

The Relationship between Quota Schemes and Disability Discrimination Law in Europe

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Structure of presentation:

- General introduction to quotas
- Examination of operation of quotas in European states, with a focus on common law and civil law jurisdictions
- Reflection on the relationship and interaction between quota schemes and discrimination law

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Quota Schemes: History, Basic Variations and Fine Tuning: History

- Some European states established quota schemes targeting disabled veterans in the aftermath of WWI – based on the idea of duty
- After WWII, quota schemes were expanded to cover disabled civilians – they became part of the general body of social welfare policy and legislation

Quota Schemes: History, Basic Variations and Fine Tuning: Basic Variations

- A recommendation which is not backed up with legislation
- A legal obligation which is not enforced
- A legal obligation backed up by a sanction involving the payment of a fee for non-compliance, or a duty to pay a levy if quota target is not met through employment of disabled people

Quota Schemes: History, Basic Variations and Fine Tuning: Fine Tuning (1)

- Quotas can cover all persons who are registered as disabled, or focus on a sub-group of disabled people who are regarded as having particular difficulties in securing employment
- Size of quota percentage varies, and schemes often allow for setting different percentages for different sectors or size of employers

Quota Schemes: History, Basic Variations and Fine Tuning: Fine Tuning (2)

- The number of staff an employer must have before they are covered by the quota schemes varies
- Quota schemes can cover either the public or private sector, or both
- A number of other means exist for fine-tuning quota schemes

Overview of Quota Schemes in Europe

- All 28 European States have legislation prohibiting disability discrimination with regard to employment
- 21 of the 28 European States have quota laws
- The three Nordic States, the three Baltic states and the United Kingdom do not have quotas

Quotas in Common Law Jurisdictions in Europe

- Cyprus and Ireland have quotas which apply only to the public sector
- No fee or levy is imposed in the case of non-compliance
- The UK abolished the quota in 1995 when the Disability Discrimination Act was adopted

Quotas in Civil Law Jurisdictions in Europe (1)

- 18 civil law jurisdictions and 1 mixed law jurisdiction (Malta) have quotas
- All quota schemes are based on legislation
- Most states apply a quota levy / fee scheme
- Most quota schemes are enforced / monitored / impose sanctions

Quotas in Civil Law Jurisdictions in Europe (2)

- In 9 states, money raised through the levy / fee goes to a fund which is used to support the employment of disabled persons
- In most states, the quota applies to both the public and the private sector

Compatibility of Quotas and Discrimination Law (1)

- Are quotas and discrimination law compatible with each other, or are they pulling in two different directions?

Compatibility of Quotas and Discrimination Law (2)

- Incompatible because quotas are based on welfare or charity model of disability and discrimination law is based on social-contextual or human rights model of disability
- Incompatible because quotas discriminate against people without disabilities

Compatibility of Quotas and Discrimination Law (3)

- Compatible because discrimination law helps to prevent discrimination when employers hire under quota laws
- Compatible because complying with quota laws helps to combat discriminatory views
- OR
- Incompatible and should serve different groups

Compatibility of Quotas and Discrimination Law (4)

- In general the compatibility of quotas and discrimination law does not seem to have been a troubling issue in those European States where quotas exist
- The main exception is Cyprus, where the issue has been considered twice by the Supreme Court

Compatibility of Quotas and Discrimination Law – Cyprus (5)

- 2002: quota law declared void and in breach of equality clause of constitution. Court applied formal understanding of equality
- 2009: new quota law upheld. Court held the constitution prohibits arbitrary differences in treatment, but does not exclude reasonable differential treatment
- 2009: different treatment in unequal or exceptional situations does not amount to a deviation from the equality principle, but is a practical implementation of that principle

Compatibility of Quotas and Discrimination Law (6)

- Otherwise surprisingly little attention has been paid to the issue of the compatibility of quotas and discrimination law
- BUT: the UK abolished the quota at the same time as discrimination law was adopted, while in Ireland, the quota scheme is not binding
- This may hint at a greater awareness of the potential for conflict or tension between quotas and discrimination legislation in common law states in comparison with civil law states

Defining Disability for the Purposes of Quotas and Discrimination Law

- Little evidence of the same (limited) definition of disability being used for the purposes of both discrimination law and quotas
- To the extent that there is some overlap, this applies exclusively to the reasonable accommodation duty. This is the case in a small number of civil law jurisdictions (France, Germany and Slovenia)

Levies / Fees linked to Quotas and Financial Support for Reasonable Accommodations and other Non-discrimination Duties

- In some civil law jurisdictions a connection is clearly made between quotas and financial support for compliance with the reasonable accommodation duty
- Levy / fee money is sometimes used to support employment of disabled persons, including through support for reasonable accommodations
- Financial support is sometimes only available to employers who meet their quota obligations through employing disabled persons, or to benefit workers who are covered by the quota scheme

Obligations Owed to Individuals

- There is no evidence, in either civil law or common law jurisdictions, that quota schemes confer either an individual right to a position or that a failure to fulfil a quota provides evidence of discrimination

Conclusion (1)

- All quotas in civil law jurisdictions are statutory, and most operate a quota-levy / fee scheme
- No common law jurisdiction applies a quota-levy / fee scheme
- There seems to be greater awareness of the potential for conflict or tension between discrimination law and quota schemes in common law jurisdictions

Conclusion (2)

- The two schemes in the common law jurisdictions only apply to the public sector – in civil law jurisdictions quotas generally apply to both public and private sector employers
- This may indicate different perceptions regarding the role of public sector employers and the legitimacy of imposing quota requirements on the private sector
- Main finding: with 21 EU Member States applying both disability discrimination legislation and a quota system, the two approaches are not generally seen as incompatible by policy makers in Europe

- Thank you
- The paper is available at:
- https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3246883