



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

### NEWS REPORT

<b>Country:</b>	Germany
<b>Title:</b>	Withdrawal of innovative quota regulation for the civil service
<b>Date:</b>	19 February 2018
<b>Expert:</b>	Ulrike Lembke
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Newly elected state parliament of North Rhine-Westfalia withdraws innovative quota regulation for the civil service
<b>Ground of discrimination:</b>	Sex/gender
<b>Source:</b>	State legislation
<b>Field:</b>	Employment
<b>Applicable law:</b>	Statute on Amendments to the Civil Service Law of North Rhine-Westfalia of 19 September 2017

### **Content**

**Law and policy development:** A 2014 legal expertise study concluded 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. This results in the fact that there are nearly never two persons with equal qualifications, let alone a man and a woman. Although women account for the majority in many areas of the civil service, they are less represented in higher positions and wage groups and they are clearly underrepresented in leading positions. Accordingly, new measures were developed.

In 2016, the Statute on the Modernization of the Civil Service Law of North Rhine-Westfalia entered into force. Under its Section 19(6) concerning promotion, female civil servants were to be given preference under the provision of *substantial* equal qualification, aptitude and professional performance, unless there are specific hardships in the person of a male applicant. The preferential promotion of women applied 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 had not reached 50%. The statute established a substantially equal qualification, aptitude and professional performance in case of an equivalent *overall evaluation* in the applicant's latest assessment report.

On 21 February 2017, the State Administrative Court of North Rhine-Westfalia decided that Section 19(6) of the Statute on the Modernization of the Civil Service Law of North Rhine-Westfalia was incompatible with the constitution. The court accepted the

regulation, that female civil servants are to be given preference for promotion under the provision of substantial equal qualification, aptitude and professional performance, unless there are specific hardships in the person of a male applicant. But the court rejected the idea that a substantially equal qualification could be established by an equivalent overall evaluation. Although it was obvious that gender quota regulations have nearly no effect, the innovative gender quota regulation of North Rhine-Westfalia became a vividly debated topic. Conservative parties as well as right wing populists could rely upon the 'unjustified preferential treatment of unqualified women' as a successful topic in the following state election campaign. Time and again, the court decision was incorrectly reported as a decision on the incompatibility of any gender quota with the constitution. The immediate withdrawal of the new quota regulation became one of the most important electoral promises

After the election of the new parliament and government of North Rhine-Westfalia, they fulfilled their promise: On 19 September 2017, the parliament of North Rhine-Westfalia withdrew the innovative gender quota regulation. It did not abolish any quota regulation but fell back on the well-known quota regulation stating that female civil servants are to be given preference for a promotion under provision of equal qualification, aptitude and professional performance, unless there are specific hardships in the person of a male applicant.

With this, the civil service of North Rhine-Westfalia is not only back to a situation of underrepresentation of women in leading positions and will stay there, but positions against gender equality within the civil service (and in many other places) have been proven to work out well in state election campaigns.

**Key points of analysis:** Within the civil services, women are still underrepresented in higher positions, higher wage groups, technical occupations and leading positions. For more than 30 years, quota regulations have proved to be quite ineffective to change this. An innovative new approach by the former parliament of North Rhine-Westfalia has immediately been withdrawn by the newly elected state parliament. More concerning, positions against gender equality and the promotion of women have been proved to be successful topics of electoral campaigning.

**Internet link sources:** Statute on Amendments to the Civil Service Law of North Rhine-Westfalia of 19 September 2017,  
<https://www.landtag.nrw.de/portal/WWW/dokumentenarchiv/Dokument?Id=XMMGVB1729|764|765>

Press release on the decision of the State Administrative Court of North Rhine-Westfalia of 21 February 2017:  
[http://www.ovg.nrw.de/behoerde/presse/pressemitteilungen/11\\_170221/index.php](http://www.ovg.nrw.de/behoerde/presse/pressemitteilungen/11_170221/index.php)

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/1407qa\\_zielquoteoedie.pdf](https://www.mik.nrw.de/fileadmin/user_upload/Redakteure/Dokumente/Themen_und_Aufgaben/Moderne_Verwaltung/1407qa_zielquoteoedie.pdf).