



## **Quality in Gender+ Equality Policies**

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Integrated Project

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## **Issue Histories Germany: Series of Timelines of Policy Debates**

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## Abbreviations and Glossary

BMFSFJ: Bundesministerium für Familie, Senioren, Frauen und Jugend	Federal Ministry for Family, Senior Citizens, Women and Youth
BT: Bundestag	Lower House of the Parliament
BR: Bundesrat	Upper House of the Parliament
DF: Deutscher Frauenrat	German Women's Council
DGB: Deutscher Gewerkschaftsbund	Confederation of German Trade Unions
DJB: Deutscher Juristinnen-Bund	German Women Lawyers Association
FCC: Bundesverfassungsgerichtshof	Federal Constitutional Court
GG: Grundgesetz	Basic Law (Constitutional Law)
GM	Gender Mainstream(ed)
Länder	Federal States of Germany
LSVD: Lesben- und Schwulenverband Deutschlands	Lesbian and Gay Association of Germany
Parties:	
CDU/CSU	Christian Democratic Union/ Christian Socialist Union
SPD	Social Democratic Party
FDP	Free Democratic Party (Liberals)
Linkspartei PDS;	Party of Democratic Socialism; merged with the party WASG into the new party "DIE LINKE" in June 2007
Bündnis 90/ Die Grünen	Green Party

# 1. GENERAL GENDER+ EQUALITY POLICIES

## 1.1. National and European Policies – Across Policy Spaces

### Introduction and first overview

Historically speaking, political periods focusing on the advancement of women have tended to alternate with such on family policy. However, gender equality policies that promoted women's individualisation have never gained dominance over the traditional rulings of family politics (Berghahn 2003). This also applies to an analysis of recent press releases and publications of the previous and current governments. While women's and equality issues were addressed in a separate chapter of the coalition agreement in 1998 and 2002 (Coalition SPD and the Bündnis 90/ Die Grünen), the Grand Coalition (CDU/CSU and SPD, 2005) subsumes women and equality policies under the chapter 'A family friendly society'. The same applies to other publications of these governments: Whereas during the 14<sup>th</sup> legislative period (1998–2002, Social Democrats and the Bündnis 90/ Die Grünen), the BMFSFJ was very productive in releasing official statements on gender equality measures undertaken by the government<sup>1</sup>, a shift towards 'children-friendly' policies is observable from the 15<sup>th</sup> period (the same coalition parties, 2002–2005) onwards. With the Family and Women's ministry falling under CDU/CSU authority at the end of 2005 (currently the 16<sup>th</sup> legislative period), the **discursive emphasis on 'gender-equality oriented family policies' over explicit gender equality policies** has gained strength<sup>2</sup>. Phrases like 'children are the future' illustrate the demographic discourse around the need for a higher birth rate that has substituted the discourse on gender equality as a justice concern in its own right.

A look back into Germany's recent past reveals that the conservative rationale of the 1950s and 1960s (male-breadwinner model, housewife marriage) was increasingly challenged in the 1970s. By the late 1960s, a change in government from the Christian to the Social Democrats had brought an increased awareness of women's issues and the women's movement (MacRae 2006). Gender equality was often being interpreted as **formal legal equality** which was also used to abolish women's 'privileges', such as easier access to the dependant's pension. This happened without assuring that women's losses in pension entitlements due to child-raising activities were sufficiently compensated.

In addition, German discussions around equality policies need to be understood in the light of different developments in East and West Germany. Women's equality in the East largely meant integrating women into the labor force, developed "top down", in state institutions. Equality in the West carried other meanings, developed "bottom up", in the women's movement. Today, reactions to feminist demands are still tainted by such different

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<sup>1</sup> A major publication is the report on *Measures of the Federal Government to Promote Equal Opportunity between Women and Men (2001)*. It comprises of the latest legal changes in the fields of employment. <http://www.bmfsfj.bund.de>

<sup>2</sup> BMFSFJ. 2007. *20 Years of Federal Women's Ministry*. Berlin.

understandings. Germany's unification meant that mostly West German legislation was adopted. However, some policy processes such as the ones on abortion were heavily influenced by East German claims.

Major shifts in thinking about gender equality occurred in the 1980s and 1990s, when the understanding of gender equality began to comprise **affirmative action and positive discrimination**. According to the BMFSFJ (2007) it was one of the results of the 4<sup>th</sup> UN World Conference on Women in Beijing (1995) that the Federal Government slowly engaged in the shift from women's to gender policies. In 1994, the Basic Law (Grundgesetz) was amended in order to include that 'the state enhance the factual implementation of gender equality and eliminate all existing discrimination'. In the same year, the Second Equal Rights Act was passed. Accordingly, special measures to promote the advancement of women in order to achieve gender equality should be promoted. Heated debates fuelled around the effectiveness and fairness of quotas (MacRae 2006). The question of **quota systems** was also subject to European Court of Justice (ECJ) rulings in the late 1990s (Kalanke/1995 and Marschall/1997 Decisions). Müller (2005) who reviews this period from a women's activist and scientist perspective interprets this qualitative shift as a trigger for a war between the sexes from the beginning of the 1980s onwards: It explicitly 'attacked' the traditionally male dominated field of male gainful employment through special measures for women. A peak in this debate was the rise and fall of a gender equality act for the private sector that ended up as a voluntary agreement in 2001. Yet, for the public service, the Federal Act on Implementing the Concept of Equal Opportunities between Women and Men was decided (2001). In May<sup>3</sup> 2007 a motion by the Bündnis 90/ Die Grünen that provided for a 40 % quota in the advisory boards of companies listed on the stock market (following the Norwegian model) was rejected by the CDU/CSU, the SPD and the Liberals (FDP).

The advancement of women as a single political strategy proved unsatisfactory after several decades. New impulses in the field of gender equality derived from the theoretical concepts of gender and **gender mainstreaming** that were adopted in the German political context in the late 1990s. State feminists engaged actively in this new strategy, whereas feminist activists and researchers maintained a more critical standpoint (Müller 2005). There is an abundance of theoretical and applied research that seeks to accompany and counsel the political process. Following the EC Amsterdam Treaty of 1997, this strategy was adopted by the Federal Government on June 23, 1999. The implementation process started forecullly in 2000, when regulations were put in place (§ 2 GGO<sup>4</sup>) and pilot projects of all government branches were coordinated in an interdepartmental working group (IMA). With the foundation of the **GenderCompetenceCenter** at the Humboldt-University in Berlin in 2003, the BMFSFJ has sought to institutionalise applied research and counselling on Gender Mainstreaming. However, it is by now the only instrument of the Federal Government to mainstream gender issues into its work. Gradually, and already at the time of the Social Democrats and Greens in power, family politics gained priority to a degree that equality policies lost more and more resources and standing of their own.

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<sup>3</sup> Bundestag May 24, 2007

<sup>4</sup> GGO Gemeinsame Geschäftsordnung der Bundesministerien = Common Rules and Regulations of the Federal Ministries

Buzz words like 'diversity management' and the not so new, but still important term 'anti-discrimination' are now part of the discourse on gender+ equality. However, dealing with **intersectionalities** systematically at the policy level has been rather rare. One example is the 9<sup>th</sup> Book of the Social Code of 2001, introduced as the first gender mainstreamed law in Germany. It deals with issues such as the access of disabled persons to rehabilitation entitlements, social benefits, and access to the labour market. It provides for special measures for **women with disabilities**. In the following year, the Act on Equal Opportunities for Disabled Persons (Bundesgleichstellungsdurchsetzungsgesetz BLeiG, 2002) came into force which explicitly refers to affirmative action in favour of women with disabilities. It also provides for a Commissioner of the Federal Government for Disability Affairs (Beauftragte der Bundesregierung für die Belange behinderter Menschen), located at the Ministry for Employment and Social Affairs, that has the task to supervise and inform the government's promotion of equality related to disability and gender. However, the feminist disability movement<sup>5</sup> – according to a member of the political lobby group Weibernetz, Martina Puschke – states that the issues of women with disabilities are not dealt with sufficiently as a cross-cutting issue, neither in the field of women's nor disability policies and that existing legislation is not reaching far enough.

With regard to **religion, ethnicity and citizenship status**, the engagement with intersectionalities has happened more on the level of studies and reports (see Chapter National Action Plans, Reports and Studies) than in actual policy making. The assumed importance of studies and reports as sources and argumentation strategies for the policy process does not seem to play out in practice. Whereas almost all reports, both on the national and the international level (EU, UN), at least work with a restricted concept of intersectionality, national policy making does not live up to its gender mainstreaming requirements, let alone other intersectionalities. This is not only visible in the Hartz legislation, but also in other national action plans on employment or on social inclusion.

Recent years saw the spreading of public discourses on migration/ integration that were marked by terms such as 'parallel societies', failed integration and traditionally based violence. Questions arose over multiculturalism and whether there should be something like a German mainstream culture ('Leitkultur'). Correspondingly, integration issues were prominently placed onto the political agenda. High-level talks and conferences were organised in 2006: the Integration Summit (Integrationsgipfel) in July 2006, led by Chancellor Angela Merkel (CDU), and the Conference on Islam (Islamkonferenz) in September 2006, initiated by the Minister of Interior, Wolfgang Schäuble (CDU). While political debates with – and not about – Muslims were welcomed from all sides, issues of participation and representation proved to be problematical. Compromises over contents such as the relation between religion and the state seem impossible to achieve. The second rounds of both, the Conference on Islam and the Integration Summit, were informed by heavy criticisms from all stakeholders. A gender analysis of these events should scrutinise issues of representation and the selection of topics. However, the National Integration Plan, issued in July 2007,

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<sup>5</sup> In May 2007, the European Network of Women with Disabilities (Europäisches Netzwerk behinderter Frauen) was founded by 105 women from 17 countries in Berlin (zwd Frauen, Gesellschaft und Politik (243) 2007: II).

considers gender dimensions in education and employment and points to need for action related to violence against women.

Citizenship status and ethnicity are most often dealt with in the field of gender-based violence, as reflected in the emergence of policy drafts on forced marriage or forced prostitution. The social division of **sexual orientation** has been addressed in policy making via the Life Partnership Act and the Life Partnership Revision Act. There are several regulatory gaps in the field of reproductive medicine; provisions mostly address the interests of heterosexual married couples. **Age** and demographic aging are gaining leverage in the demographic discourse that aims at 'making use of the potentials of elderly citizens' as long as they are still healthy and productive. The discourse on elderly care as reflected in the 'Charter on the Rights of People in Need for Care' of 2005 has again been led in a gender blind way. The intersectionalities of **class** and gender are taken account of in reports on poverty and social inclusion (see subchapter on National Action Plans, Reports and Studies); however, important respective legislation such as the Hartz reforms has been passed without considering the gender dimension.

What follows from the feminist disability claims and from a preliminary analysis of the other issues is that intersectionalities are only sometimes understood as additive (multiple discrimination) and hardly ever as mutually constitutive (a more dynamic concept of intersectionality). One exception may be statements issued in the wake of the antidiscrimination law in Germany in 2005, debated since the relevant EU Directives came into force. More often, social divisions due to gender, age, ethnicity, religion, class and sexual orientation are dealt with separately. Reports like the Gender Data Report (2005) at least have started to consider gender+ (a second social division) concerns.

### **Milestones in Gender+ Equality Policies**

A recent article on political, civil and social citizenship rights and policy change in Germany (Von Wahl 2006) provides for an interesting policy analysis across domains. The case studies on processes on gender equality are: quotas in political representation (political citizenship), women and reconciliation policy (social citizenship), and anti-discrimination policies (civil citizenship). Comparing policy change across domains demonstrates that change in these three arenas has occurred to different degrees and for different reasons; electoral competition has fostered policy change in representation, while the male-breadwinner model has slowed reform for reconciliation of family and employment. A weak affirmative action regime (Gleichstellungsregime) stands in opposition to individual anti-discrimination and limits potential change.

Germany's weak liberal tradition, reflected in the dominance of actors like social partners (Germany as a conservative-corporatist welfare state with a strong male-breadwinner model) as well as the influence of the churches, has resulted in a **slow anti-discrimination and weak affirmative action reform process**. With regard to the beginnings of the women's movement that stressed the adjective 'autonomous' as one of its essential features, it might be exactly the negative attitude vis-à-vis incremental change – together with the lack of allies

in the political realm – that had contributed to the lack of pressure from civil society for anti-discrimination policies. As compared to other Western industrialised states, Germany is lagging behind in anti-discrimination laws and institutions (von Wahl 2006).

Generally speaking, feminist (academic as well as activist) evaluations of Germany's process towards gender equality over the last five decades mostly underline the slow and **flawed promotion of gender equality on a formal legal level**. Despite many positive developments, it is still unsatisfactory in many fields. A need for action is particularly visible in the elimination of all forms of indirect discrimination against women in order to achieve factual equality between the genders. An increased awareness to the intersectionalities of class, sexual orientation, age, disability, religion, ethnicity and issues such as citizenship status and nationality are not only challenging feminist theory but also feminist practice. Questions of how to accommodate intersecting social categories in the policy process and public administration are some of the issues in gender+ equality policies today. An overview of the most important gender equality+ legislation in this chapter will give a first insight into whether these challenges have been or are being met in policy processes.

Berghahn (2003, 2006) underlines that at the policy level it is not only conservative and slow reform, but the lack of reforms that indicate the dominance of conservative structures and politics. Shortcomings and negative consequences for women's individualisation follow from conservative policies, some dating back to the 1950s. **Hot issues of debate until today** are – among others – the so-called spouse splitting/ income taxing system (stemming from the 'housewife marriage') and the lack of promotion of female labour participation (policies on child care leave and maintenance law). While child care policies are currently undergoing a rather progressive change, maintenance law is facing a backlash. Moreover, precarious employment is becoming increasingly a reality, not only, but especially for women. Basic social benefits and the term 'needs community', as introduced by the Hartz reforms, recur to the outdated male breadwinner model. Parliamentary debates on this milestone legislation in the field of employment have been led as a gender-blind discourse. However, over the years, progress has been made in family and labour law as well as in the field of violence against women.

Milestones in family law were the Marriage and Divorce Reform Act from 1976 that officially did away with the role model 'housewife marriage' (Leitbild Hausfrauenehe) and eliminated the principle of guilt<sup>6</sup> in cases of divorce. In 1994, the Marriage Name Act provided for nearly formal equality in the choice of family names. With regard to custody, a major reform was the Childship Rights Improvement Act passed in 1997. This was criticised by feminists who questioned who benefited from the reform and in what ways. It provided for joint custody after separation for both, formerly married and non-married parents – which often signifies half of the rights, but all of the duties for the main carer, i.e. the mother.

Other important reforms on **intimate citizenship** were undertaken by the coalition of Social Democrats and the Bündnis 90/the Greens (1998–2005) from the turn of the millennium onwards: The 2001 introduced the Life Partnership Act and the amendment of 2004 (heavily

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<sup>6</sup> This was not entirely the case as it was maintained in maintenance regulations for the ex-spouse.

opposed by the conservative Christian-Democratic party) provided for almost equal rights for registered homosexual partnership as for marriage. However, reforms in the inheritance law and tax system are still pending and subject to major conservative opposition. An initiative to transform the spouse-splitting taxing system that relies on the male-breadwinner model into an individual taxing system has been subject to political debates for decades, with no success to date. Such a change would also benefit homosexual and non-married couples. Similarly, regulatory gaps continue to exist in the field of reproductive medicine where the legal situation for couples other than heterosexual married ones and singles remains unclear. Since the Embryo Protection Act was passed in 1990, no respective legislation on the regulation of reproductive medicine was introduced. A minor exemption to this was the Children's Right Improvement Act (2002) that forbids the contesting of paternity after an agreed heterologous insemination.

With regard to the **non-employment** issue of reconciliation of family and professional life, there is a shift observable in the discourse on child-care at the end of 1990s. In the early 1990s, the Child-raising Benefit Acts<sup>7</sup> clearly legitimised women's exit from the labour market by providing long child-raising periods. Later on, German family policy starts to combine the recognition model (recognising family work as work e.g. in the pension system) and the reconciliation model (promotion of parental part-time work).

The issue of abortion and **violence against women** were two of the major concerns of the autonomous women's movement in the 1970s (Müller 2005) in the Federal Republic<sup>8</sup>. A campaign of the new women's movement from 1971 ('I had an abortion') eventually led to a hard-fought liberalisation (law permitting an abortion within the first three months of pregnancy (Fristenlösung)). This act never entered into force due to parliamentary opposition (after its decision) and was ruled against by the Federal Constitutional Court. The then adopted 'Indication Abortion' (Indikationslösung) was challenged again in 1992 by parliamentarians across party lines. As a consequence of unification, the right to abortion that had been regulated differently in the East and West was sought to accommodate the better legal provisions from the East. A watered down version that entered into force in 1995, informed by a Federal Constitutional Court ruling, did not satisfy neither anti-abortionists nor the women's movement<sup>9</sup>.

The concern with domestic violence, marital violence and sexual harassment has characterised legislation on gender-based violence in the first half of the QUING period; at the same time, the intersection of gender and disability was increasingly acknowledged in the discourse. The second half of the QUING period is informed by legislation around the intersections of gender, religion and ethnicity: Issues like FGM, forced marriage, forced prostitution and trafficking in women are playing an important role on the political agenda.

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<sup>7</sup> In 1990 the child-raising benefit and leave were extended from 15 to 18 months. The 1992 provisions provide for a child-raising leave until the child reaches the age of three; the child-raising benefit is extended to two years. A legal entitlement to day care places for the three to six year old is introduced in 1996.

<sup>8</sup> In the GDR, abortion was legalised within the first three months of pregnancy.

<sup>9</sup> Abortion within the first three months after counselling is considered unethical and wrong (,Unrecht') but not subject to legal proceedings.

For a detailed account of the development of policies in the fields of non-employment, intimate citizenship and gender-based violence relevant for the QUING period (1995-2007) see the introductions in the respective issue-history-chapters.

### **National–European Policy Transfer**

The first explicit gender equality policy in West Germany is to be found in the area of employment due to compliance with EU law that has been and still is – although to a lesser degree – employment-focused. The drafting of a national Equal Treatment Act (Compliance Law 1980) arose from the obligation to transpose European Directives into national law.

As MacRae (2006) shows in her analysis of the early **EU Directives on Equal Pay of 1974 (75/117/EEC)** and **Equal Treatment in 1976 (76/207/EEC)**, policy processes are neither a purely national nor European top-down process. Policies arise through interaction of multiple and coexisting policy spaces. As a result, Germany provides for a mixed, European and traditionally West German gender regime. The West German gender regime is characterised in social research as one of the most conservative and resilient of its kind, and its political representatives have been known for their persistence. The West German stakeholders not only tried to block or at least weaken the EU directives, but also proved reluctant towards their implementation. Domestic policies often turned out to be in conflict with the European Law<sup>10</sup>. European Court of Justice rulings played an important role in the gradual adoption of EU law in West Germany<sup>11</sup>. According to MacRae neither the women's movement nor party feminists drew from early European legislation to legitimise their promotion of gender equality. However, MaeRae sees increased domestic legislative activity as a result of mobilisation around gender issues at the EU level. Despite the slow implementation process, a European influence on the German gender regime and shift in debates is diagnosed.

Similar proceedings and developments apply for other EU directives as well. The implementation of the **Amendment of the Equal Treatment Directive (2002/73 EC)** together with the Directives **2000/43 (race, ethnicity)** and **2000/78 (employment and occupation)** and the **Gender Equality Directive for Goods and Services (2004/113/EC)** is characterised by its slow progress and continuous postponement. In 2005, Germany was convicted by the European Court of Justice for not complying with EU directives. Eventually, in August 2006, six years after the first EU guidelines were issued, the General Equal Rights Act (Allgemeines Gleichstellungsgesetz) entered into force. Germany's tendency to block and dilute EU directives (see Chapter GENDER-BASED VIOLENCE 2004 Gender-specific Reasons for Asylum: Immigration Law) was again confirmed in the drafting of the **2004/83 EC Directive on minimum standards for refugees** ('Qualification Directive'). Moreover, the

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<sup>10</sup> ,During the thirty-year period, 1970-2000, approximately 25 percent of the European Court of Justice (ECJ) rulings on gender policy were referred to the European body by the German Courts.' (MacRae 2006:526)

<sup>11</sup> The ECJ established that the Compliance Law (1980) was not adequately implementing the Equal Treatment Directive; in its Kalanke/ Marschall rulings it contributed to a more profound understanding of the special measure of quotas in Germany.

deadline for implementing the directive was missed again; it was not until July 2007 that it was transposed into national legislation in the form of the New Immigration Act.

## 1.2. Actors and Institutional Structures

### General administrative and legislative structures

#### Federal Government

Government coalitions were formed by the conservative CDU/CSU and the liberal FDP from 1982 to 1998, followed by the Social Democratic (SPD) and Green (Bündnis 90/ Die Grünen) Coalition<sup>12</sup> from 1998 to 2005. Since then, the ruling parties (CDU/CSU and SPD) form a so-called 'grand coalition'<sup>13</sup>.

In the years of the Social Democratic and Green Coalition (1998–2005), many gender-democratic and anti-discrimination projects have been pushed through. These include the Life Partnership Act, the Violence Protection Act or the Prostitution Act, and the Child-Raising Benefit Act of 2001 aimed at promoting gender equality in the distribution of reproductive and productive work. However, this government is also responsible for the gender-blindness of the Hartz Reforms.

In May 2007, the ruling parties, the CDU/CSU and the SPD, have each issued a new political programme (Grundsatzprogramm). Whereas in the Social democratic Party there is inner-party resistance to the low profile of equality policies from the side of the party's women section (Working Group Socialist Women ASF) and the Young Socialists (Jusos), the CDU/CSU has adopted their new programme that does not even provide its own chapter on women's or equality policies. Subsumed under the chapter of 'Strong Families – A Human Society', reconciliation issues are touched upon.

#### Expert Commissions of the Federal Government (Expertenkommissionen der Bundesregierung)<sup>14</sup>

The role of expert commissions set up on demand by the government in order to inform policy processes has not been systematically studied by political scientists. Given their presence in the media, it may be assumed that they have a significant impact on policy

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<sup>12</sup> Koalitionsvertrag 1998. *Aufbruch und Erneuerung. Deutschlands Weg in das 21. Jahrhundert.* [Coalition Agreement 1998. Upbeat and Renewal. Germany's Way into the 21st century. ]

Koalitionsvertrag 2002. *Erneuerung – Gerechtigkeit – Nachhaltigkeit. Für ein wirtschaftlich starkes, soziales und ökologisches Deutschland. Für eine lebendige Demokratie.* [Coalition Agreement 2002. Renewal – Justice – Sustainability.]

<sup>13</sup> Koalitionsvertrag 2005. *Gemeinsam für Deutschland. Mit Mut und Menschlichkeit.* [Coalition Agreement 2005. Together for Germany. With Courage and Humanity.]

<sup>14</sup> On the political impact of these study commissions see the research project and dissertation <http://www.expertenkommissionen.de/index.html>.

processes. Important expert commissions of recent years (the most important ones grouped first) include:

- Modern Services on the Labour Market (Hartz-Kommission, Kommission Moderne Dienstleistungen am Arbeitsmarkt)
- Independent Immigration Commission (Süssmuth-Kommission, Unabhängige Kommission 'Zuwanderung')
- Sustainable financing of social security schemes (Rürup-Kommission, Kommission für die Nachhaltigkeit in der Finanzierung der sozialen Sicherungssysteme)
- National Ethics Council (Nationaler Ethikrat)
  
- Corporate Governance Code (Regierungskommission Deutscher Corporate Governance Code)
- Impulses for Civil Society (Impulse-Kommission, Kommission Impulse für die Zivilgesellschaft)
- Financing of life long learning (Expertenkommission 'Finanzierung Lebenslangen Lernens')

### Future Commissions

At the end of the 1990s, several future commissions, either commissioned by the Länder governments (Bavaria and Saxony<sup>15</sup>, Baden-Württemberg<sup>16</sup>) or party related think-tanks (like the Friedrich-Ebert-Stiftung<sup>17</sup> (SPD) or the global think tank Club of Rome<sup>18</sup>) published reports on the future of employment. These reports impacted heavily on discourses of education and work.

### Lower and Upper Houses of Parliament (Bundestag and Bundesrat)

The two strongest parliamentary groups in the Bundestag (Lower House of the Parliament) were the CDU/CSU and the SPD throughout these years. With regard to gender-sensitive law initiatives and motions, it is especially the Green Party and also the left party (Die Linke.PDS) that are the most active. The FDP has also been active with regard to the Life Partnership Act and following legislations.

The committees of the German Bundestag (Ausschüsse) play an important role in its legislative work. The Bundestag sets up committees for specific areas of policy in which

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<sup>15</sup> Kommission für Zukunftsfragen der Freistaaten Bayern und Sachsen. 1996/1997. *Erwerbstätigkeit und Arbeitslosigkeit in Deutschland, Entwicklung, Ursachen und Maßnahmen*. [Gainful Employment and Unemployment in Germany. Developments, Reasons and Measures] Bonn.

<sup>16</sup> Zukunftskommission Gesellschaft 2000 der Landesregierung Baden-Württemberg. 1999. *Solidarität und Selbstverantwortung. Von der Risikogesellschaft zur Chancengesellschaft* [Solidarity and Self-Reliance. From the risk society to a society of chances] Stuttgart.

<sup>17</sup> Zukunftskommission der Friedrich-Ebert-Stiftung. 1998. *Wirtschaftliche Leistungsfähigkeit, sozialer Zusammenhalt, ökologische Nachhaltigkeit. Drei Ziele – ein Weg* [Economic efficiency and productivity, social cohesion, ecological sustainability. Three objectives – one way.] Bonn 1998

<sup>18</sup> Giarini, O. and P. M Liedtke. 1998. *Wie wir arbeiten werden* [How we will work] Der neue Bericht an den Club of Rome. Hamburg.

members from all the parliamentary groups deliberate on and revise draft bills. Seats are distributed according to the relative strengths of the parties in Parliament. The committee prepares and discusses legislative proposals for adoption (or rejection) in the plenary.

The forum where the Federal States (Länder) participate in the legislative work is the Upper House of the Parliament (Bundesrat). The Bundesrat has the right to draft law proposals that have to be discussed in the Bundestag and also need to give their consent to certain law proposals that fall under the authority of the Länder (zustimmungspflichtig). The Mediation Committee (Vermittlungsausschuss) is the last legislative forum where legislative agreements between the Bundestag and the Bundesrat are found. The conservative Federal States of Bavaria and Baden-Württemberg are not only the most active in drafting law proposals but also usually oppose gender-democratic reforms.

#### Study Commissions/Enquete Commissions set up by the German Parliament (Enquete Kommissionen des Deutschen Bundestags)

Upon a motion of one quarter of its members, the Bundestag is obliged to set up a study commission for the preparation of decisions on wide-ranging and significant issues. The members of study commissions are nominated in line with an agreement reached between the parliamentary groups. Study commissions, which are composed of parliamentarians and external experts, are charged with submitting reports and recommendations to Parliament before the end of a particular electoral term. On the basis of these reports and recommendations Parliament is then able to decide in the following electoral term whether the study commission in question should continue its work. Enquete Commissions:

##### 14<sup>th</sup> legislative period (1998–2002)

- Ethics and law in modern medicine
- Globalisation
- The future of civil work
- Demographic change

##### 15<sup>th</sup> legislative period (2002–2005)

- Ethics and law in modern medicine
- Culture in Germany

##### 16<sup>th</sup> legislative period (2005–)

- Culture in Germany

#### **Gender Equality Machinery**

The 1980s saw an institutionalisation of women's issues in the Federal Administration. The Federal Ministry of Youth, Families and Health included Women from 1986 onwards in its official name and set up a special Department for Women's Politics in 1987 (BMFSFJ 2007). Also on the state (Länder) and communal level, women's and equality offices were put in place. In 1991, the Conference of Equality and Women's Ministers and Senators of the

Länder (GFMK) was established. Feminists within the Social Democratic and the Green Party pushed for the institutionalisation of gender equality issues. These so-called state feminists are and can be important allies of the women's movement; however, the latter was split over the question to what degree interaction with state institutions should take place.

In order to deal with the manifold demands arising from Germany's unification in 1990, the Ministry was split into three areas with Angela Merkel acting as Minister of Women and Youth from 1991 to 1994. It was during this legislative period and due to Merkel's endorsement of the issue that – a watered down version of – the Second Equal Rights Act was pushed through (Degen 2001). In 1994, the Ministry was joined again and received its present name and form: Federal Ministry of Family, Senior Citizens, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend BMFSFJ). In 1997, a Federal-State working group on Violence against Women was set up, followed by a working group on Trafficking in Women.

In May 2000, the Interministerial Working Group (IMA) on Gender Mainstreaming that coordinated and provided for a common gender mainstreaming strategy of the Federal Government was set up and located at the BMFSFJ until its dissolution in 2006. In 2003, the GenderCompetenceCenter was established, an application-oriented research institution at the Humboldt-University of Berlin, financed by the Federal Ministry for Family, Senior Citizens, Women and Youth, which is the only remaining instrument to implement gender mainstreaming in public administration<sup>19</sup>.

#### Federal Ministry for Family, Senior Citizens, Women and Youth (BMFSFJ)

The Division for Gender Mainstreaming/ Equality Legislation at the Federal Ministry for Family, Senior Citizens, Women and Youth is the main coordinating department with regard to gender equality measures of the Federal Government.

#### Women's Ministers

1985 – 1988	Rita Süßmuth	CDU
1988 – 1991	Ursula Lehr	CDU
1991 – 1994	Angela Merkel	CDU
1994 – 1998	Claudia Nolte	CDU
1998 – 2002	Christine Bergmann	SPD
2002 – 2005	Renate Schmidt	SPD
2005	Ursula von der Leyen	CDU

#### Federal Anti-Discrimination Office

With the coming into force of the General Equal Rights Act, a Federal Anti-Discrimination Office at the BMFSFJ was established. In February 2007, Martina Köppen was assigned director. Given her background as an officer for European Affairs of the Commission of German Bishops, Catholic Office in Berlin, the Lesbian and Gay Association (LSVD) is

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<sup>19</sup> For a detailed account of gender mainstreaming activities see OPERA update: Germany (July 2007).

raising concerns about the choice. It is mostly a counselling office and has the assignment to fulfil its tasks together with actors from civil society. Further, it has to report to the German parliament in four yearly intervals. Gender equality commissioners at the communal level demand that anti-discrimination issues are not dealt with in this office but separately. Otherwise, it would take away the focus and resources from gender equality concerns.

#### Equality Commissioners of the Federation

As provided by the 2001 Federal Act on Implementing the Concept of Equal Opportunities between Women and Men, federal agencies have to establish gender equality offices.

#### Conference of Equality and Women's Ministers and Senators of the Länder (GFMK)

In the form of an annual conference (since 1991), the states' positions on essential women's and gender equality issues are discussed and measures to be undertaken are decided upon. A representative of the Federal Government reports to the ministers. The position papers accompany the federal policy making process. In 2006, unification with the Conference of Youth and Family Ministers of the Länder (JFMK), as promoted by conservative Federal States, was rejected in the 17<sup>th</sup> Conference in Potsdam. Economic independence, reconciliation and equal participation are the central demands of the final statement. The claims take the intersectionalities of gender, age and ethnicity into account.

#### Equality and Women's Institutions at the Länder level

All the Länder government have equality institutions, in the form of ministries, state secretaries or commissions. According to the 5<sup>th</sup> CEDAW country report of 2003, the tasks and powers refer to the policy process (drafting of proposals), consultations with civil society and other associations concerned with women's affairs as well as cooperation with the respective Federal and Länder agencies that are associated with the implementation of gender equality measures.

#### Municipal Equal Opportunity Boards

According to the 5<sup>th</sup> CEDAW country report, about 1.900 municipal equality offices existed in 2003; their assignments and legal foundation depend on the statutory provisions of the respective state. Municipal equal opportunity officers have joined forces, e.g. in the Federal Association of Municipal Women's and Equality Offices (Federal Association of Municipal Women's and Equality Offices, BAG) in order to exert political influence at the federal level.

#### Commissioners for women's affairs and equal rights at institutions of higher education

According to the 4<sup>th</sup> CEDAW country report, 'all the higher education laws in the new Federal Länder include provisions concerning the appointment of a commissioner for women's affairs' (CEDAW 4: 35). Apparently, almost all old Länder governments followed the recommendations of a Federal-State Commission to establish women's or equality offices. In

the 5<sup>th</sup> CEDAW report it is documented that commissions are merged into the Federal conference of commissioners for women's affairs and equal rights at institutions of higher education in Germany (Bundeskonzferenz der Frauenbeauftragten und Gleichstellungsbeauftragten an Hochschulen BuKoF). It represents the interests of the conference members at federal level and towards the European Union.

#### Commissioner for equal opportunities on the labour market

The appointment of full-time equal opportunity officers at every level of the Federal Agency for Employment is provided by the 3<sup>rd</sup> Book of the Social Code (SGB III). They are charged to realise the principle of equal opportunities in the work of the job agencies.

#### Other important ministries and commissions

- Ministry of Health (Gesundheit, BMG)
- Ministry for Employment and Social Affairs (Arbeit und Soziales, BMAS)
- Ministry of Justice (Justiz, BMJ)
- Ministry of Interior (Inneres, BMI)
- Ministry of Finance (Finanzen; BMF)
- Ministry of State in the Federal Chancellery<sup>20</sup>: Federal Government Commissioner for Migration, Refugees, and Integration (Beauftragte/r für Migration, Flüchtlinge und Integration) (since 1978)
- Commission of the Federal Government for Disability Affairs (Beauftragte/r der Bundesregierung für die Belange behinderter Menschen), located at the Ministry for Employment and Social Affairs (since 2002)

#### State and Party Feminists

- SPD: Working Group Socialist Women (Arbeitsgemeinschaft Sozialistischer Frauen, ASF), Working Group Lesbian and Gays (Arbeitskreis Lesben und Schwule in der SPD, Schwusos) Working Group Young Socialists (Arbeitsgemeinschaft der Jungsozialistinnen und Jungsozialisten in der SPD, Jusos); Women and Gender Politics at the Friedrich Ebert Stiftung (Frauen und Gender Politik)
- CDU: Women's Union (FU Frauen Union)
- FDP: Federal Association of Liberal Women (Bundesvereinigung Liberale Frauen)
- DIE LINKE: Left Socialist Women's Working Group of the Party Die LINKE (Linke Sozialistische Arbeitsgemeinschaft der Frauen der Partei DIE LINKE, LISA); Rosa-Luxemburg-Stiftung

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<sup>20</sup> The Ministers of State of the Federal Chancellery form part of the policymaking level. They have particular duties and they advise and support the Chancellor.

- Bündnis 90/ Die Grünen: Federal Women's Council (Bundesfrauenrat), Federal Working Group Women's Politics (Bundesarbeitsgemeinschaft Frauenpolitik), Federal Working Group Lesbian Politics (Bundesarbeitsgemeinschaft Lesbenpolitik); Feminist Institute of the Heinrich-Böll Stiftung (Feministisches Institut)
- Federal Association of Municipal Women's and Equality Offices (Bundesarbeitsgemeinschaft der kommunalen Frauenbüros und Gleichstellungsstellen, BAG)

### Social Partners

- Union for Services (Dienstleistungsgewerkschaft ver.di): Groups for Gender and Women's Policies; Disabilities; Lesbian, Gay, Bi-Sexuals and Transgender
- DGB Women (DGB Frauen) at the Confederation of German Trade Unions (Deutscher Gewerkschaftsbund, DGB)<sup>21</sup>
- Union for Education and Science (Gewerkschaft für Erziehung und Wissenschaft, GEW)
- Union for Metal (IG Metall): Groups for Disabled; Women; Youth; Migrants; Unemployed

### Actors from Civil Society

The different gender regimes in West and East Germany also impacted on the respective civil societies. While in East Germany, women's equality largely meant integrating women into the labor force, developed "top down" in state institutions, equality in the West carried other meanings, developed "bottom up" in the women's movement. Hence, when speaking about the German women's movement it is mostly the West German tradition to which we are referring.

The autonomous women's movement of the Federal Republic that had been sparked by other revolutionary mobilisations at the end of 1960s first and foremost engaged in the politicisation of the private and demanded the democratisation of gender relations (Müller 2005). Special points of concern were sexual self-determination (in the abortion debate) and the creation of special spaces for women in order to compensate for structural discrimination

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<sup>21</sup> In April 2007 a feasibility study for a Gender Index Germany was presented by the Confederation of German Trade Unions (DGB) in Berlin. This Gender Index comprises of 15 indicators that try to capture the fields of women and employment (occupation, payment, unemployment, social care receivers etc.) This instrument would enable comparisons of economic positions across regions in Germany. (zwd Frauen, Gesellschaft und Politik (243) 2007:15).

in a male dominated society. The fact that violence against women was increasingly addressed in public led to the establishment of women's shelters in the 1970s. The fight against gender-based violence proved to be the most fruitful of the battles of the women's movement. Despite different positions on how to co-operate with gendered state institutions and debates on the possibilities or threats of anti-violence campaigns run by and with men, co-operation projects were set up.

At least for the last decade, extensive political lobbying in the field of violence against women with migrant backgrounds, including refugees and asylum seekers, is visible. Citizenship rights like residence permits are often a condition to effectively combat gender-based violence. While this connection is emphasised by the respective NGOs lobbying in both the intimate citizenship and gender-based violence fields, these issues are hardly ever so closely associated in the respective policies.

Clearly, the LSVD has been effectively addressing same sex partnership rights at the political level. Other intimate citizenship issues like tax alleviations for couples and families that intersect with the issue of non-employment have been extensively addressed by the German Women Lawyers Association. The women's sections of the unions, which are – strictly speaking – not attributable to civil society, are especially active in the areas of non-employment and intimate citizenship.

Women's groups have joined forces in the shadow reports in order to contrast the official country reports (CEDAW, Beijing Platform for Action) with the demands from civil society. For documentation on these reports, see the Chapter on National Action Plans, Reports and Studies.

#### Across Issues

- The German Women Lawyers Association (Deutscher Juristinnenbund DJB)
- German Women's Council (Deutscher Frauenrat) – umbrella organisation of over 50 women's groups
- Deutsches Institut für Menschenrechte (DIM)

#### Disability:

- Women's Net – Federal Lobby Group Women with Disabilities (Weibernetz – Bundesweite Politische Interessensvertretung Behinderter Frauen)

#### Non-Employment

- Across-party Women's Initiative Berlin (Überparteiliche Fraueninitiative Berlin, ÜPFB) – Employment
- German Social Association (Sozialverband Deutschland)
- Organisation of Single Mothers and Fathers (Verband alleinerziehender Mütter und Väter VAMV)
- Working Group Women – Employment – Politics (Arbeitsgruppe Frauen – Arbeit – Politik Berlin; (before: Working Group Hartz (AG Hartz))

- HYDRA e.V. Meeting and Counselling Center for Prostitutes (Treffpunkt und Beratung für Prostituierte)

### Intimate Citizenship

- Pro familia
- German Lesbian and Gay Association (Lesben- und Schwulenverband Deutschland, LSVD)
- The Association of Binational Families and Partnerships (Verband binationaler Familien und Partnerschaften)
- Pro Asyl
- agisra Köln e.V. – (Human Rights for Migrant Women and Female Refugees)
- Federal Association of Women Migrants in Germany (Bundesverband der Migrantinnen in Deutschland)<sup>22</sup>
- HUDA Network for Muslim Women (HUDA Netzwerk für Muslimische Frauen)
- Meeting and Education Centre for Muslim Women (Begegnungs- und Fortbildungszentrum muslimischer Frauen e.V.)

### Gender-based Violence

- KOK (German nationwide activist coordination group combating trafficking in women and violence against women in the process of migration)
- Terre des Femmes (Human Rights for Women)
- Ban Ying e.V. Coordination and Counselling Centre on Human Trafficking (Koordinations- und Beratungsstelle gegen Menschenhandel)

## **1.3. Laws**

### **1994 Basic Law**

Since 1994, Art. 3 Abs.2 GG includes not only the phrase that women and men are equal, but that the State has to actively work towards the realisation of gender equality.

### **1994 The Second Equal Rights Act (1995)**

In 1995, the Second Equal Rights Act (Zweites Gleichberechtigungsgesetz) comes into force. The main point of critique is that the law only concentrates on the public service and

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<sup>22</sup> Other important mainstream (i.e. not specifically dedicated at gender issues) migrant associations are the Turkish Community in Germany (Türkische Gemeinde Deutschland), Federation of Turkish Parents (Föderation Türkischer Elternvereine in Deutschland), the Turkish-German Health Organisation (Türkisch-Deutsche Gesundheitsstiftung), the Turkish-Islamic Union for Religion (DITIB, Türkisch-Islamische Union der Anstalt für Religion).

Also the Islamic Council (Islamrat) and the Central Muslim Council (Zentralrat der Muslime, ZMD) are important actors in the political debate. However, the latter ones were not invited to the first Integration Summit in 2006.

In April 2007, the Muslim Coordination Council (Kordinierungsrat der Muslime, KRM) was founded by conservative Muslim organisations: the ZMD, the DITIB, the Islamic Council and the Association of Islamic Cultural Centres (Verband der Islamischen Kulturzentren VIKZ).

hardly touches on the private sector. Equal opportunity regulations for the private sector are missing. The law might therefore be judged as not compatible with EU law. Even for the public service the law is weak: It has no quota systems, the competencies of the women's policy agencies are low, their institutionalisation is weak and they aim mainly at combining work and family – for women. One positive aspect of the law is the introduction of sexual harassment as part of the problem of gender equality. (Schieck 1995)

#### **Primary Sources:**

- Explanation of the draft: Gesetzentwurf Bundesregierung 21.07.1993 Drucksache 12/5468 Anlage: Stellungnahme Bundesrat und Gegenäußerung Bundesregierung, p.16-24, 8p.
- 2<sup>nd</sup> reading: BT – Plenarprotokoll 12/222 21.04.1994 19152C-19166D, 14 p.
- Bill: Gesetz zur Durchsetzung der Gleichberechtigung von Frauen und Männern (Zweites Gleichberechtigungsgesetz – 2. GleichBG) (The Second Equal Rights Act) Bundesregierung – Gesetz vom 24.06.1994 – Bundesgesetzblatt Teil I 1994 Nr.39 30.06.1994 S.1406

#### **2001 Agreement between the Federal Government and the Central Associations of German Business on Promoting Equal Opportunities for Women and Men in the Private Sector**

During the coalition negotiation between the SPD and the Bündnis 90/ Die Grünen in 1998 an agreement on a legislative provision for gender equality in the private sector is reached. Family and Women's Minister Christine Bergmann is also actively promoting such an affirmative act in the programme 'Woman and Work' in 1999. In 2000, the Minister presents the major pillars of such legislation. Despite talks with all stakeholders, the employers' associations do not agree on it. However, the Minister commissions labour law expert Heide Pfarr from the Institute of Economic and Social Sciences (WSI) at the Hans Böckler Stiftung to draft a respective law. This law provides for the right to class action lawsuits (Verbandsklagerecht), the interlinkage of promotion of women and public contracts as well as the establishment of a coordinating equality office. In high level talks between the Chancellor and the employers' associations the former turns out to be increasingly sceptical about the law, whereas the latter completely reject the demands. Women's associations such as the Working Group Socialist Women (ASF), the Federal Association of Municipal Women's and Equality Offices (BAG), the women's section of the unions and the Bündnis 90/ Die Grünen continuously argue for such an act. The Christian-conservative party (CDU/CSU) and the Liberals (FDP) oppose the law vehemently.

Follow-up documentation:

In 2003 and 2006, a report on the implementation of the Agreement is submitted. In the context of the Across-party Women's Initiative Berlin (Überparteiliche Fraueninitiative Berlin ÜPFB), authors of the implementation report (Renate Ortlieb, Freie Universität Berlin)

document the lack of effectiveness of this voluntary agreement. The German Women Lawyers Association (Deutscher Juristinnenbund DJB) is also amongst the ones to call for an affirmative equal rights act for the private sector (2006). In 2006, the BMFSFJ underlines the importance of the voluntary agreement and states that an equality act for the private sector is not aimed for (as the voluntary agreement is sufficient).

### **Primary Sources:**

- Vereinbarung zwischen der Bundesregierung und den Spitzenverbänden der deutschen Wirtschaft zur Förderung der Chancengleichheit von Frauen und Männern in der Privatwirtschaft (Agreement between the Federal Government and the Central Associations of German Business on Promoting Equal Opportunities for Women and Men in the Private Sector). 2.7.2001, 3p.
- Implementation Report 2003: Bilanz 2003 der Vereinbarung zwischen der Bundesregierung und den Spitzenverbänden der deutschen Wirtschaft zur Förderung der Chancengleichheit von Frauen und Männern in der Privatwirtschaft, 42p.
- Implementation Report 2006: Second Assessment of the Agreement between the Federal Government and the Central Associations of German Business on Promoting Equal Opportunities for Women and Men in the Private Sector, February 2006, 66p.

### **2001 Federal Act on Implementing the Concept of Equal Opportunities between Women and Men (= Federal Equality Act)**

Positive elements of this act, introduced in 2001, are 1. the prohibition of indirect discrimination in human resources decisions; 2. the regulations on transparency in the application processes; 3. the obligation to equality action plans with flexible quota schemes; 4. better institutional standing of gender equality officers.

Missing from the act are sanctions in cases of violations of equality action plans and the right to class action (Verbandsklagerecht), supporting the individual's right to sue. Besides, a similar act for the private economy is still missing.

### **Primary Sources:**

- Gesetz zur Durchsetzung der Gleichstellung von Frauen und Männern (Bundesgleichstellungsdurchsetzungsgesetz – BGleiG) (Federal Act on Implementing the Concept of Equal Opportunities between Women and Men) Bundesregierung – Gesetz vom 30.11.2001 – Bundesgesetzblatt Teil I 2001 Nr.62 04.12.2001 S. 3234, 9 p.

## **2002 Act on Equal Opportunities for Disabled Persons**

The act aims at creating new possibilities of self-determination and equal participation in social life such as establishing barrier-free environments on a broad scale. Section 2 BGG provides for special measures and affirmative action for disabled women.

### **Primary Sources:**

- Gesetz zur Gleichstellung behinderter Menschen und zur Änderung anderer Gesetze (BGG) (Act on Equal Opportunities for Disabled Persons) Bundesregierung – Gesetz vom 27.04.2002 – Bundesgesetzblatt Teil I 2002 Nr.28 30.04.2002 S. 1467, 16 p.

## **2006 General Equal Rights Act**

After the issuing of the European Directives against discrimination in 2000 (race, ethnicity) and 2002 (gender equality in employment), a first draft of a German adoption of anti-discrimination legislation is submitted in 2001. This first draft is rejected. In 2004, a draft from the coalition parties which exceeds the EU directive is not decided in the respective legislative period due to an appeal of the Bundesrat to the Mediation Committee (Vermittlungsausschuss). Despite the fact that the law does not need the confirmation of the Bundesrat, the appeal to the Mediation Committee needs to be addressed and this postpones it coming into force.

It takes until August 2006 until such an act is eventually brought through parliament<sup>23</sup>. Different actors contributed to the postponement of the Anti-Discrimination Act (later called the General Equal Rights Act) coming into force. Main critical voices against the act draw on the liberal, bourgeois and gender+ blind principles of individual autonomy and freedom of contract. Another line of criticism evolves around the concern for unintentional legal consequences such as uncontrollable masses of suits. With regard to the red-green coalition, it is criticised for its lack of engagement in the discourse, probably due to internal differences in opinion. (Wersig 2005)

In 2005, Germany is convicted by the European Court of Justice for not complying with EU directives. Eventually, in August 2006, six years after the first respective EU guidelines were issued, the General Equal Rights Act (Allgemeines Gleichstellungsgesetz) enters into force. Major points of concern are the few measures for effective law enforcement. With regard to labour law, it is problematic that the employer is only punishable provided s/he has been acting culpably ('schuldhaft gehandelt'). The time limits to file a suit do not meet with the actual living situations of victims and, in order to press charges successfully, victims have to show evidence that plausibly indicates discrimination. Again problematically, the right to

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<sup>23</sup> The Council Directive (2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services) that has to be transformed into national law until December 2007 is already included into the final German draft.

class action is not provided for. Additionally, provisions for area-wide anti-discrimination offices are not included. (Liebscher 2005 and 2006)

Follow-up documentation:

With the entering into force of the General Equal Rights Act, a Federal Anti-Discrimination Office at the BMFSFJ has to be established. In February 2007, Martina Köppen is assigned director. Given her background as an officer for European Affairs of the Commission of German Bishops, Catholic Office in Berlin, the Lesbian and Gay Association (LSVD) is raising concerns about the choice.

### **Primary Sources:**

14. Legislative period: 2001 draft + readings

15. Legislative period: 2004 draft + readings

16. Legislative period (2005-):

- Explanation of the draft: BT – Gesetzentwurf Bundesregierung 08.06.2006 Drucksache 16/1780, 60 p. und Stellungnahme des Bundesrates, 5p
- 2<sup>nd</sup> reading: BT – Plenarprotokoll 16/43 29.06.2006 S. 4027B-4045A, 13 p.
- Bill: Gesetz zur Umsetzung europäischer Richtlinien zur Verwirklichung des Grundsatzes der Gleichbehandlung (Allgemeines Gleichbehandlungsgesetz AGG) Bundesregierung – Gesetz vom 14.08.2006 – Bundesgesetzblatt Teil I 2006 Nr.39 17.08.2006 S. 1897, 14 p.
- Civil Society Text: Comment on the draft of the AGG by the German Women Lawyers Association (DJB): Stellungnahme zum Entwurf eines Allgemeinen Gleichbehandlungsgesetzes vom Mai 2006, BR Drs 329/06 Stellungnahme vom 22.06.2006, 14p.
- Civil Society Text: Open Letter of the German Women Lawyers Association (DJB) to the European Commission: Offener Brief an Herrn Kommissar Vladimir SPIDLA und Herrn Generaldirektor Nikolaus G. VAN DER PAS, Herrn Generaldirektor Nikolaus G. VAN DER PAS: Unzureichende Umsetzung der EG-Antidiskriminierungsrichtlinien in Deutschland, 19. Juni 2007, 9p.

## **1.4. National Action Plans, Reports and Studies**

### National Action Plans

In 1999, the **National Action Plan to Combat Violence against Women**, the first comprehensive plan to combat gender-based violence also on a structural level, was introduced. In order to implement the plan, a Federal-State (Länder)-working group was

established to enable co-operation and structural changes at all levels. In 2004, the Federal Implementation Report reflected major achievements of the Action Plan and announced the Action Plan would be maintained in the following legislative periods. A written (critical) comment has been issued by the Federal Association of Municipal Women's and Equality Offices (BAG). Also, the German Women Lawyers Association (DJB) is continuously commenting on the government measures on violence against women.

At the EU summit in Nizza in 2000, it was agreed that **National Action Plans to Combat Poverty and Social Exclusion** are to be submitted until 2010 in two-yearly intervals. Since then, Germany has published two (2001–2003, 2003–2005). The reports are to a certain degree gendered and take other social inequalities due to sexual orientation, disability, citizenship status and age into account. However, intersectionalities are dealt with separately instead of being seen as mutually constitutive.

Since the 1997 introduction of the European Employment Strategy and the corresponding EU guidelines, EU Member States have delivered yearly **National Action Plans for Employment Policy** (since 2005 **National Reform Programme**) that describe how the 'Employment Guidelines are put into practice at the national level. They present the progress achieved in the Member State over the last 12 months and the measures planned for the coming 12 months: they are both reporting and planning documents'<sup>24</sup>. Chapters of these reports touch on gender equality on the labour market and integration of people at a disadvantage in the labour market, such as: 'early school leavers, low-skilled workers, people with disabilities, immigrants, and ethnic minorities, by developing their employability, increasing job opportunities and preventing all forms of discrimination against them'<sup>25</sup>.

In 2005, corresponding to the requirements decided upon in the Special Session of the UN General Assembly on Children in 2002, Germany issued a **National Action Plan. For a Germany fit for Children 2005–2010** which seems to be gender mainstreamed and to take other social divisions into account. However, intersectionalities of gender, disability and citizenship status are dealt with separately.

In July 2006, the first Integration Summit, initiated by Chancellor Angela Merkel, was held at the chancellery. In a three-hour debate, the chancellor met with different stakeholders involved in integration matters, of which one third had a migration background. Media articles report both scepticism and euphoria about the mere happening, before and after the summit. Scepticism is documented, especially from the side of several Muslim associations (Islamrat; Zentralrat der Muslime) that were not invited. After the summit, six working groups were set up in order to prepare a **National Integration Plan** in the period up to the next Integration Summit on July 12, 2007. The working groups were:

1. Improving integration courses (GM: yes)
2. Promoting language acquisition from the very beginning (GM: no)

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<sup>24</sup> See [http://ec.europa.eu/employment\\_social/employment\\_strategy/national\\_en.htm](http://ec.europa.eu/employment_social/employment_strategy/national_en.htm) (accessed on June 20, 2007).

<sup>25</sup> National Action Plan for Employment Policy 2004, p. 33

3. Securing good education and vocational training; improving chances on the labour market (GM: yes)
4. Improving the situation for women and girls, realise equality (even intersectionalities)
5. Integration on the spot (GM: yes)
  - 1.1. Cultural plurality; enforcing intercultural competences (GM: no; no 'Leitkultur-Begriff')
  - 1.2. Integration through sports (GM: yes)
  - 1.3. Media – Making use of plurality (GM: no; mainstreaming ethnicity)
  - 1.4. Integration via citizen engagement; enhance equal participation (GM: yes)
6. Science – open minded (GM: marginally)

Scanning through the reports of the working groups one can state that not all of them are gender mainstreamed. Working Group IV 'Improving living conditions for women and girls; realise equality' is addressing women's issues separately. It is specialising on violence prevention and protection via legal provisions, but also touching on participation. A second group worked on strengthening the position of migrant women in the family and in the wider social environment, especially in the areas of health care, sex education and elderly care. Interestingly the report states that the living situation of elderly migrant women is precarious as three reasons for discrimination intersect: gender, age and ethnicity. Therefore, the report recommends that special attention should be paid to them.

In the forefront of the second summit, representatives of important associations with Turkish background have announced they will be staying away from the meeting. The reason for this is the amendment of the Immigration Act passed in the Bundestag in June 2007 that was decided without consultation of the relevant civil society groups.

The National Integration Plan provides for 400 voluntary measures to be implemented by the government at the federal, state and communal level as well as actors from the economy and associations with and without migrant background. The implementation of these measures will be evaluated at the third Integration Summit in autumn 2008. At the federal level the government plans the extension of integration courses, the availability of child care for participants of the integration courses, co-operations with the private economy to promote access to labour market for young migrants, the advancement of migrant women as a motor of integration and online-counselling for women affected by forced marriages. Also, special measures in the fields of sports, media and civil engagement aim at enhancing the integration of migrants.

### Reports and Studies

Regular reports, relevant for the QUING period, are the **Family Reports**, drafted by the BMFSFJ (1994, 2000 and 2007). Also, the **Social Reports** (2001, 2005), drafted by the Ministry of Health and Social Security, have chapters on gender equality policies and policies directed at disabled, youth and seniors.

For the first time, a **Gender Data Report**<sup>26</sup> was published by the BMFSFJ in November 2005. In over 800 pages, the German Youth Institute (Deutsches Jugendinstitut e.V.) in cooperation with the Federal Statistical Agency (Statistisches Bundesamt), conducted an analysis of the living situations of women in Germany, taking into account the intersectionalities of age, disability, sexual orientation and citizenship status.

The Interdisciplinary Centre for Women and Gender Studies of the Bielefeld University in cooperation with the Institute for Applied Social Sciences (infas), Bonn published 'Health, Well-Being and Personal Safety of Women in Germany, A **Representative Study of Violence against Women in Germany**' in 2004<sup>27</sup>. This study was conducted on behalf of the Federal Ministry for Family, Senior Citizens, Women and Youth (BMFSFJ) in the period of 2002 to 2004. In 2007, the findings of a separate analysis that concentrated on the situation and exposure to violence of migrant women were presented in a conference, organised jointly by the Federal Government Commissioner for Migration, Refugees, and Integration and the NGO Terre des Femmes.

The '**Evaluation research on intervention projects against domestic violence**'<sup>28</sup> (2004) (German acronym: WiBIG) was commissioned to the University of Osnabrueck by the Federal Ministry for Family, Senior Citizens, Women and Youth to assess the work of ten selected intervention projects over a period of 6 years (1998–2004). The focus during the first phase of the study was to evaluate the Berlin Intervention Project against Domestic Violence (German acronym: BIG), which at the time was a federally funded model project. The second phase from 2000 focused on a comparative evaluation of other intervention projects of different scales and scopes running at either local authority or state level. Furthermore, eight perpetrator programmes offered by different organisations were evaluated.

Also in 2004, two more **studies on the living conditions of women** in Germany were published, taking into account the intersectionalities of age and citizenship status. One

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<sup>26</sup> Cornelißen, Waltraud (Deutsches Jugendinstitut e.V.) (2005): *Gender-Datenreport. 1. Datenreport zur Gleichstellung von Frauen und Männern in der Bundesrepublik Deutschland* [Gender data report on the equality of women and men in the Federal Republic of Germany]. On behalf of the Federal Ministry for Families, Senior Citizens, Women and Youth (BMFSFJ).

<sup>27</sup> Schröttle, Monika/Müller, Ursula (2004): *Lebenssituation, Sicherheit und Gesundheit von Frauen in Deutschland. Eine repräsentative Untersuchung zu Gewalt gegen Frauen in Deutschland* [Health, well-being and personal safety of women in Germany. A representative study of violence against women in Germany]. On behalf of the Federal Ministry for Families, Senior Citizens, Women and Youth (BMFSFJ). In 2007: *Lebenssituation und Gewaltbetroffenheit von Migrantinnen* [Living situations and exposure to violence of migrant women].

<sup>28</sup> Hagemann-White, Carol, Kavemann, Barbara et.al. (2004): *Studie "Gemeinsam gegen häusliche Gewalt - Kooperation, Intervention, Begleitforschung"* [Working together to combat domestic violence: Cooperation, intervention, research. Findings of the evaluation research assessing intervention projects against domestic violence (German acronym: WiBIG)]. On behalf of the Federal Ministry for Families, Senior Citizens, Women and Youth (BMFSFJ).

focuses on the living conditions of elderly, single women with migrant background<sup>29</sup>, the other one on girls and women with different ethnic backgrounds<sup>30</sup>.

A report from 2001 on **Women and Health in Germany** (Bericht zur gesundheitlichen Situation von Frauen in Deutschland<sup>31</sup>) published by the BMFSFJ provides a geographically segregated analysis of women and health care in Germany. It gives a detailed account of socio-economic factors, violence in partnerships, reproductive health, women with special needs, and gender-mainstreamed approaches to health care etc.

### Country and Shadow Reports to International Human Rights Conventions

An abundance of reports and action plans have been produced over the last ten years. This is partly due to agreements on the EU level and conventions on the international level that comprise of reporting duties and strategic action plans. Germany is member state to the most important international human rights conventions and follows its reporting duties. NGOs have critically evaluated the state reports and have documented the major shortcomings of national measures to promote the advancement of women and establish legal and factual gender equality.

Germany became a member state to the CEDAW on 17 July 1980 (ratified 1985) and signed the Optional Protocol in 1999 (ratified in 2002). Up to now, it has already submitted five Country Reports. The last **CEDAW Country Report** in 2003 was complemented by a shadow report<sup>32</sup>, compiled and edited by the NGOs agisra, KOK and Terre des Femmes, with contributions from over 20 national civil society voices. The NGO report, while not touching on all issues of the convention, raises some issues silenced in the official report. These include the lack of gender sensitive regulation in immigration law (employment), the flawed implementation of measures against violence against women (+ intersectionalities) and issues of citizenship (the unclear legal situation of victims of trafficking, asylum seekers and illegal migrants etc.). In 2004 the CEDAW committee, informed by the shadow report, discussed the state report and issued the final recommendations. While the final recommendations can themselves be criticised for their weak language and their tame content, they nevertheless reflect some of the major problems. The points of concern refer to

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<sup>29</sup> Matthäi, Ingrid (ISO Institut e. V.) (2004): *Lebenssituation älterer, allein stehender Migrantinnen*. [Living conditions of elderly, single women with migrant background]. On behalf of the Federal Ministry for Families, Senior Citizens, Women and Youth (BMFSFJ).

<sup>30</sup> Ursula Boos-Nünning and Yasemin Karakasoglu (2004). *Viele Welten leben. Lebenslagen von Mädchen und jungen Frauen mit griechischem, italienischem, jugoslawischem, türkischem und Aussiedlerhintergrund*. [Living several worlds. Living situations of girls and young women with Greek, Italian, Yugoslavian, Turkish background and resettlers]. On behalf of the Federal Ministry for Families, Senior Citizens, Women and Youth (BMFSFJ).

<sup>31</sup> BMFSFJ. 2001. *Bericht zur gesundheitlichen Situation von Frauen in Deutschland. Eine Bestandsaufnahme unter Berücksichtigung der unterschiedlichen Entwicklung in West- und Ostdeutschland*. [Report on women and health in Germany. A Survey taking into account the different developments in West and East Germany.]

<sup>32</sup> The forth period report was also accompanied by a shadow report, but only by two NGOs, WIRUS and KOK (both active in the field of women's human rights) in 2000 (Böker 2004:1).

1. gender roles: stereotypes in the media
2. violence against women: the lack of gender segregated data accounting for intersectionalities
3. productive and reproductive work: the government is urged to promote equal pay, to use temporary special measures in order to improve women's position on the labour market and to monitor the impact of regulations on part-time work and to counteract possible adverse consequences of this working pattern for social security. Men should be encouraged to take up parental leave.
4. Agenda 2010: the committee urges the state to monitor the gender impacts of these reforms
5. intersectionality: lack of data on the situation of migrant and minority women and girls
6. women's political and public participation: to promote the access of women to higher echelons of the hierarchy
7. prostitution: the state is urged to implement measures enabling exit from prostitution and information programmes that raise awareness of the human rights issues involved in the exploitation of prostitution
8. the monitoring and evaluation of laws, policies and plans
9. consultation with civil society

In 2005 the federal government issued its 7<sup>th</sup> **Human Rights Report** to the Bundestag which not only touches on the advancement of human rights in Germany's foreign politics but also domestic policies. It covers the period 2002–2005 and, similar to the CEDAW report, lists legal and other governmental measures to realise human rights.

Clearly, the time before and after the Fourth UN World Conference on Women in Beijing in 1995 has stimulated much mobilisation around women's and gender issues. In the course of the reviewing and appraisal processes of the **Beijing Platform for Action in 2004/5** (Beijing + 10), the German Women's Council (Deutscher Frauenrat) has, together with the German Association of Women Medics (Deutscher Ärztinnenbund), German Association of Women Lawyers (Deutscher Juristinnenbund) and the NGO Terre des Femmes, published a report<sup>33</sup> on Germany's implementation of the Beijing Platform for Action and the following documents. It critically assesses the co-operation between NGOs in the preparation and in the follow-up process to Beijing. The 12 different working groups that comprised members of NGOs and 300 experts in the forefront of the conference were dissolved afterwards, thus excluding NGOs from further implementation processes. Apart from a governmental national action plan (1997), the government proved to be negligent in the dissemination of international human rights conventions and the Beijing Platform for Action in the following years. A further criticism is that none of the following governments allude to international human rights conventions in official statements on their working programmes and strategies. However, the German Women's Council was supported by the BMFSFJ for the organisation of preparatory

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<sup>33</sup> Deutscher Frauenrat, ed. 2004. *Bericht deutscher NGOs über die Implementierung der Pekinger Aktionsplattform und der von der 23. Sondersitzung der UN-Vollversammlung 2000 (Peking + 5) verabschiedeten Dokumente*. <http://www.frauenrat.de> (accessed on June 19, 2007).

meetings in the forefront of Beijing +5 (for which the German Women's Council (Deutscher Frauenrat) also compiled a shadow report). On a more positive note, the 2004 shadow report mentions the discussion of the 5<sup>th</sup> state report to the CEDAW in parliament and the integration of two NGO members into Germany's delegation to the CSW (UN Commission on the Status of Women) sessions.

The main points of concern of the 2004 Beijing shadow report:

1. The depoliticising strategies and flawed implementation of gender mainstreaming in the latest policy processes
2. The traditional gender division of labour (reproductive and productive roles), unequal pay, women's disproportional participation in part-time employment and the lack of day care facilities for children.
3. The shift from women and gender to family policies as well as the emphasis on demographic developments ('Germany is in need of a higher birth rate'), make the subordination of the advancement of women's human rights under other discourses visible.
4. The German Women Lawyers Association also criticises the decline of institutional gender equality structures at the Länder level as well as the lack of implementation of gender mainstreaming in policy making at the federal level.
5. Terre des Femmes, active in the field of combating violence against women, demonstrates the lack of evaluation of governmental campaigns and projects (e.g. the National Action to Combat Violence against Women in 1999), lack of data and insufficient financing of women's shelters and other counselling centres.
6. Most importantly, a change in legislation to allow migrant women an independent resident permit from their husbands is long overdue.

## 2. NON-EMPLOYMENT

### 2.1. Introduction

With regard to the issue of non-employment and the question of how state legislation legitimises or provokes exit from the labour market, various and contradictory debates can be identified. On the one side, the fight against unemployment makes it important that all persons, including women, mothers and disabled people, participate in the labour force. This rationale can be observed in regulations that promote women's employment, such as the Hartz reforms, the Job AQTIV Act or the 9<sup>th</sup> Book of the Social Code (intersectionality of gender and disability). Yet, inclusion into labour often happens in terms of precarious employment (Mini-, Midi-Jobs) or at the edge of gainful employment (1-Euro-Jobs, civil work). On the other side, the report of the Future Commission of the States Bavaria and Saxony stated that the high percentage of female labour force participation or the continuous high percentage of women wanting gainful employment (in the East of Germany) was responsible for high unemployment rates (Stolz-Willig 1999). Hence, women's labour market participation is considered as both a problem and a desired development at the same time.

The debate on reconciliation of family and working life and the equal distribution of reproductive and productive worth between the genders takes an intermediate position: It legitimises the withdrawal from the labour market for the sake of child raising activities and seeks to put it on a gender equal basis. At the same time, it intends to encourage a fast return to the labour market by providing part-time legislation. For a long time, child care policies that claimed to enable free choice (also part of the vocabulary of the conservatives) remained a hollow or even misleading statement as lacking day care infrastructure for the one to three year old impeded and still impedes realistic alternatives to choose from.

At the other end of the spectrum are initiatives like the recent one from the conservative CSU/ Bavaria that demands a 'caring bonus' for stay-at-home parents, clearly favouring child care models where the main carer (i.e. the mother) withdraws from the labour market.

When it comes to elderly care, the rationale as stated by the Ministry of Health is clear: It is envisaged that most of the care work is performed at home<sup>34</sup>. As non-professional care work is in 70 % of the cases performed by female care givers, there is a strong gender bias also in the field of care work. The withdrawal from the labour market that affects mostly women is legitimised and was backed up by the Long-term Care Insurance Act. Despite acknowledging the work performed by non-professional care givers by improving their social security, it is still not remunerated like professional care work or any other form of gainful employment. Typically, for both child raising and care policies, losses in the pension system due to the absence from gainful employment are not compensated sufficiently. Hence, the withdrawal from the labour market remains problematic. The newly introduced reform act on long-term

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<sup>34</sup> From the website of the Ministry of Health on the Long-term Care Insurance Act: 'The goal of strengthening domestic elderly care has been achieved: 2/3 of people in need for care have chosen to be cared for at home' (<http://www.bmg.bund.de>, accessed on May 18, 2007).

care seeks to feed back caring duties to productive work: Persons with caring duties are granted half a year of caring leave with the right to return to the workplace afterwards. However, the fact that the primarily responsible site for elderly care is the privately performed care at home (Theobald 2006), remains highly problematical.

The question of who is legitimately not employed can be extended to mean who has been denied access to employment and under what circumstances this is considered legitimate.

Understanding sex work as some form of regular employment has shaken the fundamentals of conservative Germany. The discourse on forced prostitution is now used in order to cut back the rather progressive legislation of the 2001 Prostitution Act.

Adhering to another religious community other than the Christians and indicating this by wearing religious symbols like a headscarf can be a legitimate reason to be excluded from public service. Hence, the access to the labour market is not only regulated by the obvious question of citizenship status (see Immigration Act), but also by the identity marker of religion.

The policies relevant for the issue of non-employment passed in Germany in the period from 1995 to 2007 will be discussed under the following subcategories:

- I. Reconciliation of work and family life
- II. Care work and informal work
- III. Equal pay and gender pay gap
- IV. Tax/ benefit policies
- V. Access to the labour market

#### Reconciliation of work and family life

- 2001 Child Raising Benefit Act + Part Time Act
- 2004 Day Care Improvement Act
- 2006 Parental Benefit Act
- 2006 Act for the Fiscal Promotion of Growth and Employment

#### Care work and informal work

- 1994 Long-term Care Insurance Act
- 2007 Revision of the Long-term Care Insurance Act

#### Equal pay and gender pay gap

- 2006 General Equal Rights Act

#### Tax/ benefit policies

- 2001 Pension Reform Act
- 2002/3 Hartz Reforms (especially Hartz IV)
- 2004 Elderly Income Act
- 2006 Amendment Basic Social Care for Job Seekers (Hartz)
- 2006 Aliens Benefit Act

### Access to the labour market

- 2000 Amendment Act on Elderly Part Time
- 2000 Job AQTIV Act
- 2001 9<sup>th</sup> Book of the Social Code
- 2001 Act on Prostitution
- 2003– Hijab Debate
- 2004 Immigration Act

### **Reconciliation of work and family life**

Reconciliation of work and family life has been a central issue of political debate over the last decade. However, different underlying rationales are informing this discourse. Whereas it can be used to enhance the economic independence of women, it can also be integrated into the traditional realm of family politics. Typical for the latter is the current emphasis on the importance of family and children, forming part of a wider discourse on demographic change and ageing.

As pointed out in the introduction, a policy shift has happened slowly in the field of child-raising benefit policies. In the early 1990s, the Child-raising Benefit Acts<sup>35</sup> clearly legitimise the woman's exit of the labour market by providing long child-raising periods. In 1998, the coalition agreement between the Social Democrats and the Bündnis 90/ Die Grünen already explicitly stated reconciliation of family and work as a goal; this was emphasised by the government programme 'Women and work' (1999). The 2001 Child Raising Benefit Act started to combine the recognition model (recognising family work as work e.g. in the pension system<sup>36</sup>) and the reconciliation model (promotion of parental part-time work). The recent reform of child-raising legislation in 2006 (Parental Benefit Act) follows and at the same time exceeds the hybrid model. It presents a policy shift as the child-raising benefit amounts to something like a child-raising wage for the first time. The idea of a child-raising wage was discussed from 1998 onwards, when Christian Leipert and Michael Opielka published an expert report on behalf of the German Working Group for Family Support (Deutscher Arbeitskreis für Familienhilfe), suggesting a remunerated model of family work called 'child-raising wage 2000' (Erziehungsgehalt 2000). This model was also discussed in feminist research (e.g. Stolz-Willig 1999 and Koch 2001).

Since the new millennium, fathers are also being included into reconciliation models. In 2001, the introduction of a new Child-Raising Benefit Act and the Part-Time and Temporary Contracts Act were accompanied by a government campaign called 'More space for fathers'

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<sup>35</sup> 1990 child-raising benefit and leave extended from 15 to 18 months. 1992 child-raising leave until the child reaches the age of three; child-raising benefit is extended to two years.

<sup>36</sup> With regard to the pension system, child-raising recognition periods and credits were amended from 1992 onwards to include at least symbolic improvements; however, actual losses of gainful employment are far from being compensated.

(BMFSFJ 2007). The 2006 Parental Benefit explicitly demands 'daddy months' in order to receive full parental benefit payments.

In order to realise the freedom of choice between child-caring activities at home or in day care facilities, a corresponding infrastructure has to be established. Since 2001, Family and Women's Ministers have engaged in this topic and led fierce debates on the financing of child care places. An important policy document is the 2004 Day Care Improvement Act. The recent advance of Family and Women's Minister Ursula von der Leyen in accelerating the process has provoked a backlash from the conservative party (especially the CSU/ Bavaria). The conservatives support a 'caring bonus' for stay-at-home parents. A second issue of debate evolving around the issue of child day care is the question of tax deductibility of child care costs (2006 Act for the Fiscal Promotion of Growth and Employment). Family and Women's Minister Ursula von der Leyen emphasises the opportunity to create legal jobs in the household which has been made more attractive through this legislation. The opposition in turn stresses the priority of the creation of child care places over tax deductibility.

The 2006 Aliens and Child Care Benefit Act was added to the list of relevant gender+ equality policies in order to demonstrate how the allocation of benefits is differentiated according to citizenship status. Persons with humanitarian residence permit are only eligible to child raising benefits when they have been living in Germany for at least three years and when they can prove legal employment or Unemployment Benefit I payments. A concrete example: Whereas German carers at least receive € 300 of parental benefit when they have no existing employment record e.g. housewives, aliens are not eligible to this minimum amount.

### **Care work and informal work**

In 1994 the Long-term Care Insurance Act came into force that was – at first sight – a milestone in the legislation of domestic care work; feminist standpoints, rather critical of the reform, have been extensively discussed in research. At the political level, the gender dimension of domestic care work seems to have been left out of the equation or at least has been addressed insufficiently. The recent reform (June 2007) does address the demand for a 'care leave' – it seems however that it is not exactly meeting the feminist demands as issued by the Confederation of German Trade Unions (DGB) or the German Women's Council (Deutscher Frauenrat).

The intersection of gender and migration issues in the form of 'illegal' care givers was – like in Austria – subject to public debates. Like the neighbouring country, Germany was lacking carers (Pflegernotstand). However, debates seem to have been less intense and less virulent in Germany as compared to Austria, where the involvement of politicians into the subject has contributed to an enormous presence in the media. Also, it could be subject to analysis whether different legislations on transition periods have contributed to a mitigation of the situation in Germany. Namely in 2001, an exemption to the recruitment ban was made for 'home helps' recruited from the future EU member states (Poland, Slovakia, Slovenia, Czech

Republic and Hungary). Despite not legally entitled to perform nursing tasks, an opportunity for legal employment was opened. Since 2004, due to the EU enlargement, professional carers have the right to work in Germany as long as they are employed by a company in an EU member state except Germany. Hence, employing foreign nursing staff directly at a German household remains illegal.

In Germany, there has also been a change in regulations affecting men, who can now register for a year of civil or cultural service as a replacement for military service. Here, a privilege of women has been extended to men, while one also knows that both men and women who take this up come from middle- or upper-class backgrounds.<sup>37</sup>

### **Equal pay and gender pay gap**

Whereas the gender pay gap is subject to feminist research and activism, legislation has been lagging behind. The government programme 'Women and Work' stated in 1999 that the government had no mandate to regulate tariffs in the private economy but that it would, however, set initiatives to promote equal pay. Measures included reporting duties (once per legislative period), examination as to whether the right to class action lawsuits would improve the standing of employees and negotiations with tariff partners. Eventually in 2002, the first – and up to now – only report on Equal Pay<sup>38</sup> was issued. An international conference on Equal Pay was also held in Berlin in 2002. Since then, initiatives to address the gender pay gap seem to have faded. However, the General Equal Rights Act (2006), according to EU directives, forbids discrimination in remuneration schemes on grounds of gender. In the letter to the EU commission, the criticisms of the German Women Lawyers Association (DJB) also refer to the flawed implementation of equal pay principles in the General Equal Rights Act.

### **Tax/ benefit policies**

To ensure economic independence for women, despite their losses in gainful employment during child-raising periods, forms an essential element of gender equality policies. Recognition periods and credits in the official pension scheme aim at compensating these losses. In Germany, however, these compensations have never exceeded the measure of 'symbolic improvements'. This applies to the 2001 Pension Reform Act as well as to the

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<sup>37</sup> 2002 Neuregelungen des Freiwilligen Sozialen Jahres und des Freiwilligen Ökologischen Jahres: „Blickt man auf die Soziodemografie der Teilnehmenden im FSJ und FÖJ, so sind es in der Mehrzahl junge Frauen, die überwiegend nach dem Abschluss der Realschule oder des Gymnasiums einen Freiwilligendienst leisten. Der Anteil junger Männer ist zwischen den Jahrgängen 2001/02 und 2003/04 von rd. 12% auf 24% im FSJ und von rd. 27% auf rd. 32 % im FÖJ angestiegen. Dies ist weitgehend auf die Möglichkeit, nach § 14c ZDG ein FSJ oder FÖJ anstelle des Zivildienstes zu leisten, zurückzuführen“ (BMFSFJ o.J., S. 10).“ → Bildungsstand / Migrationshintergrund  
Ausschlussmechanismen

Quelle: <http://www.bmfsfj.de/Kategorien/Publikationen/publikationsliste,did=98192.html>

<sup>38</sup> *Bericht der Bundesregierung zur Berufs- und Einkommenssituation von Frauen und Männern*. [Report of the Federal Government on the situation of women and men regarding employment and pay ] 24. April 2002. Available at <http://www.g-i-s-a.de/res.php?id=148> (accessed on July 10, 2007).

Long-term Care Insurance Act. The reform of private pension schemes in 2004 eventually regulated for equal contributions for women and men in these insurance schemes.

Legislative reforms having an enormous gender impact, but which have been introduced without much consideration of gender dimensions, are the Hartz reforms I to IV (passed in 2002 and 2003). The women's movement has intervened into the process and has issued several statements comprising a gender analysis of these laws. Also the women's and equality commissions of the social partners like ver.di (Union for Services) have criticised these reforms. In 2006, a grand motion from Die LINKE was eventually answered by the Federal Government and discussed in parliament. A central issue of feminist concern is the regulation of Unemployment Benefit II and the promotion of precarious jobs, the majority of which are performed by women.

One of the hottest debates in the field of tax policy is the one on income tax. It is documented in the chapter on INTIMATE CITIZENSHIP as the right to joint tax assessment for spouses (the so called 'Spouse Splitting Model') arises exclusively from heterosexual marriage. Clearly, this topic is also related to non-employment as the model favours the withdrawal of women from the labour market.

### **Access to the labour market**

The regulations of the 2000 First Amendment on the Act on Elderly Part Time is presented by the Federal Government as promoting equality between women and men as it allows for the reduction of working hours also in cases of part-time employment. From the point of view of economic independence and security however, these regulations remain questionable. Also, it seems that it was not subject to much public debate. However, it is part of the issue of non-employment as it promotes the exit from the labour market for elderly employees.

The 2000 Job AQTIV Act was the first act to explicitly promote women's labour market participation. In some respects, it is already a predecessor of the Hartz reforms, as child-raising activities are not considered an obstacle to employment. However, this act is rather more related to employment than unemployment as it tries to push women into the labour market. Another important legislation at the intersections of gender and disability was the 2001 gender mainstreamed 9<sup>th</sup> Book of the Social Code that promoted the labour market participation of persons with disabilities.

Other important acts and debates negotiate the definition of 'legitimate' employment. In 2001, the Act on Prostitution for the first time defined sex work as work and made it subject to social security. The other example is the debate on the wearing of a headscarf (female Muslim teachers and the hijab-debate) in school. Here the issues of gender and religion intersect on the question whether access to the labour is legitimately regulated by the issue of religious identity. The Immigration Act of 2004 – among other issues – regulated access to the labour market for aliens. As the German Women Lawyers Association (DJB) points out, these regulations will mostly benefit male migrants.

## 2.2. Actors

Obviously, the chancellors – for the QUING period Chancellor Gerhard Schröder (1998-2005) ‘famous’ for his derogative statement on women’s issues (‘Gedöns’) and Angela Merkel (2005-) - are important actors. Public debates on child care and gender roles are clearly influenced by the churches (see the 2004 Daily Care Improvement Act). Rulings of the Federal Constitutional Courts are playing an important role not only at the legislative level but also at the discursive (see the 2003 Hijab Debate).

Important ministries for the issue of non-employment - apart from the BMFSFJ - are the Ministry of Health, Ministry for Employment and Social Affairs, Ministry of Finance as well as the commissioners for migration and the one for disability affairs. Other important actors are listed below:

### State and Party Feminists

- SPD: Working Group Socialist Women (Arbeitsgemeinschaft Sozialistischer Frauen, ASF), Working Group Lesbian and Gays (Arbeitskreis Lesben und Schwule in der SPD, Schwusos) Working Group Young Socialists (Arbeitsgemeinschaft der Jungsozialistinnen und Jungsozialisten in der SPD, Jusos); Women and Gender Politics at the Friedrich Ebert Stiftung (Frauen und Gender Politik)
- CDU: Women’s Union (FU Frauen Union)
- FDP: Federal Association of Liberal Women (Bundesvereinigung Liberale Frauen)
- DIE LINKE: Left Socialist Women’s Working Group of the Party Die LINKE (Linke Sozialistische Arbeitsgemeinschaft der Frauen der Partei DIE LINKE, LISA); Rosa-Luxemburg-Stiftung
- Bündnis 90/ Die Grünen: Federal Women’s Council (Bundesfrauenrat), Federal Working Group Women’s Politics (Bundesarbeitsgemeinschaft Frauenpolitik), Federal Working Group Lesbian Politics (Bundesarbeitsgemeinschaft Lesbenpolitik); Feminist Institute of the Heinrich-Böll Stiftung (Feministisches Institut)
- Federal Association of Municipal Women’s and Equality Offices (Bundesarbeitsgemeinschaft der kommunalen Frauenbüros und Gleichstellungsstellen, BAG)

### Social Partners

- Union for Services (Dienstleistungsgewerkschaft Ver.di): Groups for Gender and Women’s Policies; Disabilities; Lesbian, Gay, Bi-Sexuals and Transgender
- DGB Women (DGB Frauen) at the Confederation of German Trade Unions (Deutscher Gewerkschaftsbund, DGB)

- Union for Education and Science (Gewerkschaft für Erziehung und Wissenschaft, GEW)
- Union for Metal (IG Metall): Groups for Disabled; Women; Youth; Migrants; Unemployed

#### Actors from Civil Society

#### Across Issues

- The German Women Lawyers Association (Deutscher Juristinnenbund DJB)
- German Women's Council (Deutscher Frauenrat)

#### Disability:

- Women's Net – Federal Lobby Group Women with Disabilities (Weibernetz – Bundesweite Politische Interessensvertretung Behinderter Frauen)

#### Non-Employment

- Across-party Women's Initiative Berlin (Überparteiliche Fraueninitiative Berlin, ÜPFB) – Employment
- German Social Association (Sozialverband Deutschland)
- Organisation of Single Mothers and Fathers (Verband alleinerziehender Mütter und Väter VAMV)
- Working Group Women – Employment – Politics (Arbeitsgruppe Frauen – Arbei – Politik Berlin; (before: Working Group Hartz (AG Hartz))
- HYDRA e.V. Meeting and Counselling Center for Prostitutes (Treffpunkt und Beratung für Prostituierte)

### **2.3. Timeline**

#### **1994 Long-term Care Insurance Act (1995)**

In 1993, the Federal Government submits a bill regulating contributions to the care insurance scheme, the allocation of care benefits and the integration of non-professional carers into the pension and accident insurance<sup>39</sup>. However, carers neither acquire unemployment insurance, sick, nor care insurance, entitlements during their care leave.

The need for such a law has arisen from the high financial pressure on communal bodies that have to allocate high amounts of social benefits (Sozialhilfe) in order to alleviate the pressing financial burden of increasingly higher numbers of elderly people in need of care. Surprisingly, the bill, although fiercely discussed before and after its introduction, is passed without political demands from the side of the carers (mostly women) and the women's

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<sup>39</sup> Ministry in charge: Federal Ministry for Employment and Social Order (Bundesministerium für Arbeit und Sozialordnung)

movement (Behning 1997). It took a mediation process (Vermittlungsverfahren) between the federal and the state level in order to resolve the problem of financing the bill.

In 2001, the Federal Constitutional Court (3.4.2001) ruled on equal contributions to the official care insurance schemes between women and men. In 2001, the German Women Lawyers Association drafts suggestions on how to transform the Federal Constitutional Court Ruling into the legal system (see civil society text below).

#### Follow-up documentation

The Ministry of Health has the obligation to report on the development of the Long-term Care Insurance Act every three years. The third report is published in 2004. In 2003, the German Social Association (Sozialverband Deutschland) demands that a reform of the act must take into consideration the high percentage of female carers. New regulations should address the fact that assuming caring responsibilities means dropping out of gainful employment. Thus, reconciliation of caring duties and regular work should be promoted by respective legislation.

The Round Table on Care, initiated by the BMFSFJ in 2003 and active until autumn 2005, has gathered different stakeholders of the debate in order to develop the 'Charter on the Rights of People in Need for Care'. This document, however, does not discuss the rights of carers. In 2005, initiatives to improve the situation of women cared for stem from the Working Group Socialist Women (ASF). In 2006, the German Social Association (Sozialverband Deutschland) demands that the German Women's Council (Deutscher Frauenrat) lobbies for the introduction of a legal entitlement to choose the sex of the care giver.

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- Explanation of the Draft: available at: BR - Stellungnahme Bundesrat 24.09.1993 Drucksache 505/93 (Beschluß), 17 p.
- 2<sup>nd</sup> parliamentary reading: BT - Plenarprotokoll 12/183 22.10.1993 S. 15819B-15861A, 15889A-15891B/Anl, 42 p.
- Bill: Gesetz zur sozialen Absicherung des Risikos zur Pflegebedürftigkeit (Pflegeversicherungsgesetz) (Act on the Social Protection against the Risk of Need of Care, Long-term Care Insurance Act)  
Bundesregierung - Gesetz vom 26.05.1994 - Bundesgesetzblatt Teil I 1994 Nr.30 28.05.1994 S.1014  
Bundesregierung - Berichtigung vom 23.09.1994 - Bundesgesetzblatt Teil I 1994 Nr.68 11.10.1994 S.2797
- Civil Society Text: The German Women Lawyers Association (DJB) has actively lobbied in the policy making process and afterwards. At this point in time, an online comment was not available as the online archives only date back to 2000.

Draft of a Care Insurance Reform Act by the DJB: Berücksichtigung des Aufziehens

von Kindern in der Pflegeversicherung: djb-Vorschlag zur Umsetzung der Pflegeversicherungs-Entscheidungen des Bundesverfassungsgerichts (BVerfG) vom 3. April 2001, 6p.

### **1999 Government Programme 'Women and Work'**

The 1999 governmental programme 'Women and Work' aims at promoting equality of women and men in professional and family life. It intends to facilitate the reconciliation of both spheres. From now on, 'reconciliation' is playing a major role on the political agenda. The programme also talks about affirmative action in order to mitigate existing discrimination of women on the labour market. Part of such special measures is the announcement of a planned equality act for the private economy. However, these accompanying measures in the private economy to actively promote gender equality are missing until today. Efforts to push through a gender equality act for the private sector are countered by both Chancellor Schröder and the head organisations of the private sector (see Chapter GENERAL GENDER EQUALITY POLICIES). Instead, a voluntary agreement with reporting requirements is decided upon in 2001.

#### **Primary Sources:**

- Government Programme: Programm Frau und Beruf ['Women and Work']. BMFSFJ. 1999, 16p.

### **1999 Act on the Reorganisation of Low-scale Work**

In official government statements (Measures undertaken by the Federal Government for the Improvement of Equal Opportunities of Women and Men 2001), this act is considered to advance equality between women and men as it enables women to contribute to the pension scheme and to acquire independent pension entitlements despite marginal employment ('geringfügig')<sup>40</sup>.

#### **Primary Sources:**

- Draft: Gesetz zur Neuregelung der geringfügigen Beschäftigungsverhältnisse (Act on the Reorganisation of low-scale work) Bundesregierung - Gesetz vom 24.03.1999 - Bundesgesetzblatt Teil I 1999 Nr.14 29.03.1999 S. 388
- Explanation: Maßnahmen der Bundesregierung zur Verbesserung der Chancengleichheit von Frauen und Männern (Measures undertaken by the Federal Government for the Improvement of Equal Opportunities of Women and Men). BMFSFJ, 2001, p. 11, last paragraph.

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<sup>40</sup> For a critique see Scheiwe, Kirsten in Streit 4/2000, p.147-148.

## **1999 First Amendment of the Act on Elderly Part Time**

In the context of high unemployment statistics, the 1996 Act on Elderly Part Time (Altersteilzeitgesetz) intends to promote part time and early retirement of elderly employees in order to make room for younger workers. Part time salaries are subsidised (20 % in comparison to normal part time work) by the public, thus making it attractive for employers and employees alike. However, pension entitlements are lower. In 1999, this law was amended to include the right to reduced working time even when previously employed part-time. Employers still are entitled to unemployment insurance. In official government statements (Measures undertaken by the Federal Government for the Improvement of Equal Opportunities of Women and Men 2001), this is considered an achievement for women, given women's disproportionate participation in part-time employment.

### **Primary Sources:**

- Bill: Gesetz zur Fortentwicklung der Altersteilzeit (First Amendment of the Act on Elderly Part Time) Bundesregierung - Gesetz vom 20.12.1999 - Bundesgesetzblatt Teil I 1999 Nr.57 27.12.1999 S. 2494
- Explanation: Maßnahmen der Bundesregierung zur Verbesserung der Chancengleichheit von Frauen und Männern (Measures undertaken by the Federal Government for the Improvement of Equal Opportunities of Women and Men). BMFSFJ, 2001, p. 12, paragraph 1.

## **2001 9<sup>th</sup> Book of the Social Code: Rehabilitation and Participation of Disabled Persons**

Despite some points of critique, the Ninth Book of the Social Code on the Rehabilitation and Participation of People with Disabilities is a milestone in equal rights legislation. Due to the participation of many interest groups and associations, important rights claims have been realised. The law's objective is to establish equality between disabled and non-disabled as well as to eliminate discrimination on grounds of gender. The author points to the difficulties of implementation given the regressive social and labour market policies (and the implicit male breadwinner model) in which the law is embedded.

With regard to the issue of (non-) employment, it is interesting to mention that welfare benefits for this target group are also employment-focused. This is important as women with disabilities have a low labour force participation rate. (Zinsmeister 2002)

### **Primary Sources:**

- 2<sup>nd</sup> parliamentary reading: BT - Plenarprotokoll 14/165 06.04.2001 S. [16113B-16126A](#), 16172B-16173B/Anl

- Bill: Sozialgesetzbuch - Neuntes Buch - Rehabilitation und Teilhabe behinderter Menschen (SGB IX) Bundesregierung - Gesetz vom 19.06.2001 - Bundesgesetzblatt Teil I 2001 Nr.27 22.06.2001 S. 1046,
- Civil Society Text: Comment by the Association ‚Weibernetz‘ on the Implementation of the 9th Book of the Social Code: Stellungnahme zum Stand der Umsetzung des SGB IX, 1. Teil vom Projekt „Politische Interessenvertretung behinderter Frauen“ des Weibernetz e.V. zur Anhörung am 13. Oktober 2003 im Deutschen Bundestag, 4p.

## **2001 Pension Reform Act**

The 1992 Pension Reform has extended the recognition of child-raising periods in the statutory pension insurance scheme from one to three years. Credited periods due to raising children up to the age of 10 and due to providing long-term care at home without remuneration are also introduced. The 1999 Pension Reform Act provides for a gradual increase in the crediting of child-raising periods from 75 to 100 %. In the 2001 Pension Reform Act, crediting considers child-raising periods up to the children’s age of 10. Furthermore, it introduces the ‘pension splitting scheme’ for spouses and a subsidised private pension scheme. The dependant’s pension is more closely connected to child-raising activities. The developments in the pension scheme reflect two tendencies: Firstly, reproductive work is increasingly acknowledged (without allowing for an independent existence). At the same time, this means that reproductive work is legitimately performed in the realm of non-employment (this is especially true considering the low public infrastructure and investment in childcare). Secondly, pension entitlements are increasingly tied to official and private contributions made during gainful employment.

### **Primary Sources:**

- 2<sup>nd</sup> reading: Plenarprotokoll 14/147 26.01.2001; Plenarprotokoll 14/148 07.02.2001 and Plenarprotokoll 14/149 08.02.2001
- Bill: Gesetz zur Ergänzung des Gesetzes zur Reform der gesetzlichen Rentenversicherung und zur Förderung eines kapitalgedeckten Altersvorsorgevermögens (Altersvermögensergänzungsgesetz - AVmEG) Bundesregierung - Gesetz vom 21.03.2001 - Bundesgesetzblatt Teil I 2001 Nr.13 26.03.2001 S. 403, 16 p.
- Bill: Gesetz zur Reform der gesetzlichen Rentenversicherung und zur Förderung eines kapitalgedeckten Altersvorsorgevermögens (Altersvermögensgesetz - AVmG) Bundesregierung - Gesetz vom 26.06.2001 - Bundesgesetzblatt Teil I 2001 Nr.31 29.06.2001 S. 1310

- Civil Society Text: In 2000, the German Women Lawyers Association (DJB) presented a gender-sensitive pension reform model: djb-Modell für eine geschlechtergerechte Rentenreform. aktuelle information Sonderheft Rente, 2p.
- Civil Society Text: German Women' Council (Deutscher Frauenrat): Press Release on the Pension Reform Act, 19.1.2001: Rentenreform. Einigkeit zu Lasten der Frauen, 2p.

## **2000 Child-raising Benefit Act (2001) and Act on Part-Time Working and Fixed-Term Employment Contracts (2001)**

In 2001, the new Child-raising Benefit Act enters into force. Major changes include: The term child-raising leave (Erziehungsurlaub) is replaced by parental leave (Elternzeit, like before: three years). For the first time since 1986, the income limits for child-raising benefit (max. two years) have been increased. The child-raising benefit is also offered as a budget (higher amount – shorter term). Mothers and fathers can now take parental leave at the same time within an unchanged duration of a maximum three year period. Both parents have the right to work part-time during parental leave (2000 Act on Part-Time Working and Fixed-Term Employment Contracts). Recipients of child-raising benefit are allowed to work 30 hours per week instead of the previous 19. There is a right to return to previous working hours on expiry of parental leave. There is the possibility to take one year of the parental leave between the child's third and eighth birthday provided the employer agrees. The basic childcare benefit amounts to € 300 and is paid for two years.

### **Primary Sources:**

#### **→ Child-raising Benefit Act (2001)**

- Explanation of the draft: BT - Gesetzentwurf Bundesregierung 07.06.2000 Drucksache 14/3553, 3 p.
- 2<sup>nd</sup> parliamentary reading: BT - Plenarprotokoll 14/115 07.07.2000 S. 10941 B-10958B, 17 p.
- Bill: Drittes Gesetz zur Änderung des Bundeserziehungsgeldgesetzes (Third Amendment of the Child-raising Benefit Act), Bundesregierung - Gesetz vom 12.10.2000 - Bundesgesetzblatt Teil I 2000 Nr.46 26.10.2000 S. 1426; Bundesregierung - Berichtigung vom 16.11.2000 - Bundesgesetzblatt Teil I 2000 Nr.50 24.11.2000 S. 1585
- Civil Society Text: Comment by the German Women Lawyers Association on the draft: Stellungnahme zum Entwurf eines Dritten Gesetzes zur Änderung des Bundeserziehungsgeldgesetzes (Stand 1. Februar 2000) Stellungnahme vom 15.03.2000

### → Act on Part-Time Working and Fixed-Term Employment Contracts (2001)

- Bill: Gesetz über Teilzeitarbeit und befristete Arbeitsverträge (Act on Part-Time Working and Fixed-Term Employment Contracts) Bundesregierung - Gesetz vom 21.12.2000 - Bundesgesetzblatt Teil I 2000 Nr.59 28.12.2000 S. 1966

### 2000 Job AQTIV Act (2001)

Following the Second Amendment to the Third Book of the Social Code in 1999<sup>41</sup>, this act expands specific labour market policy measures for women. Vocational training during child raising periods is encouraged. Measures include allowances for child care costs (€130) for unemployed persons if they take part in occupational basic and further training. From 2003 onwards, gap periods related to maternity and childcare up until the child's third birthday count as contribution periods in unemployment insurance.

#### Primary Sources:

- Bill: Gesetz zur Reform der arbeitsmarktpolitischen Instrumente (Job-AQTIV-Act) Bundesregierung - Gesetz vom 21.12.2000 - Bundesgesetzblatt Teil I 2000 Nr.59 28.12.2000 S. 1966, 22p.

### 2001 Act on Prostitution (2002)

In May 2001, parliamentarians of the Social Democrats and the Bündnis 90/ Die Grünen (governing parties) draft a law that aims at significantly improving the social security and working conditions of prostitutes. Before the draft, an owner of a prostitutes bar in Berlin sued for legal recognition and won her case, supported by specialist lawyers and a prostitute movement<sup>42</sup>. The court rather randomly interrogated 50 scientists, NGOs, churches and other actors as to whether public perception of prostitution has changed.

The act is a landmark in the discourse on prostitution as for the first time sex work is no longer considered 'sittenwidrig' (against social morals) but a form of service. However, labour law provisions apply differently in order to protect sex workers (period of notice, employer's instruction rights). The verbal agreement between a prostitute and the customer is considered a civil contract that entitles the prostitute to sue for payment. Also, the promotion of prostitution (in the form of running a brothel and the like) is no longer punishable under criminal law. Employed prostitutes consequently have access to social security schemes.

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<sup>41</sup> This act includes people that have been unemployed prior to assuming (child) caring activities into job promotion and provides for the financing of job promotion activities even for persons not eligible to unemployment benefit or aid, both measures aiming at integrating women

<sup>42</sup> Verwaltungsgericht Berlin, 1.12. 2000, *STREIT 1 / 2001*; Anmerkung Baer in NJ 2002; Alice Sadoghi (2005) "Offene Rechtsfragen zur Prostitution in entwicklungsgeschichtlicher Perspektive" in: Linzer Schriften zur Frauenforschung.

After some negotiations within the coalition, the Bundestag agrees to the draft which is also backed by the Minister of Family, Senior Citizens, Women and Youth, Christine Bergmann (SPD). The Bundesrat opposes the draft for various reasons, among which is the demand that customers should have the right to object to the prostitute's claims not only in cases of non-compliance. The concession achieved by the Mediation Committee (Vermittlungsausschuss) allows for objection for two more reasons: When the client claims 'Verjährung' or that payment has already taken place.

#### Follow-up documentation

A short analysis of media articles shows that the target group and respective NGOs are sceptical about the effectiveness of the act from the very beginning. Following an information request of the FDP on the social security situation of prostitutes in 2004, the BMFSFJ announces the presentation of the evaluation of the Act on Prostitution for the mid of 2005. In 2005, there is media and public debate on the question whether the Federal Job Agencies are placing unemployed workers into prostitution (as sex work is considered a form of work) and whether a rejection of such a job offer would mean reductions in unemployment benefits. In January 2007 the evaluation study is eventually presented to the public by Minister Ursula von der Leyen (CDU/BMFSFJ). It reflects that the act has not been successful. From 2005 onwards the debates on prostitution have shifted in order to merge with the one on forced prostitution and trafficking in women. NGOs like KOK are warning against such a blending of debates and emphasise their different rationales. However, policy drafts on trafficking (see Chapter GENDER-BASED VIOLENCE) are demanding the re-introduction of the prohibition of promotion of prostitution. In the context of the presentation of the above mentioned evaluation, this has been rejected by Minister von der Leyen.

#### Primary Sources:

- 1<sup>st</sup> reading, Plenary Protocol of the Bundestag 14/168 11.5.2001 S.16485C-16292D, 7 p.
- 2<sup>nd</sup> and 3<sup>rd</sup> reading, Plenary Protocol of the Bundestag 14/196 19.10.2001 S.19193B-19204B, 11 p.
- Bill: Gesetz zur Verbesserung der rechtlichen und sozialen Lage der Prostituierten (Act on the Improvement of the Legal and Social Conditions of Prostitutes). Federal Government, 20.12.2001, Bundesgesetzblatt Teil I 2001 Nr. 74 27.12.2001 S. 3983,
- Explanation of the legislation: Begründung. Deutscher Bundestag, Drucksache 14/5958, 3 p.
- BMFSFJ Press Release: Bundesfamilienministerin von der Leyen: "Prostitution ist kein Beruf wie jeder andere auch – Ausstieg ist das Ziel." (Family and Women's Minister von der Leyen: 'Sex work is not a job like another – exit is the objective') Press Release BMFSFJ, 24.1.2007, 2p.

- Civil Society Text: Comment by the NGO KOK following a press release of the Federal Government about the Prostitution Act: Stellungnahme des KOK zur Presseerklärung der Bundesregierung vom 24.1.2007 zu den Auswirkungen des Gesetzes zur Regelung der Rechtsverhältnisse der Prostituierten. KOK, 20.2.2007, 4p.

## **2002–2003 Hartz Reforms I – IV**

In 2002, the Federal Government (Social Democrats and Green Party) commissions a group of 15 experts, led by Peter Hartz, to develop employment strategies and to reorganise the Federal Job Agencies. Following these recommendations, the Hartz I – IV reforms are passed in 2002 and 2003. From the side of the women's movement (e.g. the Federal Association of Municipal Women's and Equality Offices (BAG) and the German Women Lawyers Association (DJB), criticisms refer not only to the set up of the commission (one woman, Isolde Kunkel-Weber from the Union for Services ver.di, out of 15 members) but to the lack of gender mainstreaming throughout all measures proposed by the commission. Strikingly, the reforms have passed legislation rather quickly with debates in parliament almost entirely led as a gender-blind discourse.

As briefly mentioned in the parliamentary debate on Hartz IV (Karin Roth, SPD), child-raising activities are not considered a legitimate reason for not assuming a job. As specified in the SGB II § 10 Zumutbarkeit, a person receiving Arbeitslosengeld II (Unemployment Benefit II) is obliged to take up any job unless it endangers the rearing of her/his or her/his partner's child. The raising of a child *over the age of three* is not in danger when public facilities are available. Or expressed differently: Raising a child *under the age of three* is still a legitimate reason for non-employment. SGB II § 8 Erwerbsfähigkeit defines who is considered employable: all persons unless constraint by sickness or disability, who are capable of performing three hours of work per day. Aliens are considered employable if they have a working permit or might be granted one. Important features of the Hartz II reform are the promotion of jobs in the low pay sector, so called Mini-Jobs, Midi-Jobs and I-Corporations (one-(wo)man corporation, ICH-AG). The Hartz IV reform reorganises unemployment aid (Arbeitslosenhilfe) and social benefits (Sozialhilfe), which are merged into Unemployment Benefit II (Arbeitslosengeld II). This benefit is allocated on a needs basis. A partner's income is taken into account. The assessment base is the community the person 'employable, but in need' (Erwerbsfähige Hilfsbedürftige) lives in.

Follow up: See 2006 Act on the Advancement of Basic Social Care for Job Seekers

### **Primary Sources:**

- Civil Society Text: Open Letter of the German Women Lawyers Association to the Hartz-Commission: Offener Brief des DJB an die Kommission "Moderne

Dienstleistungen am Arbeitsmarkt" (Hartz-Kommission) Stellungnahme vom 05.08.2002, 2p.

- Hartz I and II (Erstes und Zweites Gesetz für moderne Dienstleistungen am Arbeitsmarkt)  
1<sup>st</sup> reading BT - Plenarprotokoll 15/8 07.11.2002 S. 391A-418B  
2<sup>nd</sup> reading BT - Plenarprotokoll 15/11 15.11.2002 S. 670B-693C  
Bill: Hartz I: Bundesregierung - Gesetz vom 23.12.2002 - Bundesgesetzblatt Teil I 2002 Nr.87 30.12.2002 S. 4607  
Bill: Hartz II: Bundesregierung - Gesetz vom 23.12.2002 - Bundesgesetzblatt Teil I 2002 Nr.87 30.12.2002 S. 4621
- Hartz III and IV (Drittes und Viertes Gesetz für moderne Dienstleistungen am Arbeitsmarkt)  
2<sup>nd</sup> reading: BT - Plenarprotokoll 15/67 (neu) 17.10.2003 S. 5735D-5757D, 5827A-5832D/AnI  
Bill: Hartz III: Bundesregierung - Gesetz vom 23.12.2003 - Bundesgesetzblatt Teil I 2003 Nr.65 27.12.2003 S. 2848  
Bill: Hartz IV: Bundesregierung - Gesetz vom 24.12.2003 - Bundesgesetzblatt Teil I 2003 Nr.66 29.12.2003 S. 2954
- Civil Society Text: Comment on the draft of Hartz III by the German Women's Council: Stellungnahme des Deutschen Frauenrates zum Gesetzentwurf der Fraktionen SPD und BÜNDNIS 90/DIE GRÜNEN Entwurf eines Dritten Gesetzes für moderne Dienstleistungen am Arbeitsmarkt - BT-Drucksache 15/1515. Oktober 2001, 7p.
- Civil Society Text: Comment on the draft of Hartz IV by the German Women's Council: Stellungnahme des Deutschen Frauenrates zum Gesetzentwurf der Fraktion SPD und BÜNDNIS 90/Die GRÜNEN Entwurf eines Vierten Gesetzes für moderne Dienstleistungen am Arbeitsmarkt - BT-Drucksache 15/1516, Oktober 2001, 5p.

### **2003– Hijab-Debate: Decision of the Federal Constitutional Court and following Länder Legislations**

Controversial bans from professions for female Muslim teachers wearing a headscarf in class like in the case of Fereshta Ludin (in the Federal State of Baden-Württemberg) are part of, and have fuelled, a wider national public discourse on religion, 'parallel societies', failed integration and violence. This intense public debate, the so called 'Kopftuchdebatte' (hijab debate), evolves in 2003, triggered by the Federal Constitutional Court decision that delegated the problem to the Länder. From 2004 onwards, Länder legislations regulating the public service/school – religion interface are introduced. Interestingly, the decision of the Stuttgart Administrative Court (again Baden-Württemberg) in the case of Doris Graber (2006) rules out discrimination on grounds of religion and thus allowing the wearing of a headscarf.

Conversely, the Bavarian Constitutional Court dismisses a claim from an Islamic religious community (2007) and states that the Bavarian regulation that implicitly legitimates the wearing of Christian habits in schools is not unconstitutional.

### **Primary Sources:**

- Decisions of Constitutional and Administrative Courts + incl. press releases
- Länder Legislations

### **2004 Day Care Improvement Act**

Since 2001, the Family and Women's Minister Christine Bergmann (SPD) has been eager to express the government's dedication to invest into public childcare. A 2002 study, commissioned by the BMFSFJ and a survey of the Federal Statistical Agency (Statistisches Bundesamt) reflect the uneven distribution of childcare infrastructure (for under three year olds) in the East and West and the very low density of places in the latter.

Disagreements over the financing of the bill result in the rejection of the Improvement Act on Daily Care by the Bundesrat. The part of the legislation that does not need to pass the Bundesrat enters into force in January 2005; the opposition parties abstain from voting. Until 2010 communal authorities are obliged to improve childcare provision up to 230.000 places for under three-year olds.

Follow-up documentation:

In 2005, the second part of the initial law, now termed Act on the Advancement of Child and Youth Aid enters into force. In 2006, the issue of childcare is raised again, this time by Chancellor Angela Merkel who suggests general cost-free childcare. The SPD and the CDU alike engage in this discourse. However, the parties are split along the line as to how finance childcare. This debate is fuelled in early 2007 when Family and Women's Minister Ursula von der Leyen (CDU) announces the creation of 750.000 places until 2013, subsidised by an amount of 3 billion Euros a year. The Bündnis 90/ Die Grünen, Die LINKE and the Union of Education and Science (Gewerkschaft für Erziehung und Wissenschaft GEW), are welcoming such an advance. However, internal ideological divides open up in the CDU (e.g. with the more conservative wing warning against the discrimination of parents staying at home in order to care for their children). Also, an intense public debate on family politics evolves around statements of the Catholic Bishop Mixa ('Gebärmaschinen'). However, the coalition commission (Koalitionsausschuss) comes to a common agreement and provides the right to public childcare for children from the age of 13 months from 2013 onwards. The BMFSFJ currently works on a respective draft. The financing of the planned expansion of childcare infrastructure is still subject to debate as well as the introduction of a 'caring benefit (Betreuungsgeld/ also critically called 'Herdprämie') for stay-at-home parents as promoted by the CSU (Bavaria). Women's and Family Minister Ursula von der Leyen agrees to the coalition compromise (day care and caring benefit) whereas the SPD and the Bündnis 90/ Die Grünen are against it as it promotes traditional gender roles.

### **Primary Sources:**

- Explanation on the draft: BT - Plenarprotokoll 15/135 28.10.2004 S. 12280C-12306B, 10p.
- 1<sup>st</sup> reading: BT - Plenarprotokoll 15/123 09.09.2004 S. 11191B-11213C, 21p.
- 2<sup>nd</sup> reading: BT - Plenarprotokoll 15/135 28.10.2004 S. 12280C-12306B, 26 p.
- Bill: Gesetz zum qualitätsorientierten und bedarfsgerechten Ausbau der Tagesbetreuung und zur Weiterentwicklung der Kinder- und Jugendhilfe (Tagesbetreuungsausbaugesetz - TAG) (Daily Care Improvement Act) Bundesregierung - Gesetz vom 27.12.2004 - Bundesgesetzblatt Teil I 2004 Nr.76 31.12.2004 S. 3852, 3p.
- Civil Society Text: Comment on the draft by the German Women Lawyers Association (DJB): Stellungnahme zum Gesetzentwurf der Bundesregierung zum qualitätsorientierten und bedarfsgerechten Ausbau der Tagesbetreuung und zur Weiterentwicklung der Kinder- und Jugendhilfe (Tagesbetreuungsausbaugesetz – TAG) Stellungnahme vom 14.09.2004, 3p.

### **2004 Elderly Income Act**

In 2004 the German Women's Council (Deutscher Frauenrat) runs a campaign 'Day of reckoning' (Tag der Abrechnung) that rises awareness of gender inequalities in private pension schemes. Eventually, a reform of the 'Riesterrente' in 2004 provides for equal treatment in private pension insurance schemes. Only those insurances will be subsidised that charge the same premium for women and men.

### **Primary Sources:**

- Explanation of the draft: BR - Gesetzentwurf Bundesregierung 02.01.2004 Drucksache Drs 2/04, S.38-52, 14 p.
- 2<sup>nd</sup> reading: BT - Plenarprotokoll 15/105 29.04.2004 S. 9428D-9449C, 9569C-D/Anl, 21p.
- Bill: Gesetz zur Neuordnung der einkommensteuerrechtlichen Behandlung von Altersvorsorgeaufwendungen und Altersbezügen (Alterseinkünftegesetz - Riesterrente) - AltEinkG) (Elderly Income Act) Bundesregierung - Gesetz vom 05.07.2004 - Bundesgesetzblatt Teil I 2004 Nr.33 09.07.2004 S. 1427, 21p.

- Civil Society Text: German Women Lawyers Association (DJB) at the public hearing of the Parliamentary Commission on Finances: Stellungnahme zur öffentlichen Anhörung des BT Finanzausschusses am 28. Januar 2004 zum Entwurf eines Alterseinkünftegesetzes (BT Drs. 15/2150) (mündlich), 4p.

## **2004 Immigration Act – Access to Labour Market and Employment (2005)**

The Immigration Act reorganises the access of migrants to the labour market. It also provides a migrant's right to paid integration courses.

In a written comment on an early draft (2002), the German Women Lawyers Association (DJB) refers to the lack of gender-sensitive measures in the regulations on access to the labour market.

### **Primary Sources:**

- Bill: Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz) (Immigration Act) Bundesregierung - Gesetz vom 30.07.2004 - Bundesgesetzblatt Teil I 2004 Nr.41 05.08.2004 S. 1950
- Civil Society Text: Comment on the draft by German Women Lawyers Association: Stellungnahme zum Entwurf eines Gesetzes zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthaltes und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz) der Fraktionen SPD und Bündnis 90/DIE GRÜNEN (BT Drs. 14/7387 vom 8. November 2001. Stellungnahme vom 10.01.2002, 5p.
- Civil Society Text: Comment on the draft by the German Women's Council: Stellungnahme es Deutschen Frauenrates vom 7.1.2002. Entwurf eines Gesetzes zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz – ZuwG) vom 3.8.2001 – Update Änderungen vom 8.11.2001, 5p.

## **2006 Act on the Advancement of Basic Social Care for Job Seekers**

Voices from the opposition (the Bündnis 90/ Die Grünen, parliamentary group Die LINKE) demand a socially sensitive reform of the Hartz legislation. In the course of the policy process an official hearing takes place. However, the draft of the coalition parties (CDU/CSU and SPD) is decided in July 2006 (Act on the Advancement of Basic Social Care for Job Seekers). It is immediately followed by a *gender-sensitive* grand information request (Große Anfrage) of the parliamentary group Die LINKE. The answers of the Federal Government are discussed in Parliament in March 2007, but are again gender-blind.

The Act on the Advancement of Basic Social Care for Job Seekers narrows eligibility to Unemployment Benefit II in order to avoid abuse. Controls of living arrangements as well as

narrow definitions of appropriateness of jobs and the obligation to take up 1-Euro-Jobs in order not to lose Unemployment Benefit II (ALG II) are harshly criticised by the left parties. The aim of this kind of work is to support long-term unemployed people in their return to the labour market. 1-Euro-Jobs are characterised as additional, serving the public good and not competing with regular employment – but have proved contrary in practice. Not receiving a salary for up to 9 months of part-time work up to 30 hours per week (workers are paid 1€ an hour ('Mehraufwandsentschädigung')) but receiving Unemployment Benefit II, they are neither considered employed nor appear in unemployment statistics.

Currently, the coalition plans to introduce 'combined salaries' (Kombilöhne) for social work performed by long-term unemployed people (= citizen work/ 'Bürgerarbeit'). This model was tested at the city level: The communal administration pays one half of the salary and hence, needs to spend less money on Hartz IV; the Federation pays the other half. The effect is lower unemployment rates. However, the citizen workers are not provided with further vocational training due to a lack of financial resources (zwd Bildung und Politik (5) 2007: 3).

### **Primary Sources:**

- 1<sup>st</sup> reading: BT - Plenarprotokoll 16/35 11.05.2006 S. 3009D-3018C
- 2<sup>nd</sup> reading: BT - Plenarprotokoll 16/37 01.06.2006 S. 3333A-3347D, 3399D/AnI
- 3<sup>rd</sup> reading: BT - Plenarprotokoll 16/37 01.06.2006 S. 3333A-3353D, 3398C-3400A/AnI
  
- Bill: Gesetz zur Fortentwicklung der Grundsicherung für Arbeitsuchende Bundesregierung - Gesetz vom 20.07.2006 - Bundesgesetzblatt Teil I 2006 Nr.36 25.07.2006 S. 1706
  
- Grand Information Request: Resultate und gesellschaftliche Auswirkungen der Gesetze für moderne Dienstleistungen am Arbeitsmarkt (Results and Social Impacts of the Acts for Modern Services in the Labour Market). By the parliamentary group DIE LINKE, 7.7.2006, Drucksache 16/2211
  
- Answer to the Grand Information Request. Federal Government, Bundesministerium für Arbeit und Soziales (BMAS) (Ministry for Employment and Social Affairs), 1.2.2007, Drucksache 16/4210
  
- Parliamentary Debate of the Grand Information Request: BT – Protokoll 16/88 22.3.2007 S.8857-8885C, 28p.

### **2006 Act for the Fiscal Promotion of Growth and Employment**

Since the end of 2005, the Ministers of Finance (Peer Steinbrück, SPD) and Family (Ursula von der Leyen, CDU) have been fighting over the terms of tax deductibility of childcare costs. In the context of the Genshagener Meeting, the coalition reaches an agreement, which is heavily criticised by the parliamentary group of the Social Democrats and the Bündnis 90/

Die Grünen. Eventually, the coalition parties come to an understanding, while the opposition parties remain sceptical. The process has been critically evaluated by the Organisation of Single Mothers and Fathers (Verband alleinerziehender Mütter und Väter VAMV). Whereas the left parties are continuously emphasising the importance of improving the child care infrastructure, Ursula von der Leyen stresses the opportunity to create legal jobs in private households which has been made more attractive through this legislation. The opposition (Greens, FDP and the parliamentary group Die LINKE) rejected the draft.

The law provides equal treatment of single parent and double income families. Costs for childcare until the age of 14 can be written off up to the amount of 4000€ a year. Single earner families are allowed to only write off childcare costs for children between three and six years.

### **Primary Sources:**

- 1<sup>st</sup> reading, Plenary Protocol of the Bundestag 16/19 16.2.2006 S.1322B-1347A, 25p.
- 2<sup>nd</sup> and 3<sup>rd</sup> reading, Plenary Protocol of the Bundestag 16/26 17.3.2006 S.2047B-2064B, 17p.
- Bill: Gesetz zur steuerlichen Förderung von Wachstum und Beschäftigung (Act for Fiscal the Promotion of Growth and Employment) 26.4.2006, Bundesgesetzblatt Teil I 2006 Nr. 22 5.5.2006 S.1091

### **2006 Parental Benefit Act (2007)**

The initiative for a wage-substituting child-raising benefit model is presented by Family and Women's Minister Renate Schmidt (SPD) in April 2005. It already comprises of the essential features: 67 % of the prior salary for the period of one year, 'father months' or the loss of benefit as well as a basic benefit for parents previously non-employed. Like before, parental leave is provided for three years. Interestingly, the Green Party rejects the model during its July 2005 meeting arguing that the improvement of the childcare infrastructure should be promoted instead. All other parties express their agreement. Following the early elections in 2005, the coalition commission (SPD and CDU/CSU) on family politics under the lead of parting Family and Women's Minister Renate Schmidt (SPD) resumes the parental benefit model. Positive reactions follow from the Organisation of Single Mothers and Fathers (Verband alleinerziehender Mütter und Väter VAMV). The subsequent Family and Women's Minister Von der Leyen also insists on the 'father months' despite jurists who suspect the unconstitutionality of such a regulation. Von der Leyen's position is backed by the new chancellor Angela Merkel in the first government declaration in November 2005 but fiercely discussed within the Union (CSU and CDU). The more conservative wing argues that the benefit's purpose it to encourage parents to have more children, whereas the more progressive sees it as instrument to promote gender equality. After months of discussion the coalition commission comes to an agreement which extends the initial period from ten to twelve months with two additional father months. Single parents are granted the full 14

months. The basic childcare benefits (Sockelbetrag) amounts to € 300 (instead of the € 750 envisaged by the SPD).

All parties generally agree on the setup of childcare benefit; however there are details that are fought over. Criticisms stem from the The German Women Lawyers Association's (DJB) concerning the 'siblings bonus' (Geschwisterbonus) and provisions regulating part-time work of both parents at the same time. The DJB's alternative version of the 'siblings bonus' is adopted by the Women's Committee (Ausschuss) of the Bundestag. The grand coalition parties adopt the law; the opposition parties vote against for various reasons. Points of criticisms refer to the lack of child care places for one to three year olds as well as to the shorter period of basic childcare benefits as compared to the previous law. Students' organisations like the freie Zusammenschluss von StudentInnenschaften (fzs) criticise the deteriorating regulations for students with child care responsibilities (€ 300/month and 1 year vs. € 450/month and 2 years). Criticisms from the Confederation of German Trade Unions (DGB) refer to the method of calculation which results in shorter periods and lower benefits than officially promoted.

### **Primary Sources:**

- Speeches: Regierungserklärung der neuen Bundeskanzlerin Angela Merkel vor dem Bundestag (Government Declaration by Chancellor Angela Merkel before the Bundestag), 30.11.2005
- Speeches: Antrittsrede Familienminister von der Leyen (BMFSFJ) (First Speech of the Family and Women's Minister von der Leyen) 1.12.2005
- 1<sup>st</sup> reading: BT - Plenarprotokoll 16/40 22.6.2006 S.3709B-3739C, 32p.
- 2<sup>nd</sup> reading: BT - Plenarprotokoll 16/55 29.9.2006 S.5353A-5376A, 23p.
- Bill: Gesetz zur Einführung des Elterngeldes (Elterngeldgesetz) (Parental Benefit Act), 5.12.2006, Bundesgesetzblatt Teil I 2006 Nr.56 11.12.2006 S.2748
- Civil Society Text: Comment on the draft by the German Women Lawyers Association: Stellungnahme zum Gesetzentwurf der CDU/CSU und SPD zur Einführung eines Elterngeldes Bundestags – Drucksache 16/1889 vom 20.6.2006 Stellungnahme vom 29.06.2006. 10 p.
- Civil Society Text: Comment on the draft by the Confederation of German Trade Unions (DGB): Stellungnahme des Deutschen Gewerkschaftsbundes (DGB) zum Gesetzentwurf zum Elterngeld und zur Elternzeit (BEEG) Kabinettsbeschluss vom 14.06.06, 5p.

## **2006 Act on the Eligibility of Aliens to Child Benefit, Child-Raising Benefit and Maintenance Allowance (= Aliens Benefit Act)**

In 2004 the Federal Constitutional Court (FCC) rules that those migrants who have a residence permit due to *humanitarian reasons* are eligible to child benefit, child-raising benefit and maintenance allowance. The government is charged to draft a respective law by January 1, 2006. The changes in child benefit and child-raising benefit due to the Immigration Act which enters into force in January 2005 also do not cover all forms of humanitarian reasons. At the beginning of 2006, the Federal Government introduces a draft to reorganise the issue according to the Federal Constitutional Court (FCC) ruling. The circle of eligible migrants has widened. However, last minute changes in the Family Committee (Familienausschuss) as proposed by the Union (CDU/CSU) have narrowed eligibility for some groups of humanitarian refugees. Now, persons with a residence permit due to humanitarian reasons have to have lived in Germany for at least three years and have to prove current employment or Unemployment Benefit I payments. This act enters into force in December 2006. NGOs like the Flüchtlingsrat Berlin expect claims before the FCC due to unconstitutionality of the changes.

### **Primary Sources:**

- 1<sup>st</sup> reading: Plenarprotokoll 16/37 01.06.2006 S. 3270D-3273A, 3p.
- Recommendation of the Parliamentary Commission for Family, Senior Citizens, Women and Youth: Beschlussempfehlung und Bericht Ausschuss für Familie, Senioren, Frauen und Jugend 13.10.2006 Drucksache 16/2940
- 2<sup>nd</sup> reading: BT - Plenarprotokoll 16/57 19.10.2006 S. 5590B-5596C, 6p.
- Bill: Gesetz zur Anspruchsberechtigung von Ausländern wegen Kindergeld, Erziehungsgeld und Unterhaltsvorschuss (Act on the Eligibility of Aliens to Child Benefit, Child-Raising Benefit and Maintenance Allowance), 13.12.2006. Bundesgesetzblatt Teil I 2006 Nr.60 18.12.2006 S.2915
- Civil Society Text/ Information and critical evaluation/ Refugee Council Berlin: Wichtige Neuregelungen zum Kindergeld, Erziehungsgeld und Elterngeld für Ausländer. 3p.

## **2007 Reform for Sustainable Development of the Long-term Care Insurance Act (= Revision of the Long-term Care Insurance Act)**

Since 2006, the Confederation of German Trade Unions (DGB) has demanded a Care Time Act (Pflegezeitgesetz) providing the right for carers to reduce working time and to return to equal full time employment afterwards. Contrary to the draft of a Care Time Act in June 2006

by the German Social Association (Sozialverband Deutschland) that claims the right to a temporary, unpaid care leave (6 months), the Confederation of German Trade Unions (DGB) and the Deutsche Frauenrat<sup>43</sup> reject the total withdrawal from the labour market. The Minister of Health, Ulla Schmidt (SPD) is planning to start a legal reform process in 2007. The reform decided upon in June 2007 provides for a slight increase of contributions until 2014 and the introduction of a 'care leave' (Pflegezeit) and the right to return to the workplace until after six months.

### **Primary Sources:**

- Coalition Agreement on a revision act: Reform zur nachhaltigen Weiterentwicklung der Pflegeversicherung 19. Juni 2007. 7p.
- Civil Society Text/ Background and Position Paper/ Confederation of German Trade Unions (DGB): Frauen- und Gleichstellungspolitik, Hintergründe und Positionen: Vereinbarkeit Beruf und Pflege, 6/2006, 10p.

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<sup>43</sup> The Deutsche Frauenrat also supports the campaign of the European Women's Lobby 'Who cares?' This campaign focuses on the provision of affordable, accessible and high quality care services for all dependants, available to all women and men whatever their financial situation. (For more information see <http://www.womenlobby.org>).

### 3. INTIMATE CITIZENSHIP

#### 3.1. Introduction

In the field of intimate citizenship, it is the 2001 Life Partnership Act and the 2004 Life Partnership Revision Act that are clearly part of gender+ equality policies. These milestone legislations regulating same sex partnerships and families have been pushed through by the Bundestag with a social democratic and green majority. Interventions in front of the Federal Constitutional Court by conservative states, such as the Federal States of Bavaria, Saxony or Thuringia, have failed.

The Amendment of the Aliens Act from 2000 brought improvements for the citizenship status of migrant women; also, the Immigration Act of 2004 improved the position of women asylum seekers (see Chapter GENDER-BASED VIOLENCE 2004 Immigration Act). All the other bills as listed below have significant impacts on gender relations, although the changes or planned amendments cannot be considered to enhance gender equality.

The policies relevant for the issue of intimate citizenship that were passed in Germany in period from 1995 to 2007 will be discussed under the following subcategories:

- I. Divorce, separation and marriage
- II. Civil partnership and gay marriage, discrimination on the basis of sexual orientation
- III. Reproductive Rights, including abortion, reproductive assistance

#### Divorce and separation, marriage and non-marriage

1997/8 Childship Rights Reform Act

2007– Amendment of Determination of Paternity

2001–2003 Income Tax Models

2006– Income Tax Models

2002 Family Promotion Act

2006– Amendment of Maintenance Law

2000 Amendment of the Aliens Act

2007– Act on the Rights to Contest Paternity Acknowledgements

2007 Immigration Law – Family Reunion

#### Civil partnership and gay marriage, discrimination on the basis of sexual orientation

2001 Life Partnership Act

2001 Failed Partnership Completion Act

2004 Life Partnership Revision Act  
2006– Life Partnership Completion Act

Reproductive Rights, including abortion, reproductive assistance

2002 Children’s Right Improvement Act

**Divorce and separation, marriage and non-marriage**

While we will not look into the regulations on the parent-child relationship in the QUING intimate citizenship issue history, it is worth mentioning the re-emergence of the discourse of father rights. The fact that they have been gaining strength over the last decade is useful information since it provides the backdrop against which other legislations on intimate citizenship need to be understood. Two legislations reflect the emphasis on father rights: the 1997/8 Childship Rights Reform Act and its regulations on joint custody, and the 2007 drafts on the amendment of regulations on the determination of paternity.

The privileging of marriage over other forms of partnership and the implicit promotion of the male breadwinner model is reflected in tax models such as the spouse splitting model. Being subject to political debates and feminist interventions for decades, little progress has been made to meet feminist demands for individual taxation. Two more legislations, the 2002 Family Promotion Act and the 2006 draft on a new maintenance law, underline the financial privileging of marriage over single parent families and non-married couples.

While the above mentioned policies can not be entirely assigned to the field of gender equality policies, two more acts do so: the 2000 Amendment of the Aliens Act and the New Immigration Law of 2007. The first act sees improvements made in the field of independent resident permits for the spouse after separation. While the act is an improvement compared to the regulation of 1997, problematic definitions of the hardship clause remained. The 2007 Amendment of the Immigration Act’s regulations on family reunion were presented as combating forced marriages and thus promoting human rights and equality for migrant women. However, civil society organisations claim that regulations such as an independent residence permit for the women would have been more effective. It would be necessary in order to promote equality between women and men with migrant background. Rights claims for an independent residence permit for the spouse have marked the immigration/ integration discourse of the last decade. However, civil society voices seem to have little success in pushing the issue forward.

The 2007 drafts against fake paternity acknowledgements are again situated at the intersection of gender and citizenship. The apparent need for such an act arose from dubious statistics that claimed the issue was significant given the high number of ‘false paternity acknowledgements’. Such an act would prevent unmarried women receiving a residence permit in Germany to which they are not entitled. This bill reflects current xenophobic attitudes in Germany.

## **Civil partnership and gay marriage, discrimination on the basis of sexual orientation**

More explicit gender+ equality policies are the ones acknowledging same sex partnerships and families. The introduction of the Life Partnership Act was fiercely contested; however it was passed and even amended to include more provisions for families such as the co-partner adoption in 2004. However, in terms of the allocation of state resources in the form of tax reductions or inheritance laws, conservative parties are still vehemently opposed to an extension of the Life Partnership Act. Current debates reflect the deep divides within German society over the question of homosexual partnerships.

Discrimination on grounds of sexual orientation in labour and civil law has also been included into the General Equal Rights Act of 2006. However, several issues have not made it into mainstream policies. For example, the intersection of age and sexual orientation has been addressed in a decision by the Federal Parliament in 2005, after lobbying from Lambda and two MPs from the social democrats and the green party<sup>44</sup>. In 2006, this was not subject to effective lobbying and thus failed to impact on the law. Other examples include questions of HIV/AIDS discrimination, adoption, and tax law.

Among the NGOs lobbying for sexual orientation, there is also a certain dominance of gay male interests and representation. E.g., the initiative to build a federally funded memorial for prosecuted homosexuals in Berlin has been dominated by the image of gay men, and women are generally less present in organisations like the LSVD.

## **Reproductive Rights, including abortion, reproductive assistance**

In the field of reproductive medicine, the above mentioned regulatory gaps remain. The Embryo Protection Act from 1990 has not been amended to clarify the rights of non-married couples, same sex couples and singles to reproductive medicine. Also, a recent Federal Constitutional Court decision only refers to the question whether the financing of artificial insemination covers non-married couples (which it rejected). The legislation that excluded the right to contest paternity after agreed heterologous insemination (2002 Children's Right Improvement Act) could have contributed to a more liberal practice on the part of medics. However, this was and still is countered by the guidelines of the Medical Association which were renewed in 2006 and maintained their heteronormative bias.

Legislation on abortion entered into force in 1995. However, as the most intense debates happened before the QUING period, it was not included into the list of sub-issues.

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<sup>44</sup> <http://www.lambda-online.de:8080/lambda-online.de/Content/Themen/ZoomIn/?Go=Bundestagsbeschluss>

„Wo Vorbilder auftreten, treten Vorurteile zurück. ... [Der Bundestag stellte fest, dass]...die schwul-lesbische Projektarbeit der Beratungsstellen mit ihren spezialisierten und integrierten Angeboten eine unverzichtbare Maßnahme der Jugendhilfe darstellt.“ Zum ersten Mal in seiner Geschichte erklärt der Deutsche Bundestag, dass er „sich gegen jede Form der Diskriminierung junger Schwuler und Lesben, sowie gegen deren Arbeit vor Ort“ wendet. Weiter setzt er sich „aktiv dafür ein, die Lebensbedingungen lesbischer und schwuler Jugendlicher zu verbessern – beispielsweise durch Aufklärungsarbeit, Akzeptanzförderung und Anti-Gewalt-Arbeit an Schulen, sowie an anderen staatlichen Einrichtungen.“

## 3.2. Actors

### Important ministries and commissions

- BMFSFJ
- Ministry for Employment and Social Affairs (Arbeit und Soziales, BMAS)
- Ministry of Justice (Justiz)
- Ministry of Interior (Inneres)
- Ministry of Finance (Finanz)
- Ministry of State in the Federal Chancellery: Federal Government Commissioner for Migration, Refugees, and Integration (Beauftragte für Migration, Flüchtlinge und Integration)

### State and Party Feminists

- SPD: Working Group Socialist Women (Arbeitsgemeinschaft Sozialistischer Frauen, ASF), Working Group Lesbian and Gays (Arbeitskreis Lesben und Schwule in der SPD ,Schwusos) Working Group Young Socialists (Arbeitsgemeinschaft der Jungsozialistinnen und Jungsozialisten in der SPD, Jusos); Women and Gender Politics at the Friedrich Ebert Stiftung (Frauen und Gender Politik)
- CDU: Women's Union (FU Frauen Union)
- FDP: Federal Association of Liberal Women (Bundesvereinigung Liberale Frauen)
- DIE LINKE: Left Socialist Women's Working Group of the Party Die LINKE (Linke Sozialistische Arbeitsgemeinschaft der Frauen der Partei DIE LINKE, LISA); Rosa-Luxemburg-Stiftung
- Bündnis 90/ Die Grünen: Federal Women's Council (Bundesfrauenrat), Federal Working Group Women's Politics (Bundesarbeitsgemeinschaft Frauenpolitik), Federal Working Group Lesbian Politics (Bundesarbeitsgemeinschaft Lesbenpolitik); Feminist Institute of the Heinrich-Böll Stiftung (Feministisches Institut)
- Federal Association of Municipal Women's and Equality Offices (Bundesarbeitsgemeinschaft der kommunalen Frauenbüros und Gleichstellungsstellen, BAG)

### Social Partners

- Union for Services (Dienstleistungsgewerkschaft Ver.di): Groups for Gender and Women's Policies; Disabilities; Lesbian, Gay, Bi-Sexuals and Transgender
- DGB Women (DGB Frauen) at the Confederation of German Trade Unions (Deutscher Gewerkschaftsbund, DGB)

- Union for Education and Science (Gewerkschaft für Erziehung und Wissenschaft, GEW)
- Union for Metal (IG Metall): Groups for Disabled; Women; Youth; Migrants; Unemployed

### Actors from Civil Society

#### Across Issues

- The German Women Lawyers Association (Deutscher Juristinnenbund DJB)
- German Women's Council (Deutscher Frauenrat)

#### Intimate Citizenship

- Organisation of Single Mothers and Fathers (Verband alleinerziehender Mütter und Väter VAMV)
- Pro familia
- German Lesbian and Gay Association (Lesben- und Schwulenverband Deutschland, LSVD)
- Lobby of famous LGBT people
- AIDS Hilfe
- The Association of Binational Families and Partnerships (Verband binationaler Familien und Partnerschaften)
- Pro Asyl
- agisra Köln e.V. – (Human Rights for Migrant Women and Female Refugees)
- Federal Association of Women Migrants in Germany (Bundesverband der Migrantinnen in Deutschland)<sup>45</sup>

#### Gender-based Violence

- KOK (German nationwide activist coordination group combating trafficking in women and violence against women in the process of migration)
- Terre des Femmes (Human Rights for Women)

### **3.3. Timeline**

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<sup>45</sup> Other important mainstream (i.e. not specifically dedicated at gender issues) migrant associations are the Turkish Community in Germany (Türkische Gemeinde Deutschland), Federation of Turkish Parents (Föderation Türkischer Elternvereine in Deutschland), the Turkish-German Health Organisation (Türkisch-Deutsche Gesundheitsstiftung), the Turkish-Islamic Union for Religion (DITIB, Türkisch-Islamische Union der Anstalt für Religion).

Also the Islamic Council (Islamrat) and the –Central Muslim Council (Zentralrat der Muslime, ZMD) are important actors in the political debate. However, the latter ones were not invited to the first Integration Summit in 2006.

In April 2007, the Muslim Coordination Council (Koordinierungsrat der Muslime, KRM) was founded by conservative Muslim organisations: the ZMD, the DITIB, the Islamic Council and the Association of Islamic Cultural Centres (Verband der Islamischen Kulturzentren VIKZ).

## **1997/8 Childship Rights Reform Act**

This act regulates joint custody for non-married parents. Whereas the possibility to find such a regulation has existed before, it becomes more known and the 'rule' – while not explicitly stated in the law. Feminists are sceptical about the norm 'joint custody' because it usually means less rights but the same duties for the carer, mostly the woman. The law is criticised for improving the legal situation of fathers.

### **Primary Sources:**

- BT - Gesetzentwurf Bundesregierung 13.06.1996 Drucksache 13/4899 Anlage: Stellungnahme Bundesrat und Gegenäußerung Bundesregierung
- 1<sup>st</sup> reading: BT - Plenarprotokoll 13/113 20.06.1996 S. 10165C-D, 10188D-10198A/Anl
- 2<sup>nd</sup> reading: BT - Plenarprotokoll 13/192 25.09.1997 S. 17344B-17366B, 17421C-17422B/Anl
- Bill: Gesetz zur Reform des Kindschaftsrechts (Kindschaftsrechtsreformgesetz - KindRG) (Childship Rights Reform Act) Bundesregierung - Gesetz vom 16.12.1997 - Bundesgesetzblatt Teil I 1997 Nr.84 19.12.1997 S.2942 Bundesregierung - Berichtigung vom 29.04.1998 - Bundesgesetzblatt Teil II 1998 Nr.27 20.05.1998 S.946

## **2000 Amendment of the Aliens Act**

Section 19: An independent right of residence for foreign spouses in the event of the dissolution of the marital community (e.g. in cases of domestic violence) is granted now in the event of separation after two years instead of the previous four (legislation from 1997). The hardship clause, in accordance with which an independent right of residence may be awarded before this period expires, has also been redesigned.

The first act is cited in the CEDAW country report in order to document improvements made in the field of independent resident permits for women after separation. While the act is an improvement compared to the regulation of 1997, problematic definitions of the hardship clause remained.

### **Primary Sources:**

- Explanation: BT - Gesetzentwurf Hanna Wolf (München), SPD; Lilo Friedrich (Mettmann), SPD; und andere; SPD; Bündnis 90/Die Grünen 14.12.1999 Drucksache 14/2368, 1p.

- 1<sup>st</sup> reading: BT - Plenarprotokoll 14/85 28.01.2000 S. 7870 D-7883D, 13p.
- 2<sup>nd</sup> reading: BT - Plenarprotokoll 14/93 16.03.2000 S. 8555C-8575A, 8666C-8667C/Anl, 20p.
- Bill: Änderung des Ausländergesetzes – (Amendment of the Aliens Act) Bundesregierung - Gesetz vom 25.05.2000 - Bundesgesetzblatt Teil I 2000 Nr.24 31.05.2000 S. 742

## **2001 Life Partnership Act**

Initiatives to grant rights to same sex partnerships stem from the Bündnis 90/ Die Grünen since the beginning of the 1990s. From the end of 1999 onwards, a draft from the SPD/ the Greens is discussed in the Bundestag. The Lesbian and Gay Association Germany (Lesben- und Schwulenverband Deutschland LSVD) is actively lobbying for such an act. A draft from the FDP does not go through parliament.

Hot debates take place in the 2<sup>nd</sup> and 3<sup>rd</sup> reading of the draft. The coalition splits the draft into two parts in order to push through the part that does not need the approval of the Bundesrat. The act is decided in the Bundestag with the votes of the coalition parties (SPD and Greens), the CDU/CSU and the FDP vote against and the PDS abstains from voting. Immediately the Federal States of Bavaria, Saxony and Thuringia initiate a ‚Normenkontrollverfahren‘ at the Federal Constitutional Court in order to avoid that the act becomes binding law. They argue that the improvement of the legal provisions for same sex partners is unconstitutional insofar as it threatens the protection of marriage and family as provided by the Basic Law. This claim is rejected by the Federal Constitutional Court, allowing the act to enter into force in August 2001. It is confirmed by the FCC in July 2002. The decision negates any ‚distance commandment‘ (‘Abstandsgebot’) between marriage and life partnership.

The act provides for a new legal family institution, which in some respects almost achieves equality with marriage (especially in terms of duties). Rights to family reunion are granted. Problematically, only a small custody right is granted to the partner. Also, tax regulations which are addressed in that part of the act that needs acceptance of the Bundesrat are not decided upon (See Failed Life Partnership Completion Act). Regulations in the law on public service as well as dependants’ provisions are missing.

### **Primary Sources:**

- Civil Society Text: Comment on the draft by the LSVD: Stellungnahme zu den Gesetzentwürfen der Bundestagsfraktionen von SPD und Bündnis 90/Die Grünen - Drucksache Nr. 3751- und der F.D.P. - Drucksache 1411251. – September 2000.
- 2<sup>nd</sup> and 3<sup>rd</sup> reading: BT - Protokoll 14/131 10.11.2000 S.12606-D12630A, 24 p.

- BR - Plenarprotokoll 757 01.12.2000 S. 544D-551D, 571B-572B/Anl, 7p.
- Gesetz zur Beendigung der Diskriminierung gleichgeschlechtlicher Gemeinschaften: Lebenspartnerschaften (Lebenspartnerschaftsgesetz) (Life Partnership Act). 16.12.2001. Bundesgesetzblatt Teil I 2001 Nr.9 22.2.2002 S.266, 22p.
- Press Release: Claim and Decision (17.7.2002) of the Federal Constitutional Court: Normenkontrollverfahren, 4p.

### **2001– 2003 Debate: Income Tax Models**

Since 2001, the provision that spouses are eligible to split their tax duty has been fiercely discussed in every legislative period. Initiatives to cut this tax advantage in favour of investment in day care places are issued by the Bündnis 90/ Die Grünen, the Family and Women's Minister Bergmann (2002) and from various non-governmental actors like the German Women Lawyers Association (DJB). Also in 2002, the FDP demands tax alleviation for families (family splitting), independent of the legal status of parents.

In the frame of coalition negotiations between the SPD and the Bündnis 90/ Die Grünen, the latter one argues to lower tax benefits for spouses in order to improve day care. The Union (CDU/CSU) opposes such a reduction and argues that it contradicts the special protection of marriage and families as provided by Art.6 of the Basic Law. They intend to claim against such a resolution at the Federal Constitutional Court. Whereas initially the SPD had decided on changing the spouse splitting model during their party meeting 2001 in Nürnberg (with the Working Group Socialist Women (ASF) pushing for it), the position shifts in the course of coalition negotiations and a reform of the model is postponed. Nevertheless, the demands of the Bündnis 90/ Die Grünen and the SPD women persist (with exemption of the Family and Women's Minister Renate Schmidt). Despite ongoing demands from the Working Group Socialist Women (ASF) and the Federal Association of Municipal Women's and Equality Offices (BAG) during 2003, Family and Women's Minister Schmidt asserts that an abrogation of the spouse splitting model will not be feasible.

### **2001–2002 (Failed) Life Partnership Completion Act**

With the Life Partnership Completion Act another aspect in the tax debate arises. This act, initially part of the Life Partnership Act that aims at equal regulations for same sex couples in the tax system (splitting), is rejected by the Bundesrat. The conservative party at the Federal Level (Union CDU/CSU) also opposes it. After the ruling of the Federal Constitutional Court that the same sex partnership act is constitutional, the fight over financial benefits in the tax and inheritance scheme re-emerges. All parties but the conservative agree on improvements for same sex couples in this matter. In the context of the election campaign in 2002, the CDU/CSU announces that they vehemently reject equality between same sex partnerships and marriage. One of the most prominent voices is Edmund Stoiber, CSU leader and Prime

Minister of Bavaria. Interestingly, at the same time he claims not to lobby for an abrogation of the Life Partnership Act once elected chancellor of Germany. The LSVD is actively pushing for a decision prior to the elections. Again, the act is blocked by the Bundesrat.

## **2002 Reproduction: Children's Right Improvement Act**

There is a legislative gap in the field of reproductive medicine in Germany. The Embryo Protection Act from 1990 is silent on matters of who has access to sperm banks and assisted reproduction. However, a directive from the Medical Association regulates that only married couples and long-lasting partners are to be treated. The regulation that leaves out single mothers or same sex couples from treatment is renewed in November 2006. Heterologous insemination (sperm donation) in lesbian couples is thus permissible by law but not often practiced. Legal problems of paternity and maintenance duties that arise with heterologous insemination have been mitigated by the 2002 Children's Right Improvement Act that rules that parents who have agreed on heterologous insemination do not have the right to contest paternity afterwards. This regulation should have nullified objections from the side of medics – which did not happen. A ruling from the Federal Constitutional Court from February 2007 determines that the costs for artificial insemination are only to be met by public health insurances for married couples (and not for non-married). The decision lacks a clarification of the legitimacy of artificial insemination for lesbian couples.

Since 2001, when the National Ethics Council was set up by the Federal Government<sup>46</sup>, topics related to reproductive medicine are discussed in this forum. From 1998–2005 a respective Enquete Commission 'Ethics and Law related to Modern Medicine' (Enquete Kommission 'Ethic und Recht der modernen Medizin) was meeting in order to inform the work of the Bundestag. Debates were regularly taking place in parliament (5 from 2000–2002, and 2 from 2003–2005). However, there is no respective legislative proposal pending.

## **2002 2<sup>nd</sup> Family Promotion Act**

This act provides – among other regulations – for the continuous reduction of the 'household tax allowance' until its complete abrogation in 2005. Against this reduction that affects single parent families a suit is filed by the Organisation of Single Mothers and Fathers (Verband alleinerziehender Mütter und Väter VAMV) at the Federal Constitutional Court. The FCC had ruled in 1998 that the Federal Government has to provide for a tax relief equally effective for all families. The claim of the VAMV is rejected due to formal reasons.

## **2004 Life Partnership Revision Act**

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<sup>46</sup> The National Ethics Council is now independent and only has reporting duties to the government.

It is not until autumn 2004 that the Life Partnership issue reappears on the political agenda despite intense pressure from the side of civil society, particularly by the LSVD. In early 2004, the FDP introduces a draft which is discussed together with a draft from the coalition partners. A public hearing on the issue reflects the critical view of the conservative spectrum on the possibility of co-partner adoption (Stiefkindadoption). Again, regulations on tax, inheritance and public service law are left out in order to circumvent the blocking from the CDU/CSU and FDP led Federal States. The law passes the Bundestag in October 2004. It provides the above mentioned co-partner adoption, community of acquisitions (Zugewinnngemeinschaft), maintenance law, provisions for dependants and engagement for same sex partners.

Follow-up documentation:

Soon after the Life Partnership Revision Act comes into force, the LSVD hopes to push for equal rights in the remaining issues. This is rejected by the SPD. Joachim Poss from the SPD argues that the equal treatment of same sex partnership in tax law as compared to marriage is not mandatory as registered partnerships are an 'aliud'<sup>47</sup> to the traditional family institute of marriage. From his point of view, some tax benefits are already applicable for same sex couples and thus no further legal action is necessary. The CDU/CSU still talks of the privilege of marriage granted by the constitution.

Another claim by the Land Bavaria against the regulation of co-partner adoption is still pending at the Federal Constitutional Court.

### Primary Sources:

- Explanation: BT - Gesetzentwurf Joachim Stünker, SPD; Hermann Bachmaier, SPD; und andere; SPD; Bündnis 90/Die Grünen 29.06.2004 Drucksache 15/3445, 5p.
- 1<sup>st</sup> reading: BT - Plenarprotokoll 15/119 02.07.2004 S. 10911D-10921A, 10p.
- 2<sup>nd</sup> reading: BT - Plenarprotokoll 15/136 29.10.2004 S. 12482A-12491C, 12527D-12529A/Anl, 9p.
- Bill: Gesetz zur Überarbeitung des Lebenspartnerschaftsrechts. Bundesregierung - Gesetz vom 15.12.2004 - Bundesgesetzblatt Teil I 2004 Nr.69 20.12.2004 S. 3396
- Civil Society Text: Comment on the drafts by the LSVD: Stellungnahme zum a) Gesetzesentwurf der Koalitionsfraktionen: Gesetz zur Überarbeitung des Lebenspartnerschaftsgesetzes (Life Partnership Revision Act) BT-Drucksache 1513445 und b) Entwurf der FDP-Fraktion: Gesetz zur Ergänzung des Lebenspartnerschaftsgesetzes - BT-Drucksache 1512477, 18. Oktober 2004, 13 p.

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<sup>47</sup> Aluid is a legal term in German law referring to a person who does not qualify for benefit.

## **2006– In legislation: Life Partnership Completion Act**

In early 2006, two motions by the Bündnis 90/ Die Grünen and the FDP are issued in order to push for equal rights in tax and inheritance law for same sex partnerships. The motion of the Bündnis 90/ Die Grünen also demands joint adoption for homosexual couples. The parliamentary group the Left (Die LINKE) also advocates full adoption rights. The motions are followed by two respective law initiatives. The motions are discussed in parliament in February 2007; the initiatives follow on June 21, 2007. Whereas SPD Minister of Justice, Brigitte Zypries, advocates equalising tax and public servants laws, the CDU/CSU rejects any improvements in these policy areas for registered same sex partnerships. CSU parliamentarian Daniela Raabs admits that there would be room for legal action; however, the CDU/CSU does not want to use it.

In June 2007 a campaign across parties and interest groups<sup>48</sup> is launched under the lead of the LSVD. 'No things by halves' (Keine halben Sachen) aims at raising awareness of the fact that rights in a same sex partnership do not correspond to the duties as compared to marriage regulations.

### **Primary Sources:**

- Explanation of the draft: BT - Gesetzentwurf Volker Beck (Köln), Bündnis 90/Die Grünen; Irmingard Schewe-Gerigk, Bündnis 90/Die Grünen; und andere; Bündnis 90/Die Grünen 15.11.2006 Drucksache 16/3423 (Gesetz zur Ergänzung des Lebenspartnerschaftsgesetzes und anderer Gesetze (LpartGErgG) (Life Partnership Completion Act)
- 1<sup>st</sup> reading: BT - Plenarprotokoll 16/105 21.06.2007 S. 10725D-10743B, 18p.
- Civil Society Text: Campaign LSVD: Keine halben Sachen! Gemeinsamer Aufruf: Steuerliche Benachteiligung von Lebenspartnerschaften beenden!, 2p.

## **2006– Debate: Income Tax Models**

There are various positions in the discourse: Non-governmental organisations like the German Women Lawyers Association (DJB) have been demanding individual taxes for decades, backed by the left parties. The underlying rationale of their argumentation is that women's individual existence should also be promoted through the tax system. A different

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<sup>48</sup> Participating groups and organisations are: Lesben- und Schwulenverband (LSVD), FDP Bundesverband, Bündnis 90/Die Grünen Bundesverband, Lesben und Schwule in der Union (LSU), Lesben und Schwule in der SPD (Schwusos), Arbeitsgemeinschaft queer der Linkspartei.PDS, Bundesarbeitsgemeinschaft Schwule und Lesbische Paare e.V. (SLP), ver.di-Bundesarbeitskreis Lesben, Schwule, Bisexuelle und Transgender Völklinger Kreis e.V., Wirtschaftsweiber, Ökumenische Arbeitsgruppe Homosexuelle und Kirche (HuK) e.V., Arbeitsgemeinschaft homosexueller Lehrer in der GEW Berlin.

position focuses on children and claims that their living standards should be secured independent of the parent's union (FDP). On the more conservative side, the rationale of children's security is also drawn on, but with a persistent focus on the family form they live in (marriage).

The Greens and Die LINKE stress the importance for women to secure their individual existence. Therefore they support the abrogation of the spouse splitting model (apart from other measures such as a reform of the 'need community' (Bedarfsgemeinschaft) in Hartz IV). From the side of the social partners, the Confederation of German Trade Unions (DGB) is in favour of a reform. In April 2006, the Bündnis 90/ Die Grünen present their model of individual taxation which is to be equally valid for spouses as well as registered homosexual partnerships. The additional revenues should be used for day care facilities. All parents with children under three should be given a 'day care check'.

In June 2006, the CDU (General Secretary Ronald Pofalla and BMFSFJ Minister von der Leyen) adopts the idea of amending the spouse splitting into a family splitting model, against the position of CSU leader Edmund Stoiber. The SPD is sceptical. Family associations like the Verband alleinerziehender Mütter und Väter, pro familia (together with the German Women Lawyers Association (DJB) ), but also the ver.di women (Union for Services) prefer an individual taxation scheme over the model of family splitting. The FDP still demands a family splitting model that does not depend on the parents' legal status.<sup>49</sup>

In June 2007, the Ministry of Finance announces to alter the tax scheme in order to provide for a more equal distribution of the tax burden between the partners. This model leaves the principles of the spouse splitting one intact, but suggests that each partner pays taxes according to his/her percentage of the family income (zwd Frauen, Gesellschaft und Politik: (243) 2007:6.)

### **Primary Sources:**

- Motion: BT - Antrag Christine Scheel, Bündnis 90/Die Grünen; Kerstin Andreae, Bündnis 90/Die Grünen; und andere; Bündnis 90/Die Grünen 18.10.2006 Drucksache 16/3023, 2p.
- 1<sup>st</sup> reading of the motion: Speeches of all party members: BT - Plenarprotokoll 16/80 02.02.2007 S. 8078C-D, 8111A-8115A/Anl, 4p.
- Interview with Family and Women's Minister Ursula von der Leyen im Handelsblatt : "Familien mit Kindern mehr vom Einkommen lassen". E-text online at the site of the BMFSFJ. 23.1.2007, 2p.

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<sup>49</sup> The women's section within the FDP (Bundesvereinigung Liberale Frauen) demands that the FDP promotes individual taxing schemes. However, they have not succeeded in changing the party line.

- Civil Society Text: Press Release/ German Women Lawyers Association: Kann Familiensplitting fortschrittlich sein? 26.6.2007, 2p.
- Civil Society Text: Background Paper/ German Women Lawyers Association: Hintergrundpapier zur aktuellen Diskussion über eine Reform der Besteuerung von Ehe und Familie Stellungnahme vom 27.06.2006, 12p.
- Civil Society Text: Common appeal of 16 associations under the lead of the Zukunftsforum Familie: "Wir brauchen eine Politik, die alle Kinder fördert". 15.5.2007, 6p.

## **2006 In legislation: Amendment of Maintenance Law**

In May 2005, the Ministry of Justice presents a draft to amend regulations on maintenance. The draft is resumed in the new legislative period in April 2006. In the existing legislation, the period for maintenance payments to the woman depends on the legal status (divorced (first vs. second spouse) vs. non-married). The draft provides for the prioritisation of children over ex-partners. Ex-partners with child-raising responsibilities are treated equally and rank at the second place. Also, partners who have been married for a long time and trusted in marital maintenance duties, but whose children have come of age already, should still be considered in the second rank. All other ex-partners are ranked third. Another feature of the law is the so-called 'enforcement of post-marital personal responsibility', which aims at promoting the ex-partners gainful employment after divorce or separation.

In March 2007, due to pressure from the CDU/CSU, the coalition decides to amend the ranking: Only spouses with child-raising duties and long-time spouses are considered second. Non-married are ranked last. A decision by the Federal Constitutional Court from May 2007 stresses once again that children must not be discriminated against just because they are born out of wedlock. Consequently, the meeting of the Bundestag in which the coalition draft is planned to be decided is postponed in order to rethink the draft.

### **Primary Sources:**

- Explanation of the draft, BT - Gesetzentwurf Bundesregierung 15.06.2006 Drucksache 16/1830, 4p.
- 1<sup>st</sup> reading: BT - Plenarprotokoll 16/43 29.06.2006 S. 4136D-4137A, 4212D-4219B/Anl, 8p.

## **2006 In legislation: Act on the Right to Contest Paternity Acknowledgements**

In 2004, the CDU/CSU parliamentary group submits a motion that aims at conceding rights to authorities to contest paternity acknowledgements. This request is underlined by the conference of Ministers of Interior that present questionable statistics on false paternity acknowledgement in order to grant the non-married woman a resident permit in Germany. The draft of the Ministry of Justice is informed by this statistic. The first reading of this act takes place in February 2007. The Association of Binational Families and Partnerships (Verband binationaler Familien und Partnerschaften) vehemently opposes this act.

### **Primary Sources:**

- Civil Society Text: Comment on the draft by the Association of Binational Families and Partnership: Stellungnahme zum Entwurf eines Gesetzes zur Ergänzung des Rechts zur Anfechtung der Vaterschaft vom 3.4.2006; Stellungnahme vom 26.6.2006, 7p.
- Civil Society Text: Comment on the draft by the German Women's Council: Stellungnahme des Deutschen Frauenrates zum Referentenentwurf eines Gesetzes zur Ergänzung des Rechts zur Anfechtung der Vaterschaft, Stellungnahme vom 23.6.2006, 2p.
- Civil Society Text: Comment on the draft by the German Women Lawyers Association (DJB): Stellungnahme zum Referentenentwurf eines Gesetzes zur Ergänzung des Rechts zur Anfechtung der Vaterschaft vom 4. April 2006, Stellungnahme vom 15.7.2006, 11p.
- Explanation of the draft: Stellungnahme zum Referentenentwurf eines Gesetzes zur Ergänzung des Rechts zur Anfechtung der Vaterschaft vom 4. April 2006. Stellungnahme vom 15.07.2006, 3p.
- 1<sup>st</sup> reading: BT - Plenarprotokoll 16/79 01.02.2007 S. 7924B, 7976B-7981C/Anl, 5p.

### **2007 In legislation: Amendment of Determination of Paternity**

In 2005, the Federal Court of Justice (Bundesgerichtshof) has ruled that hidden paternity tests are not valid in the course of a paternity suit. Consequently, two law initiatives from the Federal States of Baden-Württemberg and Bavaria are submitted that provide a legal claim to paternity tests in order to determine paternity and to use them in court. In the draft of Baden-Württemberg, paternity tests should be permitted even without the knowledge of all stakeholders. The Bavarian draft provides the legal claim for paternity tests, but does not allow for secret tests. In 2007, the Federal Constitutional Court rules again that secret tests are not legal and that the government has until March 2008 to introduce legislation facilitating paternity determination. All parties welcome the decision. The Bündnis 90/ Die Grünen are even in favour of suing labs that undertake illegal tests. In March 2007, the Ministry of Justice

sends out a draft to be commented by other government departments, the Länder and associations. At the same time, the Bundesrat decides to adopt the draft of Bavaria.

### **Primary Sources:**

- Explanation of the draft: Referentenentwurf des Bundesministeriums der Justiz Entwurf eines Gesetzes zur Klärung der Vaterschaft unabhängig vom Anfechtungsverfahren, Stand: 26. April 2007, 9p.
- Civil Society Text: Comment on the draft by the German Women Lawyers Association (DJB): Stellungnahme Entwurf eines Gesetzes zur Klärung der Vaterschaft unabhängig vom Anfechtungsverfahren 20. Juni 2007, 4p.

### **2007 New Immigration Law – Family Reunion & Forced Marriages**

In the context of the Conference of Ministers of Interior (and backed by the Federal Minister of Interior Otto Schily SPD) in June 2005, more restrictive criteria for family reunion (minimum age of 21 and basic knowledge of the German language) are conceptualised as able to mitigate the problem of forced marriages. Again, this is promoted by a 10 point integration action plan of the Bavarian Government. The criteria are introduced into the draft of a new Immigration Law (January 2006) by the Federal Ministry of Interior. In March 2007, the draft accepted by the coalition (CDU/CSU and SPD) provides a minimum age for family reunion of 18 years. According to a statement of the Federal Minister of Interior Wolfgang Schäuble (CDU) this is intended not only to mitigate the problem of forced but also arranged marriages. Also, basic command of German is a condition for family reunion in order to facilitate integration<sup>50</sup>. The SPD admits that it does not agree with the regulations, but is willing to trade off provisions on family reunion for better residence rights (Bleiberechtsregelung). SPD parliamentarian Mechthild Rawert argues that the CDU/CSU tried to trade off women's rights<sup>51</sup>. Better regulations on the right to return to Germany after a stay abroad would only be accepted if the period to receive an independent resident permit after separation from the spouse was prolonged from two to three years. Both regulations refer to the problem of forced marriage against which the conservatives are apparently so eager to fight. This again sheds light on the contradictory discourses in the conservative wing.

These provisions are heavily criticised by parliamentarians of the opposition. The FDP claims that mandatory language skills as a criterion for eligibility of family reunion are unconstitutional. The Bündnis 90/ Die Grünen emphasise that independent residence permits and the right to return to Germany after a stay abroad would be more effective. Opposing

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<sup>50</sup> Interestingly, Wolfgang Schäuble asserts that exemptions for people with less 'need of integration' (Integrationsbedarf) like citizens from the US, Canada, Japan, South Korea or Israel are permissible.

<sup>51</sup> This was reported by the news agency zwd (Women and Politics) on June 14, 2007. [www.zwd.info](http://www.zwd.info), accessed on July 13, 2007

NGOs and organisations are (among others) the Turkish Community (Türkische Gemeinde), PRO ASYL and more human rights organisations, the German Women's Council (Deutscher Frauenrat), Terre des Femmes, KOK, the Association of Binational Families and Partnerships (Verband binationaler Familien und Partnerschaften) and the Lesbian and Gay Association Germany (LSVD).

The draft passed legislation in June against many votes of the SPD<sup>52</sup>; the Bundesrat confirmed the law on July 6, 2007. SPD parliamentarians have uttered the hope that the Federal Constitutional Court will rule against the recently passed law: The regulations on family reunion disadvantage migrants vis à vis German citizens and families with other migration backgrounds (Israel, Canada, USA etc.). The recently passed restrictive act provokes important Turkish Communities and Associations<sup>53</sup> to abstain from the Second Integration Summit on July 12, 2007.

### Primary Sources:

- Explanation of the draft: BT - Gesetzentwurf Bundesregierung 23.04.2007 Drucksache 16/5065, 7p.
- 1<sup>st</sup> reading: BT - Plenarprotokoll 16/94 26.04.2007 S. 9543C-9567C
- 2<sup>nd</sup> reading: BT - Plenarprotokoll 16/103 14.06.2007 S. 10584D-10610D, 10639/C/AnI
- Civil Society Text: Confederation of German Trade Unions (DGB): Stellungnahme zum Entwurf des Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union, beschlossen vom Bundeskabinett am 28. März 2007. 15. Mai 2007, 39p.
- Civil Society Text: German Women Lawyers Association (DJB): Stellungnahme zum Entwurf des Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union, 18. Mai 2007, 12 p.
- Civil Society Text: Comment on the draft by the NGO KOK: Aktualisierte Stellungnahme des KOK e.V. Zum Entwurf eines Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union, 5. Juni 2007, 13 p.

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<sup>52</sup> The Law was heavily disputed, but eventually accepted in the Parliamentary Commission of the Interior (Innenausschuss) on June 13, 2007.

<sup>53</sup> These are the Turkish Community in Germany (Türkische Gemeinde Deutschland), Federation of Turkish Parents (Föderation Türkischer Elternvereine in Deutschland), the Turkish-German Health Organisation (Türkisch-Deutsche Gesundheitsstiftung), the Turkish-Islamic Union for Religion (DITIB, Türkisch-Islamische Union der Anstalt für Religion).

## 4. GENDER-BASED VIOLENCE

### 4.1. Introduction

Violence against women, especially the issue of marital rape was pushed onto the political agenda by the SPD and the Bündnis 90/ Die Grünen but was regularly turned down by the Bundestag. Again, through a coalition across parties, the penal code was amended in 1997 which made marital rape like any other form of rape punishable under law. In the frame of the 1999 National Action Plan to Combat Violence against Women, the forum to draft and push through legislation against domestic violence was created. Following the Austrian example (1997), with a few years of delay, the Violence Protection Act regulating civil provision in cases of domestic violence was adopted unanimously by the Bundestag in 2001. This is surprising since previous initiatives had failed in the Bundestag. Berghahn (2003) deduces that international model legislations (Austria, USA etc.) and international pressure from the side of the UN and EU were influential in bringing about the positive developments.

Other landmark legislations in relation to gender-based violence were the Second Equal Rights Act (1994) that comprised of the Employee Protection Act, addressing sexual harassment at the workplace, substituted by the General Equal Rights Act in 2006. Intensive lobbying efforts from part of the feminist disability movement eventually yielded fruits from the turn of the millennium onwards. Whereas the 1997/1998 reforms of the Sexual Penal Code were discriminatory against women with disabilities, later reforms implemented legal equality for women with disabilities suffering from gender-based violence<sup>54</sup>. The intersectionalities of gender, ethnicity and religion together with citizenship status issues have gained increasing importance in the discourse on violence against women. Penal law reforms on trafficking in women/ forced prostitution and forced marriages have been promoted by both feminist NGOs and conservative Federal States (Länder) – with different underlying rationales. An example for the slow and flawed implementation of EU directives into national legislation is the introduction of gender-specific reasons for asylum into the Immigration Act of 2004. It was only through a legislative trade-off between the ruling Social Democrats and Green Party that these provisions were introduced into the Immigration Law at that point in time.

The policies relevant for the issue of gender-based violence that were passed in Germany in period from 1995 to 2007 will be discussed under the following subcategories:

- I. Domestic violence and violence in partnerships (marital rape)
- II. Sexual assault and rape
- III. Trafficking and prostitution

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<sup>54</sup> But the intersectionalities of gender and disability were not only dealt with in the field of violence. As mentioned in the chapter on GENERAL GENDER EQUALITY POLICIES, the 9th Book of the Social Code as well as the Act on Equal Opportunities for Disabled Persons (both 2001) were milestone legislations in realising equal rights for women with disabilities.

- IV. Sexual harassment and stalking
- V. Forced marriage, honour crimes and FGM

#### Domestic violence and violence in partnerships (marital rape)

- 1997 Marital rape (33<sup>rd</sup> Amendment of the Penal Code)
- 1999 National Action Plan to Combat Violence against Women
- 2001 Violence Protection Act

#### Sexual assault and rape

- 1997/1998 Sexual violence against women with disabilities (33<sup>rd</sup> Amendment of the Penal Code and the 6<sup>th</sup> Reform Act of the Penal Code)
- 2004 Sexual violence against women with disabilities (Amendment of the Regulations on Violations of Sexual Self-Determination)

2000 Amendment of the Aliens Act (see Chapter INTIMATE CITIZENSHIP)

2004 Gender-specific reason for asylum: Immigration Act

#### Trafficking and prostitution

- 2001 Motions on Human Trafficking
- 2005 Human Trafficking (37<sup>th</sup> Amendment of the Penal Code)
- 2007– Amendment of the penal code on human trafficking

#### Sexual harassment and stalking

- 1994 Employee Protection Act (Second Equal Rights Act)
- 2006 General Equal Rights Act
- 2006 Stalking Act

#### Forced marriage, honour crimes and FGM

- 2005 Forced Marriage (37<sup>th</sup> Amendment of the Penal Code)
- 2007– Law to Combat Forced Marriages
- 2007 Forced Marriages – New Immigration Law (see Chapter INTIMATE CITIZENSHIP)

1997/1998 FGM (33<sup>rd</sup> Amendment of the Penal Code)

2006– Motions on FGM

### **Domestic violence and violence in partnerships (marital rape)**

The fight against violence against women especially in intimate relations has been a major field of action for both civil society organisations and legislative bodies. However, it took a long time before marital rape was included into the penal code as rape. In the late 1990s, political windows opened that made important advances in government programmes and legislations on domestic violence possible. The 1999 National Action Plan to Combat Violence against Women is still valid until today; this action plan, together with the

implementation of the Violence Protection Act from 2001, has been subject to feminist interventions as well as feminist research. Despite the many criticisms, the measures and strategies arising from these policy provisions have contributed to public acknowledgement of the problem of violence against women and the need to act upon it.

### **Sexual assault and rape**

The feminist disability movement has achieved a late success in the combating of violence against women with disabilities. After the much discussed sexual penal code reforms of 1997/1998 and following evaluations, the 2004 reform eventually does away with the unequal treatment of sexual crimes against disabled individuals.

A major reform was the introduction of gender-specific reasons for asylum into the Immigration Act of 2004. Yet, the 'devil is in the detail': the German legislation follows the problematic EU Qualification Directive in the definition of (non-) state persecution.

### **Trafficking and forced prostitution**

Trafficking and forced prostitution subject to debate among feminists have been on the political agenda since the early 2000s. Due to international attention to these issues, the penal code was amended in 2005 to include human trafficking. Alongside the U.S. driven campaigns against forced prostitution in the context of the FIFA World Cup in Germany in 2006, political debates were resumed soon after the 2005 penal code amendment. As explained in the sub-issue history on prostitution (NON-EMPLOYMENT 2001 Act on Prostitution) and human trafficking in this chapter, it is the merging of two debates that can be observed. Conservatives as well as some feminist voices use the debate on forced prostitution in order to revoke stricter regulations on prostitution in general. The appropriation of prior feminist discourses to legitimate conservative demands can be observed again in the issue of forced marriages (see below). In addition, such debates are heavily ethnicised, exoticised and religiously charged, with connections to immigration law, asylum law and workers' mobility. Part of the discussion has been advocating the Swedish model to criminalize customers of prostitution, without much debate around the racist or heteronormative implications of such policies, including the image of prostitutes as victims. Reflections in academic gender studies, like studies on gender images in such policies by Sabine Grenz from 2005<sup>55</sup>, have not made it into these discourses.

### **Sexual harassment and stalking**

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<sup>55</sup> Grenz, Sabine. 2005. *(Un)heimliche Lust. Über den Konsum sexueller Dienstleistungen* [Secret lust. About the consumption of sexual services] Wiesbaden. See also Grenz, Sabine and Martin Lücke, ed. 2006. *Verhandlungen im Zwielflicht. Momente der Prostitution in Geschichte und Gegenwart* [Negotiations in the Twilight. Moments of prostitution in the past and in the present] transcript: Bielefeld.

The first act against sexual harassment was introduced in 1994 and raised much criticism especially for its weak law enforcement mechanisms. The Federal Government commissioned an implementation study done by NFO Infratest and Baer to target deficiencies in the law. However, it took another 12 years until regulations on sexual harassment were renewed; this happened in the frame of the General Equal Rights Act (2006). Obligations due to EU directives forced the German governments to introduce such an act; according to the EU guidelines sexual harassment had to be defined wider than initially aimed for. Just like in the case of sexual harassment where the need for legislation or better legislation was continuously called into question, the same happened in the politics regarding stalking. However, the standpoint that the Violence Protection Act from 2001 did not sufficiently regulate cases of stalking was accepted and an act was passed in November 2006.

### **Forced marriage, honour crimes and female genital mutilation (FGM)**

Forced marriage was introduced into the penal code as a part of other public offences in 2005. Interestingly, legislative initiatives that were issued afterwards stem from the conservative state Baden-Württemberg. Just like in the case of forced prostitution, the discourse on forced marriages can be utilised to promote conservative politics, in this case exclusionary immigration policies. The tightening of regulations on family reunion in the New Immigration Law (2007) was legitimised by the impact they would supposedly have on the prevention of forced and arranged marriages.

The discourse on FGM was on the political agenda in 1997/1998 when the sexual penal code was amended. With regard to the Immigration Act (2004) that regulated gender-specific reasons of asylum, the problematic definition of non-state persecution in relation to FGM became evident. However, research showed that jurisdiction is recognising FGM as a legitimate reason for asylum (Brabandt 2005). Since 2006, the topic is once more on the political agenda due to motions from the opposition parties. Political lobbying by civil society groups (e.g. feminist NGOs like KOK, agisra, Terres des Femmes etc.) related to forced prostitution, forced marriage and female genital mutilation is extensive.

## 4.2. Actors

### Important ministries and commissions

- BMFSFJ
- Ministry for Employment and Social Affairs (Arbeit und Soziales, BMAS)
- Ministry of Justice (Justiz)
- Ministry of Interior (Inneres)
- Ministry of State in the Federal Chancellery: Federal Government Commissioner for Migration, Refugees, and Integration (Beauftragte für Migration, Flüchtlinge und Integration) (since 1978)
- Commission of the Federal Government for Disability Affairs (Beauftragte der Bundesregierung für die Belange behinderter Menschen), located at the Ministry for Employment and Social Affairs (since 2002)

### State and Party Feminists

- SPD: Working Group Socialist Women (Arbeitsgemeinschaft Sozialistischer Frauen, ASF), Working Group Lesbian and Gays (Arbeitskreis Lesben und Schwule in der SPD ,Schwusos) Working Group Young Socialists (Arbeitsgemeinschaft der Jungsozialistinnen und Jungsozialisten in der SPD, Jusos); Women and Gender Politics at the Friedrich Ebert Stiftung (Frauen und Gender Politik)
- CDU: Women's Union (FU Frauen Union)
- FDP: Federal Association of Liberal Women (Bundesvereinigung Liberale Frauen)
- DIE LINKE: Left Socialist Women's Working Group of the Party Die LINKE (Linke Sozialistische Arbeitsgemeinschaft der Frauen der Partei DIE LINKE, LISA); Rosa-Luxemburg-Stiftung
- Bündnis 90/ Die Grünen: Federal Women's Council (Bundesfrauenrat), Federal Working Group Women's Politics (Bundesarbeitsgemeinschaft Frauenpolitik), Federal Working Group Lesbian Politics (Bundesarbeitsgemeinschaft Lesbenpolitik); Feminist Institute of the Heinrich-Böll Stiftung (Feministisches Institut)
- Federal Association of Municipal Women's and Equality Offices (Bundesarbeitsgemeinschaft der kommunalen Frauenbüros und Gleichstellungsstellen, BAG)

### Actors from Civil Society

### Across Issues

- The German Women Lawyers Association (Deutscher Juristinnenbund DJB)
- German Women's Council (Deutscher Frauenrat)

#### Disability:

- Women's Net – Federal Lobby Group Women with Disabilities (Weibernetz – Bundesweite Politische Interessensvertretung Behinderter Frauen)

#### Intimate Citizenship

- Pro familia
- German Lesbian and Gay Association (Lesben- und Schwulenverband Deutschland, LSVD)
- The Association of Binational Families and Partnerships (Verband binationaler Familien und Partnerschaften)
- Pro Asyl
- agisra Köln e.V. – (Human Rights for Migrant Women and Female Refugees)
- Federal Association of Women Migrants in Germany (Bundesverband der Migrantinnen in Deutschland)<sup>56</sup>
- HUDA Network for Muslim Women (HUDA Netzwerk für Muslimische Frauen)
- Meeting and Education Centre for Muslim Women (Begegnungs- und Fortbildungszentrum muslimischer Frauen e.V.)

#### Gender-based Violence

- KOK (German nationwide activist coordination group combating trafficking in women and violence against women in the process of migration)
- Terre des Femmes (Human Rights for Women)

### **4.3. Timeline**

#### **1994 Sexual Harassment: Employee Protection Act/ Second Equal Rights Act (1995)**

First awareness of the issue rose in 1983, when there was a case of sexual harassment in the lines of the recently elected Green Party. Strikingly, neither the anti-violence nor the feminist movement engages significantly in the issue, supposedly – among other issues – because of the intensity of the abortion debate. Also, advocates of sexual harassment

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<sup>56</sup> Other important mainstream (i.e. not specifically dedicated at gender issues) migrant associations are the Turkish Community in Germany (Türkische Gemeinde Deutschland), Federation of Turkish Parents (Föderation Türkischer Elternvereine in Deutschland), the Turkish-German Health Organisation (Türkisch-Deutsche Gesundheitsstiftung), the Turkish-Islamic Union for Religion (DITIB, Türkisch-Islamische Union der Anstalt für Religion). Also the Islamic Council (Islamrat) and the –Central Muslim Council (Zentralrat der Muslime, ZMD) are important actors in the political debate. However, the latter ones were not invited to the first Integration Summit in 2006.

In April 2007, the Muslim Coordination Council (Koordinierungsrat der Muslime, KRM) was founded by conservative Muslim organisations: the ZMD, the DITIB, the Islamic Council and the Association of Islamic Cultural Centres (Verband der Islamischen Kulturzentren VIKZ).

legislation do not choose to pressure through fighting in court but to go through parliament. Hence, changes take a long time to happen. In the following decade however, impulses that advance the cause come from the European integration process/EU directives as well as from femocrats. Acting on state and communal level through the institutions of women's or gender equality offices they draw from transnational expertise and the soft-law measures of the EU.

Despite its symbolic importance, the law is a major disappointment to the feminist movement for various reasons: It does little to strengthen the legal standing of the victim; it does not define sexual harassment as sex discrimination nor places the law in the context of gender equality. The term of sexual harassment is defined very narrowly: Only intentional, sexually motivated behaviours constitute sexual harassment. This means that the logic of the law accounts for the intentions of the perpetrator instead of considering the outcome for the victim. Also, the law talks about a 'one-time-mistake'. Eventually, it is argued that the law does not provide for adequate law enforcement mechanisms such as sanctions for employers violating the law. (Zippel 2006) According to Degen (2001) it was due to the assertiveness of the then acting Women's Minister Angela Merkel that the Employee Protection Act came into force at all.

#### **Primary Sources:**

- Draft: Gesetzentwurf Bundesregierung 21.07.1993 Drucksache 12/5468 Anlage: Stellungnahme Bundesrat und Gegenäußerung Bundesregierung, 77 p.
- 2<sup>nd</sup> reading: BT – Plenarprotokoll 12/222 21.04.1994 19152C-19166D, 14 p.
- Bill: Gesetz zur Durchsetzung der Gleichberechtigung von Frauen und Männern (Zweites Gleichberechtigungsgesetz – 2. GleichBG) (Second Equal Rights Act) Bundesregierung – Gesetz vom 24.06.1994 – Bundesgesetzblatt Teil I 1994 Nr.39 30.06.1994 S.1406

#### **1997 Marital Rape: 33<sup>rd</sup> Amendment of the Penal Code (§177 - §179)**

After ten years of debate on whether marital rape should be treated like any other form of rape, the mid 1990s eventually promise progress in this matter. From 1995 onwards, initiatives of the SPD, the PDS and the Bündnis 90/ Die Grünen are on the political agenda, but are all rejected. With regard to an initiative of the CDU/CSU in the same period, agreement is not found at the last stage of legislation (Vermittlungsverfahren). Eventually, a law drafted across parliamentary groups makes its way into the 33<sup>rd</sup> Amendment of the Penal Code.

#### **Primary Sources:**

#### **33<sup>rd</sup> Amendment of the Penal Code (§177 - §179)**

- Explanation of the draft: BT - Gesetzentwurf Ulla Schmidt (Aachen), SPD; Irmgard Schewe-Gerigk, Bündnis 90/ Die Grünen Drucksache 13/7324, 2p.
- 1<sup>st</sup> reading: BT - Plenarprotokoll 13/172 24.04.1997 S. 15492B-15505C, 13p.
- 2<sup>nd</sup> reading: BT - Plenarprotokoll 13/175 15.05.1997 S. 15785D-15797A, 15797C-D, 15831B-15832B/Anl, 12p.
- Bill: 33. Strafrechtsänderungsgesetz - §§ 177 bis 179 StGB (33. StrÄndG) (33<sup>rd</sup> Amendment of the Penal Code) Bundesregierung - Gesetz vom 01.07.1997 - Bundesgesetzblatt Teil I 1997 Nr.45 04.07.1997 S.1607

### **1997/1998 Sexual Violence against Women with Disabilities: 33<sup>rd</sup> Amendment of the Penal Code (§ 177 Abs.1, § 179) and 6<sup>th</sup> Reform Act of the Penal Code<sup>57</sup>**

The 33<sup>rd</sup> Amendment of the Penal Code introduces § 177 I (Rape and Sexual Coercion – Exploitation of Unprotected Situations) and § 179 (Sexual Abuse of Non-Resistant People) into criminal law. The distinction between these two paragraphs and their applicability is highly questioned by researchers and practitioners active in the prevention and combat of sexual violence against women with disabilities. However, the act is decided in 1997 and rephrased in 1998 in the 6<sup>th</sup> Reform Act of the Penal Code.

Follow-up documentation:

The Committee of Law (Rechtsausschuss) of the Parliament demands an evaluation of this regulation by 2001. The Ministry of Justice presents the requested report that recommends maintaining the existing regulation. This is highly criticised by disability organisations. A workshop is organised by the Bündnis 90/ Die Grünen and the SPD in order to gather experts and to discuss whether § 179 discriminates against women with disabilities. The Federal Organisation for Women with Disabilities (bundesorganisationstelle behinderte frauen, bifos) commissions sexual penal law expert Dagmar Oberlies. Eventually, sexual penal law is reformed in 2004 (see below).

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<sup>57</sup> Law Documentation – Comments on the 6<sup>th</sup> Reform Act of the Penal Code (not available online): 29.10.97 ifi – Initiative für Integration – gegen Aussonderung von Menschen mit Behinderung Pforzheim/Enzkreis e. V., Engelsbrand: Stellungnahme zum § 174 c StGB

14.06.95 Treffen der psychosozialen Berufs- und Fachverbände zum Thema „Sexueller Mißbrauch in Therapie und Beratung“ („Verbändetreffen“), Bochum: Stellungnahme zum sexuellen Mißbrauch in der Therapie

Okt. 97 Treffen der psychosozialen Berufs- und Fachverbände zum Thema „Sexueller Mißbrauch in Therapie und Beratung“ („Verbändetreffen“), ohne Ortsangabe: Stellungnahme zur Änderung des § 174 StGB, sexueller Mißbrauch in Psychotherapie u. Beratung

## Primary Sources:

**33<sup>rd</sup> Amendment of the Penal Code (§177 - §179):** See 1997/1998 Sexual Violence against Women with Disabilities

## 6<sup>th</sup> Reform Act of the Penal Code:

- Explanation: BT - Gesetzentwurf Bundesregierung 25.09.1997 Drucksache [13/8587](#), p.22-35, 13 p.
- 2<sup>nd</sup> reading: BT - Plenarprotokoll 13/204 14.11.1997 S. [18432A](#)-18464C, 34p.
- Bill: Sechstes Gesetz zur Reform des Strafrechts (6.StrRG) (6<sup>th</sup> Reform Act of the Penal Code) Bundesregierung - Gesetz vom 26.01.1998 - Bundesgesetzblatt Teil I 1998 Nr.6 30.01.1998 S. 164 (25p.) + Bundesregierung - Berichtigung vom 03.04.1998 - Bundesgesetzblatt Teil I 1998 Nr.21 14.04.1998 S. 704
- Report on § 179 StGB: Federal Ministry of Justice; Bericht zu §179 StGB (Sexueller Missbrauch widerstandsunfähiger Personen. März 2001, 11p.

## 1997/1998 Female Genital Mutilation: 33<sup>rd</sup> Amendment of the Penal Code + Motions

Whereas the topic has become more visible in the public debate in the last years, NGOs like Terre des Femmes have already been active in this field for more than 20 years. An important impulse comes from the Fourth World Conference on Women 1995 in Beijing and the Platform for Action which pushes activities forward, especially between 1995 and 1999. Terre des Femmes, together with female parliamentarians of the Green and to a lesser degree of the Social Democratic Party, draw from international norms (as promoted by UN institutions) in order to remind the government of its responsibilities and to push the issue onto the agenda.

Despite initiatives prior and during the reform of 1997/8, penal law has not been extended to include FGM as a separate element of offence; however, the motion from parliamentarians of the Green Party leads to the resolution that FGM is a violation of physical integrity and thus punishable under penal law §§ 223 ff<sup>58</sup>. (Brabandt 2005)

## Primary Sources:

**33<sup>rd</sup> Amendment of the Penal Code (§177 - §179):** See 1997/1998 Sexual Violence against Women with Disabilities

## Motions:

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<sup>58</sup> FGM falls under dangerous respectively grievous bodily harm for which the sentences are raised in the 6th Penal Law Reform Act (6. Strafrechtsreformgesetz). Also, the procedure is unlawful and doctors performing FGM can be banned from profession between one and five years.

- Motion: Genitalverstümmelung ächten, Mädchen und Frauen schützen BT - Antrag Irmgard Schewe-Gerigk, Bündnis 90/Die Grünen; Amke Dietert-Scheuer, Bündnis 90/Die Grünen; und andere; Bündnis 90/Die Grünen 27.11.1997 Drucksache 13/9335
- 1<sup>st</sup> reading of the motion: BT - Plenarprotokoll 13/211 12.12.1997 S. 19332B-19345C, 13p.
- Recommendations of the Parliamentary Commission on Family, Senior Citizens, Women and Youth: BT - Beschlußempfehlung und Bericht Ausschuß für Familie, Senioren, Frauen und Jugend 08.05.1998 Drucksache 13/10682, 5p.
- 2<sup>nd</sup> reading of the motion: BT - Plenarprotokoll 13/240 17.06.1998 S. 22127C-22149A, 22p.

See also 2006 Female Genital Mutilation

### **1999 National Action Plan to Combat Violence against Women**

This action plan is the first exhaustive attempt to combat violence against women and to coordinate initiatives vertically (communal, regional and federal level) and horizontally (including all stakeholders). Despite welcoming the national plan, the Federal Association of Municipal Women's and Equality Offices (BAG) raises a series of points of criticism.

#### **Primary Sources:**

- National Action Plan of the Federal Government to Combat Violence against Women: Aktionsplan der Bundesregierung zur Bekämpfung von Gewalt gegen Frauen, 50p.
- Parliamentary Reading: BT - Plenarprotokoll 14/93 16.03.2000 S. 8555C-8575B, 8666C-8667C/Anl, 20p.
- Civil Society Text: Written Comment of the Federal Association of Municipal Women's and Equality Offices (BAG): Stellungnahme der BAG zum Aktionsplan der Bundesregierung zur Bekämpfung von Gewalt gegen Frauen, Oktober 2000, 6p.
- Federal Implementation Report: Umsetzung des Aktionsplans der Bundesregierung zur Bekämpfung von Gewalt gegen Frauen. 2004, 11p.

### **2000 Amendment of the Aliens Act**

Section 19: An independent right of residence for foreign spouses in the event of the dissolution of the marital community (e.g. in cases of domestic violence) is granted now in the event of separation after two years instead of the previous four (Legislation from 1997).

The hardship clause, in accordance with which an independent right of residence may be awarded before this period expires, has also been redesigned.

See Chapter INTIMATE CITIZENSHIP 2000 Amendment of the Aliens Act

## **2001 Trafficking in Women - Motions**

Since the end of the 1980s, trafficking is part of the public debate, especially related to the south-east Asian region and sex tourism. At the same time, the topic enters the political agenda and is taken up by the Federal Government as an issue. After the fall of the Berlin wall in 1989, a new group of victims from central and east European countries emerges. First legislation on the issue is made in penal law (1992); the phenomena that regulations on victim's protection have less priority than criminal persecution remains up until today. An international conference on trafficking in women in 1996 in Vienna, organised by the EU commission and the IOM, raises further awareness of the issue. From 1997 onwards, co-operations between the German state institutions (police, attorneys) and NGOs are set-up in order to bring together criminal prosecution and victim's protection. Lobbying by important NGOs such as KOK (German nationwide activist coordination group combating trafficking in women and violence against women in the process of migration) has resulted in round table talks and co-operation between the police and NGOs (counselling centres, Fachberatungsstellen) (Niesner 2001). Since 2000, an administrative regulation allows victims of trafficking a four week period before deportation. It is especially the Bündnis 90/ Die Grünen and the SPD that take up the issue, e.g. in the motion of 2001 that provides a better legal standing for victims (also during criminal proceedings). (

### **Primary Sources:**

- Motion: Antrag Prävention und Bekämpfung von Frauenhandel (Prevention and Combat of Trafficking in Women) Antrag SPD und Bündnis 90/Die Grünen 3.7.2001 Drucksache 14/6540
- BT - Bundestagprotokoll 14/182 5.7.2001 S.17920A-B
- Recommendations of the Parliamentary Commission for Human Rights and Humanitarian Aid: Beschlussempfehlung und Bericht Ausschuss für Menschenrechte und humanitäre Hilfe 19.11.2001 Drucksache 14/7539
- Plenary Protocol of the Bundestag: BT - Bundestagprotokoll 14/208 13.12.2001 s.20572D-20575D; 20578B-20592C, 17p.

## **2001 Violence Protection Act**

The Intervention Project Berlin, initiated by practitioners in the field of domestic violence against women, starts in 1995 and is funded by the BMFSFJ. In the context of this project, an act against domestic violence is drafted by an expert commission and presented to the public

in 1999. It is informed by practical experiences, legal analyses of the German regulations and oriented towards the recently introduced Austrian Act against Violence in the Family (1997). The Federal Government introduces a first draft in 2000 which is adopted unanimously in the Bundestag and accepted by the Bundesrat in 2001. Key features of the law comprise go-orders, contact bans, fast-tracking, preventive detention and the allocation of housing space to the victim.<sup>59</sup>

Actors: Berliner Interventionsprojekt, Ministry of Justice, Minister of Justice Herta Däubler-Gmelin (SPD)

### **Primary Sources:**

- Civil Society Text: Comment on the draft by the German Women Lawyers Association (DJB): Stellungnahme zum Referentenentwurf eines Gesetzes zur Verbesserung des zivilgerichtlichen Schutzes bei Gewalttaten sowie zur Erleichterung der Überlassung der Ehewohnung bei Trennung, Stellungnahme vom 30.06.2000, 5p.
- 1<sup>st</sup> reading: BT - Plenarprotokoll 14/155 08.03.2001 S. 15195B-15215C, 20p.
- 2<sup>nd</sup> reading: BT - Plenarprotokoll 14/198 08.11.2001 S. 19416A-19421B, 19439A-19441D/Anl, 5p.
- Bill: Gesetz zur Verbesserung des zivilgerichtlichen Schutzes bei Gewalttaten und Nachstellungen sowie zur Erleichterung der Überlassung der Ehewohnung bei Trennung (Violence Protection Act) Bundesregierung - Gesetz vom 11.12.2001 - Bundesgesetzblatt Teil I 2001 Nr.67 17.12.2001 S. 3513
- Civil Society Text: Evaluation by the German Women Lawyers Association (DJB): Contribution of the djb Commission on violence against women and children to monitoring the implementation of the German Violence Protection Act (2001) and Action plan of the German federal government to combat violence against women (1999). October 2005, 2p.

### **2003 Sexual Violence against Women with Disabilities: Amendment of the Regulations on Violations of Sexual Self-determination**

For information on the policy process and history see the paragraph on 1997/1998 Sexual Violence against Women with Disabilities.

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<sup>59</sup> The evaluation of the Violence Protection Act, commissioned by the Ministry of Justice, has been published in 2005: Rupp, Marina, ed. 2005. *Rechtstätsächliche Untersuchung zum Gewaltschutzgesetz*. (Evaluation of the Violence Protection Act).

In 2003, responding to the demands of disability organisations, the degree of penalties of § 179 is equalised with § 176 (Severe Sexual Abuse of Children) and § 177 (Sexual Coercion/Rape)<sup>60</sup>.

#### **Primary Source:**

- Explanation of the draft: BT - Gesetzentwurf SPD; Bündnis 90/Die Grünen 28.01.2003 Drucksache 15/350
- 1<sup>st</sup> reading BT - Plenarprotokoll 15/22 30.01.2003 S. 1722D-1735D, 13p.
- 2<sup>nd</sup> reading: BT - Plenarprotokoll 15/56 03.07.2003 S. 4679B-4693D, 14p.
- Bill: Gesetz zur Änderung der Vorschriften über die Straftaten gegen die sexuelle Selbstbestimmung und zur Änderung anderer Vorschriften. (Amendment of the Regulations on Violations of Sexual Self-determination) Bundesregierung - Gesetz vom 27.12.2003 - Bundesgesetzblatt Teil I 2003 Nr.67 30.12.2003 S. 3007, 6p.

#### **2004 Victim Protection Reform Act**

The Victim Protection Reform Act from June 2004 aims at improving the position of victims in criminal proceedings. It is criticised in January 2006 by the NGO KOK, which evaluates the act from the point of view of victims of human trafficking.

#### **Primary Sources:**

- Civil Society Text: Comment on the draft by German Women Lawyers Association (DJB): Stellungnahme zum Referentenentwurf eines Gesetzes zur Verbesserung der Rechte von Verletzten im Strafverfahren (Opferrechtsreformgesetz) Stellungnahme vom 24.09.2003, 6p.
- Explanation of the draft: BR - Gesetzentwurf Bundesregierung 07.11.2003 Drucksache Drs 829/03, 7p.
- 2<sup>nd</sup> reading: BT - Plenarprotokoll 15/94 04.03.2004 S. 8400A-8409C, 8465B-8466A/Anl, 9p.
- Bill: Gesetz zur Verbesserung der Rechte von Verletzten im Strafverfahren (Opferrechtsreformgesetz - OpferRG) (Victim Protection Reform Act) Bundesregierung - Gesetz vom 24.06.2004 - Bundesgesetzblatt Teil I 2004 Nr.31 30.06.2004 S. 1354, 5p.

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<sup>60</sup> The Law had to undergo the mediation commission.

- Civil Society Text: Evaluation of the Victim Protection Reform Act by the NGO KOK: Auswertung der Studie ‚Das Opferrechtsreformgesetz: Kann es die Stellung der von Menschenhandel betroffenen Frauen im Strafprozess verbessern?‘ Januar 2006

## 2004 Gender-specific Reasons for Asylum: Immigration Law

The introduction of gender-specific reasons for asylum, as granted by the 2004 Immigration Law, has a long history of parliamentary debates. From 1995 to 1998, initiatives of the Bündnis 90/ Die Grünen and the SPD to promote their introduction are closely linked to the matter of female genital mutilation. While FGM is publicly and politically outlawed, the black/yellow coalition (CDU/CSU and FDP) rejects the amendment of regulations on asylum and immigration in favour of girls and women exposed to gender-specific *non-state* prosecution. Despite a change of government in 1998 (coalition of Social Democrats and Greens), gender-specific (non-state) reasons for asylum are not included into the coalition agreement. Such an agreement is impeded by the male politicians in the fields of justice and interior, especially by the to-be Minister of the Interior Otto Schily (SPD). The compromise agreed on is administrative regulations that mention gender-specific persecution as a reason against deportation. Despite increasing pressure from NGOs such as Amnesty International, Pro Asyl and Terre des Femmes as well as international norms that acknowledge gender-specific non-state persecution, the original government's draft of an immigration law in 2001 does not provide for such a regulation. Due to a trade-off between the Bündnis 90/ Die Grünen and Social Democrats (anti-terrorism acts in exchange for gender-specific reasons in the Immigration Act) the matter eventually makes it into the legislation. However, the law is rejected by the conservative party in the Bundesrat in 2002<sup>61</sup>. Arguments like 'Überfremdung', the loss of a German identity, and the threat of a multicultural society are used.

Internationally, Otto Schily, the acting Federal Minister of Interior also opposes the respective EU Council Directive 2004/83/EC of 29 April 2004 (on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted), the so called 'Qualification Directive'<sup>62</sup>. Eventually, a watered-down version reacting to the German reservations is decided upon in 2004.

In the second run of the immigration legislation that resumes the previously rejected draft, (non-specific) gender-specific reasons for asylum are again subject to debate and are among the reasons why the Bundesrat opposes it. The integration of non-state actors (private persons) is particularly critical. The compromise reached during the course of top-level talks between Chancellor Schröder, Angela Merkel (CDU) and Edmund Stoiber (CSU) follow the

<sup>61</sup> Despite unclear voting in the Bundesrat, the law is signed by the president. Consequently, the law is rejected by the Federal Constitutional Court due to the formal error.

<sup>62</sup> Annotation: The deadline to transpose the Qualification Directive into national law was October 2006; the New Immigration Act, passed in July 2007, does so. Various NGOs such as PRO ASYL, KOK, German Women Lawyers Association (DJB) and many others have rejected the act for various reasons [see Chapter INTIMATE CITIZENSHIP 2007 New Immigration Law].

problematic EU Directive (indirect state persecution). The final regulations fall short of the primary draft. The deterioration of provisions for women asylum seekers is clearly attributable to the CDU/CSU's xenophobic stance on the issue. The Bündnis 90/ Die Grünen remain sceptical but agree to the final draft. (Brabant 2004)

### Primary Sources:

- Explanation: BT - Gesetzentwurf Bundesregierung 07.02.2003 Drucksache 15/420
- 1<sup>st</sup> reading: BT - Plenarprotokoll 15/31 13.03.2003 S. 2316C-2348A, 32p.
- 2<sup>nd</sup> reading: BT - Plenarprotokoll 15/44 09.05.2003 S. 3645A-3670B, 25p.
- Mediation Process (Vermittlungsverfahren): BR - Plenarprotokoll 802 09.07.2004 S. 337D-346A, 9p.
- Bill: Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz) (Immigration Act) Bundesregierung - Gesetz vom 30.07.2004 - Bundesgesetzblatt Teil I 2004 Nr.41 05.08.2004 S. 1950, 62p.

### 2005 Forced Marriage: 37<sup>th</sup> Amendment of the Penal Code

The Bündnis 90/ Die Grünen are among the first to address the issue of forced marriages in parliament. A public hearing<sup>63</sup> is held in 2003, where important actors from civil society are invited: Rachel Volz/ Terre des Femmes<sup>64</sup>, a representative of the girls' shelter Papatya and the lawyer Seyran Ates. Public debate starts at the end of 2004 with reports from the news magazine Der Spiegel. In the course of the 37<sup>th</sup> Amendment of the Penal Code in February 2005, forced marriage is introduced as an element of crime into the penal code (Schwere Nötigung). The Coalition Agreement (end of 2005) emphasises the government's dedication to combat forced marriages.

### Primary Sources:

- Explanation: BT - Gesetzentwurf Joachim Stünker, SPD; Hermann Bachmaier, SPD; und andere; SPD; Bündnis 90/Die Grünen 04.05.2004 Drucksache 15/3045, 1,5p.
- 1<sup>st</sup> reading: BT - Plenarprotokoll 15/109 07.05.2004 S. 9946B-9952D, 6p.

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<sup>63</sup> Official Hearing: Bündnis 90/Die Grünen. *Zwangsheirat ist keine Ehrensache. Dokumentation der Anhörung* vom 17.07.2003 in Berlin, Deutscher Bundestag. Berlin

<sup>64</sup> The NGO Terre des Femmes has run two campaigns, 'Stop Forced Marriages' (2002/2003) and Honour Crimes (2004/2005).

- 2<sup>nd</sup> reading: BT - Plenarprotokoll 15/135 28.10.2004 S. 12368D-12375C, 7p.
- Siebenunddreißigstes Strafrechtsänderungsgesetz - §§ 180b, 181 StGB (37. StrÄndG) (37th Amendment of the Penal Code) Bundesregierung - Gesetz vom 11.02.2005 - Bundesgesetzblatt Teil I 2005 Nr.10 18.02.2005 S. 239, 3p.

### **2006- In legislation: Law to Combat Forced Marriages**

In July 2005, the Bundesrat adopts a draft of a Law to Combat Forced Marriages by the Land Baden-Württemberg from October 2004. It already contains the demand to introduce forced marriage as a separate crime in itself into penal law. Other new regulations are the extension of sentences (6 months to ten years), the extension of the annulment period of forced marriage from one to three years as well as accompanying measures in civil law. However, regulations that improve residence titles for victims are lacking. The draft of Baden-Württemberg is again accepted by the Bundesrat in the new legislative period in February 2006.

#### **Primary Sources:**

- Explanation of the draft of the Land Baden-Württemberg: Gesetz zur Bekämpfung der Zwangsheirat und zum besseren Schutz der Opfer von Zwangsheirat (Zwangsheirat-Bekämpfungsgesetz) (Law to Combat Forced Marriages) BT - Gesetzentwurf Bundesrat 23.03.2006 Drucksache 16/1035, 2p.

NGOs and the Bündnis 90/ Die Grünen criticise missing residence regulations. A need for respective improvements is claimed in the motions of the Bündnis 90/ Die Grünen, Die LINKE and the FDP (Liberals). As a result of the motions, a public expert hearing in the Commission of Family, Senior Citizens, Women and Youth is held in June 2006. However, all motions of the opposition parties are rejected in March 2007.

The coalition agreement (CDU/CSU and SPD) from November 2005 has asserted the introduction of a separate offence and other measures. Currently, the coalition parties are working on a catalogue of measures to combat forced marriages.

#### **Primary Sources:**

- Civil Society Texts: Public Hearing: Öffentliche Anhörung des Ausschusses für Familie, Senioren, Frauen und Jugend zu den Anträgen<sup>65</sup> der Bündnis 90/Die Grünen, der FDP und der Fraktion DIE LINKE. 19.06.2006

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<sup>65</sup> Antrag der Abgeordneten Irmgard Schewe-Gerigk, Josef Philip Winkler, Ekin Deligöz, weiterer Abgeordneter und der Fraktion BÜNDNIS 90/DIE GRÜNEN: Zwangsverheiratung bekämpfen - Opfer schützen, BT-Drucksache 16/61

Antrag der Abgeordneten Sibylle Laurischk, Otto Fricke, Ina Lenke, weiterer Abgeordneter und der Fraktion der FDP: Zwangsheirat wirksam bekämpfen - Opfer stärken und schützen - Gleichstellung durch Integration und Bildung fördern, BT-Drucksache 16/1156

## **2005 Human Trafficking and Forced Prostitution: 37th Amendment of the Penal Code**

In 2004, the coalition parties draft the 37<sup>th</sup> Amendment of the Penal Code in order to transpose the EU and UN standards (Palermo Protocol 2000)<sup>66</sup> on human trafficking into national law. According to the KOK, debates over these regulations are controversial. Eventually, the definition of trafficking is widened in order to include (additional to trafficking into sexual exploitation) trafficking into exploitative labour arrangements. Criticisms of the German Women Lawyers Association (DJB) and the KOK refer to the interference with immigration law and insufficient victim protection laws (see 2004 Victim Protection Reform Act). It enters into force in February 2005.

### **Primary Sources:**

- See 2005 Forced Marriage: 37<sup>th</sup> Amendment of the Penal Code
- Civil Society Texts: Comment on the draft by the German Women Lawyers Association (DJB): Stellungnahme zur Reform der Strafvorschriften über den Menschenhandel und Vorschlag des Deutschen Juristinnenbundes Stellungnahme vom 17.03.2004 (11p.) Stellungnahme zur Reform der Strafvorschriften über den Menschenhandel Stellungnahme vom 03.05.2004 und Entwurf eines ... Strafrechtsänderungsgesetzes - §§ 180b, 181 StGB (...StrÄndG)

## **2006- In legislation: Human Trafficking - Amendment of the Penal Code**

In the same month, a legislative initiative of the Federal State of Bavaria demands that clients of forced prostitutes be sentenced up to five years in prison (§ 232a, Freierstrafbarkeit) given they abuse the prostitute's situation or ignore signs of forced prostitution. The parliamentary group CDU/CSU follows with an initiative in April 2005 that draws from the Bavarian draft. The Ministry of Justice warns against overhasty rulings on this matter. The Bündnis 90/ Die Grünen also point to the dilemma that punishment of clients ('Freierstrafbarkeit') who often act as witnesses in criminal proceedings might be counterproductive. It would contribute to the invisibilisation of the scene, thus worsening the conditions for prostitutes as well as meaning deterioration in criminal proceedings. The planned leniency programme is also rejected by the Bündnis 90/ Die Grünen. They point to the necessity to improve victim protection (residence permit, financing of counselling

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Antrag der Abgeordneten Sevim Dagdelen, Karin Binder, Ulla Jelpke, weiterer Abgeordneter und der Fraktion DIE LINKE: Für einen Schutz der Opfer von Zwangsverheiratungen, für die Stärkung ihrer Rechte und die längerfristige Bekämpfung der Ursachen patriarchaler Gewalt, BT-Drucksache 16/1564

<sup>66</sup> EU Council Framework Decision of 19 July 2002 on combating trafficking in human beings and the Palermo Protocol (= UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000).

centres). The importance of victim protection is also emphasised by the Federal Ministry of Development (Staatssekretärin Kortmann, SPD).

In the new legislative period (March 2006) the Bundesrat resumes the Bavarian draft. It contains the claim that the punishability of promotion of prostitution should be re-introduced. The draft has not been discussed in Parliament yet. A motion on the issue by the Green Party is discussed in the Bundestag and in the respective commissions (Ausschüsse) from April 2006 onwards.<sup>67</sup> From the side of civil society, the KOK and the German Women Lawyers Association (DJB) reject the draft of the Bundesrat. In the context of the presentation of the evaluation of the Prostitution Act in 2007, Family and Women's Minister von der Leyen also opposes the punishment of promotion of prostitution, but is positive that an agreement on the punishment of clients ('Freierstrafbarkeit') will be found.

[On the merging of the discourses on prostitution and forced prostitution see NON-EMPLOYMENT 2001 Prostitution Act.]

### **Primary Sources:**

- Explanation of the draft of the Bundesrat: Strafrechtsänderungsgesetz - Menschenhandel - (... StrÄndG) BT - Gesetzentwurf Bundesrat 26.04.2006 Drucksache 16/1343, 3p.
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### **2006– Female Genital Mutilation/ Motions**

Since 2006 up to now, FGM is once more explicitly on the political agenda. Motions by the Bündnis 90/ Die Grünen, the Liberals (FDP) and the (parliamentary group) Die LINKE are discussed in parliament on February 1, 2007<sup>68</sup>. Currently, Terre des Femmes demands a national action plan for the protection of girls from FGM in Germany and aims at an official hearing (öffentliche Anhörung) to make the issue more visible.

See also 1997/1998 Female Genital Mutilation/ Penal Law

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<sup>67</sup> On the occasion of the 2006 FIFA World Cup held in Germany, a nation wide campaign 'Stop forced prostitution' is launched by several NGOs and organisations under the lead of the Deutsche Frauenrat in order to sensitise the public to the problem of forced prostitution.

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- Bündnis 90/Die Grünen: Mädchen und Frauen vor Genitalverstümmelung schützen BT Drucksache [16/3542](#)
- FDP: Genitalverstümmelung von Mädchen und Frauen ächten und bekämpfen BT Drucksache [16/3842](#)
- DIE LINKE: Weibliche Genitalverstümmelung verhindern - Menschenrechte durchsetzen BT Drucksache [16/4152](#)

### **Primary Sources:**

- Parliamentary Reading of the motions: BT - Plenarprotokoll 16/79 01.02.2007 S. [7847C-7859D](#), 12p.

### **2006 General Equal Rights Act: Sexual Harassment**

As Zippel (2006) shows, the climate for legislative change towards more restrictive regulations on sexual harassment was not much more favourable at the beginning of the new millennium than it was at the beginning of the 1990s. The tense employment situation causes the policy makers to withdraw from state interventions into the labour market. The pro-business advocates and German employers argue that existing regulations on sexual harassment are sufficient. Advocates for a stronger law are confronted with the question whether they should demand a separate law or just go with the current flow and introduce the best possible regulations against sexual harassment into the General Equal Rights Act. The second strategy is adopted. However, it is striking how little attention is paid to sexual harassment during the drafting of the law.

The question of class action suits is a hot issue of debate; the meagre result is subject to much feminist criticism. Also, implementation and law enforcement issues such as where the Anti-Discrimination Offices should be located and whether women's and equality offices would now have to assume the other grounds of discrimination are contentious. The German definition of sexual harassment that comprised of the premise of intentionality eventually has to give way to the EU directive's clear definition of sexual harassment as sex discrimination. Zippel concludes that without the EU as a catalyst, German regulations on this issue in the sense of promoting gender equality would still be lagging behind and favouring employers' interests. However, feminist criticisms on the General Equal Rights Act remain (See Chapter GENERAL GENDER EQUALITY POLICIES 2006 General Equal Rights Act).

### **Primary Sources:**

- See GENERAL GENDER EQUALITY POLICIES – 2006 General Equal Rights Act

### **2007 Stalking Act**

The Violence Protection Act from 2002 refers to stalking, but critics claim that it covers the issue insufficiently. A controversial debate arises over this question. From 2004 onwards, law initiatives come from the Federal States of Hessen, Bavaria and Rheinland-Pfalz. The Bundesrat adopts the first one with changes in March 2005. At the same time, the Minister of Interior, Brigitte Zypries (SPD) presents a draft in April 2005 which is rejected by the Bundesrat because it lacks the provision of preventive detention and does not go far enough in general. Due to early elections in 2005, the issue is postponed until the beginning of 2006 when both Bundesrat and the Federal Government present their respective drafts. A

compromise between the Länder and Federal draft is found in May 2006. Following an official hearing in October 2006, the governmental draft is decided upon against the votes of the opposition at the end of November 2006. Stalking is now an element of offence, with higher sentences (three years, and in cases of bodily harm up to ten years). However, it is still conceptualised as an Antragsdelikt (criminal offence prosecuted only upon application by the victim) and not as a public offence. Also, preventative detention is introduced against the opinion of the Bündnis 90/ Die Grünen who question the constitutionality of such a regulation. The Greens and the FDP argue that a reform of the Violence Protection Act would have been more effective.

### **Primary Sources:**

- Explanation of the draft: BT - Gesetzentwurf Bundesregierung 08.02.2006 Drucksache 16/575, 1p.
- 1<sup>st</sup> reading: BT - Plenarprotokoll 16/35 11.05.2006 S. 2969B-2974B, 5p.
- Civil Society Text: German Women Lawyers Association (DJB): Stellungnahme zur öffentlichen Anhörung des Rechtsausschusses des Deutschen Bundestages am Mittwoch, den 18.10.2006 – Stalking, Stellungnahme vom 13.10.2006, 13p.
- 2<sup>nd</sup> reading: BT - Plenarprotokoll 16/70 30.11.2006 S. 6948A-6957B, 9p.
- Bill: Gesetz zur Strafbarkeit beharrlicher Nachstellungen (... StrÄndG) (Stalking Act) Bundesregierung - Gesetz vom 22.03.2007 - Bundesgesetzblatt Teil I 2007 Nr.11 30.03.2007 S. 354

## **2007 Human Trafficking – New Immigration Law**

### **Primary Sources:**

- New Immigration Law – see Chapter INTIMATE CITIZENSHIP 2007 New Immigration Act
- Civil Society Text: Comment on the planned amendment of residence permits by the German Women Lawyers Association (DJB): Stellungnahme zur geplanten Änderung des Aufenthaltsrechts – zum Aufenthaltsrecht von Opfern von Menschenhandel – Stellungnahme vom 10.06.2006, 3p.

## **2007 Forced Marriages – New Immigration Law**

The issue of forced marriages emerges in the debate on the reform of the Immigration Act (2004) from 2005 onwards. It is one of the main arguments for the New Immigration Act passed in 2007.

**Primary Sources:**

- New Immigration Law – see Chapter INTIMATE CITIZENSHIP 2007 New Immigration Act

**2007 Forced Marriages – National Integration Plan**

The issue of forced marriages is addressed in the National Integration Plan. The section comprises of a diagnosis of the problem and a list of measures to be undertaken by the Federal Government and other actors (including those from civil society).

**Primary Sources:**

- National Integration Plan on Forced Marriages: Der Nationale Integrationsplan. Neue Wege – Neue Chancen. Bundesregierung, 12.7.2007, p.88-94, 6p.

## 5. CONCLUSIONS

### 5.1. Relative importance of topics in the subissues

#### General Gender Equality Policies

The late coming into force of the General Equal Rights Act in August 2006 and its long policy history of political controversies, amendments and postponement have dominated the political discourse on general gender+ equality policies in Germany for the last six years. At the beginning of the QUING period, it is the Second Equal Rights Act of 1994 that is of major importance. Also, (the failing of) the gender equality act for the private sector that ended up as a voluntary agreement of the head organisations of the private sector in 2001 was hotly debated.

#### Non-Employment

With regard to the issue of non-employment it is especially child (and elderly) care policies that shape the discourse. Closely related are the important issues of pension schemes and policies such as the Unemployment Benefit II (Hartz IV). A very active topic in the debate on the access to the labour market is the Hartz legislation. Equal pay is part of the public debate on gender equality; however it is not represented in gender equality legislation. Increasingly, the political agenda is informed by concerns with the integration of (women) migrants into the labour market.

#### Intimate Citizenship

Three major areas of equal importance can be identified in the issue of intimate citizenship: Firstly, the legislation evolving around same sex partnerships, secondly the privileging of heterosexual married couples in legislation on benefits and tax schemes and thirdly issues around the intersectionalities of gender and citizenship such as independent residence permits or gender-specific reasons for asylum. Major regulatory gaps persist in the field of reproductive rights for non-married or same sex couples and singles.

#### Gender-based Violence

The concern with domestic violence, marital violence and sexual harassment has characterised legislation on gender-based violence in the first half of the QUING research period; at the same time, the intersection of gender and disability were increasingly acknowledged in the discourse. The second half of the QUING research period is informed by legislation around the intersections of gender, religion and ethnicity: Issues like FGM and forced marriage are playing an important role on the political agenda. The topic of forced prostitution and trafficking in women also came to the political agenda again – mainly as reaction to the liberalisation of prostitution law.

## **5.2. Major shifts in general gender+ equality policies and in the three subissues**

### General Gender Equality Policies

Germany's gender regime can be characterised as a hybrid set-up consisting of conservative and progressive tendencies and it is therefore hard to diagnose major shifts in debates. The fact that the General Equal Rights Act was only passed in 2006 after more than ten years of political debate reflects the conflicting tendencies. While the coming to power of the Social Democrats and the Greens (1998-2005) after 16 years of conservative-liberal governments (1982-1998) resulted in progressive legislations in some areas (such as the recognition of same sex partnerships), other areas are still dominated by a conservative rationale underpinned by the male bread-winner model (such as the tax system). Whereas in the beginning of the Social Democratic/ Green period an emphasis on explicit gender equality policies was visible, a shift towards family-friendly policies began to show. This development has been exacerbated by the current grand coalition formed by the Christian-conservative CDU/CSU and the Social Democrats. Interestingly, the current political agenda is informed by demographic and economic discourses; however, legislation such as the recent Parental Benefit Act might show positive results on gender equality.

### Non-Employment

With regard to the reconciliation of professional and family life, the 2001 Child Raising Benefit Act prepared for the shift in child care policies in 2006 (Parental Benefit Act). The Long-term Care Insurance Act of 1994 was celebrated as a milestone law, improving the situation of both the people in need for care and care givers. However, feminist evaluations are more critical. Shifts in a more negative sense were provoked by the Hartz reforms that contributed to a strengthening of the male-breadwinner model. Recently, an increasing concern with gender, ethnicity and citizenship (and employment) has become apparent. High-level events that received much media attention were held in 2006: the National Integration Summit and the Conference on Islam.

### Intimate Citizenship

Discrimination on grounds of sexual orientation has been mitigated through legislation that acknowledges same sex partnerships. Milestone legislation was passed in 2001 and 2004; however, equal rights in the tax system are not realised. The rights associated with marriage that mostly counter women's individualisation have not been addressed through gender+ equality legislation; also, partnerships other than marriages are discriminated against, e.g. in the draft of a new maintenance law. Rights claims demanding independent residence permits for migrants (e.g. spouses after divorce) have been successful to some degree in a long-term perspective. However, since the last improvement dating from 2000, little progress has been made.

### Gender-based Violence

A milestone legislation was the inclusion of marital rape as form of rape into the penal code; a late success (1997) given the women's movement continuous lobbying for awareness of the issue. While the Violence Protection Act of 2001 has been critically evaluated by feminist practitioners and academics, it is still a landmark in the political discourse on domestic

violence. Eventually in 2003 the sensitisation of the feminist disability movement for the problem of violence against women with disabilities yielded fruits in an amendment of the penal code. The recent emphasis on gender-based violence against an ethnic backdrop has its origin in feminist concerns with especially vulnerable women; however, an appropriation of discourses on trafficking in women, honour killings and forced marriage is observable in order to serve the ends of restrictive immigration policies.

### **5.3. The role of civil society and other political actors**

The German Women's Council is a nation-wide association of 50 organisations across party, religious or other lines that lobby for women's issues. The German Women Lawyers Association (DJB) assumes an outstanding role in the political fields as its members have a wide range of expertise and comment on almost every law proposal important for QUING.

Other essential political actors from civil society that are actively lobbying are the Lesbian and Gay Association of Germany for issues on intimate citizenship and the NGOs Terre des Femmes and KOK in questions on violence, gender and citizenship. The Federal Association of Municipal Women's and Equality Offices (BAG) are important political voices.<sup>69</sup>

Although unions cannot be qualified as civil society actors in the German corporatist system, for the issues of non-employment the women's unit of the social partners such as ver.di (Union for Services), the Confederation of German Trade Unions (DGB) and the Union for Metal (IG Metall) were important voices "from outside".

### **5.4. The impact of the EU and other international bodies**

As Germany is characterised by a conservative gender regime, the emergence and implementation of gender equality policies have been rather slow and flawed as compared to other West European states. Institutionalised gender equality bodies are relatively weak and few in number. However, pressure from the EU and other international bodies has contributed to a weakening of the traditional gender regime in order to form a hybrid model where progressive and conservative policies co-exist. At the same time, Germany has always been actively promoting conservative approaches to legislation at the EU level. This resulted in initiatives to water-down several EU directives – with varying success.

Germany follows its reporting duties to EU and international bodies through a large number of national reports, action plans etc; it also reports to the CEDAW committee regularly; yet, co-operation with NGOs in the preparation of the reports is rather weak. However, international human rights conventions and duties that arise from them seem to play a minor role in the national discourse. While there is certainly movement and mutual policy exchange between national and supra-national levels, public knowledge of instruments like the CEDAW is weak. As reported by MacRae (2006), the women's movement has for a long time

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<sup>69</sup> More a more detailed account of the actors see the respective issue-chapters.

abstained from drawing on international women's human rights conventions or EU directives to legitimise their claims. Still, we would follow MacRae's appraisal that matters of responsiveness to supra-national institutions have contributed to shifts in the traditional (West) German gender regime.

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