



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Germany
Title:	Amendments to equality law for the civil service
Date:	2 oktober 2015
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<u>Context</u>	
Issue at stake:	German legislator tried to introduce a new concept of 'gender neutrality' within the federal civil service
Ground of discrimination:	Sex
Source:	Legislation
Field:	Employment; equality law
Applicable law:	Federal Equality Statute

Content

Legislative development: The law on the equal participation of women and men in leading positions of private companies and in the civil service of 6 March 2015 further amended the Federal Equality Statute (*Bundesgleichstellungsgesetz, BGIG*). The most important amendments are the formal equality in addressing both men and women, the advancement of men and women in case of under-representation of one of the sexes, the obligation to publish a vacancy in case of under-representation of one of the sexes, the preference of the member of the under-represented sex in case of equal qualifications for vacant positions, the obligation to carry out equality planning, reporting requirements, and shorter deadlines for the compulsory participation of the equal opportunity commissioners.

These amendments were thoroughly criticised. The paradigmatic shift from tackling gender discrimination in the civil service by promoting the advancement of women to an understanding of discrimination solely based upon under-representation in specific areas did not show any familiarity with the problems of indirect discrimination and discriminatory structures. Within the civil service, men and women are represented equally by numbers, but women are under-represented in well-paid areas, full-time work, and leading positions; whereas men are under-represented in areas of employment that are especially poorly paid or enjoy very low reputation, or both.

Before adoption, the Law on equal participation was amended to clarify that only when it is based on structural discrimination does male under-representation entail the obligation to publish a vacancy, and the obligation to prefer the under-represented male for the position in case of equal qualifications. On the other hand, the Law now stipulates that female under-representation is an automatic indicator of discrimination. Moreover, the adopted Law contains emphasised duties to record and evaluate the representation of women and men in leading positions.

Further critique was not taken into account by the legislator. The parliamentary faction of the Greens and the German Women Lawyers' Association had criticised the overall weakening of the obligation to further gender equality by vague terminology, lack of

sanctions, and excessive exceptions; the obstructions to the work of the equal opportunity commissioners by shortening deadlines and undermining their position as supervisory authorities; and the unsolved problems of 'equal qualifications' never occurring in reality due to practices of bottomless differentiation in favour of male candidates as shown by a 2014 legal expertise.

Key points of analysis: The legislator tried to introduce a new concept of 'gender neutrality' within the equality law of the federal civil service, which failed to address the roots of indirect and structural discrimination. Men and women are equally represented by numbers within the federal civil service but there are remarkable gender differences concerning payment, part-time work, care leaves and leading positions. Due to thorough critique, the planned amendments were changed to clarify that male under-representation only when based upon structural discrimination requires the promotion of men, while female under-representation indicates discrimination.

Internet link source:

(all accessed 29 April 2015)

Legislative history with all relevant documents:

<http://dipbt.bundestag.de/extrakt/ba/WP18/643/64384.html>

Critique by the German Women Lawyers Association, <http://www.djb.de/Kom/K1/st14-17/>, the Conference of Equal Opportunity Commissioners in Federal Authorities,

<http://www.frauenbueros-nrw.de/Download/BundesgleichstellGes-IMA.pdf>, and the Greens, <http://dipbt.bundestag.de/dip21/btd/18/042/1804240.pdf>

Legal expertise on gender target quotas within the civil service and their effectiveness:

H.-J. Papier & M. Heidebach *Rechtsgutachten zur Frage der Zulässigkeit von Zielquoten für Frauen in Führungspositionen im öffentlichen Dienst sowie zur Verankerung von Sanktionen bei Nichteinhaltung* North Rhine-Westphalia July 2014,

http://www.mgepa.nrw.de/mediapool/pdf/presse/pressemitteilungen/Gutachten_Zielquoten.pdf