



Quality in Gender+ Equality Policies

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State of the Art and Mapping of Competences Report: Germany

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This State of the Art report is part of the comparative research project QUING that is financed by the European Commission. QUING will answer two important questions: What are actually gender equality policies in the practice of national and European policy making? And also: What is the quality of these current policies, especially in terms of their transformative potential, their attention for other inequalities and their openness for voices of the movements that lay at its origin? QUING studies all 27 EU-countries plus Croatia and Turkey. QUING will present results from January 2009 on, and will be finished in 2011.

For its analysis, QUING has chosen three gender equality relevant issues: non-employment, intimate citizenship and gender based violence. The comparative study will enable a better understanding of differences and similarities, and of the quality of gender+equality policies. This comparative analysis is the heart of QUING that will generate new theory, that will be relevant to the whole of Europe. These parts of QUING are named LARG and WHY. In a related part, named STRIQ, the project will further develop theories on intersectionality, on the relationship between gender inequalities and inequalities originating in ethnicity, class, religion or sexuality, and describe and analyze to what extent and how intersectionality is incorporated in gender equality policies with across Europe. Additionally, QUING will also be preparing the ground for comparative research on the history of feminist ideas in Europe. In this part, named FRAGEN, QUING will start with the construction of a database that will 'open' selected core feminist texts to researchers by storing original second wave feminist texts in the database together with an analytic description of these texts in English. QUING will open this database to the research community in its last year. In its last two years, QUING will also be very active with its fifth part, named OPERA, actively translating its knowledge in gender training for all actors in policy making, and it will develop high quality standards for such training, that will be tested in practice. For a more extensive presentation of the QUING project please consult the website at www.quing.eu.

This State of the Art report has the goal of assuring that the QUING researchers start their research using the knowledge that is already available on gender equality policies in a country. In this sense, the State of the Art is a classic literature review, relevant to the different parts of the QUING project (LARG, WHY and STRIQ). Added to this, some information is asked for that facilitates the preparation of the activities in FRAGEN.

This report is structured as follows. In the first part a short assessment is made of the annotated bibliography that can be found in the second part of this report. In the second part of the report one will find the actual annotated bibliography. This part maps the most important relevant academic studies and other policy related literature (reports by IO, INGOs, experts etc.) about each country. The annotated bibliography has been divided into four separate sections. One section covers studies relating to gender equality policies, the following one is on non-employment related articles, the next one is on intimate citizenship related articles and the final one is on gendered violence related articles. In all sections, the accent is on studies that focus on the *gender equality aspects* of policies relating to these issues. The four sections itself have been divided into country language studies and English language studies. Comparative studies can be found under a separate heading within these language groups. Next to the bibliography, this part also contains a section relating to the OPERA part of the QUING project in which the most relevant gender training literature that has been produced in the country (e.g. gender equality manuals, gender mainstreaming manuals, gender impact assessment guides) is listed. There is a section related to the FRAGEN part in the QUING project listing the archives or documentation centres specialized in gender equality policies on national level.

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Introduction

From a historical perspective four major factors have impacted on German equality policies and their discussion in academic literature during the last ten to fifteen years¹: First, the increasing EU integration and its challenges for national equality legislation, and the accompanying discourse on demographic change and the family, second, the German unification in 1990; third, the discourse on the future of work triggered by economic calamities such as mass unemployment, especially in the East of Germany; fourth, the discourse on migration and integration, and last, the discourse on violence against women.

The process of EU integration has been a major factor influencing German national gender equality legislation and research. EU directives on anti-discrimination and the obligation of EU member states to adhere to the principle of gender mainstreaming in public administration posed challenges for national policy makers². Studies annotated in the first section of the bibliography (*'General Gender Equality Policies'*) document the translation of EU regulations into national laws. Between the poles of international obligations and national interests, the implementation of anti-discrimination guidelines into labour, social and civil law proved slow and was mainly assessed as producing watered down results. As an example, the implementation process of the General Equal Rights Act, which eventually came into effect in 2006 after five years of political debate, is documented. Other important acts for the realisation of gender equality such as the 9th Book of the Social Code are discussed in this first chapter³.

Referring to the strategy of gender mainstreaming, empirical research on the status of national or state or local implementation is not as extensive as the theoretical discussions about the chances and possibilities, or traps and challenges provided by this new strategy. This may be due to the relatively short practise of gender mainstreaming, which was, on the national level, adopted by the Government in 1999 and had an 'Interministerial Working Group' (IMA Gender Mainstreaming) set up in 2000, dissolved in 2006. However, all pilot projects and GM instruments are documented⁴.

National legislation on issues of *'Intimate Citizenship'* has been influenced by international, including EU developments, e.g. the increasing acceptance of various living arrangements and family forms. One example is the act on registered partnerships for same sex couples that came into force in Germany in 2001, and was

¹ This listing addresses factors influential for national equality legislation as related to the issues 'Non-Employment', 'Intimate Citizenship' and 'Gender-Based Violence' and does not claim to be complete.

² It is especially feminist academic journals such as *Streit* (Feminist Legal Review), *femina politica* (Journal for Feminist Political Sciences), that have published articles on the drafting and implementation processes of national equality legislation over time. Other feminist academic journals (e.g. *Zeitschrift für Frauenforschung und Geschlechterstudien* (Journal for Women's and Gender Studies) or *beiträge zur feministischen theorie und praxis* (Contributions to Feminist Theory and Practise) are concentrating more on the third sector, migration and violence; *Feministische Studien* (Feminist Studies) engage quite extensively in the discourse on reproductive medicine but also classical feminist issues such as reconciliation and women's employment.

³ Extensive research on national gender equality policies in a historical perspective has been conducted by Sabine Berghahn (Freie Universität Berlin).

⁴ The federally funded GenderKompetenzZentrum at Humboldt Universität zu Berlin administers an extensive information website on the issue, with around 3000 pages to date (www.genderkompetenz.info).

amended several times already, e.g. to extend legal provisions on parentage in 2004. Much of the literature compiled for the section of 'Intimate Citizenship' focuses on this Life Partnership Act, analysing its provisions as compared to marriage and non-married living arrangements. Similarly, parental, custody and adoption rights are discussed in this comparative perspective.

A related 'Intimate Citizenship' issue is the institution of marriage and the gendered, and particularly exclusively heterosexual, 'privileges and disadvantages' that follow from the marital status⁵. They have been analysed profoundly in publications on the German welfare state (annotations in both the 'Intimate Citizenship' and 'Non-Employment' section). Actual public debates on fake and binational marriages, reflecting the intersections with migration/citizenship status, have not been addressed in academic literature yet.

Adding to this, the debate on demographic change has heavily influenced policies around intimate citizenship and non-employment. Data on "too few German children" activated support for long time efforts to take steps towards work-life-balance for parents, particularly to allow mothers to be employed by providing public child care, and financial support for parenting. Large legislative projects have been undertaken in this area, with severe budget implications, and with public debates about gender stereotypes ("true motherhood", "fathers", "family").

Public and political discourses on reproductive medicine have also been impacted by European as well as international medical ethics discourses. Despite the lack of specific German legislation on this issue, yet professional regulation in effect, feminist scholarship engages in it from a classical feminist point of view ('self-determination'), as well as from a feminist-disability and a sexual orientation perspective.

The second influential factor, Germany's unification in 1990, not only posed real political problems, but was also intensively reflected in national research as a 'dual process of transformation'. The concept captures the phenomenon that people from the GDR had to 'adjust' to the 'Western' economic and social model which itself was undergoing fundamental structural changes due to neo-liberal processes threatening standards of a social welfare state. In this context, gender competent research did initially ask the question of what the unification meant for women's rights (on a formal legal level, as for instance the right to abortion), and then assessed the changes against the backdrop of gender regimes in East and West Germany. 'Winners and losers' of unification were and are diagnosed until today – also from a gendered perspective, with growing attention to issues of class. Embedded in this narrative of a dual transformation process was the question of how the GDR gender regime would or did actually change and/or adjust to the Western German one. Today, there is detailed East-West and gender segregated empirical data - on women in the labour force, as labour market participation, unemployment rate, child-care provisions, family forms and women and child poverty - that trace the developments from the early nineties until the present. Research on the unification has been mostly embedded into the paradigm of the welfare state and its underlying rationale, with a critique of the 'male breadwinner model' (in contrast to the 'double wage earner

⁵ The institution of marriage (and its underlying gendered principles that counter processes of women's individualisation) is a prevalent research focus. E.g. the research project 'The Male Breadwinner Model' at the Freie Universität Berlin, lead by Sabine Berghahn, has been terminated recently. For details see web.fu-berlin.de/ernaehrermodell/index.html.

model'). The 'breadwinner'-paradigm is applied in almost all disciplines crossing from political, sociological, economic to legal studies.⁶

Although classical *Non-Employment* topics such as (child) care leave are well covered by academic studies, they are not dealt with under the label of non-employment. However, literature in gender studies addresses the discrepancy between the (male) norm of employment (as a condition for social security) and the (female) norm of non-employment in the form of unpaid reproductive work (and its insufficient social covering, or with its effects on stereotyping and access to employment generally). The facts that the gender division of labour and the devaluation of work performed by women (either 'reproductive' or 'productive') hamper processes of women's individualisation, are extensively analysed. Recently, some attention has been paid to racialized segregation in the labour market as well, and, in the wake of discussions around demographic change, rearing age. Nonetheless, a strong focus on employment which is reflected in the abundance of literature on gendered labour market developments and changes in women's labour force and labour market participation (East/West Germany) can be observed⁷. Some essential publications were included in order to gain an insight into the backdrop against which policies of non-employment have to be understood.

Strikingly, there is lots of literature on the gendered nature of the third sector and the 'New Volunteers', partly triggered by the debate on demographic change, and on the intense public and political-academic discourse on 'The Future of Employment' promoted by several 'Future Commissions' ('Zukunftskommissionen'), Commissions of the Federal Parliament, and a new government dedication to the "Ehrenamt". The strong gender bias of policies that aim at turning masses of unemployed into not or badly remunerated civil workers has been extensively addressed in feminist literature. Also, the 'Hartz reforms' redefining who is employable or legitimately non-employed and the significance of these definitions for social benefit entitlements have been analysed from a gender perspective. A current topic these days is "precarious" employment, sometimes including attention to racist aspects of policies. These developments led us to deduce that the crisis of employment, i.e. mass unemployment, has been the third significant factor impacting on the political field and thus, academic research.

It is the discourses on migration and integration that we consider the fourth important pillar for national legislation and research. Issues of migration and integration cut across policy fields such as violence against women (e.g. forced marriages, honour killings = QUING 'Gender-Based Violence') and immigration (residence and work permits, 'fake paternity'= QUING 'Intimate Citizenship'), but are also relevant regarding non-employment in that "precarious" work constellations are sometimes analysed as exclusion based on gender, ethnicity, or age.

In particular, and relevant to QUING's 'Non-Employment' interest, and to intersectionality, Germany saw intense discussions around controversial bans from profession for female Muslim teachers wearing a headscarf in class. An intense public debate, the so called 'Kopftuchdebatte' (hijab debate), evolved around 2003,

⁶ Studies which fall in QUING's 'Non-Employment' category are conducted from all these disciplines. In comparative studies in political science, the German welfare state is mostly contrasted with different European models of welfare states, e.g. Sweden and France.

⁷ Research centers such as GendA (www.uni-marburg.de/fb03/genda) reflect the focus on gender and employment in current national research.

triggered by government decisions in Southern Germany, a Constitutional Court decision and subsequent Länder legislations, and has been ongoing ever since. As the fierce public and political debate on the 'hijab' complements the public discourse on migration, religion, 'parallel societies', failed integration and violence, and does so from an explicit gendered point of view, but also with conservative uses of equal rights to establish an assumed "superiority" of Christian cultures versus Islamic cultures, it can contribute to a better understanding of intersectionality also in policy fields such as immigration policies and legislation on gender-based violence.

Similarly, ethnicity, religion, and gender intersect in the area of *Gender-Based Violence*, since discussions in Germany dealt with domestic violence in families with migrant background (keyword: independent residence permit of the spouse) and asylum seeking (keyword: gender-specific reasons for asylum). Hot policy debates, again including and fuelled by legislation and court decisions, have evolved around these issues in the period of interest here. Research on forced marriages and honour killings is often initiated and conducted by NGOs, like the national NGO Terre des Femmes. Gender-specific reasons for asylum however are well covered by academic research as well.

Last, violence against women is and has for a long time been a standard issue in feminist politics and gender studies. Literature on gender-based violence is mostly policy analysis with a strong focus on problems of law enforcement, yet also sometimes studies directed at legislative reform. There are abundant studies on the Violence Protection Act (civil law on domestic violence), passed in 2001 and based on examples from Austria, or the U.S. or Australia, as well as studies on law against sexual harassment, with laws passed, due to EU impulses, in the late 1990s, and again in the General Equal Rights Act in 2006. Here, the category of gender was discussed intersecting with disability, in that violence against women with disabilities has been discussed from a juristic point of view (provisions of the sexual penal code), and intersecting with sexual orientation, e.g. in studies around violence against gays, or within lesbian relationships. Racism in the context of violence seems not to have triggered as much attention. There have been few publications from a gender perspective on the problem of stalking, yet drafts for an anti-stalking act were circulating at least for the last two years, and the respective act came into force in November 2006.

In the following three chapters that map gender competences in Germany, a clear East-West divide becomes visible: Researchers at universities as well as experts at NGOs (Chapter 'Competences') are mostly to be found in the West of Germany. The same picture arises in the case of feminist archives and libraries (Chapter 'FRAGEN') and is also valid for the distribution of gender training institutes (Chapter 'OPERA'), if Berlin as counted as West rather than East. However, location is not always biography, since particularly academics have, both in the West and the East, mostly grown up in the West.

The abundance of feminist archives in the "Old States" (Alte Bundesländer) can be explained by the long tradition of documentation that started with the second women's movement in the 1970s. Relevant archives, e.g. in Berlin and Cologne, have been sustained and expanded constantly. The locations of two important East German documentation centers at the Humboldt Universität of Berlin and in Leipzig stem from the centers of the women's movement in the GDR. Apart from the Gender

Institute in Sachsen-Anhalt (G/I/S/A), the distribution of gender training institutes also confirms a clear East-West divide.

With regard to gender trainings, three types on at least three different levels (federal, state, communal) have been identified, although the field constantly changing, so findings can only be seen as tentative, and overlapping: Firstly, there is gender-specific organisational consultancy (e.g. on equal pay; gender audits); secondly, there is consultancy on gender mainstreaming and diversity, including gender competence, expert knowledge, and thirdly, there are gender trainings for individuals and trainings to combat stereotypes and discrimination. The actors cited in the OPERA section vary in their profiles, and trend to specialisation can be observed.

Annotated Bibliography

1 General Gender Equality Policies

1.1 German Sources

- 1 Berghahn, Sabine. 2006. *Von der Familienpolitik zur Frauenpolitik und zurück*. [From family politics to women's politics and all the way back] Speech on feminist lawyers' day 2006.
<http://userpage.fu-berlin.de/~berghahn/home/Aktuelles/Berghahn%20FJT-streit.pdf>
(accessed on February 19, 2007)

Keywords: gender equality policies, family policies, overview, women's individualisation

The author argues that up to now political periods focusing on gender equality have tended to alternate with such on family policy whereas there was never such a thing as an equilibrium between them. The author reflects the major shortcomings and negative consequences for women's individualisation following from these policies from the 1950s onwards: housewife marriage, the so called spouse splitting/ income taxing system, the lack of promotion of female labour participation (policies on child care leave and maintenance law). The author concludes the article with an evaluation of current shifts in family policy such as the Act on Parental Benefit ('Elterngeld') which she sees as a positive development after all. She locates needs for action regarding the draft of a new maintenance law and the law on unemployment benefit II (Arbeitslosengeld II) which passes the financial burden on to the unions people live in (marriage, cohabitation, family), thus counteracting processes of individualisation.

- 2 Liebscher, Doris. 2006. Zum Inkrafttreten des AGG. [The coming into force of the General Equal Rights Act] *Streit* 3: 139.

Keywords: General Equal Rights Act 2006, law enforcement

On the occasion of the coming into effect of the General Equal Rights Act in August 2006, six years after the EU guideline was issued in order to be implemented into national legislation, the author raises several points of concern. The main line of argument addresses the changes in the law which make law enforcement more difficult: 1. The employer is punishable provided s/he has been acting culpably ('schuldhaft gehandelt'); 2. The time limits to file a suit do not meet with the actual living situations of victims; 3. In order to press charges successfully, victims have to show evidences that plausibly indicate discrimination; 4. Associational claims are not provided for; 5. The lack of provisions for area-wide anti-discrimination offices.

3 Baer, Susanne. 2005. Perspektiven der Gleichstellungspolitik – kritische und selbstkritische Fragen. [Perspectives in equality policies – critical and self-critical questions] *Streit* 3: 91-99.

Keywords: gender equality policy, actors in gender equality policies, work, family health, education, feminism, gender mainstreaming

The article is a speech to the 21st Congress of Feminist Lawyers in Germany. It reviews gender equality in the past and looks critically at crucial issues of gender equality in Germany but also at feminist interventions into gender equality policies. The author's diagnosis of gender equality policies is sceptical: Times for gender equality policies are difficult, and a new 'feminist concept' is needed. Gender equality policies have been successful, but several problems exist. The article maps different actors in the policy field – civil society, women's policy machineries and actors in the political system and assesses their contribution to gender equality. Central issues of gender equality policies in Germany are seen in the field of work, family, health and education. The author criticises the 'old' concepts of feminism and claims a re-invention of feminism. Her claim is that feminism and gender mainstreaming should not be seen as opposite poles but should be combined.

4 Behning, Ute and Birgit Sauer, eds. 2005. *Was bewirkt Gender Mainstreaming? Evaluierung durch Policy-Analysen*. [What does gender mainstreaming bring about? Evaluation by means of policy analyses] Frankfurt a.M.: Campus.

Keywords: theory gender mainstreaming, policy analysis

This publication is based on a workshop initiated by the Institute of Political Science/ University of Vienna and the Institute for Advanced Studies (IHS) in 2003. It engages in the theoretical discussion on the instrument of gender mainstreaming, and presents different approaches of policy analysis from which evaluations of gender mainstreaming processes can draw. The third chapter compiles empirical results from policy research.

5 Jung, Dörthe and Margret Krannich, eds. 2005. *Die Praxis des Gender Mainstreaming auf dem Prüfstand. Stärken und Schwächen der nationalen Umsetzungspraxis*. [The practice of gender mainstreaming under evaluation. Strengths and weaknesses of national implementation processes] Frankfurt a. M.: Heinrich Böll Stiftung.

Keywords: conference, evaluation, gender mainstreaming

This publication is based on a conference held in January 2004 in Frankfurt/Main, which provided a forum for experts to critically evaluate current gender mainstreaming practises on the national level. Experts from various fields exchanged their expertise about successes, obstacles, possibilities for

development and needs for quality standards in gender mainstreaming processes.

6 Stiegler, Barbara. 2005. *Antidiskriminierungspolitik: Erschöpfung in der Geschlechterpolitik?* [Anti-discrimination policies: exhaustion in the fields of gender politics?] Wirtschafts- und sozialpolitisches Forschungs- und Beratungszentrum der Friedrich-Ebert-Stiftung, Abteilung Arbeit und Sozialpolitik.

Keywords: political science, gender equality strategies, anti-discrimination, women's positive discrimination/affirmative action, gender mainstreaming

The article discusses different political strategies to promote gender equality, analyses their potential and best field of application. The author argues that the current focus on anti-discrimination can not substitute for a combined strategy, consisting of anti-discrimination, affirmative action and gender mainstreaming. Analysing the case of the gender wage gap, she demonstrates how anti-discrimination provisions which give the individual the right to claim for equal pay have to be supplemented by structural changes promoted by gender mainstreaming and supported by positive discrimination.

7 Wersig, Maria. 2005. Sieg der Freiheit?: zum Scheitern des deutschen Antidiskriminierungsgesetzes. [The victory of freedom? The failed anti-discrimination act] *femina politica* 14 (2): 100-104.

Keywords: policy history, policy process, framing, Anti-Discrimination Act (later: General Equal Rights Act 2006)

The author depicts how different actors contributed to the postponement of the coming into effect of the Anti-Discrimination Act, later called the General Equal Rights Act. She summarises critical voices against the act which basically drew on the liberal, bourgeois and gender+ blind principles of individual autonomy and freedom of contract. Another line of rather not equality oriented criticism evolved around the concern for unintentional legal consequences such as uncontrollable masses of suits. With regard to the social democrat and green party coalition, the author states a lack of active endorsement of the law. The claim is that the government failed to make the need for such an act more acceptable to the public.

8 Mechthild Cordes, 2004: Gleichstellungspolitiken: Von der Frauenförderung zum Gender Mainstreaming [Gender equality politics. From affirmative action to Gender Mainstreaming], in: Becker / Kortendieck (Hrsg.), Handbuch Frauen- und Geschlechterforschung, Wiesbaden, S. 712-720

9 Berghahn, Sabine. 2003. Ritt auf der Schnecke. Rechtliche Gleichstellung in der Bundesrepublik Deutschland. [Riding on a snail. Equal rights in the Federal Republic of Germany] *Gender Politik online* http://web.fu-berlin.de/gpo/sabine_berghahn.htm (accessed on February 13, 2007)
GER

Keywords: historical analysis, overview, policy and jurisdictional analysis, gender equality

This detailed historical analysis deals with the rationales underlying constitutional changes, gender equality policies and decisions of the constitutional court from the foundation of the Federal Republic of Germany until the present.

The conservative rationale of the 1950s and 1960s was increasingly challenged in the 1970s, but gender equality was often being interpreted as to abolish women's 'privileges'. 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. The question of quota systems was subject of constitutional court rulings in the late 1990s (Kalanke/Marschall-Decision). Following the EU guidelines on gender mainstreaming, this strategy found its way into the political system from 2000 onwards.

The evaluation concludes that the promotion of gender equality on a formal legal level has happened slowly and is still unsatisfactory in many fields. The author locates needs for action to eliminate all forms of indirect discrimination against women.

10 Bieritz-Harder, Renate. 2003. *Neue Chancen der Gleichstellung durch das SGB IX: Teilprojekt "Besondere Bedürfnisse" behinderter Frauen im Sinne des § 1 S. 2 SGB IX; Selbstbestimmung, Teilhabe am Arbeitsleben, Elternschaft*. [Opportunities for the realisation of equal rights by means of the Ninth Book of the Social Code: special needs of disabled women. Self-determination, participation in working life, parenthood] Verlag Bundesministerium für Familie, Senioren, Frauen und Jugend.

Keywords: legal expertise, ninth book of the Social Code (rehabilitation and participation of people with disabilities), women with disabilities

This independent expertise was made by an academic, on behalf of an NGO (bifos - Federal Organisation of Women with Disabilities), financed by the federal government, Ministry of Family, Seniors, Women and Youth. It deals rather descriptively with equality measures and affirmative actions for the benefit of women and girls with disabilities.

11 Frey, Regina. 2003. *Gender im Mainstreaming. Geschlechtertheorie und Praxis im internationalen Diskurs* [Gender in mainstreaming. Gender theory and practise in international discourse] Königstein.

Keywords: gender mainstreaming, gender theory, implementation

The author discusses the sources of the strategical concept of gender mainstreaming from a critical perspective based on the current state of gender theory. She engages with international and national developments around implementation of gender mainstreaming.

12 Bothfeld, Silke et al. eds. 2002. *Gender mainstreaming – eine Innovation in der Gleichstellungspolitik: Zwischenberichte aus der politischen Praxis*. [Gender mainstreaming – an innovation in gender equality policies: preliminary reports from the political practise] Frankfurt a.M: Campus.

Keywords: gender mainstreaming, chances, political process

In this publication, academic experts and feminists working in the equality machinery critically discuss the emergence of gender mainstreaming, its fields of application and the chances for the realisation of gender equality that arise with this new instrument.

13 Koch, Angelika. 2002. Politische Steuerung der Chancengleichheit: Politik der kleinen Schritte durch das neue Bundesgleichstellungsgesetz. [The political regime of equal opportunities: small steps through the federal act on implementing the concept of equal opportunities between women and men] *femina politica* 1: 88-93.

Keywords: policy analysis, federal act on implementing the concept of equal opportunities between women and men, public service

The author explores the major achievements and shortcomings of the Federal Act on Implementing the Concept of Equal Opportunities between Women and Men, introduced in 2001. Positive developments are the 1. prohibition of indirect discrimination in human resources decisions; 2. regulations on transparency in application processes; 3. obligation to equality action plans with flexible quota schemes; 4. better institutional standing of gender equality officers. However, the author remains critical about the reform act. What would be needed are sanctions in cases of violations of equality action plans and the right to associational claims, supporting the individual's right to sue. Besides, a similar act for the private economy is still missing.

14 Zinsmeister, Julia. 2002. Der lange Weg zur Gleichstellung – behinderte Frauen und das neue SGB IX. [The long way to equality – disabled women and the new ninth book of the social code] *Streit* 20 (1): 3 -10.

Keywords: policy analysis, policy history, Ninth Book of the Social Code (SGB IX) 2001, disabilities, equal rights

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 backwards oriented 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

imperative to know as women with disabilities have a low labour force participation rate.

15 Leicht-Scholten, Carmen. 2000. *Das Recht auf Gleichberechtigung im Grundgesetz: die Entscheidungen des Bundesverfassungsgerichts von 1949 bis heute*. [The principle of equality in constitutional law: the decisions of the federal constitutional court from 1949 until the present] Frankfurt a.M: Campus.

Keywords: Federal Constitutional Court rulings. principle of equality (Sec 3 Paragraph 2 Constitutional Law)

An analysis of the decisions of the Federal Constitutional Court from the foundation of the Federal Republic of Germany until the present draws an ambiguous picture: In the field of gender equality in professional life, court rulings stand for the compensation of women where the traditional gender division of labour or prejudices of employers have countered gender equality. Thus, positive discrimination of women for the benefit of gender equality is allowed.

With regard to the reproductive realm, the principle of gender equality is interpreted to mean the parents' 'freedom of choice' of whatever role they want to assume. However, the Constitutional Court ignores the discrepancies between the theoretical concept of 'freedom of choice' and the realities people live in, thus ignoring the lack of material and structural societal conditions to realise a choice. For pregnant women, the principle of equality is used to stress the biological difference between men and women. Also, the right of the 'nasciturus' (the foetus) is considered more important than aspects of gender equality or human dignity of the pregnant woman.

Concluding the author states that interpretation of the principle of equality will remain problematic as long as the state takes 'sexual difference' out of the equation. This is practised by the Constitutional Court by excluding sexual and reproductive rights from the principle of equality, arguing that sexual difference makes it impossible to establish a standard of comparison. What follows from such an understanding is that 'a woman has to be equal in order to be able to complain about inequalities' (Mac Kinnon 1994 cited in Scholten).

16 Sacksofsky, Ute. 1996. *Das Grundrecht auf Gleichberechtigung: Eine rechtsdogmatische Untersuchung zu Artikel 3 Absatz 2 des Grundgesetzes* [The fundamental right to equality: a juridical analysis of Article 3 Para.2 of the Basic Law] Baden-Baden: NOMOS. 2nd ed.

Keywords: Federal Constitutional Court rulings. Right to equality (Sec 3 Paragraph 2 Constitutional Law)

This is the lead analysis of the history of the constitutional right to equality, including a comparison with the U.S., and an update on decisions from the Federal Constitutional Court.

17 Schieck, Dagmar. 1995. Die Schnecke kriecht rückwärts: Das zweite Gleichstellungsgesetz. [The snail sneaks backwards: the second equal rights act] *Streit* 1: 3-13.

Keywords: The Second Equal Rights Act, public service, private sector, EU compatibility, quota, affirmative action, women's policy agencies, sexual harassment

In 1995, The Second Equal Rights Act came into force. The article assesses the pros, but mainly the cons and failures of the act. The main point of critique is that the law only concentrates on the public service and does not touch the private sector. Equal opportunity regulations for the private sector are still 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. However, the author criticises that the regulations do not go far enough.

1.2 English-language Sources

18 Louise K. Davidson-Schmich Implementation of Political Party Gender Quotas Evidence from the German Länder 1990–2000 in: *Party Politics*, Vol. 12, No. 2, 211-232 (2006)

Key Words: gender quotas • party quotas • women in German politics • women in legislatures • women's representation

The use of gender quotas to increase women's political representation in legislatures has expanded in recent years. Scholars have identified three main categories of gender quotas, including constitutional, election law and political party quotas. While considerable attention has been devoted to classifying types of quotas, to explaining why they were adopted and to investigating which quota provisions are most effective, little is known about the actual implementation of political party gender quotas. This article is a first step in explaining when parties live up to their promises to promote women's representation and when they fail to do so. Focusing on Germany, I examine four parties' experiences in implementing quotas in 16 states over a decade. I argue that while structural factors such as the electoral and party systems as well as the supply and demand of female candidates are not unimportant, cultural variables best explain whether or not parties actually comply with their own quotas.

19 MacRae, Heather. 2006. Rescaling gender relations: The influence of European directives on the German gender regime. *Social Politics* 13 (4): 522-550.

Keywords: EU gender directives, implementation, other policy fields, Germany

During the 1960s-1990s, a gradual yet definite shift in the organization of gender politics in the European Union (EU) and member states has become apparent. This shift began with the implementation of the early gender directives of the 1970s and has since evolved to include a partial “rescaling” of policy-making from national to transnational spaces and a gradual redefinition of gender regimes and policies at the national level. As a result, gender policy cannot be viewed as either predominantly transnational or national but arises through interaction of multiple and coexisting policy spaces. In this article, I use a multiscalar analysis to highlight this complex interaction. I draw on (West) Germany as a specific case study to offer a historical analysis of the implementation of the early European gender directives and the manner in which these developments have contributed to the redirection of the German gender regime and the emergence of a new “hybrid regime”.

20 Von Wahl, Angelika. 2006. Gender equality in Germany: comparing policy change across domains. *West European Politics* 29 (3): 461-488.

Keywords: political science, methodology, policy change, gender equality

Focusing on the past 25 years in three central arenas of political, social, and civil rights, this article engages in the current debate over policy change and the direction of German politics by analysing the issue of gender equality. Combining T.H. Marshall's concept of citizenship and Hall's analysis of policy change, I obtain a two-level framework that differentiates between policy changes and categorises reform in Germany in three different domains. The case studies 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 down reform for reconciliation of family and employment. A conservative affirmative action regime stands in opposition to individual anti-discrimination and limits potential change. This comparison across domains defines the dependent variable “Policy change” in a more nuanced way, helping to pinpoint and differentiate specific areas of reform.

1.2.1 Comparative studies

21 Van der Vleuten, Anna. 2005. Pincers and prestige: explaining the implementation of EU gender equality legislation. *Comparative European Politics* 3 (4): 464–488.

Keywords: policy analysis, European Union, gender equality policy general; compliance, comparative study (France, Germany and the Netherlands).

This paper answers the question, under which conditions compliance with a supranational agreement can be obtained in cases in which a member state is unwilling to comply. It shows that the willingness to implement depends on the

economic and ideological costs of policy change and on the amount of pressure exercised by societal actors. An unwilling state decides to comply when its prestige is at risk and it is “squeezed between pincers”, put under pressure by supranational and domestic actors simultaneously’ (p. 464). This paper analysis the implementation of EU gender equality policies in France, Germany and the Netherlands between 1958 and 2000.

2 Non-Employment

2.1 German-language Sources

1 Bothfeld, Silke. 2006. Das Elterngeld – Einige Anmerkungen zum Unbehagen mit der Neuregelung. [Parental benefit – concerns regarding the new regulation] *femina politica* 2: 102-107.

Keywords: policy history, 1985- 2007, Child Care Leave and Benefit Acts, reform 2007, parental benefit

Drawing on child care models as developed by Fraser 1994 ('Recognition', 'Gainful Employment' and 'Integration' Model), the author analyses German child care models from 1985 onwards. The Act from 1985 can be attributed to the first model which - by recognising and 'remunerating' family work together with long child care leaves (up to three years) - produced a long absence of women from the labour market. The reform of 2001 has paved the ground towards a shift to the integration model by enabling part time work for both parents. The reform of 2007 follows the same direction, but still preserves components of the recognition model as reflected in the basic child care allowance for not gainfully employed parents. The points of criticism comprise the undecidedness of the political actors of which model to follow. Consequently, the reform is a hybrid (with some good approaches).

Positive are the shorter time frame of allocation of child care benefit (12 and 14 months) – signalling a change of paradigm towards the promotion of a fast return to the labour market after child care leave - , but a further flexibilisation which might provoke a higher participation of fathers is missing. The integration of not-gainfully employed parents into job promotion activities is regarded as an achievement. More problematically, the abrogation of income limits privileges high earners whereas provisions for not-gainfully employed parents just like sick, unemployed etc. parents to secure their existence independently are lacking.

The main point of critique refers to the singling out of child care policies instead of more substantial reforms in labour market and social policies which would be needed urgently. Without supporting measures that address 1. the lack of child care offers, 2. the need for regulations on working time, 3. the worrying development of higher contributions and lower benefits in social welfare, 4. the situation of low income earners and 5. mass unemployment, the reform of 2007 will not contribute to a more gender democratic distribution of reproductive and productive labour, but will exacerbate the already observable re-traditionalisation of the gender relations.

2 Bode, Malin. 2005. Erziehungsgeld und Kindergeld für politische Flüchtlinge und Mütter mit humanitärem Aufenthaltshintergrund. [Child-care benefit and child benefits for political refugees and mothers with residential permit due to humanitarian reasons] *Streit* 1: 21-23.

Keywords: child-care benefit, eligibility, immigration law, target group migrants/refugees

The author documents the decision of the Federal Constitutional Court, that the provisions regulating child care benefit for political refugees and mothers with residence rights due to humanitarian reasons are not in accordance with the constitution. It leaves out certain groups and thus has to be amended.

Annotation: The new regulations from 2006 so far have not been covered by academic literature yet, however, there is extensive NGO documentation on the issue (www.fluechtlingsrat.de).

3 Berghahn, Sabine. 2004. Verfassungspolitischer Streit um ein Stück Stoff: das Kopftuch der Lehrerin im Konflikt zwischen Grundrechtsschutz, staatlicher Neutralität in Glaubensfragen und föderaler Gesetzgebung. [Constitutional fights over a piece of fabric: the headscarf of a teacher in conflict between constitutional rights, state neutrality regarding questions of religion and *Länder*-legislation] *femina politica* 13 (1): 45-56.

Keywords: law, Administrative Court, hijab debate, ban from profession in public service, constitutional rights

The analysis engages in the so called 'hijab debate' by exploring the real-political foundations of the decision of the Supreme Administrative Court in 2003. Furthermore, the author explores the underlying rationales of the opposing senators. Furthermore, it is demonstrated that by passing on the right to legislate bans from profession due to religious symbols to the states (*Länder*), the Supreme Administrative Court has missed out on its duty to rule on fundamental constitutional questions. According to the author, the debate develops around conflicting constitutional rights, such as the public servants positive right to practise their religion and the pupils'/parents' right to state 'neutrality' in public education.

Also, the author shows that there is a double moral standard related to employment bans: The evidence suggests that there is always trouble when employees threaten the hegemonic appearance of public service. Correspondingly, disconcertment with Christian religious symbols has been almost inexistent. Taking into account current debates on integration and migration, legislators would be well advised not to deepen trenches by decreeing a hijab ban, but to decide cases of 'occupational aptitude' of teachers in public service individually.

4 Fasselt, Ursula. 2004. Leistet die Grundsicherung nach SGB XII einen wirksamen Beitrag zur Bekämpfung der Armut alter Frauen? [Do basic benefits as granted by the twelfth book of the social code contribute to the reduction of women's old-age poverty?] *Streit* 1: 9-17

Keywords: basic social care/income, poverty of women, pension for women

The article assesses the reform of the basic social care/income model and the reform of the pension system by the red-green government (in force January 1st, 2005). The aim of the reform is to guarantee an independent form of pension for women and for unemployed people and people in need between the age of 15 and 65. The law aims at covering developments such as the erosion of the labour market and full-time employment, once typical for women, but now affecting also

men. The basic social care/income should support people to conduct an independent live; only if they are married, the partner is obliged to pay for a basic care.

5 Hürten, Marianne. 2004. *Gehartzte Zeiten: Frauen in Not zwischen Sozialhilfe und Arbeitslosengeld II*. [Hard(tz) times: women in need – between social care and unemployment benefit II] *Zeitschrift für Frauenforschung und Geschlechterstudien* 22 (1):137-146

Keywords: Social Security/Employment Reform Act, Hartz III, Hartz IV, Unemployment Benefit II (ALG II), empirical data, target group, women receiving welfare benefits in the past

This article specialises on the provisions of Hartz III and IV for women ‘in need, but able to work’. Interestingly, there are some improvements in the ALG II compared to the former social care model (Sozialhilfe) such as the exclusion of belongings (car, adequate housing space) and assets such as privately financed pension entitlements etc. from the means test. More worryingly, one-time benefits have been significantly reduced. The law suggests a differentiated treatment of target groups in order to meet needs more effectively. By example of job promotion activities, it can be shown that this is not the case: Caring responsibilities of single mother with older children are not adequately considered.

Annotation: With regard to QUING’s non-employment focus, it is imperative to note that with the HARTZ reforms a significant linguistic and symbolic change happened: Formerly, people – after dropping out of the labour market and at the expiration of unemployment benefit – were granted ‘social care’ (Sozialhilfe). Now, the interlinkage to gainful employment is closer drawn by calling the financial benefit ‘Unemployment Benefit II’ (Arbeitslosengeld II) and the applicants ‘able to work/in need’ (erwerbsfähige Hilfebedürftigte) instead of ‘recipients of social care’ (SozialhilfeempfängerInnen).

6 Krüger, Petra. 2004. *Geschlechter(un)ordnung im ehrenamtlichen Engagement?: erste Ergebnisse einer Studie zu Geschlechterdifferenzierungen und -segregierungen im ehrenamtlichen Engagement*. [Gender (trouble) in the voluntary sector? First findings of a study on gender differentiation and segregation in the third sector.] *Zeitschrift für Frauenforschung und Geschlechterstudien* 22 (2 + 3): 147-158.

Keywords: voluntary work, gendered division of labour, gender segregation, gender hierarchies

The articles analyses gender segregation in 3 types of voluntary work – the ‘classical social voluntary work’ (Arbeiterwohlfahrt), the technical voluntary work (Technisches Hilfswerk) and the ‘new voluntary work’ (Mittelstädter Tafel). The study, based on field research, found that gender segregation is very strong in the classical social voluntary work and in the technical voluntary work. While the classical social voluntary work is seen as ‘female work’ of women, near to reproductive and household work, done by women who are not in waged labour, the technical voluntary work is ‘male work’, seen as waged labour, mainly a

compensation for military service of young men. The new voluntary work has the least gender segregation.

7 Schindler, Christiane. 2003. Verhartzt und nicht zukunftsfähig. Zum dritten und vierten Hartz-Gesetz. [Verhartzt and not sustainable. On the third and fourth Hartz-Act] *femina politica* 12 (2): 67-70.

Keywords: Social Security/Employment Reform Act, Hartz III, Hartz IV

This short article gives a brief overview of the main points of concern regarding the recently introduced Hartz III and IV reforms. These can be subsumed under 'the privatisation of costs of long time unemployment': Reforms will result in fewer recipients of the so called 'Unemployment Benefit II' (Arbeitslosengeld II) and lower benefits due to reduced tax exempt amounts and a restrictive means test that takes the partner's income and other belongings into account. These reforms reactivate the male breadwinner model and its inherent gender relations of dependence. Furthermore, they will impact over proportionally on women of who already one third was no longer eligible to unemployment benefit in 2002. The loss of financial aid is connected to a reduced access to job promotion activities, thus leading into a downwards spiral of poverty and social exclusion. Also, the obligation to assume almost any job, regardless of qualification or working conditions as well as the promotion of jobs at the low pay-low security end of the spectrum contribute to the extension of a low-income sector that will effect women, but also increasingly men.

8 Schwenken, Helen. 2003. Weltwirtschaft im trauten Heim. Arbeitsmigrantinnen in deutschen Haushalten und der Kampf um Arbeits- und Aufenthaltsrechte. [Global economy in the home. Migrant women workers in German households and the fight for work and resident permits] *beiträge zur feministischen theorie und praxis* 63/64: 139-151.

Keywords: migration, housework, informal work/labour market, self organisation of migrant house-workers, trafficking in women

The article describes forms, characteristics and scope of unpaid housework in Germany, organized as employment in the informal sector. The main aim of the article is to assess the possibilities, strategies of migrant house-workers to fight for better conditions. The argument of the article is, that a self-definition as victims (of trafficking) is not suitable for political organisation. 4.35 Million households, it is estimated, have regularly or from time to time help from outside, mainly elderly people. Most of this work is done informally by (female) migrant workers (some of them as 'au pairs') who due to problems of visa only can work in the informal sector – because it is 'invisible' and seen as 'non-work'. This is good for 'illegal' migrant workers. Self-organisation to improve the situation of migrant workers in the informal sector should not focus on the issue of trafficking (alone) but more on the claim to overcome the international sexual division of labour.

9 Bosch, Gerhard. 2002. Auf dem Weg zu einem neuen Normalarbeitsverhältnis?: Veränderung von Erwerbsverläufen und ihre sozialstaatliche Absicherung. [On the way towards a new model of regular employment? Changes in employment biographies and social security] In *Zukunft der Arbeit und Geschlecht: Diskurse, Entwicklungspfade und Reformoptionen im internationalen Vergleich*, ed. Karin Gottschall and Birgit Pfau-Effinger, 107-134. Opladen: Leske + Budrich.

Keywords: empirical data, changes in regular employment arrangements

The author engages in the discourses on the changing of employment patterns and deregulatory labour market policies. By analysing empirical data under the criteria of full/part-time work, temporary contracts, working hours in full/part-time, minor jobs (geringfügige Beschäftigung) and stability of employment the diagnosed change in working arrangements could not be verified. However, it is obvious that women's rising activity rate is realised via the performance of part-time jobs in the labour market.

Still, a differentiation of labour market arrangement is diagnosed to happen in Germany due the following factors: 1. The flexibilisation of production and of services due to fluctuations on the demand side will challenge 'traditional labour arrangements'. 2. The increase of women's labour force participation rate under the conditions of a still existing male breadwinner model challenges the gender bias of the regular employment scheme. 3. The increase of tertiary education with students financing it by assuming part-time or temporary work contributes to the demand of differentiated jobs. 4. The higher an employee's education, the less regulated is her/his working time, thus questioning labour principles as protected by regular employment. 5. Direct deregulation of labour market arrangements as well as the over- or under-regulation of special working contracts contribute to the erosion of regular employment relations. 6. Mass unemployment produces high competition among the workers and reduces their bargaining power vis à vis the employer.

10 Goedicke, Anne and Heike Trappe. 2002. Der geschlechtsspezifische Wandel des Arbeitsmarktes in Ost- und Westdeutschland. [Gender-specific changes in the labour market in East and West Germany] In *Vollendete Wende?: Geschlechterarrangements in Prozessen des sozialen Wandels*, ed. Eva Schäfer, 12-39. Rosa-Luxemburg-Stiftung.

Keywords: gender segregated empirical data, labour market developments, East/West Germany

This article addresses employment conditions and developments in the labour market participation of West and East German women in the 1990s.

Two major factors have severely impacted on women's situation on the labour market in East Germany: The reduction of demand of labour after unification and the passive tertiarisation of the economy. Contrary to Peinl's article, the authors stress the high competition among men and women in the tertiary sector which was caused by the loss of jobs in the traditionally male sector of industrial production. But the initial trend of displacement of women by men in the labour market has not proved persistent. With regard to the gender segregation of the

labour market, forms have differed in East and West Germany, but it has continued or even worsened throughout the nineties.

Labour market participation of women after unification has decreased in East Germany due to shortage of employment, followed by stagnation, whereas the share of women working in the West has risen. However, labour market integration of women in the West has mostly been realised by means of part-time work. Women's part-time work in the East – exacerbated by changes of labour relations - is still lower than in the West. In the whole of Germany, the 1,5-income-model is gaining ground.

Unemployment risks, over proportionally higher in the East than the West, has been mostly born by women, but differs by sector (public/private) and qualification level, age and professional experience.

Labour market participation of mothers has increased in the old and dropped in the new federal states. Mothers in East Germany take less maternity leave, but are more threatened to face unemployment afterwards. Statistics show that employment possibilities in the East are not directly connected to family responsibilities and reconciliation issues, but reflect an already disadvantageous starting position for women compared to men in the labour market.

11 Knapp, Ulla. 2002. Kinder, Inder und Frauen: eine Diskussion der aktuellen Migrationsdebatte aus geschlechterpolitischer Sicht. [Children, indians and women: a gender analysis of the current debate on migration] In *Gender Matters: feministische Analysen zur Wirtschafts- und Sozialpolitik*, ed. Friederike Maier and Angela Fiedler, 133-159. Ed. Sigma.

Keywords: political economy, labour market policies, migration, gender-blindness, gender-differentiated consequences

At first view, the central topic of this article, selective migration promotion – publicly led as a gender-blind discourse - , is a clear employment issue. However, there are some allusions to gender-differentiated consequences of current labour market politics for migrants, touching on non-employment: Women constitute an over proportionally high percentage of unemployed. Their labour participation rate falls short of general female rates both in West and East German states. This follows from – among other factors – unclear residence and working permits as well as low educational achievements of second or third generation children, especially girls.

12 Leitner, Sigrid. 2002. Alte Gräben – neue Fronten: zur Geschlechtsspezifik der Rentenreform 2001 [Old trenches – new lines of fire: a gender analysis of the pension reform act 2001] In *Gender Matters: feministische Analysen zur Wirtschafts- und Sozialpolitik*, ed. Friederike Maier and Angela Fiedler, 161-180. Ed. Sigma.

Keywords: pension system, Pension Reform Act 2001, women

The German pension system is based on the contributions made during gainful employment over a life-cycle. Despite taking gender differences in employment biographies into account (crediting of (child) caring periods) and despite equalising measures for low incomes, losses in women's pensions are far from

being compensated. These compensatory policies have not mitigated the fact that in average, women's pensions only amount to half of men's pensions. Thus, women are bearing the contradictions of the structural set-up which favours women's dependence from a male breadwinner during the period of gainful occupation and shifts to allocation of pensions on an individual contribution base. Only in the case of the surviving dependent's pension, the preference of marriage and women's dependence is translated into the pension system. Consequently, women who are entitled to a dependent's pension are better off than their consexuals; yet they are far from disposing of the same financial resources as their male counterparts.

The Pensions Reform Act from 2001 has brought minor improvements in the crediting of child raising periods and in the compensation of payment losses due to child care periods (but has left out other forms of care work). Apart from this, nothing but disadvantages: Women are overly endangered by old-age poverty due to the reduction of pension levels. Additionally, private capital-based pension schemes have provided for higher premiums for women due to their higher life expectancy. Given that women are more likely to be employed in low-income jobs, these structural inequalities are exacerbated by the system of private pensions. Whether needs-based basic social care (Grundsicherung) will manage to mitigate old-age poverty is doubtful, but for sure opposes objectives of individualisation (as the partner's income is taken into account to determine one's eligibility). What is still missing are policies that regulate entitlements for non-married partners in the dependent's pension systems.

13 Oertzen, Elisabeth von. 2002. Migrantinnen und Wohlfahrtsstaat I: Sozialstaatliche Ansprüche und Leistungen als Instrument der Einwanderungspolitik im internationalen Vergleich. [Women migrants and the welfare state (part 1): social rights as instruments for migration policies in an international perspective] *Dokumentation Ringvorlesung „Sozialpolitik und Geschlecht“ Universität Köln.* <http://www.uni-koeln.de/organe/gleichstellungsbeauftragte/> (accessed on February 13, 2007)

Keywords: citizenship status, welfare entitlements, comparative study, USA, Germany, migrant women

This lecture explores how the concepts of the national and the welfare state are closely interlinked and what happens when processes of migration challenge such constructions. Depending on a country's set-up, social entitlements are connected to citizenship status, thus making the inclusionary and at the same time exclusionary underpinnings of formal citizenship visible. In the case of Germany, the allocation of welfare benefits distinguishes between contribution-based (e.g. unemployment benefit) in contrast to tax-financed (social care (Sozialhilfe) etc.) benefits. Migrants are granted the first benefits more willingly than the latter one (despite their contribution to the tax system). Shockingly, receiving welfare benefits can also lead to the revocation of the residence permit. Due to Germany's specific migration policy history, social rights are provided more willingly than political rights (concept of a 'denizen'). A gender analysis of migration processes shows that women's dependence from their husbands has often been exacerbated by restrictive alien laws that prevented migrant women from successful individualisation. The public discourse has produced different

images of migrant women over time, but they are all characterised by tendencies of victimisation.

14 Peinl, Iris. 2002. Ostfrauen auf der 'Zeitengrenze' (Christa Wolf): Erwerbsarbeit als zunehmend wichtiger sozialer Integrationsmodus. [Women in East Germany on a 'time Border' (Christa Wolf): gainful employment as an increasingly important factor for social inclusion] In *Vollendete Wende: Geschlechterarrangements in Prozessen des sozialen Wandels*, ed. Eva Schäfer, 63-81. Rosa-Luxemburg-Stiftung.

Keywords: labour market, flexibilisation, women's employment, East Germany

The leading question of this article is whether neo-liberal processes of deregulation and flexibilisation open up structural and cultural-symbolic possibilities of labour arrangements for the benefit of women's employment.

During the ongoing processes of dual transformation, labour markets have become increasingly precarious, especially for women. But more than 80 % of women workers are employed in the 'future-oriented' service sector in contrast to 46 % of men. Statistics show that for the service sector, women can be found in relatively high management positions and the pay gap is smaller than in the industrial sector.

Drawing on the case study of the restructuring of the German Railway, the following tendencies could be observed: Even though women were over proportionally concerned by measures of rationalisation and restructuring (part-time for elderly workers, early retirement, compensation settlements etc.), the share of female workers rose in the same time period. The author argues that the flexibilisation of modes of employment (working hours) as well as remuneration schemes carry the potential to improve labour market participation of women. However and so far, processes of flexibilisation have mostly exacerbated the increasing precariousness of women's employment, thus lacking the realisation of their theoretical potential.

15 Koch, Angelika. 2001. Neubewertung der Familienarbeit in der Sozialpolitik? Die Neuregelung von Erziehungsgeld und Erziehungsurlaub und alternative Reformkonzeptionen. [Reassessing family work in social policies? The new regulations of child-care benefit and leave and alternative concepts] *Feministische Studien* 1: 48-61.

Keywords: care work, social policy, maternal/parental leave, child care benefit

The 'Bundeserziehungsgeldgesetz' (Child-Care Benefit Act), introduced by the conservative government in 1986 implemented the traditional view of sexual division of labour, of responsibility of the mother for the child and had the effect that women quit waged labour and had difficulties to return to the labour market. On January 1st, 2001 a new law on child-care benefit and parental leave came into effect. Men should be encouraged to go on parental leave, both parents have the right to reduce work time (Anspruch auf Teilzeitarbeit), parents are allowed to work part time during parental leave. Although the new law still rests on a conservative model of care work organisation it brings some improvement for

combining care work and waged labour. However, the incentives for fathers to go on leave are still low, and the partner with the lower income – most of them women - will stay at home with the child(ren). The article gives examples for alternative models of recognizing care work in social politics, such as 'care salary', or wage compensation if a parent goes on leave.

16 Dölling, Irene. 2000. 'Ganz neue Inhalte werden im Vordergrund stehen: die Arbeit zuerst': Erfahrungen junger ostdeutscher Frauen mit dem Vereinbarkeitsmodell (1990 – 1997). ['New contents will be at the forefront: work first': experiences with the reconciliation model of young women in East Germany (1990-1997)] In *Geschlecht – Arbeit – Zukunft*, ed. Ilse Lenz, Hildegard Maria Nickel and Birgit Riegraf, 222-242. Westfälisches Dampfboot.

Keywords: empirical study, sociology, reconciliation, unification, attitude, young women, East Germany

This article summarises the main findings of a so called 'diary study' lasting from 1990-1997 and asking whether there have been shifts in thinking about reconciliation of reproductive and productive roles in East Germany after unification. Analysing the diaries of young women, the study aimed at exploring whether or to which degree the predicted move from the former GDR model (double wage earner model) to the Western German male breadwinner model (or 'housewife-marriage') happened.

Existing research had shown that the former double wage earner model did provide women with the possibility to participate in the labour market, but without challenging the gender division of labour. The study found that in spite of these gender roles potentially favouring processes of 're-traditionalisation', a clear shift towards the male breadwinner model was not observed. However, this does not imply a more egalitarian distribution of domestic work.

17 Stolz-Willig, Brigitte. 1999. Neubewertung der Familienarbeit: Erziehungsgehalt als Perspektive? [Reassessing family work: child-care wage – a perspective?] In *Es rettet uns kein höh'res Wesen: feministische Perspektiven der Arbeitsgesellschaft*, ed. Brigitte Stolz-Willig and Mechthild Veil, 94-111. VSA.

Keywords: policy analysis, draft of a Child-Care Wage Model 2000

The author analyses a draft for a Child-Care Wage Model from 1998 (Leipert/Opielka) on behalf of the German Working Group for Family Support, suggesting a remunerated model of family work. Inherent to the logic of recognition of domestic work as paid work is the re-installation of the traditional gender division of labour. Also, considering possible wage levels, the re-inscribed gender bias is once more visible: Family work would continue to be low paid work (as it is performed mostly by women) and is unlikely to allow for an individual independent existence. Also, issues of redistribute justice and theoretical questions of how to set a value to reproductive work (given its distinctive rationality compared to productive work) remain problematical.

The author locates the draft within the actual discourse on unemployment and deregulation of employment, arguing that the re-assuming of reproductive work

and consequently the disappearance of women from the formal labour market, would be welcomed in times of mass unemployed and high competition over (precarious) jobs.

18 Notz, Gisela. 1998. *Die neuen Freiwilligen. Das Ehrenamt – Eine Antwort auf die Krise?* [The new volunteers. Citizen work – an answer to the crisis?] Neu-Ulm 1998.

Keywords: citizen work, gender

Engaging in the narrative of the crisis of the labour market, family and welfare state, the author conducts a critical analysis of the proposed solution: the new citizen workers/ volunteers. The positive results of such a solution, designed among others by the Bavarian Future Commission and authors such as Ulrich Beck, are said to be manifold: Given the future shortage of labour, the unemployed will be given a duty in the third, sector and civil unrest will be avoided. Rewarded by 'Favour Credits' (to be used in some kind of barter system), social recognition and social benefits on a needs-basis, people will not longer be a burden to the labour market, but will also contribute to maintaining the welfare state and will be given the opportunity to a meaningful formation of the self.

The author locates several risks: Firstly, the structural problem of unemployment (several million people) will not be mitigated solely by citizen or community work. Secondly, citizen work cannot substitute for adequately rewarded gainful employment. As important as citizen work might be not only for the maintenance of the social system but also for social bonds, people will more willingly engage in such action, when their existence and living standards are secured. Thirdly, the risk of the unemployed and other groups excluded from the labour market to be forced into taking up any labour or citizen work notwithstanding their qualification etc. is clearly visible. Fourthly, from a gendered perspective, women are more likely to suffer from precarious labour market situations and hence, are more likely to be subject to these developments. Fifthly, the lack of qualification of citizen workers who are allocated jobs in the social sector will lead to a further devaluation of social work (where women are also disproportionately represented) in terms of remuneration.

19 Behning, Ute. 1997. Richtungswechsel in der Sozialversicherungspolitik?: zur Anerkennung von nicht-professionellen häuslichen Pflegeleistungen durch das Pflege-Versicherungsgesetz. [A change of paradigm in social politics? The recognition of non-professional private care work in the long-term care insurance act] In *Das Private ist ökonomisch: Widersprüche der Ökonomisierung privater Familien- und Haushalts-Dienstleistungen*, ed. Ute Behning, 103 -118. Ed. Sigma.

Keywords: policy analysis, Long-Term Care Insurance Act 1995

While at first sight the set-up of the Long-Term Care Insurance Act seems to promote the recognition of privately performed and unremunerated caring activities as remunerated work, thus upgrading typically female family work to the status of gainful employment, a second look reveals the opposite. Firstly,

remuneration – based upon on the three categories of caring requirements (level 1 to 3) – provides low hourly wages which are even decreasing with raising caring requirements. Additional gainful employment however is only realistic during low caring duties (level 1) and not level 2 and 3. Also, the carers do neither acquire unemployment insurance, sick nor care insurance entitlements during their care leave. These points to the continuity of the male breadwinner model: Implicitly it is assumed that the carer, i.e. the woman, is included into social security via the entitlements of the husband. Individual entitlements in these three fields are not provided.

The publicly promoted achievement of pension entitlements also fails to live up to the expectations: Contributions to the pension system paid by the insurance institutions range from 27 to max. 80 % of the average contribution and can by no means substitute for contributions deriving from gainful regular employment. Concluding, the author states that the recognition of caring work as gainful work is far from being complete.

Developments like demographic aging and the continuously rising percentages of people in need for care have triggered the state's initiatives towards encouraging women to re-assume caring activities for family members, thus promoting the traditional gender division of labour. Acknowledging that with societal changes and women's rising share of the gainfully employed these duties will not longer be sufficiently performed by women, low remuneration is granted.

20 Breuer, Anne. 1996. Die rentenversicherungsrechtliche Absicherung der nicht professionelle Pflegekräfte – ein Beitrag zur Aufwertung der familialen Pflegeleistung oder eine Mogelpackung? [The granting of pension entitlements for non-professional carers – a contribution to the revaluation of private social care or a bluff package?] *Streit 2*: 60-62.

Keywords: Long-Term Care Insurance Act, pension entitlements

Whereas political actors celebrated the pension security reform of 1994 as a major stepping stone, this critical evaluation paints a different picture. The pension entitlements, deriving from contributions paid for the caring person by the care insurance institution, can by no means compensate for real income losses of women, who perform more than 50 % of all care work (on a non-remunerated basis).

2.2 English-language Sources

21 Berghahn, Sabine and Petra Rostock. 2006. The German Case. In *Gender equality, cultural diversity: European comparisons*. Conference documentation, Faculty of Social Sciences, University of Amsterdam.

Keywords: [media analysis, criminal law analysis, forced marriage, honour crimes, domestic violence – See GBV], policy analysis, headscarf debate

In the second part of the paper the authors engage in the 'headscarf debate' which aroused in 2002 and has been fiercely discussed ever since. Their analysis comprises the decisions of the Federal Constitutional Court as well as the new regulations made by German Federal States and an evaluation of the respective argumentation strategies.

22 Mushaben, Joyce Marie. 2004. 'Die Freiheit, die ich meine... ': An American view of the Kopftuch debate." *femina politica* 2: 98-104. EN

Keywords: hijab debate, discourses

The author places the debate in a wider context of unsolved identity and integration issues that are fought out on the back of Muslim women. Referring back to conflicting constitutional rights, she observes that the calling into question of women's constitutional rights vis à vis public interests or 'a greater good', has a clear gender-discriminatory overlay. Also, the importance of education (and work?) for emancipation is emphasised, thus making it imperative for schools to provide room for personal development for all. In a clear side-bow towards radical feminists lining up with opponents of the headscarf, the author states that 'women who would deny other women the right to choose do not advance the equality cause'.

23 Nickel, Hildegard Maria. 2003. The future of female employment: A gendered gap in political discourse." In *Reinventing gender: Women in Eastern Germany since unification*. ed. Eva Kolinsky and Hildegard Maria Nickel, 31-52. Frank Cass.

Keywords: East and West Germany, gendered labour market developments, female labour market participation, gender settlement

Operating with the term of dual transformation, the author argues that only a 2/3 share of East German society has kept up with processes after unification. Clearly, these developments have a gender and generation dimension. The author suggests to take women's labour market participation as a yardstick for successful transformation from an industrial to a service centred society.

Just as women are increasingly entering the labour market, it is facing the erosion of regular and permanent full employment schemes, mass unemployment and sectoral change. With the shift towards a knowledge-based society, new gender inequalities are likely to occur due to unequal education and vocational training patterns and employment biographies. Also, with the shift towards a service-oriented economy and due to the still practised gender division of labour, women run the risk not to meet the criteria of total availability. However, models such as part-time, sabbatical, job sharing, as seen in companies in the US, might have the potential to counter the above tendencies.

One suggestion made by several future commissions was to generate jobs by closing the service gap and by reducing the cost of jobs. This contains another gender bias insofar as this would expand female employment in the low-pay (and part-time) sector (which already carries the features of devaluation in terms of qualification acknowledgement, pay and social recognition).

With regard to the gender division of labour, East and West German women are starting from differential gender histories, with a strong breadwinner model in the West and a heavy employment focus for both genders in the East. The latter model did not imply however a more egalitarian distribution of family work, but meant that the relationship between public responsibility and private duty was defined along differential lines. Currently, both models are under erosion, caused by emancipatory politics on the one side (in the West), the strengthening of the gender division of labour (in the East) and the precarious reality of female employment in both regions.

With regard to the female employment rate, it is still higher in the East than in the West, but declining in the first and rising in the latter case. In East Germany, the most influential factor for women's employment is not the availability of child care (which is still better than in the West), but qualification. Low-skilled single mothers are most likely to be excluded from gainful employment. Also, women's labour market integration is the main criterion for socially stable families. Despite the fact that also the standard male unemployment model is under erosion, women perform the major share of part-time-work, whereas men perform the biggest share of over-time hours. Both percentages are increasing. Women are forced out of the labour market not due to family responsibilities, but primarily due to the effects induced by the (gendered) labour market.

2.2.1 Comparative studies

24 Bleijenbergh, Inge, Jet Bussemaker and Jeanne de Bruijn. 2006. Trading well-being for economic efficiency: The 1990 shift in EU childcare policies. *Marriage & family review* 39: 315-336.

Keywords: childcare policies, European Union, gender equality, Germany, Netherlands, United Kingdom

In 1992, the European Union (EU) adopted the Recommendation on Child-Care and became involved in child-care policy. For the first time, care services and domestic care were acknowledged as the common responsibility of all the European and national political units. The article shows the interaction between child-care policy at the European level and in three welfare states with strong male breadwinner policy logics: Germany, the Netherlands, and the United Kingdom (UK). At the European and national levels, arguments prioritising economic efficiency and equal opportunities gained ground at the expense of arguments prioritising the well-being of children. Formerly male breadwinner states reached a consensus on the policy goal of shared responsibility for caregiving by emphasizing common economic interests and the principle of equal opportunities while still allowing for nation variability in how this policy goal will be carried out.

25 EUROFAMCARE. 2006. *Services for supporting family carers of older dependent people in Europe: characteristics, coverage and usage*. The trans-European survey report
<http://www.uke.uni-hamburg.de/extern/eurofamcare/publikationen.php?abs=8>
(accessed on February 17, 2007)

Keywords: empirical data, organisation of domestic care work, Germany, Greece, Italy, Poland, Sweden, UK

The main aim of the EUROFAMCARE project was to evaluate the situation of family carers of older people in Europe in relation to the existence, familiarity, availability, use and acceptability of supporting services. The Trans-European Survey Report (TEASURE) provides an overview and synthesis of the results of the total survey sample, with relevant comparative analyses aimed at illustrating differences between country samples.

26 Jordan, Jason. 2006. Mothers, wives, and workers – explaining gendered dimensions of the welfare state. *Comparative Political Studies* 39 (9) Nov: 1109-1132.

Keywords: welfare state, labour market policies, Germany, France, Sweden

Feminist criticism has uncovered significant differences in the approach of welfare states to women's employment and the family not captured by more mainstream, class-based approaches. At the same time, a coherent explanation for gendered variation has been slow to develop. Exploring the French, German, and Swedish cases, this article develops a theory of welfare-state development that links the welfare state's approach to women and the family to the state's response to labour-market conditions during crucial periods of labour shortage. These three cases suggest a trade-off between the economy's dependence on immigrant labour and the welfare state's willingness to adapt to the specific interests of working mothers. This suggests a link between seemingly unrelated differences in immigration policy and the state's support for working mothers.

27 Ute, Gerhard, Trudie Knijn and Anja Weckwert, eds. 2005. *Working mothers in Europe: a comparison of policies and practices*. Cheltenham: Edward Elgar Publishing.

Keywords: women's integration into labour market, organisation of work and care, welfare systems, social policies, care arrangements, Norway, Italy, Spain, Sweden, Germany, The Netherlands.

Working Mothers in Europe combines comparative perspectives on social policies with analyses of mother's practises as evidenced in macro data and as explored in country-based case studies. Social policy research has emphasized the impact of particular welfare systems and their policies on women's integration into the labour market and the organisation of care and work. However, the authors argue that policies are not the only factor, and, hitherto, we have very little knowledge of the precise interactions between social policies and social practises of individuals

and families. In order to accurately grasp the cross-country variation of mother's work and care arrangements in Europe, this book assembles a comparative approach towards welfare systems and social policies with an analysis of mothers' social practises in several European countries (Norway, Italy, Spain, Sweden, Germany and the Netherlands).

28 Theobald, Hildegard. 2005. Labour market participation of women and social exclusion: contradictory processes of care employment in Sweden and Germany. In *Care and social integration in European societies*, ed. Birgit Pfau-Effinger, 195-211. Bristol: Policy Press.

Keywords: sociological analysis, organisation of social care - public vs. private, welfare state models (state-oriented vs. family oriented), Sweden, Germany, long-term care insurance act

Drawing from the theoretical model of Pfau-Effinger, the author analyses the organisation of social care in Sweden and Germany and traces shifts from both the state-oriented (Sweden) and the family-oriented model (Germany) towards a market-oriented welfare state model.

Traditionally, social care for the elderly was and is viewed in Germany as the primary duty of families, with women assuming the unpaid care activities. By offering the choice between cash or professional packages, the Long-Term Care Insurance Act means to induce (low, symbolically paid, informal) care within the family.

The state's welfare focus on informal care and cost-efficient i.e. low-cost professional care has marked the occupationalisation of care activities in the nineties. Following the premise of cost-reduction and at the same time high quality, the formal care sector is differentiated along educational attainments levels, age and citizenship status (migrant carers). As a result, social distinctions in both the group of carers and care receivers are enhanced.

29 Kirsten Scheiwe. Caring And Paying For Children And Gender Inequalities: Institutional Configurations In Comparative Perspective in: *Journal of Family History*, Vol. 28, No. 1, 182-198 (2003)

Keywords: family law, welfare state, costst for children

Both family law and social law have an impact on the situation of families. This has held true since the times of the "poor law" (when family law was certainly more relevant for the wealthy and mighty strata of the population). Nowadays, other rules (such as those of labor law and tax law) and welfare state institutions come into play. In analyzing legal change, this interaction between family law and welfare law has to be taken into account. From this perspective, this article endeavors to answer the following question: how do institutions distribute the costs of children in terms of money and work between various actors, and what is the relevance of the rules for gender inequalities? The changes in the similarities and differences of the institutional configurations in four countries (Belgium, Federal Republic of Germany, Sweden, and United Kingdom) are reviewed for the past decades.

30 Sigrid Leitner: Sex and gender discrimination within EU pension systems in: *Journal of European Social Policy*, Vol. 11, No. 2, 99-115 (2001)

Keywords: European Union • gender discrimination • old age security • pension systems • sex discrimination

Drawing on the philosophical differentiation between sex and gender, this article focuses on structural mechanisms of gender discrimination within European pension systems. For this purpose, the article distinguishes between two dimensions of the gender category: the work behaviour dimension and the care dimension. It is argued that the differentiation between employment and family work on the one hand and specific living arrangements on the other is structurally implemented within old age security systems. All countries have established earnings-related schemes which, to various extents, refer to former earnings and continuous working careers. Many of the earnings-related schemes incorporate family work in one way or another by granting entitlement for the care of children and/or elderly or handicapped people. Most of the schemes are combined with additional benefits for spouses and/or survivors, referring to married heterosexual couples. Only a few countries have additionally established universal pension schemes based on residence instead of employment or family work. The comparative analysis of pension systems in the 15 EU member states gives an idea about national varieties of structural gender differentiation.

31 Bruning, Gwennaële and Janneke Plantenga. 1999. Parental leave and equal opportunities: Experiences in eight European countries. *Journal of European social policy* 9:195-210.

Keywords: EU directive, parental leave arrangements, combining work and care, equal opportunities, practical consequences, Germany, Austria, France, Finland, Norway, Sweden, Denmark, The Netherlands.

In June 1996, the EU directive on parental leave came into force. A major consideration in the introduction of this directive was its advantages for the reconciliation of work and family life. However, there is little systematic knowledge about the practical significance of parental leave arrangements in the European Union for equal opportunities policy. Given this situation, the main focus of this article is on empirical issues such as the number of (male and female) leavetakers and the length of the leave. In order to present comparative data, a user rate is calculated for eight European countries (Germany, Austria, France, Finland, Norway, Sweden, Denmark, The Netherlands). It appears that the majority of leavetakers are women; even in Nordic countries there are big differences between the user rates of men and women. As a result, the importance of the actual parental leave arrangements for equal opportunities seems rather dubious.

3 Intimate Citizenship

3.1 German-language Sources

1 Ostner, Ilona, 2006: "Paradigmenwechsel in der (west)deutschen Familienpolitik", in: Peter A. Berger und Heike Kahlert (Hg.): *Der demographische Wandel. Chancen für die Neuordnung der Geschlechterverhältnisse*. Frankfurt a.M.: Campus Verlag, 165-199.

2 Stüber, Stephan. 2006. Vom Gebot die Ehe zu fördern. [Of the principle to promote marriage] *Familie, Partnerschaft und Recht* 4:117-120.

Keywords: Section 6 I Constitutional Law (promotion of marriage and family), Section 3 Constitutional Law (principle of equality), marriage, non-marital partnership, same sex partnership

The author argues that the constitutional principle to promote marriage does neither allow for a general preference of marriage nor for a command to discriminate against other forms of partnership. Court decisions from 2002 have ruled out the latter case. The author argues that the preferential treatment of marriage by principle is inadmissible, too. As provided by Sec 3 Constitutional Law, differential treatment is only tolerated for certain purposes. In the case of partnership and family, the purposes are the moral and financial support of partners and the raising of children. Given the fact, that marriage and same sex partnerships equally fulfil these purposes, differential treatment is not legitimate. This is illustrated by examples from tax and inheritance law and family allowance.

3 Dethloff, Nina. 2005. Die nichteheliche Lebensgemeinschaft und Kinder. [Non-married partnerships and children] In *Die Rechtstellung nichtehelicher Lebensgemeinschaften*, ed. Jens M, Scherpe, 137-162. Tübingen: Mohr Siebeck.

Keywords: policy analysis, family law, married vs. non-married couples (hetero and same sex)

Additionally to a statistical analysis on the prevalence of family relations in Germany, the author conducts a thoroughly analysis of provisions regulating family issues for non-married partnerships and their families. Generally speaking the author demands equal parent-child-rights regardless of the legal status of the social parents. She locates explicit need for action for families with stepchildren as current laws do not even provide for a 'small custody' right for the stepparent. At least, stepparents have been allowed visiting rights after termination of the partnership since 2004. Still, non-married parents are excluded from adoption rights (at least this has been changed for registered same sex couples in 2004). Also the author urges that the risks of labour arrangements (such as the traditional gender division of labour) as chosen or practised in partnerships have to be born by both partners. Consequently, maintenance law should account for

this factor, not only for caring duties for common children as it is currently the case. Also, the limitation of maintenance (until the child's age of three years), the amounts and the ranking of maintenance payments discriminates against children of non-married parents. Analogous to marriage-divorce-settlements, regulations for non-married partners should provide for a splitting of property growth gained during the partnership. Finally, entitlements to the former housing space (rent, property) should be made equal for married and non-married couples, especially in cases of an urgent requirement of accommodation.

4 Gültekin, Neval. 2005. Differenz, Gleichberechtigung und gesellschaftliche Widersprüche: der fehlende Blick auf EinwanderInnen. [Difference, equality and societal contradictions: the missing focus on migrants] *Zeitschrift für Frauenforschung und Geschlechterstudien* 23 (3): 102-115.

Keywords: migration, ethnic minorities, diversity, diversity management, gender mainstreaming, anti-discrimination, gender democracy, social peace

The article locates politics of diversity and diversity management in processes of migration and immigration to Germany. To promote social peace and to implement equality policies, both the strategy of gender mainstreaming and diversity management have to be part of all policies. While gender mainstreaming has been introduced in political practise, diversity management still has to become part of all policies. Diversity management in the public service is only marginally implemented, for instance in some departments of the police or on the local level, while it is more common in the private sector. To the contrary, immigration laws have been tightened so that it became more difficult for migrants to claim rights in Germany. The author demands mainstreaming diversity management.

5 Lutz, Ronald und Petra Drauschke. 2005. Individualisierung von Risiken: ostdeutsche allein erziehende Frauen im Transformationsprozess. [Individualisation of risks: East German single mothers in the transformation process] In *Irritation Ostdeutschland: Geschlechterverhältnisse in Deutschland seit der Wende*, ed. Eva Schäfer et al., 179-194. Westfälisches Dampfboot.

Keywords: empirical study, employment patterns, policy analysis Hartz IV reforms (social security/Grundsicherung), single mothers, East Germany

Referring to the most recent study from 2002, the author states several developments concerning the social status of single mothers: Constituting 84 % of all single parent families, with clearly more single mothers in East Germany (45 %) than West Germany (26 %), and despite being a socially heterogeneous group, they still run a higher risk to live in poverty, especially in the East. Whereas single mothers in the GDR used to be in full gainful employment, processes of de-industrialisation and deregulation after unification have severely impacted on the employment situation of single mothers. Given the worsening labour market situation, employment rates of this group have decreased - however, motivation to work fully is prevailing. Single mothers in the East work longer hours than the ones in the West.

As a group, lone mothers focus the individualisation of risks due to the so called dual process of transformation. The study concludes with a prognosis of the consequences of the recent Hartz IV legislation for lone mothers: Firstly, long-time unemployed lone mothers are exposed to even more pressure due to new regulations of unemployment and welfare benefits. Secondly, the increasing precariousness of jobs (in the form of mini-jobs, part-time work, temporary working contracts etc.) poses new challenges for lone mothers to secure their existence. Thirdly, the so called 'Unemployment Benefit II' (ALG II) will increase the absolute poverty level by lowering allocations, especially for higher qualified workers. Fourthly, living standards of families depending on maintenance payments will lower also due to the lower ALG II. Fifthly, these developments will impact negatively on the opportunities of children stemming from single mother families. One recommendation to counter or mitigate these developments is access to childcare that is free of charge and equipped to accommodate children of less than three years of age.

6 Pätzold, Juliane. 2005. Die gemeinschaftliche Adoption Minderjähriger durch eingetragene Lebenspartner. [Joint adoption of minors by registered life partners] *Familie, Partnerschaft und Recht* 7: 269-273.

Keywords: law, joint adoption, same sex partnership, Germany, The Netherlands, Sweden, UK, Spain

Firstly, the article enumerates the legal provisions for adoptions by single persons, by married couples and same sex couples, but leaves out to explain whether chain-adoption (e.g. in case of decease of the legal parent) is admissible. Secondly, the author engages in the discussion whether same sex parents are equally qualified as heterosexual parents to raise children referring to international sociological studies. Thirdly, a policy country comparison follows (The Netherlands, Sweden, UK, Spain). The author concludes with the statement that acknowledging the welfare of the child as the most important criterion for family policies, the legitimisation of joint adoption for same sex parents is essential. It would grant these children equal rights concerning maintenance, custody and inheritance.

7 Wegener, Angela. 2005. Regenbogenfamilien. Lesbische und schwule Elternschaft zwischen Heteronormativität und Anerkennung als Familienform. [Rainbow families. Lesbian and gay parenthood between heteronormativity and recognition] *Feministische Studien* 1: 53-67.

Keywords: rainbow familie, discourse, legal recognition

After a depiction of the most current forms of rainbow families and a discussion of the existing studies in Anglo-American and German research, the article analyses the hegemonic public discourse which clearly starts from assumptions of heteronormativity: Against the backdrop of the 'original heterosexual family' rainbow families are interpreted as other, deviant forms of families. Hence, legal recognition takes place against this background. One can observe the legal privileging of biological over social parenthood. Just like Dethloff (2002), the

author argues that other legal provisions than adoption such as custody rights are just as important or might even meet the needs and realities of children with several parents better than legalised parenthood (e.g. adoption). Similarly, the author calls for a separation of the legal status of partners from the legal recognition of social parenthood in forms of custody regulations.

8 Berghahn, Sabine. 2004. Der Ehegattenunterhalt und seine Überwindung auf dem Weg zur individualisierten Existenzsicherung. [Maintenance regulations during marriage and ways to individualisation] In *Wohlfahrtsstaat und Geschlechterverhältnis im Umbruch: was kommt nach dem Ernährermodell?* ed. Sigrid Leitner, Ilona Ostner and Margit Schratzenstaller, 105-131. VS Verlag für Sozialwissenschaften.

Keywords: political-legal analysis, marriage law, principle of subsidiarity, male breadwinner model, social security entitlements of married women, individualisation

The principle of 'Marital Maintenance' (Ehegattenunterhalt) characterises the German welfare state that has been described as being based on a strong breadwinner model. Features of the system of taxation such as 'Spouse-Splitting' (Ehegattensplitting) are grounded on this principle. It is also translated into the 'Principle of Subsidiarity' in social security. Subsidiarity means the partner's entitlement to marital maintenance over state benefit entitlements. The provisions of derived entitlements such as family health insurance and dependent's pension reflect the principle of 'Marital Maintenance'. What can be deduced from this analysis is that women are not considered as individualised participants in the labour market. These provisions reproduce gender inequalities and the traditional gender division of labour and thus counter processes of individualisation. In conclusion, the author states that these principles and their consequences for gender relations constitute acts of indirect discrimination.

9 Everts, Arne. 2004. Eingetragene Lebenspartnerschaft zwischen Personen verschiedenen Geschlechts – de lege lata. [Registered life partnership between persons of different sex] *Familie, Partnerschaft und Recht* 11: 597-599.

Keywords: transsexual law, life partnership law, sex change

The author raises the question whether the legal provision of same sex partnership (Life Partnership Act) constitutes an obstacle for sex change. Whereas § 8 I Transsexual Law forbids change of sex for married people, the author comes to the conclusion that registered same sex partnership does not hinder sex change, thus possibly leading to a factual same sex partnership between people of different sex. This is argued on the basis that there seems to be a voluntary regulatory gap in same sex partnership policies.

10 Schneider, Silke. 2004. Einwanderungsland Deutschland: auch für Frauen? [Immigration country Germany: also for women?] *femina politica* 2: 92-95.

Keywords: Immigration Law 2005, law history

In this short article the author diagnoses the major achievements and shortcomings of the then future Immigration Law 2005. Positive developments are the recognition of non-state prosecution and gender-specific forms of violence as reasons for asylum. Fugitives are considered refugees under the Geneva Convention and given the same rights as those who have been already granted asylum (right to family reunion – equally applicable to same sex couples - and work permit). The provision of integrational language courses together with welfare benefit cutbacks in case of non-attendance is considered a positive development. The author also stresses the importance to treat women migrants independently from their families and husbands, not only in their own right, but also accounting for positive integrational tendencies of families with highly individualised and active women. More negatively, the law facilitates deportation and has to be evaluated overall as an immigration impediment law.

11 Schratzenstaller, Margit. 2003. Frauen und Männer im deutschen Steuersystem [Women and men in the German tax system] In *Geld und Geschlecht: Tabus, Paradoxien, Ideologien*, ed. Brigitta Wrede, 103-120. Opladen: Leske + Budrich.

Keywords: gender analysis, income taxing models

The author conducts a gender analysis of the following models of income taxing: the individual taxation and the so called spouses-splitting (Ehegattensplitting). She explores the direct and indirect effects of both types. The findings are the following: 1. The splitting model encourages the traditional gender division of labour by lowering taxes for households with unequal contributions to the household income (due to progressive taxing) – by contrast to the individual model. 2. Secondly, high income taxes lower the offer of labour from part of the female labour force. Due to the high opportunity costs of gainful employment for child care, a low net income is likely to keep women out of the labour market in child raising periods or postpone their return to the labour market. The splitting model encourages this process insofar as the splitting advantage decreases with a second, high household income. 3. The partner who is earning less, i.e. the woman, has to bear more tax burden in the splitting system than in the individual system and as compared to the higher earner; this raises distributional questions on the household level and indicating towards gendered relations of dependence. 4. Whereas the splitting model discriminates against non-married couples, the individual model discriminates against single parent households. 5. With regard to gender specific effects of tax systems on education efforts of women, the author states that anticipated lower returns of investments provoke shorter and less intensive educational and vocational training decisions of women. (Annotation: Is that so?) 6. As a result of the focus of social security on gainful employment, women generally have less pension entitlements than men due to the gender division of labour during professional life.

Consequently to the strong breadwinner model in West Germany, there are 'derived' social security entitlements such as family health insurance or dependent's pensions. However, these provisions as well as child care credits do not compensate for actual losses in income, thus leading to lower women's

pensions in absolute terms. The author concludes that the income splitting model is implicitly based on and reproduces the traditional gender division of labour.

12 Waldschmidt, Anne. 2003. Normierung oder Normalisierung – behinderte Frauen, der Wille zum "Normkind" und die Debatte um die Pränataldiagnostik. [Standardisation and normalisation – disabled women, the wish of a 'norm'-child and the debate on prenatal diagnosis] In *Verkörperte Technik – entkörperte Frau*, ed. Sigrid Graumann, 95 – 109. Frankfurt a. M.: Campus.

Keywords: prenatal diagnosis, disability, feminist discourse, 1980s – present

Based on a discourse analytical study, the author explores the rationales underlying debates among the feminist and the feminist disability movement. In the 1980s and early 1990s, the issue of prenatal diagnosis/ abortion rights/ embryopathic induced abortion was criticised as 1. translating national-socialist eugenic into modern eugenic, 2. feeding into processes of depreciation of people with disabilities (ability-normativity), 3. equalising disability explicitly with a burden that should be avoided. Population politics have been analysed under a disabled-feminist perspective, demonstrating politics of coercing selected women into and banning others from birthing. The conflict arising from feminist principles of self-determination and principles of equal rights for persons with disabilities has not been extensively discussed in the early years, but led to fierce discussion among disabled and non-disabled feminists throughout the late 1980s.

From the 1990s onwards, criticisms shifted towards an analysis of neo-liberal influences on reproduction politics which come in disguise in order to appropriate feminist terms of self-determination and freedom of choice. The depersonalisation of women due to the medicalisation and increasing technologisation of pregnancy is exacerbated by the consideration of the foetus as a legally independent person. These processes have to be seen in the light of population control.

More recent publications such as Faber 2002 introduce new perspectives into the discussion. Firstly, the author shows the existence of double moral standards deriving on the one side from the public discourses promoting acceptance and appreciation of life with disabilities and on the other side from neo-liberal discourses that have passed on the conflict from the public into the private domain. Secondly, persons with disabilities are further differentiated into potential active customers of bio-technologies (such as prenatal and pre-implantation genetic diagnosis) and passive objects of research.

13 Bock v. Wülfingen, Bettina. 2002. Homogene Zeugung? Beschreibung eines Paradigmenwechsels in der Repromedizin. [Homogeneous procreation? A change in paradigm in reproductive medicine] *beiträge zur feministischen theorie und praxis stammzellen. stammhalter. stammaktie* 60 (20): 71-84.

Keywords: sociology, discourse analysis, reproductive medicine, bio-technology, homologous reproduction, same sex couples

The author's main argument is that reproduction wishes of same sex couples are increasingly publicly acknowledged because they feed into the interest of bio-medicine which aims at normalising technically assisted reproduction. Interestingly, the former essentialist discourse that excluded homosexuals from legitimate parenthood, is now being extended to include their 'natural wish' to rear their 'genetically own children'. These naturalising tendencies increasingly include lesbian and gay persons as clients into the reproduction industry. Shifts in normalising tendencies can be observed in the ongoing redefinitions of infertility. The criticisms refer to the disembodiment of reproduction and the dis-subjectifying of mothers for the sake of direct and faster access to the resource of the 'body'. These developments point towards a modern form of eugenic that aims at the 'Gesunder Volkskörper'.

14 Schneider, Ingrid. 2002. Körper und Eigentum: Grenzverhandlungen zwischen Personen, Sachen und Subjekten. [Body and property: negotiations over people, things and subjects] In *Konfiguration des Menschen: Biowissenschaften als Arena der Geschlechterpolitik*, ed. Ellen Kuhlmann and Regine Kollek, 41-59. Opladen: Leske + Budrich.

Keywords: bio-technology, law, public policy

The emergence and prevalence of bio-technologies poses new challenges for policy makers: How should body parts and substances and the relation to their 'owner' and 'utilisers' be dealt with legally? There are two legal approaches as well as combinations of both: the property (Eigentumsrecht) and the personal rights approach (Persönlichkeitsrecht) whose respective rationales, implications and (legal) consequences are discussed in this article. The personal rights approach emphasis the negative right to be safe from harmful practises that counter bodily integrity and the positive right of bodily self-determination. Whereas the property rights approach also addresses the issue of bodily self-determination, it is less concerned with the personal law. The author argues that suits against the abuse of body parts and substances are hard to file based on both the property and the personal rights approach. Also, the author gives an overview of the main arguments against the commodification of body parts.

15 Dethloff, Nina. 2001. Die Eingetragene Lebenspartnerschaft – Ein neues familienrechtliches Institut. [The life partnership act – a new institution in family law] *Neue Juristische Wochenschrift* 2598 – 2604.

Keywords: policy analysis, Life Partnership Act 2001, same sex partnership as compared to marriage

The author discusses the provisions granted to same sex couples under the recently Life Partnerships Act from 2001 as compared to marriage rights. While she comes to the conclusion that there is wide-ranging equality in certain respects, other fields carry the features of discriminatory regulations. Positive developments are the legislator's restraint from commenting on duties in a partnership (such as a common household or sexual intercourse) and the general provision of restricted power of lone disposition over common goods or assets.

Marriage law should be considered to be amended accordingly. More problematically, the law from 2001 only granted a 'Small Custody Right' to the other partner.

Annotation: While the Law amending the Life Partnership Act in 2004 made step-child adoption possible, it did not allow for joint adoption.

The author claims that the partner should be given custody rights even after separation instead of only visiting rights, thus accounting for factual relationships and social parenthood. Concluding one can state that the law still discriminates against homosexual parents.

16 Gehring, Petra. 2001. Feministischer Lebensschutz? Positionenverschiebungen im Vorfeld eine geplanten Fortpflanzungsmedizingesetzes. [Feminist protection of life? Shifts in arguments in the run-up of a reproductive medicine law] *Feministische Studien* 1: 90-99.

Keywords: biotechnologies, reproductive medicine, feminist standpoints, rights of foetus vs. women

In the course of an analysis of 'feminist' statements made at the 2000 Congress on Reproductive Medicine in Germany, the author shows some severe inconsistencies in feminist arguing. Firstly, by defending the rights of the foetus and by attributing to it legal status either as a protected property or even personal rights, immediately the legitimacy of abortion and thus, women's human rights are called into question. Secondly, opposing technologically assisted reproduction on grounds of 'divided' parenthood, 'problematic' identity formation for the child a.s.o. reveal essentialist assumptions about the classical nuclear family as well as heteronormativity. Thirdly, by attributing homosexuals a natural wish for their own biological child, they are included into the essentialist, normalising discourse on biotechnologies.

17 Wegener, Jörg. 2001. Neues Aufenthalts-, Arbeitsgenehmigungs- und Einbürgerungsrecht für binationale gleichgeschlechtliche Paare. [New regulations on residence and work permits and citizenship/nationality rights for binational same sex couples] *Zeitschrift für Ausländerrecht und Ausländerpolitik* 4: 159-164.

Keywords: policy analysis, Life Partnership Act and Immigration Law, residence and work permits, family reunion, nationality law, target group binational same sex couples

This analysis gives a detailed account of the provisions of the Life Partnership Act regarding rights of binational or migrant couples as compared to heterosexual married couples. Generally, the same rules apply for both forms of partnerships. What differs are regulations concerning the issue of an independent right of residence in case of a separation before the required two years of lived partnership in Germany. With regard to parental rights, the 'little custody regulation' from 2001 did not provide for a resident permit of the partner. At the time of the publication of the article (has it been amended since?), residence permit had to be applied for from abroad.

A positive consequence resulting from the Life Partnership Act is the mandatory granting of a work permit to a partner of a German citizen and citizens who come within the rule of freedom of movement in the EU and the EEA. They are eligible to acquire or maintain it in case of separation from the partner (subject to the condition that the partnership lasted at least two years).

18 Oberlies, Dagmar. 2000. Eigenständiges Aufenthaltsrecht der Frau nach Trennung. Ein Blick in die Rechtsprechung und die Verwaltungsvorschriften zu § 19 AuslG. [Individual/independent residence permit for women after separation. A glance at the jurisdiction and administrative rules concerning § 19 Alien Law] *Streit* 1: 24-32.

Keywords: Alien Law from 1997, residence permit, women, domestic violence

This article discusses the legal provisions and court decisions on independent resident permits granted to victims of domestic violence. The legal situation in 2000 allowed for an independent resident permit in cases of separation when 1) the marriage lasted at least for 4 years – on German soil or – in cases of a shorter time of being married – 2) when there are reasons related with the return of the victim to her/his home country that are presenting/causing severe problems (außergewöhnliche Härtefälle). The problems in jurisdiction evolved around the definition of severity that had to be related to the victims return – as if an act of violence or the forced return to the country of origin was not severe enough.

Annotation: The law has been changed. The required length of marriage has been reduced to two years.

19 Pötz-Neuburger, Susanne. 1999. Ein Jahr Sorgerechtsreform: Entwicklungen und Erfahrungen. [One year after the custody law reform: developments and experiences] *Streit* 4: 147-152.

Keywords: Child Law Reform 1998, advocational praxis

One year after the introduction of the new custody law, the author takes stock of the developments in divorce and separation settlements. Whereas the option of joint custody has existed before, the reform produced great legal insecurity among parents and also among lawyers. The critical question that arose from the new regulations was whether the policy maker's intention was to establish some kind of rule-exemption-relation for the cases of joint or single custody. By now, it is standard not to assume joint custody as the rule, but to take the willingness of parents to come to a joint custody agreement as the decisive factor.

The initial insecurity has contributed to parents searching more legal counselling on this matter. Some points of concern regarding the reform: 1. While parents mostly agree that the child's main place of residence should be with the mother, procedures are increasingly taking place due to questions over custody agreements. Controversial issues are – among others – cases of e.g. travels abroad – requiring a decision on whether they fall under the category of 'everyday issues' or 'special events', thus possibly requiring the consent of the second parent. This often complicates matters for the partner who assumes the lion's share of caring activities and duties.

3.1.1 Comparative studies

20 Schulz, Antje. 2004. Leistungsfähig, männlich, weiß: Bevölkerungspolitik im Zeitalter der Reproduktionsmedizin. [Productive, male, white: population politics in the age of reproductive medicine] In *Migration, Geschlecht und Staatsbürgerschaft: Perspektiven für eine antirassistische und feministische Politik und Politikwissenschaft*, ed. Bettina Roß, 67-86. VS Verlag für Sozialwissenschaften.

Keywords: sociology, development studies, population politics, reproductive medicine, international perspective, Germany

The author locates population politics in an international context and demonstrates the rulings of bio-power by example of politics against overpopulation. While coming in disguise under a developmental cloak or other covers, population politics always decide on who should reproduce and who must not – first and foremost at the expense of women. Also, the author argues that right claims of the international women's health movement have been appropriated and instrumentalised by global players such as big developmental organisations. Intersectionalities of ethnicity, race, disability, gender etc. are not only decisive for exclusionary or inclusionary reproduction 'rulings' in a north-south perspective, but equally existent in industrialised countries of the north. In the case of Germany, migrants, women with disabilities and low-income earners are more likely to be 'recommended' abortion, sterilisation, vasectomy or long time hormonal contraception. Also, access to reproductive health care discriminates along the lines of the above mentioned intersectionalities.

3.2 English-language Sources

21 Hartwig Pautz. The politics of identity in Germany: the Leitkultur debate in: *Race & Class*, Vol. 46, No. 4, 39-52 (2005)

Key Words: clash of civilisations • culture of remembrance • identity politics • immigration • integration • multiculturalism • nationalism • normalisation

'Germany is not a country of immigration' is a fiction of national homogeneity that came under increased pressure with the advent, in 1998, of a centre-left government. New laws for immigration, integration and citizenship were to be introduced, eradicating the concept of Volk tied together by ius sanguinis. But the opposition Christian Democratic Union made an electoral issue of 'Ausländerpolitik', especially integration, accusing the government of jeopardising 'German cultural identity'. What ensued was the Leitkulturdebatte, about Germany's predominant culture, characterised by the notion of the 'clash of civilisations' and the incompatibility of 'different' cultures. This not only replaced racial belonging with cultural belonging, transforming the ius sanguinis into an equally essentialist ius cultus, it also formed part of a conservative attempt to re-establish a 'normal' German national consciousness, cleared of the memory of the Holocaust.

22 Jennifer Petzen. Home or Homelike? Turkish Queers Manage Space in Berlin in: *Space and Culture*, Vol. 7, No. 1, 20-32 (2004)

Key Words: Germany • Turks • political activity • homosexuality • ethnic identity

In the past 10 years, queer Türkiyelis in Germany have become more visible in the urban queer scene by delineating institutional and extrainstitutional spaces. How do they manage and negotiate these spaces with each other and in the context of interacting with people from different—that is, non-Turkish—backgrounds? And do the ways in which these spaces are managed have the capacity to work against prejudices both in the German queer community and among the wider Türkiyeli population? Queer Türkiyelis employ strategies of space management that resist fixed ideas of identities and bounded cultures that multiculturalist discourses and the media might otherwise enforce. In place of fixed identity politics based on ethnicity and national belonging, there are, instead, spatial management strategies at work that create homelike spaces.

3.2.1 Comparative studies

23 Ostner, Ilona (mit Trudie Knijn), 2007: “The Meaning of Children in Dutch and German Family Policy”. *Comparative Social Research* 25, Elsevier Science (reviewed, in print).

24 Diane Sainsbury. Immigrants’ social rights in comparative perspective: welfare regimes, forms in immigration and immigration policy regimes in: *Journal of European Social Policy*, Vol. 16, No. 3, 229-244 (2006)

Key Words: cash transfers • immigrants • immigration policy regimes • social rights • welfare regimes

In analysing the social rights of immigrants, this paper draws on insights from comparative welfare state research and international migration studies. On the premise that the type of welfare regime has an impact on immigrants’ social rights, it utilizes Esping-Andersen’s welfare regime typology as a point of departure. However, this typology must be complemented by two analytical constructs borrowed from the international migration literature: the immigration policy regime and entry categories associated with the form of immigration. The paper examines the social rights of immigrants in three countries generally regarded as exemplars of the welfare regime types: the United States, representing the liberal regime; Germany, the conservative corporatist regime; and Sweden, the social democratic regime. It maps out immigrants’ formal incorporation into the welfare systems of the three countries and pays special attention to legislation from 1990 onwards in order to understand the interplay between welfare regimes, the forms of immigration, and the immigration policy regimes in shaping immigrants’ social rights.

25 Dethloff, Nina. 2005. Same sex parents in a comparative perspective. *International Law FORUM du droit international* 7: 195-205.

Keywords: Life Partnership Acts, adoption law, comparative perspective (USA, Australia, South Africa, European States)

In this article the author discusses the development of adoption rights for same sex couples in various countries (USA, Canada, Australia, South Africa, Spain, England, Denmark, Iceland, Germany and Austria). Adoption rights protect a factual relationship by regulating custody, maintenance and inheritance in favour of the child and should be possible for same sex couples independent of their legal status. Similarly, joint adoption just like co-parent adoption rights ought to be granted.

Despite the admittedly important issue of adoption rights other claims are just as important to protect the parent-child-relationship in same sex family. Rights claims should thus involve parental laws: Relating to the praxis of insemination, the legal parent should thus be the one who consented to the insemination – regardless of their sex. Given the right of the child to information about her or his origin, the biological origin should also be revealed, without necessarily establishing a legal relationship.

Sometimes also more important than adoption rights are issues of custody, especially in cases where there are more parents involved. In cases of separation, custody should be attributed according to the best interest of the child, which might also include the stepparent. Again, custody rights should be awarded regardless of the partners' status.

26 Katharina Boele-Woelki and Angelika Fuchs, eds. 2003. *Legal recognition of same-sex couples in Europe*. Antwerp: Intersentia.

Keywords: same-sex couples, registered partnership, same-sex marriage, legislation, EC, Denmark, Finland, Sweden, The Netherlands, Spain, France, Germany, The United Kingdom

The legal recognition of same-sex couples in Europe has undergone dramatic changes over the last few years. Following the Scandinavian model, many European countries have adopted statutes on registered partnerships or are currently debating draft legislation. The differences are bigger than one would expect at first sight. This book provides detailed information about the current state of affairs. It contains chapters on Denmark, Finland and Sweden, The Netherlands, Spain, France, Germany, the UK and 'Scandinavia'.

27 Christian Joppke. The Legal-domestic Sources of Immigrant Rights The United States, Germany, and the European Union in: *Comparative Political Studies*, Vol. 34, No. 4, 339-366 (2001)

Keywords: immigration, immigrant rights, citizenship rights, rights expansion

This article traces the evolution of two types of immigrant rights—alien rights and the right to citizenship—across three polities (the United States, Germany, and the European Union). It argues that the sources of rights expansion are mostly legal and domestic: Rights expansion originates in independent and activist courts, which mobilize domestic law (especially constitutional law) and domestic legitimacy discourses, often against restriction-minded, democratically accountable governments. The legal-domestic hypothesis is qualified and differentiated according to polity, migrant group, and type of immigrant right.

4 Gender-Based Violence

4.1 German-language Sources

1 Wenzel, Bianca. 2005. Zwangsheirat, Ehrverbrechen, Häusliche Gewalt. [Forced marriage, honour crimes, domestic violence] In *Dokumentation der Fachkonferenz Zwangsheirat, Häusliche Gewalt, Ehrenmorde. Runder Tisch des Hannoverschen Interventionsprogramms gegen Männergewalt in der Familie*, edited by Referat für interkulturelle Angelegenheiten, Referat für Frauen und Gleichstellung. 9-14. Hannover

Keywords: conference lectures, sociology, immigration, civil and penal law, forced marriage, honour killings, domestic violence, Germany

The author, member of the NGO Terre des Femmes, gives an introduction into the topic in the case of Germany. More specifically, the author touches on the issue of financing women's shelters and the worsening of conditions due to the Hartz IV reforms/SGB II (Second Book of the Social Code).

2 Ates, Seyran. 2005. Rechtliche Aspekte. [Legal aspects] In *Dokumentation der Fachkonferenz Zwangsheirat, Häusliche Gewalt, Ehrenmorde. Runder Tisch des Hannoverschen Interventionsprogramms gegen Männergewalt in der Familie*, edited by Referat für interkulturelle Angelegenheiten, Referat für Frauen und Gleichstellung. 15-22. Hannover

Keywords: conference lectures, sociology, immigration, civil and penal law, forced marriage, honour killings, domestic violence, Germany

Apart from a detailed depiction of how the above mentioned cases of violence against women take place in Germany, the author criticises the draft of the Law to Combat Forced Marriages for two reasons: Firstly, it does not refer to so called Imam-Marriages (not legally recognised marriages) and secondly, the annulment of a forced marriage should not be tied to a three year period. Additionally, there is a discrepancy between Immigration Law (2 year period before one can achieve an independent right of residence) and the Civil Law (annulment of the marriage only within one year).

The author also states that there is a correlation between forced marriage and domestic violence. In this respect, integration/ languages courses and financial sanctions in case of non-attendance of the woman have proven successful as it gives women the opportunity to leave the house, acquire language skills, information and social networks.

3 Kalthegener, Regina. 2005. Strafrechtliche Regelungen und Problembereiche. [Penal law regulations and problem areas] In *Dokumentation der Fachkonferenz Zwangsheirat, Häusliche Gewalt, Ehrenmorde. Runder Tisch des Hannoverschen Interventionsprogramms gegen Männergewalt in der Familie*, edited

by Referat für interkulturelle Angelegenheiten, Referat für Frauen und Gleichstellung.
23-28. Hannover

Keywords: conference lectures, sociology, immigration, civil and penal law, forced marriage, honour killings, domestic violence, Germany

This lecture depicts the provision from the side of penal law and discusses the newest developments in the respect of forced marriage. Whereas the integration of forced marriage as an element of crime into criminal law was the necessary step towards the official sanctioning of this crime, she does not regard the claim for an own element of crime as essential. More importantly, legal provisions should try to capture the problem of girls being carried off into forced marriage to their or their parents' home country. Furthermore, the author emphasises the importance to enable joining in action as a coprocessor/accessory prosecutor (*nebenklagefähig machen*). What she regards as problematic especially in the case of honour crimes (that are almost exclusively committed from the part of family members), is the right of the closest relatives to refuse to give evidence. The author also states that whereas in former years court decisions took cultural values and norms into account to decide on whether the perpetrator acted from base motives, decisions since 2004 have not longer supported this view.

4 Gedik, Ipek. 2005. Zwangsheirat bei Migrantenfamilien in der Bundesrepublik. [Forced marriages in migrant families in Germany] In *Jahrbuch Menschenrechte 2005*, 318-325. Frankfurt.

Keywords: anthropology, sociology, forced marriage, honour (crimes), reasons, motives, strategies

Apart from the already well-know statements on (Turkish) concepts of honour, the author distinguishes between several forms of forced marriage: 1. Girls are married off to (older) men in the parents' home country; 2. So called 'import brides' from the home country are married off to the sons in order to (re)establish or maintain close bonds to the country of origin; 3. Grooms are 'imported' in order to grant them the right of residence in Germany.

5 Puchert, Ralf and Ludger Jungnitz, 2005. Gewalt gegen Männer: die verborgene Seite der Geschlechterhierarchien. [Violence against men: the hidden side of gender hierarchies] *Zeitschrift für Frauenforschung und Geschlechterstudien* 23 (4): 24-40.

Keywords: violence against men, physical violence, psychological violence, sexualised violence

The article shows the results of a study of qualitative interviews with experts on counselling organisations and of 266 qualitative interviews with a random sample of men (study conducted as a pilot study for the Federal Ministry for Families, Seniors, Women and Youth). The study wants to sensitise for the fact of violence against men. During childhood and youth most of the men experienced violence, mainly by other men (70%). Physical and psychological violence occurs more

often that sexualized violence – and violence occurs in the family, at school as well as in the public. During the military service violence is very common. As adults, men experience violence less often, mainly in the public sphere, less often at the work place (mobbing), but also in intimate relations by their female partners.

6 Silva, Adrian de and Ilka Quirling. 2005. Zur gegenwärtigen Situation asylsuchender transgeschlechtlicher Menschen in der Bundesrepublik Deutschland. [On the present situation of transgender asylum seekers in the Federal Republic of Germany] *femina politica* 1: 70-78.

Keywords: asylum law, transgender

The authors, referring to case studies prior to the new Immigration Law in 2005, pinpoint the same problems for asylum seekers as emphasised by Lünsmann (2003). State prosecution - being an essential criterion to grant asylum - was not attributed to cases of sexual violence against transsexuals perpetrated by policemen. Despite the recent extension of asylum reasons in the new Immigration Law, the authors remain sceptical about major shifts in asylum decisions. Their scepticism is grounded on their analysis of heteronormativity dominating societies like Germany that 'eliminates' transsubjectivity.

7 Brabandt, Heike. 2004. Frauen und Asyl: geschlechterspezifische Fluchtgründe im deutschen Asyl- und Ausländerrecht. [Women and asylum: gender-specific reasons for asylum in German asylum and alien law] In *Migration, Geschlecht und Staatsbürgerschaft: Perspektiven für eine antirassistische und feministische Politik und Politikwissenschaft*, ed. Bettina Roß, 103-126. VS Verlag für Sozialwissenschaften.

Keywords: policy history, Immigration Law 2005, reasons for asylum, identity politics

The author demonstrates how racism and sexism, deeply entrenched in German society, are visible in legislation, especially in rulings on migration and asylum. By the example of the policy history of the Immigration Law, it is demonstrated how these ideological underpinnings are responsible for the watered down and late national legal interpretation of the so called 'Qualification' EU directive. Whereas gender-specific reasons for asylum have eventually been acknowledged, the definition of non-state prosecution remains problematic (as it is the case for the EU directive). In the latter case, non-state prosecution is applicable in cases where the state or state-like actors are not willing or not able to protect their citizens from violence (indirect state prosecution).

8 Heinke, Sabine. 2004. Gewaltschutzgesetz – Probleme bei der Umsetzung. [Violence protection act – problems with law enforcement] *Streit* 4: 157-162.

Keywords: Violence Protection Act, domestic violence, procedural difficulties

With regard to the Violence Protection Act introduced in 2002, the author depicts several difficulties which arise from problematic procedural provisions that might have life-threatening consequences for the victim of domestic violence. Examples are the shifting of responsibilities from the family court to the civil court after a time period of six months after separation. Secondly, the obligation to file a principal proceeding after the fast-tracking, this proceeding is often superfluous from the point of view of the victim. Thirdly, in judicial practise, the right (of the perpetrator) to be heard must not overrule the right of victim to be protected from violence. Joint oral hearings are to be avoided. Fourthly, the practise to announce a claim to the perpetrator before the actual order enters into force is problematic. Fifthly, the principle of settlement should not be aimed at, but instead the principle of providing protection. Also, the provision of temporary orders that have to be renewed in order to continue to protect the victim do not meet with women's needs. Eventually, regulations on the allocation of living space in cases of domestic violence as made by § 2 (Violence Protection Act) and § 1361b (married couples) of the Civil Code compete with each other on a formal legal level.

9 Ohms, Constanze. 2004. Recht lesbisch?: das deutsche Gewaltschutzgesetz [sic!] und Gewalt in lesbischen Beziehungen.“ [Lesbian law?: The German violence protection act [sic!] and violence in lesbian relationships] In *Geschlechterverhältnisse: Analysen aus Wissenschaft, Politik und Praxis*, ed. Hella Hertzfeldt, Katrin Schäfgen and Silke Veth, 298-308. Karl Dietz Verlag.

Keywords: sociological study, Violence Protection Act 2002, target group lesbians

The study engages in reasons for the low recourse of lesbians to the Violence Protection Act, discusses violent dynamics in lesbian relationships to then ask the question of the law's effectiveness for the target group of lesbians.

Reasons why lesbian victims of domestic violence do not make use of the Violence Protection Act have to be seen as closely interlinked with the social position of the group and the discriminatory experiences associated with it. Reasons are 1. the wish not to exacerbate societal homophobia by making violence in lesbian partnership visible; 2. internalised homophobia and 3. anticipation of violence as a strategy of the victim trying to avoid violence or cope with violence. The exercise of violence in lesbian relationship can also be traced to wrongly interpreted freedoms from traditional gender roles: Women who perpetrate violence are sometimes seen - from the part of lesbian subculture - as having overcome their socialisation into being passive and being able to 'express' their aggressions.

With regard to the effectiveness of the law, the author expresses concerns about the lack of prevention- and intervention networks that include the target group lesbians. Most institutions are heterosexually oriented (e.g. women's shelters). Also, the executive authorities are not sufficiently sensitised about the issue. Eventually, the tabooisation of female perpetration of violence in both hegemonic and lesbian culture does not contribute to an effective implementation of the Violence Protection Act in this target group.

10 Dobler, Jens. 2003. Antischwule Gewalt: Hintergründe und Gegenperspektiven. [Anti-gay violence: background and countermeasures] In *Gewalt und Geschlecht: Konstruktionen, Positionen, Praxen*, ed. Frauke Koher and Katharina Pühl, 67-81. Opladen: Leske + Budrich.

Keywords: violence against gays, prevalence and forms, sociology, theories homophobia, prevention

After a digression into historical research on violence against gays, the author demonstrates the also historical equation of perpetrators and homosexuals. States like the Federal Republic of Germany together with International Organisations such as the WHO contributed to the attributions of sickness and criminal behaviour until the seventies.

With regard to theories on homophobia or anti-homosexuality, the author distinguishes psychological/psycho-analytical, medical, sociological and political approaches. The prevalence of violence has maintained stable over the last ten years to range at 25 – 30 % of gays having experienced violence in their (gay) lifetime. This group as a whole is ten times more likely than the average population in Germany to be exposed to violence.

After 1989 and despite the historically tense relation between the police and gays, prevention and intervention measures were planned to increasingly incorporate the police. These co-operations are bearing fruits insofar as the phenomenon of bully groups against gays has significantly decreased. In conclusion, the author stresses the need to reassess criminal acts in the form of violence against gays in criminal law.

11 Fastie, Friesa. 2003. Geplante Anzeigepflicht bei sexuellem Missbrauch – Hilfe oder Gefährdung für das Kind? (Planned disclosure duty in case of sexual abuse – help or jeopardy for the child?) *Streit 1*: 30-34.

Keywords: sexual abuse of children, duty to give notice of sexual abuse

Although it seems that the majority of the involved public is against the reform of the penal code to introduce a disclosure duty in the case of sexual abuse, the author argues that the law might support children. If not only the child is made responsible for disclosure and complaint, abused children would be released in situation of immense stress.

12 Flügge, Sibylla. 2003. Überlegungen zur geplanten Anzeigepflicht bei sexuellem Missbrauch. [Considerations on the planned disclosure duty in cases of sexual abuse] *Streit 1*: 24-30.

Keywords: sexual abuse of children, duty to give notice of sexual abuse

The article is reviewing a bill, which wants to make obligatory the complaint of sexual abuse of children. The aim of the law is to make not only the victim (and the perpetrator) responsible for the charge of sexual abuse, but all people who (might) know about the fact of sexual abuse. The author is sceptical about the positive effects of stopping sexual abuse by arguing, that the abused child would

need a person of confidence who would not complain at the police. The argument focuses on the emotional and psychological stress of abused children. The article also emphasises the difficult situation for social workers and psychotherapists, but also for judges who would have to judge if a person without complaint – may have tried to stop an abuse – or just did not want to see it.

13 Frommel, Monika. 2003. Die Reform der Sexualdelikte 1997/98. [The reform of sexual offences] In *Unzucht – Notzucht – Vergewaltigung*, ed. Christine Künzel, 261-277. Frankfurt a.M.: Campus.

Keywords: sexual penal law reforms, marital rape

This article discusses the major changes in sexual penal law and diagnoses the possible future and past applications in court decisions. Issues of analysis are 1. the regulation on potential preventive detention, 2. the abrogation of 'milder forms of rape' (marital rape), 3. the extension of elements of offence § 177 (Exploitation of Unprotected Situations), 4. the extension of preventive detention. With regard to court decisions the author favours 'flexible law provisions' which make the courts accept the law more easily, without necessarily lowering sentences.

14 Lünsmann, Gabriela. 2003. (K)ein Asylgrund für Frauen – Genitalverstümmelung im Spiegel verwaltungsgerichtlicher Rechtsprechung. [(No) ground for asylum – FGM in the light of decisions of administrative courts] In *Schnitt in die Seele: weibliche Genitalverstümmelung - eine fundamentale Menschenrechtsverletzung*, ed. Terre des Femmes, 215-222, Mabuse.

Keywords: female genital mutilation, asylum, jurisdiction

Up until the introduction of the new Immigration Law in 2005, reasons to grant asylum did not adequately consider gender-specific forms of prosecution such as FGM. Early problematic jurisdiction was based on the interpretation of Section 16a Constitutional Law, that asylum is to be granted to people persecuted by the state (and according to the Geneva Convention due to their race, religion, ethnicity, political conviction or belonging to a certain social group). These decisions considered perpetrators of FGM as private, ignoring the responsibility of states to protect their citizens from violence. Also, despite acknowledging FGM as reasons against deportation, administrative courts in the 1990s did not grant asylum.

15 Oberlies, Dagmar. 2003. Der Stellenwert der Selbstbestimmung behinderter Menschen im Sexualstrafrecht. [The significance of self-determination of disabled people in sexual penal law] In *Sexuelle Gewalt gegen behinderte Menschen und das Recht. Dokumentation des Potsdamer Rechtssymposiums*, ed. Julia Zinsmeister, 27 – 39. Opladen: Leske + Budrich.

Keywords: evaluation, sexual penal law provisions, disabled women

On grounds of an evaluation of 15 court decisions, the author discusses the application of the above mentioned legal provisions. Despite the problematical application of § 179 (in cases where § 177 with higher sentences would have been applicable), the author argues against its abrogation, because of regulatory gaps that would result from it. With regard to the effectiveness of § 174 a and c, the author argues that there is no empirical data yet; what can be stated anyways is that the abundance of elements of crime has not facilitated or sharpened sentencing. The author demands a new paradigm in sexual penal law, departing not longer from the concept of guilt of the perpetrator but from the necessity of protection on the part of the victim. Thus, the paradigm should state that 'whoever is not conceding, is not able to concede or say maybe, is saying "no"'. Thus, the element of crime 'abuse' would only be applicable in cases where consent of the victim is not deemed socially acceptable.

16 Zinsmeister, Julia. 2003. Werden behinderte Frauen durch das Sexualstrafrecht diskriminiert? [Are disabled women discriminated against by sexual penal law?] In *Sexuelle Gewalt gegen behinderte Menschen und das Recht. Dokumentation des Potsdamer Rechtssymposiums*, ed. Julia Zinsmeister, 11-26, Opladen: Leske + Budrich.

Keywords: evaluation, sexual penal law reform, disabled women

Starting from the empirical evidence that both women and men with disabilities, but especially women, are over proportionally effected by violence, the author argues that it is especially in social institutions of rehabilitation that such violations take place. The reform of the sexual penal law in the years 1997 and 1998 aimed at accounting for the risks of this especially vulnerable group by amending § 174 a and c (Protection from Sexual Abuse in Institutions and Relations of Counselling, Rehabilitation and Therapy) as well as introducing a new element into § 177 I (Rape and Sexual Coercion - Exploitation of Unprotected Situations). She raises the question whether these provisions have made § 179 (Sexual Abuse of Non-Resistant People) superfluous.

17 Janzen, Ulrike. 2002. Das Kinderrechteverbesserungsgesetz. [The child rights improvement act] *FamRZ Zeitschrift für das gesamte Familienrecht* 49 (12): 785-790

Keywords: The Child Rights Improvement Act 2002, domestic violence, children

Due to the Child Rights Improvement Act go-orders are included into the catalogue of legitimate measures provided by family law in order to guarantee the protection of children. Hence, in combination with the Violence Protection Act, the legal situation of children suffering from domestic violence has been significantly improved.

18 Plett, Konstanze. 2002. Intersexualität aus rechtlicher Perspektive. Gedanken über "Rasse", Transgender und Marginalisierung. [Intersexuality in a legal perspective. Thoughts on ‚race‘, transgender and marginalisation] In *(K)ein Geschlecht oder viele? Transgender in politischer Perspektive*, ed. Polymorph -

Arbeitsgruppe zur Kritik der Zweigeschlechtlichen Ordnung, 31-42. Berlin: Querverlag.

Keywords: intersexuality, law, violence against bodily integrity

Due to the legal provision of birth announcement until one week after birth latest, the state also forces a legally binding definition of a baby's sex: By establishing the obligation of the maternity clinic or similar institutions to announce a child's name, place, date of birth and sex, the decision over a baby's sex is mainly influenced by a third 'professional' party. The law does ignore the term hermaphrodite as a personal status. While parents are entitled to be medically informed about all treatments regarding their child, the decision in itself is highly problematic. Any decision involving medical interventions violate – strictly speaking – a person's right to bodily integrity. Although the legal acknowledgement of the status 'hermaphrodite' might not resolve all the social and legal conflicts, the dilemma of parents to act on the sex of the child immediately after birth, might be mitigated.

19 Schweikert, Birgit and Susanne Baer. 2002. *Das neue Gewaltschutzrecht*. [The new violence protection law]. Baden-Baden: Nomos.

Keywords: policy history, rationale, Violence Protection Act 2002

This publication, intended as a handbook for practioners working in fields related to domestic violence, demonstrates options for action opened by the new law. Starting with a demonstration of deficits in former civil and police law the authors show how the actual provisions, elaborated in close cooperation with NGOs, answer the identified regulatory gaps.

Key features of the law comprise go-orders, contact bans, fast-tracking, preventive detention and the allocation of housing space to the victim.

20 Degen, Barbara. 2001. *Sexuelle Gewalt am Arbeitsplatz – Der Einfluss der Frauen, die Macht der Männer*. [Sexual harassment at the workplace – the influence of women, the power of men]. *Streit* 4: 149-158.

Keywords: policy analysis, sexual harassment, Employee Protection Act, law history, implementation problems

After depicting the importance of women's collective voicing of the problem of sexual violence at the workplace to get the topic onto the political agenda, the major points of concern about the Employee Protection Act from 1994 are being raised. Apart from not solving the question of the burden of proof, the act ignores the power imbalances and structural inequalities between the genders. The procedural set-up does not meet the requirements inherent to the problematic of gender-based violence at work. It assumes the benevolent, law-abiding employer that protects his or her employees. A tendency/principle to protect the perpetrator can be observed. Women who file a suit often experience a second phase of violence as their credibility is called into question.

The Act provides for the introduction of additional protection guidelines against sexual harassment in private companies - without making this suggestion legally binding. Consequently, the rights of women are the most likely to be realised where institutions have equipped gender equality or women's officers with a say and powers within the company.

One can state that the lack of sanctions impedes the effective implementation of the law and the realisation of women's right to protection from sexual harassment. Labour court decisions give reasons to believe that even favourable legal provisions do not necessarily translate into fair and gender-sensitive trials in a patriarchal set-up.

Annotation: This law has been replaced by the General Equality Act of 2006 (AGG).

21 Flügge, Sibylla. 2001. Trennung von Paar- und Elternebene oder wer schlägt, der geht? Familienrechtliche Bruchstücke im geplanten Gewaltschutzgesetz. [The distinction of partnership and parent issues' or ,the one who beats, leaves? – snatches from family law in the planned violence protection act] *Streit* 3: 114-116.

Keywords: Children Reform Act 1998, custody/visiting rights, Violence Protection Act 2002

This article considers several provisions from the fields of custody and visiting rights as well as violence protection and their consequences for women. The fact that the Children Reform Act from 1998 talks of joint custody without paying attention to violence against mothers, is highly problematic. Whereas it seems obvious that joint custody in such situations exacerbates the risk of the victim - almost always the woman – to being further exposed to violence, the Child Reform Act either ignores the topic or considers violence against a parent as problem on the parent-level.

The extension of visiting rights for fathers as well as the rights of children to maintain contact with their fathers are being almost exclusively granted at the expense of women's rights. What is striking is the sanctioning of violations of visiting rights (mostly from part of the woman as the main carer) and the non-existence of visiting duties (i.e. of the father) and hence, sanctions. With regard to the draft of the Violence Protection Act the author fears that visiting and contact rights will overrule women's right to be protected from violence.

22 Niesner, Elvira. 2001. Frauenhandel zwischen Tabuisierung, Dramatisierung und Instrumentalisierung – Herausforderungen für die feministische Forschung und Praxis durch ein internationales und tagespolitisch aktuelles Problem. [Trafficking in women between taboo, dramatisation and instrumentalisation – challenges for feminist research and practise due to an international and actual problem] In *Zwischen Emanzipationsvision und Gesellschaftskritik. (Re)Konstruktionen der Geschlechterordnung in Frauenforschung – Frauenbewegung – Frauenpolitik*, ed. Ursula Hornig, 239-266. Münster: Westfälisches Dampfboot.

Keywords: political science, penal law, victim protection, trafficking in women, NGOs and governmental actors, research, EU, Germany

After the fall of the Berlin Wall, trafficking in women has increasingly become an issue of debate in the European and German public. In her analysis, the author highlights the role of NGOs and the German governments as well as influential European discourses on security, border and migration controls and their effects on national migration and anti-trafficking policies.

With regard to German criminal law provisions, the author welcomes the extension of the definition of human trafficking to include not only trafficking into prostitution, but also into abusive labour arrangements and marriage. But she warns against the de-genderisation of the term which runs the risk to veil that the major share of victims is women. Despite legal provisions for protection, victims are treated like perpetrators due to their 'violations' of immigration laws. In this respect, immigration and penal law are ranking higher than victim protection, which has not yet become a human right in practise.

With regard to feminist research on this topic, the author sees a need for investigation on the demand side of the market and punter's consummation pattern, behaviour and motives.

23 Wienken, Cornelia. 2001. Die alltäglichen Facetten der Gewalt gegen Frauen im Alter. [The everyday phenomena of violence against elderly women] *Zeitschrift für Frauenforschung und Geschlechterstudien* 19 (3): 72-87.

Keywords: violence against old-aged women, traditional gender images, concept of violence

The article states that reliable data on the prevalence of violence against old-aged women are missing. Violent relationships between person who need care and persons who give care are caused by psychic stress in the relationship. Women who violate elderly women whom they are caring are trapped in the situation and feel that they have no way out of the care situation. Physical violence against elderly women is nested in structures of violence (structural violence): lack of intimacy (in hospitals), lack of time.

24 Ohms, Constanze. 2000. *Gewalt gegen Lesben*. [Violence against lesbians] Berlin: Querverlag.

Keywords: political science, penal law, social movements, violence against Lesbians/Gays

In the introductory chapter 'The politics of violence' the author sets the frame for the following qualitative study. Her main points of argumentation include: Whereas homosexuality has become socially more widely accepted and despite institutional offers such as gay- and lesbian units in governance on federal, state and communal level, equality is far from being established. An additional gender dimension can be observed in the different organisational set-up of lesbian in contrast to gay movements. There is an invisibility of lesbian topics in the public discourse and on the political agenda.

A second point of concern is the provisions of penal law regarding violence against homosexuals and the lack of segregated data on violence on grounds of sexual orientation. Due to a system of crime-based investigation and prosecution

which neglects the motive of a crime, there is no secured data on issues of violence against homosexuals. Whereas in other countries these are referred to as 'hate crimes', which points to the high level of violence associated to them, this definition has not become widely used in the German discourse. In a legal context, criminal offences due to the victim's sexual orientation are commonly dealt with as 'crimes against sexual self-determination'.

What can be observed are differences in violence prevention in the lesbian and gay scene, with the latter disposing of more national networks and cooperations with the police and other governmental players.

25 Arpat, Müjgan. 1998. Gewalt in Immigrantenfamilien am Beispiel von Familien aus der Türkei und die kulturellrelativistische Blindheit der deutschen Politik. [Violence in migrant Turkish families and the cultural relativist blindness of German politics] In *Frauen fordern ihr Recht. Menschenrechte aus feministischer Sicht*, ed. Birgit Erbe, 58-63. Berlin, Hamburg.

Keywords: forced marriage, carrying-off of girls, civil law, penal law, Germany, Turkey, international conventions to combat forced marriage and protect children/girls

In this 'early' article, the author already depicts the characteristic features of honour crimes and the lack of legal provisions e.g. in penal law in Germany and Turkey. By listing several paragraphs of international human rights conventions which both Germany and Turkey have ratified, the states' duty to adjust national legislation is made visible.

4.1.1 Comparative studies

26 Jurtela, Silvia. 2006. *Häusliche Gewalt und Stalking – die Reaktionsmöglichkeiten des österreichischen und deutschen Rechtssystems*. [Domestic violence and stalking – opportunities for actions provided by the German and Austrian legal systems] Dissertation thesis, University of Graz.

Keywords: policy history, policy analysis, anti-stalking Law, Germany, Austria (February 2006)

One chapter of this dissertation discusses the civil and penal law provisions against stalking in Germany (as compared to Austria) prior to the actual integration of § 238 'Nachstellung' into the Penal Code and § 112 a (Preventive Detention) into the Code of Criminal Procedure in Germany on November 30, 2006.

With regard to civil law, victims have two options: firstly, to sue for damages or demand an 'Unterlassungsanspruch' and secondly, to recourse to the Violence Protection Act. The author concludes that provisions of both options have not proved well applicable in the case of stalking. Explicit regulations on stalking provided by penal law were missing prior to 2006. Problematically, offences as related to stalking were not treated as a public offences (Offizialdelikt), but falling

under the category of 'criminal offences requiring a complaint to be made by the victim of prosecution to be initiated' (Antragsdelikt) or even private suit (Privatklagedelikt).

The policy history traces the drafts of an element of offence in 2005 made by different political actors. An evaluation of the actual provision is missing, as the decision on the draft had to be postponed due to the early elections in 2005.

27 Sadoghi, Alice. 2006. Die Frau als ‚Handelsgut‘: (straf)rechtliche Betrachtung des Menschenhandels in Österreich und Deutschland. [The woman as ‚merchandise‘: a (penal) law analysis on the issue of human trafficking in Austria and Germany] In *Verhandlungen im Zwielficht: Momente der Prostitution in Geschichte und Gegenwart*, ed. Sabine Grenz and Martin Lücke, 113-132. Transcript Verlag.

Keywords: trafficking in women, penal law, immigration law, Austria, Germany

The author discusses briefly the 37. Amendment of the Penal Law in February 2005 that redefined human trafficking. Human trafficking into sexual exploitation is regulated under § 232 and provides for a more detailed account of punishability than trafficking into exploitative labour relations (§ 233). Apart from the well-known modalities such as exercise of violence, force or threat, abduction, wilful deceit or fraud, the author points to the modality of exploitation of a position of power/predicaments.

Additionally, the author depicts provisions in penal procedural law such as modes of witness examination and victim's protection programs as well as the possibility to act as an accessory prosecutor. A critical evaluation of the current legal situation points to the need to reform immigration law, residence and working permits in order to avoid migrant women's recourse to criminals.

28 Wakolbinger, Doris. 2005. *Weibliche Genitalverstümmelung*. [Female genital mutilation] Linzer Schriften zur Frauenforschung 32. Linz: Trauner-Verlag.

Keywords: female genital mutilation, legal situation, human rights, penal law, asylum law, Austria, Germany

The study outlines the legal situation in Austria regarding female genital mutilation in penal law and asylum law and refers to first study performed on female genital mutilation performed among female migrants in Austria in 2000. It concludes that female genital mutilation is performed in Austria even though it is prohibited by the penal code, and that asylum law as implemented does not recognise female genital mutilation as a ground for prosecution in itself, but only if a woman is classified as belonging to a persecuted social group. The study contrasts the Austrian regulations with the new asylum law regulations in Germany, which explicitly refer to gendered prosecution and allow women threatened by female genital mutilation better chances in the asylum process.

29 Terre des Femmes/Böhmecke, Myria. 2005. *Studie: Ehrenmorde*. [Study: honour killings] Tübingen: Terre des Femmes.

Keywords: sociological study, empirical data, legal framework, honour killings, Germany, Sweden, UK, Turkey, Pakistan

The study covers empirical data on prevalence and forms of honour killings in Germany, Sweden, UK, Turkey, Pakistan. With regard to legal aspects in Germany, the key issue of the debate is whether honour killings should be introduced as an own element of offence in criminal law. Furthermore, a law to combat honour killings is due to be discussed in parliament. Other issues in need for legal debate are the right of residence in case of a stay outside of Germany for longer than 6 months and the new Immigration Act from 2005. In the latter case, gender-specific prosecution and violence also from part of non-state actors is recognised as a ground for asylum. However, the burden of proof rests on the victim. Victim Protection Law also needs to be followed more thoroughly, as any violation of a blocking notice exposes the victims to severe risks.

30 Kalthegener, Regina. 2003. Strafrechtliche Regelungen in europäischen Staaten. [Penal law regulations in European states (FGM)] In *Schnitt in die Seele: weibliche Genitalverstümmelung - eine fundamentale Menschenrechtsverletzung*, ed. Terre des Femmes, 187-194, Mabuse.

Keywords: female genital mutilation, penal law

Despite initiatives prior and during the reform of 1997, penal law has not been extended to include FGM as an own element of offence; however, FGM is a violation of physical integrity and thus punishable under penal law §§ 223 ff. Also, the procedure is unlawful and doctors performing FGM can be banned from profession between one and five years.

4.2 English-language Sources

31 Berghahn, Sabine and Petra Rostock. 2006. The German case. In *Gender equality, cultural diversity: European comparisons*. Conference documentation. Faculty of Social Sciences, University of Amsterdam.

Keywords: media analysis, criminal law analysis, forced marriage, honour crimes, domestic violence; [policy analysis headscarf debate – see Non-Employment]

In the first part of the article the authors give a detailed account of the emergence of the topics of forced marriage (Kelek's book 'The Alien Bride' on forced marriages) and honour killings in the German public/ media which in turn contributed to their emergence on political agendas and their reflection in law reforms. In the media analysis they also deal with the reactions of the Turkish community in Germany and the initiatives by corresponding NGOs such as Terre des Femmes.

In the chapter on family violence the authors address that provisions regulated by the Immigration Law (such as right of residence) often hinder migrant women to exercise rights expressed in the Act for the Protection from Violence.

32 Dethloff, Nina. 2003. Improving the position of women in German family law: The violence protection act of 2002 and landmark decisions in maintenance law. In *The International survey of family law*, ed. Bainham, 187-193. Bristol: Jordan Publishing.

Keywords: law, Violence Protection Act, Children Rights Improvement Act,

This article comments on the provisions of the Violence Protection Act such as protective and go-orders (also for cases of stalking) and the corresponding penalties. The protection of children's rights has been improved by provisions regulating admonishments, warnings, orders and revocation of custody as well as go-orders for the delinquent parent from the home.

[Also in this article: Recent case law on maintenance takes into consideration unequal bargaining positions in relationships and consequently, courts are given judicial control of matrimonial agreements in order to prevent individual disadvantages stemming from structural gender inequalities. Secondly, levels of maintenance which are deducted from a couple's living standard during the relationship, now take into account domestic work mostly performed by women.]

4.2.1 Comparative studies

33 Zippel, Kathrin. 2006. The political path of adoption: feminist and the German State. In *The politics of sexual harassment. A comparative study of the United States, European Union and Germany*. Chapter 4, 123-157. Cambridge UP.

Keywords: policy history, German Federal Employee Protection Act 1994, sexual harassment

The chapter explores how the political window to regulate sexual harassment eventually opened up in the early nineties and what actors pushed for the emergence of the issue onto the political agenda. The author shows that the 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 did engage vividly in the issue, because of the intensity of the abortion debate. Also, advocates of sexual harassment legislation did not choose to pressure through fighting in court but to go through parliament; consequently, changes took a long time to happen. In the following decade however, impulses that advanced the cause came 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 drew from transnational expertise and soft-law measures by the EU.

Despite its symbolic importance, the law from 1994 was a major disappointment for 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 was 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

criticised that the law does not provide for adequate law enforcement mechanisms such as sanctions for employers violating the law.

34 Timmermans, Greetje and Cristien Bajema. 1999. Sexual harassment in Northwest Europe. A cross-cultural comparison. *The European Journal of Women's Studies* 6: 419-439. E

Keywords: sexual harassment in workplace, cross-cultural comparison, review study, heterosexual power perspective, variations in definition and methodology, Austria, Belgium, Denmark, Finland, Germany, Ireland, Luxembourg, The Netherlands, Norway, Sweden, The United Kingdom

A substantial body of research addressing the issue of sexual harassment in the workplace has been developed over the past decade. In this article we consider the complexity of cross-cultural comparisons of the incidence rates of sexual harassment and present the results of our research on sexual harassment in the work place in 11 northern and western European countries. In 1997 we reviewed 74 surveys and qualitative studies conducted between 1987 and 1997. Sexual harassment appears to be a workplace problem in all countries, although the incidence varies considerably. We argue that differences in incidence rates are not for the most part a reflection of national cultural differences, but are partly due to the definitions and methodology used in the studies. This implies that higher reported incidence figures in one country do not necessarily mean a higher prevalence of sexual harassment compared to other countries. Furthermore, sexual harassment research in the countries reviewed appears to be dominated by a one-sided, uniform and heterosexual power perspective. The implications of the exclusion of cultural background and sexual orientation in theory and policy are discussed.

5 OPERA - Gender training books and manuals

German

1 Blickhäuser, Angelika and Henning von Bargen. 2005. *Gender Mainstreaming-Praxis. Arbeitshilfen zur Anwendung der Analysekategorie "Gender" in Gender Mainstreaming-Prozessen*. [Gender mainstreaming-practise. Tools for gender analyses in gender mainstreaming processes] Berlin: Heinrich-Böll-Stiftung.

2 Blickhäuser, Angelika and Hennig von Bargen. 2004. *Qualitätsstandards für Gender Trainings – Gender-Kompetenz*. [Quality standards for gender trainings – gender competence] Berlin: Heinrich Böll Stiftung.

3 Netzwerk Gender Training, ed. 2004. *Geschlechterverhältnisse bewegen – Erfahrungen mit Gender Trainings* [Moving gender relations – experiences with gender trainings] Königstein.

4 Blickhäuser, Angelika and Hennig von Bargen. 2003. *Wege zu Gender-Kompetenz: Gender-Mainstreaming mit Gender-Training umsetzen* [Paths to gender competence – implementing gender mainstreaming through gender trainings] Heinrich Böll Stiftung.

5 BMFSFJ. 2003. *GM-Checkliste zum Prüfverfahren von ESF-Projekten des BMFSFJ*. [Checklist gender mainstreaming for projects of the BMFSFJ / European Structural Funds]

6 Burbach, Christiane and Heike Schlottau, eds. 2001. *Abenteuer Fairness – Ein Arbeitsbuch zum Gendertraining* [Adventure fairness – a handbook for gender trainings] Göttingen.

7 Baur, Esther and Madeleine Marti. 2000. *Kurs auf Gender Kompetenz* [Envisaging gender competence] Basel.

Handbooks

8 Schweikert, Birgit and Susanne Baer. 2002. *Das neue Gewaltschutzrecht*. [The new violence protection act] Baden-Baden: Nomos.

Keywords: Policy History, Rationale, Violence Protection Act 2002

This publication, intended as a handbook for practioners working in fields related to domestic violence, demonstrates options for action opened by the new law. Starting with a demonstration of deficits in former civil and police law the authors show how the actual provisions, elaborated in close cooperation with NGOs, answer the identified regulatory gaps.

Key features of the law comprise go-orders, contact bans, fast-tracking, preventive detention and the allocation of housing space to the victim.

6 FRAGEN

i.d.a - Dachverband deutschsprachiger Frauen-/ Lesbenarchive, -bibliotheken und -dokumentationsstellen

(Umbrella Organisation of German-Language Lesbian/Women's Libraries, Archives and Documentation Centers)

Gottschalkstr. 57

34127 Kassel

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<http://www.ida-dachverband.de/>

The Umbrella Organisation of German-Language Lesbian/Women's Libraries, Archives and Documentation Centers has joined German, Austrian and Swiss organisations since 1994.

Selected German Archives (by cities in alphabetical order)

FFBIZ e.V.

Frauenforschungs-, -bildungs- und -informationszentrum
(Information Center for Women's Studies and Education)

Eldenaerstrasse 35 III

10247 Berlin

Tel +49 (0) 30-3210 4035

Fax +49 (0)30-322 10 35

ffbiz@t-online.de

<http://www.ffbiz.de>

Spinnboden Lesbenarchiv und Bibliothek e.V.

(Spinnboden 'Lesbian' Archive and Library)

Anklamer Straße 38

10115 Berlin

Tel +49 (0) 30 448 58 48

Fax +49 (0) 30 224 955 82,

spinnboden@spinnboden.de

<http://www.spinnboden.de>

Zentrum für transdisziplinäre Geschlechterstudien

an der Humboldt-Universität zu Berlin

(Centre for Transdisciplinary Gender Studies at the Humboldt University Berlin)

GenderBibliothek (Gender Library)

Sophienstr. 22 a

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LARa – Lesbenarchiv und Bibliothek
(LARa – 'Lesbian' Archive and Library)
Mellerstr. 2
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ausZeiten, Bildung, Information, Forschung und Kommunikation für Frauen e.V.
(ausZeiten – Education, Information, Research and Communication for Women)
Herner Str. 266
44809 Bochum
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auszeiten@w4w.de,
<http://www.auszeiten-frauenarchiv.de>

Frauenarchiv Leihse – Leihbücherei und Archiv für Frauen
(Women's Archive Leihse)
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Frauenarchiv Dortmund

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LLL e.V., Lesbenarchiv
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Lesbenarchiv.frankfurt@t-online.de
<http://lesbenarchiv-ffm.de.vu/>

Denk(t)räume, Hamburger Frauenbibliothek

Archiv - Bibliothek - Infothek – Programm
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Archive – Library – Information – Programme)
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Archiv der deutschen Frauenbewegung

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FrauenMediaTurm – Das Archiv und Dokumentationszentrum

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