclusively legitimate method for the pursuit of political change», p. 345-346.

⁵⁶ A relevant case is represented by the Dutch party *Denk*, that was founded in 2015 with the aim of representing Muslim immigrants and elected three MPs at the Lower House in both the 2017 and 2021 elections.

⁵⁷ Consider, for example, the controversial case of the prominent Dutch-Surinamese TV-personality Sylvana Simons, who has joined the Islamic oriented party *Denk* in 2016 and that same year left the party because, among the other reasons, she felt little support for her focus on LGBT and women's emancipation. Soon after Simons established her own party, *Artikel 1*, and was elected in 2021 at the Dutch House of Representatives.

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

participation, comparative research shows that in European countries migrants are ordinarily allowed to participate in politics – within movements, trade unions, political parties and religious associations; therefore, generally there is no formal barrier in this respect⁵⁸.

3.2. Political representation

The political representation of Muslim women in Western immigration States needs to be comprehended in relation to the more general and tricky question of how to conceive political representation and democracy in super-diverse societies. Although the many ramifications of this question cannot be addressed in this paper, it is useful to recall just some fundamental concepts and instruments that underlie, on both the legal and the political level, minority political representation.

A very relevant point to raise is the legal status – namely, national citizen or foreigner – of Muslim women.

In fact, national legislation in Europe is varied in this respect, with more than half of European countries (including some consolidated democracies like France, Germany and Italy) excluding non-European immigrants from the right to vote and to be elected. However, when the right to vote is not granted, political rights may be enforced, especially at the local level, through other means, such as consultative bodies (that may be directly or indirectly elected, individual or collective)⁵⁹.

A further, apparently promising, way of minority inclusion is participatory democracy, as a form of people's engagement different from both the electoral-representative circuit and referendum⁶⁰; participation mechanisms would ensure that members of minority groups, even when they're not national citizens, are involved in the political life of their own's community as residents⁶¹. However – despite the undeniable potential of participatory democracy in reshaping the concept of citizenship in a more inclusive and active way by contrasting the oligarchic character

⁵⁸ Estonia, Georgia, Greece, Azerbaijan, Macedonia, Romania, Lithuania, Slovenia are exceptions to that rule. In Germany foreigners may join political parties, but the majority of party's members is required to hold German nationality.

⁵⁹ See J. Paffarini – C. Calvieri, *Los límites a los derechos políticos de los extranjeros. La experiencia italiana y europea en comparación*, in *Revista General de Derecho Público Comparado*, 2021, p. 1-31.

⁶⁰ A. Algostino, *La democrazia partecipativa e i suoi lati oscuri*, in *Direito, Economia e Sociedade Contemporânea*, 2020, p. 50, distinguishing «participatory democracy» (e.g. participatory budgeting, Berlin's citizen juries, participatory urban planning, the French *débat public*, forums, consensus building, stakeholder involvement, etc.) from «democracy from below, that is marked by spontaneity, self-organization and independence from institutions.

⁶¹ On the inclusive nature of participatory democracy see U. Allegretti, *La democrazia partecipativa in Italia e in Europa*, in *Rivista AIC*, 2011, p. 1-12.

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

of (classic) representative democracy – there remain concerns about the capacity of such mechanisms to provide disadvantaged groups' effective emancipation⁶².

From a more general constitutional perspective, a second issue at stake is how to reconcile political representation in liberal democracies and democratic justice, to the extent that the diversity protected in a pluralistic democracy cannot be restricted to «a diversity of beliefs, opinions, preferences, and goals, all of which may stem from the variety of experience, but are considered in principle detachable from this»⁶³. To this «politics of ideas» there is who contrasts a «politics of presence», on the assumption that, «once difference is conceived [...] in relation to those experiences and identities that may constitute different kind of groups, it is far harder to meet demands for political inclusion without also including the members of such groups»⁶⁴.

In light of an accommodation strategy oriented to recognizing, institutionalizing and even fostering differences⁶⁵, which is typical of promotional constitutional systems⁶⁶, minority political representation may be thus comprehended as a set of instruments aimed at enforcing the right of minority groups to an effective participation in public life. Even if comparative scholarship duly highlights the variety of concepts and mechanisms elaborated within the constitutional law on minority participation⁶⁷, also in relation to the multifaceted notion of minority itself⁶⁸, it is

⁶² A. Algostino, cit.

⁶³ A. Philips, *The Politics of Presence*, Oxford, 1995, p. 7.

⁶⁴ *Ibidem*. Philips further develops her argument in the following terms: «Men may conceivably stand in for women when what is at issue is the representation of agreed policies or programmes or ideals. But how can men legitimately stand in for women when what is at issue is the representation of women *per se*? White people may conceivably stand in for those of Asian or African origin when it is a matter of representing particular programmes for racial equality. But can all-white assembly really claim to be representative when those it represents are so much more ethnically diverse?».

⁶⁵ J. McGarry – B. O'Leary – R. Simeon, *Integration or accommodation? The enduring debate in conflict regulation*, in S. Choudry (ed.), *Constitutional Design for Divided Societies*, Oxford-New York, 2008, p. 41, opposing the «accommodation» strategy to an «integration» model oriented to not fueling, and potentially exacerbating, differences.

⁶⁶ F. Palermo – J. Woelk, *Diritto costituzionale comparato dei gruppi e delle minoranze*, Milano, 2021, p. 43 ff., identifying repressive, liberal, promotional and multinational models in relation to the legal treatment of diversity.

⁶⁷ M. Latimer, *Minority Participation and New Constitutional Law*, in *Minority Participation and New Constitutional Law*, 2005, p. 228.

⁶⁸ The notion of minority is likely to be elusive and potentially unlimited, since it is irremediably dependent upon the idea of being different from the majority group in relation to one or more aspects that are considered worthy of attention. On the other hand, making a distinction between groups deserving of special protection as minorities (e.g. autochthonous national minorities, ethnic minorities, religious minorities, linguistic minorities) and groups that are excluded from this legal protection (e.g. migrants with a minority cultural and/or religious affiliation) is challenging, if not arbitrary, even if grounded in international law, E. Palici di Suni, *Intorno alle minoranze*, Torino, 2002. This distinction obviously recalls the well-known classification, based on the State attitude towards the different kinds of minority, proposed by W. Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford, 2000: while in «multinational States» cultural diversity is usually the result of the absorption into a larger

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

possible to outline some common aspects of what has been framed as descriptive representation⁶⁹.

The debate on political representation's foundation and characters goes back to the origins of Western constitutionalism, with the opposition between two main models: a first one, that of unitary representation, is oriented towards the construction of the sovereign nation's *volonté générale* and has its source in the French revolution and Southern Europe's constitutions; a second one, that may be labelled as pluralist, was established with the Glorious Revolution and has been marking Northern Europe's constitutional experience, with a view to mirroring the complexity of social articulations through representative institutions⁷⁰. In this broader context the conceptualization of a descriptive representation is obviously developed within the pluralist model, by envisaging the adoption of legal mechanisms – such as reserved seats, proportional electoral systems, decentralization, federalism – aimed at ensuring the election of minority candidates. In her seminal work Pitkin opposed this concept to that of substantive representation, which instead refers to the effective influence of minorities on the political process in terms of representatives acting «in the interest of the represented, in a manner responsive to them»⁷¹: while descriptive representation can serve as a mechanism for obtaining substantial representation, the latter can also be achieved without the former⁷².

state of previously self-governing territorially defined cultural communities (e.g USA and Canada) and national minorities are entitled to rights to «self-government» and «special representation», in «polyethnic states» cultural diversity is rather a product of migrations. In this last case immigrant communities and religious minorities with migrant background should enjoy «polyethnic rights» such as the right to one's cultural and religious identity, the legal recognition of religious holidays, the right to wear religious symbols in the public space, etc.

⁶⁹ H. Pitkin, *The concept of representation*, Berkeley, 1967.

⁷⁰ See C. Casonato, *Minoranze etniche e rappresentanza politica: i modelli statunitense e canadese*, Trento, 1998, p. 39 ff. and P. Ridola, *Rappresentanza e associazionismo*, in G. Pasquino (a cura di), *Rappresentanza e democrazia*, Roma-Bari, 1988, p. 101.

⁷¹ H. Pitkin, cit., p. 109.

⁷² Besides, there is still much room for debate on what substantive representation exactly entails and how to measure it: for example, «is it linked to certain activities in the legislative process and to actual policy outcomes [...], or do representatives also substantively represent when they speak on behalf of a marginalized group in the broader public sphere [...]? Where shall we look for representative acts – is one place/level of socio-political interaction more important, powerful, and meaningful to society, than another, and will it help us refine its definition and thus move forward? Moreover, does substantive representation of one marginalized group (for instance, women) have the same meaning as substantive representation of another group (for instance, ethnic or religious minorities), and if not, wherein lies the difference? How should we assess and measure the quality of substantive representation across social groups and political contexts? And, finally, why should we care: what makes substantive representation so important? Is there a link between the quality of substantive representation and the level and expression of equality within a country?», E. Rashkova – S. Erzeel, Abstract of the Panel *Substantive Representation of Marginalised Groups: Re-Conceptualising, Measurement, and Implications for Representative Democracy*, European Consortium for Political Research (ECPR), *The Joint Sessions of Workshops 2021*, 17-28 May 2021.

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

Minority quotas in political positions, as is well known, are among the most intense measures to promote, or even guarantee, political representation of disadvantaged groups such as ethnic and/or linguistic minorities and women.

As for the former, in Western Europe such institutional mechanisms may operate for cultural/linguistic communities⁷³, but do not apply on the basis of ethnicity or religion⁷⁴, with the consequence that in European countries the diversity of parliaments is more the result of political dynamics concerning the effectiveness of minority members' political participation and citizens' free electoral choices.

In relation to women's political representation, reserved quotas are relatively widespread at a global level, with a variety of instruments such as voluntary political party quotas and legislative quotas; these latter, sanctioned by constitutions or statutes, may operate at both the candidacy level (legislative candidate quotas) as well as instruments to determine the number of women to be elected to legislative bodies (legislated reserved seats)⁷⁵. Although the use of quotas, as is well known, is controversial⁷⁶, research shows that they are a good thing for women candidates and have been influential in promoting women's political inclusion⁷⁷, so much that across Europe «there has been a move to introduce them and a shift from voluntary party quotas [...] to legislated quotas that are binding for all political parties»⁷⁸.

On a theoretical and prescriptive level this mirror representation is considered by many to be an appropriate mechanism in order to guarantee multicultural societies' democratic sustainability; however, from a positive law perspective, a certain (political and, therefore, legislative) resistance must be attested in allowing new minorities (e.g. migrants, cultural and religious minorities with a migration background, women) to the full range of national minorities' political rights. Nevertheless, the distinction between new and old minorities is a consequence of the political choice not to equate the

⁷³ E.g. in Slovenia, Croatia, Bosnia and Herzegovina, Romania, Denmark, Finland, Belgium.

⁷⁴ M.L. Krook, *European States and their Muslim Citizens: The Impact of Institutions on Perceptions and Boundaries*, in J.R. Bowen – C. Bertossi – J.W. Duyvendak – M.L. Krook (eds.), *European States and their Muslim Citizens. The Impact of Institutions on Perceptions and Boundaries*, Cambridge, 2013, p. 189. Globally ethnic and linguistic minorities are those generally protected by guaranteed representation's formulas, even if there are some cases of reserved parliamentary seats on a religious basis.

⁷⁵ D. Dahlerup – Z. Hilal – N. Kalandadze – R. Kandawasvika-Nhundu, *Atlas of Electoral Gender Quotas*, Strömsborg, 2013, p. 16-24. Legislated reserved seats, in particular, «are the least-used quota type globally, but they are increasingly used in Africa and South-East Asia. To date, 36 countries and territories have adopted the system of reserved seats [...] for lower and/or upper houses and/or sub-national level councils», p. 25.

⁷⁶ See D. Dalherup, *Women, Quotas and Politics*, *Routledge Research in Comparative Politics*, London and New York, 2006. Criticism about gender quotas is related to both their legitimacy vis-à-vis the equality principle and their efficacy.

⁷⁷ See E. Lépinard – R. Rubio-Marín (eds.), *Transforming Gender Citizenship. The Irresistible Rise of Gender Quotas in Europe*, Cambridge, 2018.

⁷⁸ European Parliamentary Research Service, *Women in politics*, cit., p. 9. Legislative candidate quotas are, for example, established in Albania, Belgium, Croatia, France, Greece, Ireland, Italy, Luxembourg, Malta, Poland, Portugal, Slovenia, Spain.

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

positions of these two different categories, since legally the tools to protect and empower traditionally disadvantaged subjects are the same⁷⁹.

Trying to apply what it has been observed so far to our case study, we may wonder if European Muslim women are conceivable as a new minority in respect of which some mechanisms of descriptive political representation are enforced.

In relation to the more strictly electoral sphere, as it has been mentioned, proportional systems are in themselves considered preferable in order to guarantee minority political representation; sometimes differential, more favorable, rules can be also established, such as the derogation to the electoral threshold, if any⁸⁰. Furthermore, proportional systems are indeed viewed as mechanisms potentially able to increase political opportunities for women and result in smaller gender gaps in formal political representation⁸¹. As for cultural and ethnic minorities, proportional systems have been associated to a higher rate of minority representation and to an improved Muslim representation than in those States in which there is a majority system⁸².

This has been demonstrated to be especially true for the election of Muslim women. An investigation on Muslim political representation across 20 Western countries between 2000 and 2010 shows that Muslim women have had the greatest success in the Netherlands, Belgium and, to some extent, in Sweden and Norway, namely four European immigration countries with proportional electoral systems⁸³. The fact that Muslim women are more often elected in countries with proportional systems compared with plurality-majority systems may be explained in various ways and, interestingly, seems to suggest that «the rising Islamophobia and stigmatisation of Muslims living in the West will interact with electoral systems in gendered ways»⁸⁴.

⁷⁹ F. Palermo – J. Woelk, cit., p. 24-25. The most striking example of that is gender equality measures: in fact, although women aren't obviously a «national minority», more and more often some traditional minority rights are enforced also for the purpose of ensuring gender equality (e.g. gender quotas in the field of political participation and representation). Therefore, as for women, «non è necessario essere definiti una minoranza per godere dei diritti di minoranza», p. 272.

⁸⁰ A. Reynolds, *Electoral systems and the protection and participation of minorities*, Minority Rights Group International, 2006, www.minorityrights.org.

⁸¹ R.E. Matland, *Women's Representation in National Legislatures: Developed and Developing Countries*, in *Legislative Studies Quarterly*, 1998, and K. Beauregard, *Gender, Political Participation and Electoral Systems: A Cross-National Analysis*, in *European Journal of Political Research*, 2014.

⁸² A.H. Sinno, *Muslim Underrepresentation in American Politics*, in A.H. Sinno (ed.), *Muslims in Western Politics*, Bloomington, 2009, p. 69 ff.

⁸³ M.M. Hughes, *Electoral Systems and the Legislative Representation of Muslim Ethnic Minority Women in the West, 2000–2010*, in *Parliamentary Affairs*, 2016, p. 1-21.

⁸⁴ Hughes identifies the following reasons: list-balancing mechanisms in proportional systems benefit ethnic minority women; in the case of Muslim minorities, electorates may take into account the «perceived electability of men and women» with connections to Islam, for example by running Muslim minority women so as to «draw in Muslim minority supporters while not alienating majority voters fearful of militant Muslim men», *ivi*, p. 8; since the number of political parties increases with proportional systems, political opportunities for Muslim ethnic minority women also increase.

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

However, from what has been previously observed it should be clear that Muslim women are not among those minority groups expressly favored by descriptive representation measures.

Certainly, they're not explicitly protected as Muslim since, as already mentioned, in Western Europe the existing institutional mechanisms aiming at guaranteeing political participation and representation usually work for national minorities and linguistic communities and do not apply on the basis of religion.

If we consider Muslim women in their being women, the question is whether and to what extent gender quotas, as positive actions aimed at accelerating the achievement of gender-balanced participation and representation, are likely to promote the presence of cultural and religious minority, and especially Muslim, women as well.

The French case, in this respect, proves to be particularly illustrative. The French Parliament passed a bill promoting an equal access of women and men to electoral mandates and elective functions in 2000; under the new act political parties are required to nominate 50% women candidates in most elections. The adoption of the law fueled a huge debate, with many opponents arguing the legislative candidate quotas were against the universalistic conception of French *citoyenneté*. What is interesting, from our perspective, is that those who supported the law, and therefore contrasted that universalistic conception, did not extend their reasoning to other minority categories, such as ethnic and religious groups (and, in particular, to the female component within these groups)⁸⁵. Therefore, the diversity regarded as acceptable, and indeed claimed as a value to be protected, seems to be the one enclosed by the walls of the French republican polity, with the neutralization of particularistic identities in the political domain. On the other hand, parity has been considered to have activated, even if unintentionally, the promotion of a more general descriptive representation: in fact, in recent years there has been a growing number of minority candidates, and especially female candidates, although they appear to be, on the one hand, usually placed in unwinnable seats and, on the other hand, exploited as symbols of gender equality and secularism⁸⁶.

⁸⁵ C. Raissiguier, *Reinventing the Republic. Gender, Migration, and Citizenship in France*, Stanford, 2010.

⁸⁶ Such exploitation has occurred by excluding visible signs of religious, and specifically Muslim, affiliation, as observed by C. Achin, *Au-delà de la parité*, in *Mouvements*, 2021, p. 52, who also stigmatizes how «La ressource 'féminité', comme la ressource 'diversité', se révèlent stigmatisantes pour celles qui s'y trouvent réduites et enfermées, lorsqu'il s'agit d'accéder aux réelles positions de pouvoir pour lesquelles les ressources politiques 'claniques' classiques demeurent décisives. Les logiques puissantes d'institutionnalisation et de reproduction du champ politique ont ainsi conduit à une rapide normalisation de la parité, vidée de ses potentialités subversives et transformée en un simple outil supplémentaire dans la boîte des faiseurs de listes ou d'investitures», *ibidem*.

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

4. Concluding observations

I will not propose, by way of conclusion, some final observations aiming at putting an end to a highly debated question that certainly deserves much more attention in both the political and the academic field. The possibility for European Muslim minorities to really participate in the political life of their communities and to be substantially represented at the political level remains a very controversial issue and, with regards to Muslim women, proves to be even more complex due to the intersection of gender with ethnicity and religion. In fact, as seen, «gender alone may not best explain why women are underrepresented in a given country. Women can face obstacles to power because of their status as racial, ethnic, and religious minorities – or because of their combined status as minority women. Acknowledging differences among women may therefore help us to better understand when, where, and how gender contributes to inequality in representative institutions»⁸⁷.

A further element of complexity is the context within which the specific question of Muslim women participation and representation in European countries arises, that is the crisis of representative democracy. From our angle of observation, in particular, it must be read as the crisis of democratic systems' representativeness in relation to the increasing complexity and diversity of European multicultural and multireligious communities. The contradictions and short-circuits inherent in such processes make clear the need to reshape and revitalize the concepts of nationality and citizenship⁸⁸ in both their vertical and horizontal dimensions⁸⁹: the people, that is sovereign in democratic states and indeed establishes the State, must be understood inclusively as composed of individuals and groups of different (which means also minority) cultural and religious identities⁹⁰.

This inclusive stance of European democracies, that we are here considering from the (limited, albeit relevant) angle of Muslim women's political participation and representation, proves to be necessary at least under two main aspects. In fact, the right of everyone to participate on an equal basis in the definition of the rules of

⁸⁷ M. M. Hughes, *Diversity in National Legislatures Around the World*, in *Sociology Compass*, 2013, p. 26.

⁸⁸ On the terminological distinction between nationality and citizenship see G. Cordini, *Elementi per una teoria giuridica della cittadinanza. Profili di diritto pubblico comparato*, Padova, 1998, p. 132.

⁸⁹ On the distinction between a vertical conception of nationality as a form of belonging to the State and a horizontal conception as the right to participate in the life of the political community see E. Grosso, *Le vie della cittadinanza: le grandi radici, i modelli storici di riferimento*, Padova, 1997, and T.H. Marshall, *Cittadinanza e classe sociale*, a cura di S. Mezzadra, Roma-Bari, 2002 (or. ed. 1950).

⁹⁰ From the perspective of nationality law, it means orienting the modes of nationality's acquisition towards the convergence between the «substantial» (in terms of the actual community of people who lives in the country) and the «formal» level (in terms of the community of national citizens entitled to the full range of fundamental rights). As regards political rights, it means privileging the recognition of the right to political participation and representation as connected to the actual (legal and stable) residence in the territory rather than to the condition of «national citizen».

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

coexistence in plural societies may be understood: first of all, as a means to strengthen and (re)legitimize the democratic character of European constitutional States⁹¹; secondly, as a means to enforce the right to individual and social emancipation. This last, fundamental, right is based on equality principle and, therefore, entails not only non-discrimination on the basis of one or more protected grounds, but also the right to have each own particular and multiple identities acknowledged and respected. Therefore, the under-representation of minority groups, and especially of Muslim women, as we discussed, is likely to affect the very democratic and emancipatory character of pluralist constitutional States and has to be considered as a *vulnus* to the ultimate meaning of Western constitutionalism.

Confronted with the multiple tensions affecting political participation and representation vis-à-vis cultural and religious diversity, and specifically with the intensive diversity of Muslim women, European states have undergone significant, although different, developments. In fact, the political and legal responses to this structural problem of under-representation largely differ depending on several factors – such as the nature of formal politics, the conception of nationhood and citizenship, the attitude towards the expression of cultural and religious diversity in the public space, but also cultural ideologies as well as legal differences about discrimination laws and affirmative action policies⁹².

All these factors have an impact on the possibility to enforce one or more mechanisms of descriptive representation. Global comparative analysis shows that descriptive representation, although controversial in many respects, may serve as a powerful means for fostering a substantial representation, which refers to the effective influence of minorities on the political process; however, the former doesn't ensure the latter.

Generally speaking, as we saw, in Europe there have not been the conditions so far for establishing such mechanisms in favor of Muslim women as a disadvantaged group; nonetheless, even if being voted and elected as a Muslim woman by Muslim voters does not necessarily mean pursuing political goals for the benefit of the Islamic

⁹¹ L. Pegoraro, *Blows against the Empire. Contro la iper-costituzione coloniale dei diritti fondamentali, per la ricerca di un nucleo interculturale condiviso*, in *Annuario di Diritto comparato e Studi legislativi*, 2020, p. 460, who refers to the idea «no taxation without representation» as one of constitutionalism's fundamental pillars, sacrificed on the altar of citizenship: «La marginalizzazione dalle decisioni politiche, contro la quale si compirono le 'rivoluzioni' inglese – sin dal XIII secolo –, e americana, viene sanzionata a livello accademico dall'oblio delle radici liberali dell'eguaglianza, che in passato, ma non più ora, giustificarono l'ammissione di nuovi ceti e classi all'esercizio del potere». The «democratic argument», in terms of enhancing democratization of governance in both transitional and consolidated democracies, is one of the main justifications also for the equal representation of (new) minorities, and especially for gender balance in politics.

⁹² For an interesting comparative analysis of Muslim women's engagement in politics in European countries see D. Joly – K. Wadia, cit., and A. Easat-Daas, *Muslim Women's Political Participation in France and Belgium*, London, 2020.

Maria Chiara Locchi

*Are European democracies good for Muslim women?**The challenging question of Muslim women's political participation and representation in European constitutional states*

community (and especially of Muslim women themselves)⁹³, the relevance of having more diverse parliaments reflective of people's inner plurality is undeniable. The complexity of the interrelation between the descriptive and the substantial dimension of political representation, in any case, suggests that «future cross-national research should systematically investigate the political positions and activities of Muslim ethnic minority women, the extent to which they 'act for' Muslims or Muslim women, and how these women are viewed by Muslim voters»⁹⁴.

In conclusion – despite the ambiguities, also in terms of political exploitation, and the pitfalls related to minority political participation in European countries – promoting or even ensuring Muslim women's voice and agency not only should be considered as a way to protect both their political rights and their right to self-determination and emancipation, but it may also work as a tool to change the mindset on the (indeed diversified) conditions of the real (and not reified) Muslim women⁹⁵.

In addition, the Muslim women's participation and representation case study proves to be relevant in order to further reflect on the more general, and crucial, issue of manifesting own particularistic identities, and especially religious ones, in European democracies' public space.

In fact, it is undeniable that the expression of Islamic religious affiliation in the political arena of European countries, regardless of whether it is a sectarian and anti-democratic manifestation of identity or not, is generally perceived in negative terms. Restrictions and prohibitions of such political manifestations are frequently invoked in public discourse of consolidated democracies, with a view to preserving the public sphere's (supposed) neutrality from the (likewise supposed) disruptive effect of cultural and religious particularisms and, ultimately, to guaranteeing the conditions of democratic coexistence in pluralistic legal systems. In the field of political participation and representation, from this perspective, seems to be confirmed what Berger, more generally, observes with regard to the clash of values between Islam and Europe, that is to say that such a clash «is not that European Muslims adhere to values that are prohibited by law – on the contrary, the political-legal values allow for diversity and liberty –, but by the religious-cultural objection that 'this is not how we do things

⁹³ See M. M. Hughes, *Diversity in National Legislatures*, cit., p. 29: «physical presence in a legislative body does not guarantee that a group will be able to influence policy outcomes».

⁹⁴ M. M. Hughes, *Electoral Systems and the Legislative Representation*, cit., p. 18.

⁹⁵ *Ivi*, p. 2: «Electing Muslim ethnic minority women to national legislatures may have profound effects. Gender, ethnicity and religion are thought to influence the political interests and priorities of politicians and ultimately how they legislate [...]. In Europe, Muslim women hold distinct political views, particularly when issues involve gender and/or Islam [...], rendering the exclusive representation of Muslim ethnic minority women by other groups as problematic. But even if electing representatives of particular groups does not affect which laws are proposed or passed, including marginalised groups in democratic institutions may reduce political alienation, contribute to social stability, affect how societies perceive group members, and influence how group members see themselves [...]. In sum, including Muslim ethnic minority women in visible positions of power could make a difference».

Maria Chiara Locchi

Are European democracies good for Muslim women?

The challenging question of Muslim women's political participation and representation in European constitutional states

here'⁹⁶. Without underestimating the risks related to the multifaceted issue of political participation and representation of Muslim minority in Europe, for a pluralist constitutional State the question of Islam in the political arena can no longer be conceptualized in the light of an «Islamic exceptionalism» but has rather to be reframed in terms of a resignified citizenship and political participation⁹⁷.

* * *

ABSTRACT: Muslim women's political participation and representation in European countries proves to be a relevant case study for reflecting on the capacity of pluralist democracies to effectively enforce the rights of new minorities to be actively involved in the life of their communities and to both individual and social emancipation. By trying to map some political and legal factors affecting Muslim women's active presence in the political arena the paper wishes to contribute to the knowledge of a controversial issue where gender challengingly intersect with ethnicity and religion.

ABSTRACT: La questione della partecipazione e della rappresentanza politica delle donne musulmane nei paesi europei si dimostra un caso di studio rilevante per riflettere sulla capacità delle democrazie pluraliste di garantire l'effettività dei diritti delle nuove minoranze al coinvolgimento attivo nella vita delle proprie comunità nonché all'emancipazione, individuale e sociale. Attraverso l'analisi di alcuni dei fattori politici e giuridici che influenzano la presenza attiva delle donne musulmane nell'arena politica, il paper vorrebbe contribuire alla conoscenza di una questione controversa in cui il genere si interseca in modo complesso con l'etnia e la religione.

KEYWORDS: European Muslim women - minority political participation - minority political representation - descriptive representation - reserved seats

Maria Chiara Locchi – Associate Professor of Comparative Public Law, University of Perugia, maria.locchi@unipg.it

⁹⁶ M.S. Berger, cit., p. 234.

⁹⁷ G. Spanò, cit., p. 30.