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Employment quotas and the compensation-fund mechanism for persons with disabilities: A comparative legal analysis of the French experience and prospects for reform in Uzbekistan

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ANNOTATION

This article undertakes a comparative legal analysis of the mechanisms used to secure the employment of persons with disabilities in France and Uzbekistan, against the benchmark of Article 27 of the Convention on the rights of persons with disabilities (CRPD). It argues that an employment quota, taken in isolation, is an insufficient instrument: the french experience demonstrates that a quota becomes effective only when it is combined with two further elements — a meaningful financial contribution payable into a dedicated fund by employers who fail to comply and genuine monitoring of compliance. Using the functional method of comparative law, the article examines the French employment obligation (the 6 percent quota) its financing architecture (the AGEFIPH and FIPHFP funds) and the recognized-disabled-worker status (RQTH) and contrasts them with the still-emerging Uzbek framework introduced by the 2020 Law on the rights of persons with disabilities and the 2023 Constitution. The analysis identifies three institutional gaps in Uzbekistan — the absence of a dedicated levy-financed fund, of a single needs-assessment body and of an enforceable duty of reasonable accommodation— and formulates concrete, context-adapted proposals for reforming national legislation.

Keywords

persons with disabilities, right to work, employment quota, obligation d'emploi (OETH), AGEFIPH, FIPHFP, reasonable accommodation, CRPD, comparative law, France, Uzbekistan.

INTRODUCTION

The right to work is one of the principal levers of social inclusion for persons with disabilities: paid employment provides not only income but also autonomy, social participation and the recognition of equal personhood. Yet across the world this right remains, for the majority of persons with disabilities, more declared than realised. In Uzbekistan the gap between proclamation and practice is particularly stark: although the country has, in recent years, undertaken an ambitious reform of its disability policy, by widely cited estimates only around seven per cent of working-age persons with disabilities are in employment.[1] Identifying the legal mechanisms capable of changing this picture is therefore a question of immediate practical importance.

At the level of international law the benchmark is clear. Article 27 of the Convention on the rights of persons with disabilities (CRPD) recognises the right of persons with disabilities to work on an equal basis with others, in a labour market and work environment that are open, inclusive and accessible, and obliges States to promote employment, to prohibit discrimination and to ensure that reasonable accommodation is provided in the workplace.[2] Both France and Uzbekistan are parties to the Convention, which thus serves as a common evaluative standard — a *tertium comparationis* — for assessing the conformity of their domestic mechanisms.

The central argument of this article is that the employment quota, the instrument to which legislators most readily turn, does not by itself deliver results.

The French experience is instructive precisely because France operates one of Europe's oldest and most elaborate quota systems and yet continues to fall well short of its own targets. The decisive factor, it is submitted, is not the quota as such but a triad: a quota, coupled with a meaningful financial contribution payable into a dedicated fund by non-compliant employers, and reinforced by genuine monitoring. Where any element of this triad is missing, the obligation tends to dissolve into a formality.

METHODS

[1] Estimates drawn from data of the Uzbek authorities and international organisations; on the global dimension of the problem see World Health Organization and World Bank, World Report on Disability (WHO 2011).

[2] Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3, art 27.

The study relies on the functional method of comparative law: rather than comparing French and Uzbek norms by their formal labels, it asks which institution performs a given social function and how well.[3] The article proceeds in five steps. It first sets out the international and European legal framework governing the right to work of persons with disabilities (section 2); it then analyses the French model and its limits (section 3) and the Uzbek framework and its gaps (section 4); on this basis it develops a comparative analysis (section 5) and a set of concrete proposals for reforming Uzbek legislation (section 6), before concluding.

RESULTS

1. The right to work of persons with disabilities in international and European law

The international legal foundation of disability employment policy has shifted decisively from a welfare paradigm to a human-rights paradigm. Under the older approach, the employment of persons with disabilities was treated as a matter of charity or rehabilitation; under the CRPD it is reframed as the enjoyment of a right on an equal basis with others.[4] Article 27 CRPD accordingly combines a negative obligation — to prohibit discrimination on the basis of disability in all matters concerning employment — with a series of positive obligations, including the promotion of employment opportunities, the safeguarding of just and favourable conditions of work, and, crucially, the provision of reasonable accommodation in the workplace.

At the regional level, the European framework that shapes the French system reinforces these standards. Within the European Union, Council directive 2000/78/EC prohibits discrimination on grounds of disability in employment and occupation and expressly requires employers to provide reasonable accommodation;[6] the Charter of

[3] On the functional method see Konrad Zweigert and Hein Kötz, An Introduction to Comparative Law (Tony Weir tr, 3rd edn, Oxford University Press 1998).

[4] Theresia Degener, 'Disability in a Human Rights Context' (2016) 5(3) Laws 35; see also Gerard Quinn and Theresia Degener, Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability (United Nations 2002).

[5] CRPD (n 2) arts 2 and 5. The proportionality limit ('disproportionate or undue burden') is built into the definition of reasonable accommodation itself.

[6] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16, esp arts 2 and 5.

Fundamental rights of the European Union recognises the right of persons with disabilities to benefit from measures designed to ensure their independence and occupational integration;[7] and, in the specialised field of labour standards, ILO Convention No 159 commits ratifying States to formulating and implementing a national policy on vocational rehabilitation and employment for persons with disabilities.[8] Together these instruments establish the standard against which both national systems are measured below: non-discrimination, reasonable accommodation, and an active State policy to promote employment.

2. The employment obligation (OETH) and the status of recognized disabled worker

France pursues the employment of persons with disabilities chiefly through a statutory employment obligation — the *obligation d'emploi des travailleurs handicapés* (OETH). The obligation, first introduced in its modern quota form in 1987 and substantially recast by the landmark Law of 11 February 2005 and again by the Law of 5 September 2018, requires every employer with twenty or more employees to ensure that disabled workers make up at least six per cent of its workforce.[9] The 2018 reform simplified the way the obligation is declared and counted, channelling it through the employer's ordinary social-security reporting, with the aim of making compliance more transparent and harder to avoid.

Access to the protective regime runs through an individualised status. A person is recognised as a disabled worker by the grant of the *reconnaissance de la qualité de travailleur handicapé* (RQTH), a decision taken by the disability-rights commission (CDAPH) operating within the departmental one-stop disability house (MDPH).[10] The RQTH both counts towards the employer's quota and entitles the worker to a range of

[7] Charter of Fundamental Rights of the European Union [2012] OJ C326/391, art 26.

[8] ILO Convention No 159 concerning Vocational Rehabilitation and Employment (Disabled Persons) (adopted 20 June 1983, entered into force 20 June 1985).

[9] Loi n° 87-517 du 10 juillet 1987 en faveur de l'emploi des travailleurs handicapés (Fr); Loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées (Fr); Loi n° 2018-771 du 5 septembre 2018 pour la liberté de choisir son avenir professionnel (Fr); see now Code du travail (Fr) arts L 5212-1 et seq.

[10] Code de l'action sociale et des familles (Fr), arts L 114 and L 146-3 et seq (definition of disability and the role of the MDPH and the CDAPH).

support measures — workplace adaptation, reinforced protection against dismissal and access to specialised placement services. The French system thus links a collective obligation on employers to an individual gateway for workers, so that the quota is administered through a documented, rights-based assessment rather than left to the employer's discretion.

2.1 The financing architecture: the AGEFIPH and FIPHFP funds.

The distinctive feature of the French model — and the element most relevant to Uzbekistan — is its financing architecture. An employer that does not meet the six per cent obligation does not simply escape with an exhortation: it must pay an annual contribution, calculated per missing beneficiary as a multiple of the hourly statutory minimum wage and rising sharply with the size of the firm, up to as much as 1,500 times the hourly minimum wage for large employers that take no positive action over several years.[11] The point of the contribution is not punitive revenue but redistribution: the sums collected are pooled and reinvested in measures that actually promote disability employment.

Two dedicated funds operate this redistribution. In the private sector, the contributions are collected and managed by the Association for the management of the fund for the occupational integration of persons with disabilities (AGEFIPH); in the public sector, the parallel fund for the integration of persons with disabilities in the civil service (FIPHFP), created in 2006, performs the same role.[12] Through these funds the money paid by non-compliant employers finances workplace adaptations, vocational training, subsidies and advisory services for other employers and workers. The result is a self-sustaining circuit in which the failure to hire is converted into resources that make hiring easier elsewhere — a mechanism that combines compulsion (the quota and the contribution) with incentive (the support financed by the funds).

2.2 The limits of the French model

For all its sophistication, the French system has not solved the underlying problem,

[11] Code du travail (Fr) arts L 5212-9 to L 5212-10 (calculation of the annual contribution by reference to multiples of the hourly minimum wage, the SMIC horaire).
[12] Décret n° 2006-501 du 3 mai 2006 relatif au Fonds pour l'insertion des personnes handicapées dans la fonction publique (FIPHFP) (Fr).

and its shortcomings are themselves instructive. The activity and employment rates of persons with disabilities remain well below those of the general population, their unemployment rate is roughly double the national average, and a majority of the firms subject to the obligation still do not reach the six per cent threshold through direct employment alone.[13] The principal explanation is the very logic of the quota-and-contribution mechanism: where the contribution is set too low, or monitoring is weak, paying the levy can become cheaper and simpler for many employers than recruiting, adapting and retaining disabled workers — the so-called 'buy-out' effect.

These limits have not gone unnoticed at the international level. In its 2021 concluding observations on France, the CRPD Committee, while acknowledging progress, criticised the persistence of segregated and institutional models and the fact that reasonable accommodation was, in practice, confined largely to the field of employment rather than guaranteed across all areas of life.[14] The lesson for any State contemplating a quota is therefore twofold: the quota is a necessary but not a sufficient instrument, and its effectiveness depends entirely on the strength of the contribution, the genuineness of monitoring, and the channelling of the funds collected into real support for employment.

The Uzbek framework and its institutional gaps

Uzbekistan has, in a short period, moved its disability policy onto a new legal footing. Having signed the CRPD in 2009, the country ratified it on 7 June 2021, thereby assuming the full range of the Convention's obligations, including those flowing from Article 27.[15] A year earlier it had adopted the Law 'On the Rights of Persons with Disabilities' of 15 October 2020, which entered into force in January 2021 and which, for the first time, frames disability policy in the language of rights rather than of social assistance alone.[16] The reform was reinforced at the constitutional

[13] Figures based on French official statistics on the employment of disabled workers (notably the data published by DARES and by AGEFIPH and FIPHFP in their annual reports); the most recent figures should be consulted directly.

[14] Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of France (2021) UN Doc CRPD/C/FRA/CO/1.

[15] CRPD (n 2); Uzbekistan ratified the Convention on 7 June 2021.

[16] Law of the Republic of Uzbekistan 'On the Rights of Persons with Disabilities' No O'RQ-641 (15 October 2020).

level: the Constitution adopted by referendum on 30 April 2023 proclaims Uzbekistan a social State and contains, in Article 57, an express provision on the protection of persons with disabilities, together with guarantees of inclusive education and social protection.[17]

These are substantial advances, and at the level of constitutional text Uzbekistan now offers an unusually explicit, named protection. Yet the central challenge lies in translating these guarantees into operational mechanisms — and it is here that the comparison with France is most revealing. Uzbek legislation does establish a job quota for persons with disabilities for organisations whose workforce exceeds a statutory threshold, and provides for a monetary payment in respect of unfilled quota places. The architecture surrounding that quota, however, remains incomplete by comparison with the French model.

Three institutional gaps stand out. First, Uzbekistan has no dedicated, levy-financed fund equivalent to AGEFIPH or FIPHFP: even where payments are due for unfilled quota places, there is no autonomous institution whose specific mandate is to pool those sums and reinvest them in workplace adaptation, training and employer support. The redistributive circuit that gives the French contribution its purpose is therefore largely absent. Second, there is no single needs-assessment body comparable to the MDPH that would assess a person's situation and draw up an individualised plan; assessment continues to be organised principally around the medical-labour expert commission (VTEK), which approaches disability through the lens of lost working capacity — a medical model — rather than through an assessment of the support a person needs to work.

Third, the duty of reasonable accommodation is not yet anchored as a clear, enforceable obligation of the employer, breach of which would amount to discrimination, as it is under Article 5 CRPD and Directive 2000/78/EC. Without such a duty, the quota operates in a vacuum: an employer may meet a numerical target without being required to adapt the workplace so that disabled employees can actually remain and progress in work. Taken together, these three gaps — the missing fund, the

[17] Constitution of the Republic of Uzbekistan (adopted by referendum on 30 April 2023), arts 1 and 57.

missing assessment body and the missing accommodation duty — explain why a quota on paper has not yet produced employment in practice.

Comparative analysis: why a quota alone is insufficient

Placing the two systems side by side confirms the article's central thesis. France and Uzbekistan share the same starting instrument — a numerical quota imposed on employers above a size threshold — and even share the same core difficulty, namely that the quota tends to be under-fulfilled. What distinguishes them is everything that surrounds the quota. In France the quota is embedded in a structure of meaningful financial contributions, dedicated funds and individualised worker status; in Uzbekistan the quota stands comparatively alone. The comparison thus isolates the variables that actually determine effectiveness.

The first such variable is the financial contribution and its destination. A quota generates behavioural change only if non-compliance carries a cost that is high enough to matter and if the proceeds are visibly reinvested in employment. The French experience shows both the promise and the danger of this mechanism: the contribution-and-fund model can finance real support, but if the levy is too low or monitoring too weak, employers rationally choose to 'buy out' of the obligation. For Uzbekistan the lesson is precise: it is not the introduction of a quota but its combination with a sufficiently significant contribution, channelled into a dedicated fund, that will determine success.

The second variable is monitoring. A quota that is not measured is not enforced. The 2018 French reform sought to strengthen compliance precisely by routing the declaration of disabled employees through employers' ordinary social-security reporting, making avoidance more difficult. Any Uzbek mechanism will require an equivalent system of reliable, regular reporting and verification, without which both the quota and any contribution will remain nominal.

The third variable is the pairing of compulsion with incentive and individual rights. The French model does not rely on compulsion alone: the RQTH status confers protection and support on the worker, and the funds provide subsidies and advice to the employer, so that the system pushes and pulls at the same time. This points to the

methodological caution that must govern any borrowing. The object is not to transplant French institutions wholesale — legal transplants detached from their context rarely take root — but, in the spirit of the functional method, to reproduce the functions those institutions perform (redistributive financing, individualised assessment, enforceable accommodation and genuine monitoring) within Uzbekistan's own legal and administrative setting.

Proposals for reforming Uzbek legislation

On the basis of the comparative analysis, five concrete and mutually reinforcing proposals may be advanced. They are designed to be implemented in sequence, beginning with the measures that require the least resources and building towards deeper structural change.

I. Establish a dedicated disability-employment fund. Uzbekistan should create an autonomous fund, financed by the contributions payable by employers who do not meet the quota, on the model of AGEFIPH and FIPHFP. The fund's defined mandate should be to reinvest those contributions in workplace adaptation, vocational training, wage subsidies and advisory services, thereby converting non-compliance into resources that make compliance easier.

II. Enshrine reasonable accommodation as an enforceable duty. The duty to provide reasonable accommodation in employment should be defined in law as a binding obligation of the employer, the unjustified denial of which constitutes discrimination, subject to the recognised limit of disproportionate or undue burden, in line with Article 5 CRPD and Directive 2000/78/EC.

III. Create a single needs-assessment body and individualised plan. A one-stop body on the model of the French MDPH should be established to carry out a comprehensive assessment of each person's situation and to draw up an individualised plan, replacing fragmented, purely medical assessment with a coordinated, function-based service.

IV. Strengthen the quota through monitoring and a meaningful contribution. The quota should be reinforced by a system of regular, verifiable reporting — ideally

integrated into employers' existing reporting obligations — and by a contribution for unfilled places set at a level high enough to deter the 'buy-out' of the obligation.

V. Shift from the medical model of assessment to a functional, human-rights model. The VTEK assessment, organised around lost working capacity, should be progressively reoriented towards an assessment of the support a person needs in order to work, consistently with the social and human-rights model of disability underpinning the CRPD.

These proposals are not a call to copy the French system, with its acknowledged shortcomings, but to learn from both its strengths and its failures. Their common thread is the recognition that the right to work of persons with disabilities is secured not by a single instrument but by a coherent institutional architecture in which obligation, financing, assessment, accommodation and monitoring reinforce one another.

CONCLUSION

The comparison between France and Uzbekistan yields a conclusion that is at once simple and demanding. An employment quota for persons with disabilities is a necessary but insufficient instrument: on its own, it produces numerical targets rather than employment. The French experience — a long-established and elaborate quota system that nonetheless continues to fall short, and has been criticised by the CRPD Committee for doing so — shows that effectiveness depends on a triad of quota, a meaningful contribution channelled into a dedicated fund, and genuine monitoring, supported by an individualised, rights-based assessment of workers' needs.

For Uzbekistan, whose constitutional and legislative reforms have created a strong normative foundation but left the surrounding institutions incomplete, the path forward lies in filling the three identified gaps: the dedicated fund, the single assessment body and the enforceable duty of reasonable accommodation. Adopted together and adapted to the national context rather than transplanted wholesale, the proposals advanced here would help transform the constitutional promise of a social State into a tangible right to work for persons with disabilities — turning a quota on paper into employment in practice.

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