



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

### NEWS REPORT

<b>Country:</b>	Germany
<b>Title:</b>	Amendments to the Statute on the State's Civil Service of North Rhine-Westfalia
<b>Date:</b>	8 September 2016
<b>Expert:</b>	Ulrike Lembke
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Legislation to increase the number of women in higher positions within the civil service of North Rhine-Westfalia by amending the equal qualification requirements
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	Legislation
<b>Field:</b>	Employment
<b>Applicable law:</b>	Statute on the Modernization of the Civil Service Law of North Rhine-Westfalia of 14 June 2016

### **Content**

**Legislative development:** On 26 June 2016, the Statute on the Modernization of the Civil Service Law of North Rhine-Westfalia entered into force. Among other issues, the law aims at the promotion of women within the state's civil service. Although women account for the majority in many areas of the civil service, their proportion is decreasing in higher positions and wage groups and they are clearly underrepresented in leading positions.

In Section 20 of the Statute on the Modernization of the Civil Service Law of North Rhine-Westfalia, the law clearly states that pregnancy, maternity protection, parental leave, child care and care for dependent relatives must never lead to disadvantages concerning the appointment or promotion within the state's civil service.

Concerning the first appointment for the civil service, female applicants are to be given preference in areas in which women are underrepresented under provision of equal qualification, aptitude and professional performance, unless specific hardships occur in the person of a male applicant. This is the well known formula for preferential treatment of female applicants in case of underrepresentation of women and consistent with the ECJ case law on this topic.

Under Section 19(6) of the Statute on the Modernization of the Civil Service Law of North Rhine-Westfalia concerning promotion, female civil servants are to be given preference under provision of *substantially* equal qualification, aptitude and professional performance, unless specific hardships occur in the person of a male applicant. The preferential promotion of women applies to all higher positions with a lower proportion of female civil servants than the corresponding lower positions as long as the proportion of women in the higher position applied for has not reached 50 %. The statute establishes

an substantially equal qualification, aptitude and professional performance in case of an equivalent overall evaluation in the applicant's latest assessment report.

A 2014 legal expertise study came to the result that the concept of quotas within the civil service to hire or promote women instead of equally qualified men generally fails in practice due to the sophisticated systems of qualification assessment leading to the result that there are nearly never two persons with equal qualifications, let alone a man and a woman.

The Liberal Party of North Rhine-Westfalia announced the intention to bring a constitutional complaint before the Federal Constitutional Court pleading a violation of the constitutional prohibition of sex discrimination and of the constitutional guarantee of equal access to the civil service. As the parliamentary group of the Liberal Party is too small to bring the complaint on their own, it remains to be seen whether the Christian Democratic Party will join the complaint or not.

**Key points of analysis:** To tackle the underrepresentation of women in higher and leading positions within the civil service of North Rhine-Westfalia, women are to be given preference in promotion under provision of *essentially* equal qualification, after a 2014 study has shown that gender quotas fail in practice due to the sophisticated assessment procedures leading to the result that it is nearly impossible for women to be equally qualified.

**Internet link source:**

Statute on the Modernization of the Civil Service Law of North Rhine-Westfalia of 14 June 2016:

[https://recht.nrw.de/lmi/owa/br\\_vbl\\_detail\\_text?anw\\_nr=6&vd\\_id=15674&ver=8&val=15674&sg=0&menu=1&vd\\_back=N](https://recht.nrw.de/lmi/owa/br_vbl_detail_text?anw_nr=6&vd_id=15674&ver=8&val=15674&sg=0&menu=1&vd_back=N), accessed 5 September 2016.

2014 legal expertise study by law professor Hans-Jürgen Papier and Martin Heidebach, *Rechtsgutachten zur Frage der Zulässigkeit von Zielquoten für Frauen in Führungspositionen im öffentlichen Dienst sowie zur Verankerung von Sanktionen bei Nichteinhaltung* (Legal expertise on the legitimacy of fixed target women quotas for leading positions in the civil service and the implementation of sanctions in the case of non-compliance):

[https://www.mik.nrw.de/fileadmin/user\\_upload/Redakteure/Dokumente/Themen\\_und\\_Aufgaben/Moderne\\_Verwaltung/1407ga\\_zielquoteoedie.pdf](https://www.mik.nrw.de/fileadmin/user_upload/Redakteure/Dokumente/Themen_und_Aufgaben/Moderne_Verwaltung/1407ga_zielquoteoedie.pdf), accessed 5 September 2016.