

Abstract

This paper traces Germany's history of gender equality through the lens of discrimination, equal opportunity, and within the framework of national policies and legislation. Also, based on measures imposed by the European Union, the paper illustrates Germany's attempt at compliance. The author has included guided steps on how these institutions have implemented gender mainstreaming as a means to eliminate inequality.

Introduction

About twenty years ago I published a study on homicide between men and women and the legal categories used. I found that battered women were more often convicted for murder than violent men. The reason was: equal application of the law. Women, who suffered violence for many years, premeditated the killing of their partner; violent men, who did not have to fear anything, simply battered their wives until they were found dead.

You might know the saying by Anatole France: *"The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread."*

The question is, do we focus on the law, or do we focus on life? Do we take as a starting point from what men have, or what women need? By taking women as a starting point you might come to different perspectives as shown by the late Tove Stang Dahl in 1974, who identified five areas of "feminist jurisprudence": money law, housewives' law, paid-work law, criminal law and birth law.¹ On the other hand, formal equality is a good (mainstream) tool to address inequalities and injustices produced by the law. As Catharine MacKinnon has pointed out,² it would not be law, if it wouldn't attempt to treat likes alike; it's just not enough if there are underlying asymmetries. Defining sameness in the light of existential differences is mission impossible if somebody always points at the other truth.

In this paper I will first introduce the concept of equal rights in the German Constitution and its interpretation by the Constitutional Court. I will then turn to the European regulations, mainly concerning the labour market, and the respective jurisdiction of the European Court of Justice. This includes a brief description

of the gender mainstreaming policy in the European Union and in Germany. I will conclude by outlining some statutory laws that specifically address problems faced mainly or solely by women. This includes legal actions taken to stop violence. After all: gender-based violence is the most oppressing form of discrimination, and discriminated groups are the most vulnerable to violence.

History of gender equality in Germany:

Equality and non-discrimination, constitutional rights and jurisdiction

In 1918 Germany introduced equal citizenship, the right to vote and be elected, at the same time as the UK. This came twenty-five years after New Zealand granted women's suffrage, but only one year before New Zealand allowed women to stand for elections.³

After the fall of Nazi-Germany, a provision was introduced into the German Constitution stating: "Men and women shall have equal rights" (Art. 3 II), and in addition: "No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions" (Art.3 III). Equality before the law prohibits arbitrary differentiations [*Willkürverbot*] whereas the non-discrimination clause prohibits any differentiation on the indicated grounds such as sex, race, nationality etc. [*Differenzierungsverbot*]. This means no legal provision can endure that which is solely based on an unequal treatment of men and women. You can already sense that problems will occur if you want to prefer women to men, in order to reverse inequalities and past injustices. Giving priority treatment to one sex necessarily discriminates against the other. To address this problem, an amendment was introduced after the reunification saying: "The

state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist." [Art. 3 II, 2]

There are cases such as that of Beatrice Fernandez,⁴ which brings up the fact that since only women can get pregnant therefore only women will lose their jobs. Similarly, take the case that university regulations allow anybody to apply, but limit master courses to evening hours. This might discourage mainly female students to apply; without explicitly saying so. This problem, where the discrimination is not explicit but rather empirical, is covered by the concept of indirect discrimination, which will be discussed later. Another issue in this context that is linked to the Beatrice case asks the question whether constitutional and fundamental rights are only binding for state institutions. For Germany this view is made explicit; the constitution says, "The fundamental rights bound legislation, executive power and jurisdiction as immediate law" [Art.1 III] - thus not private parties. The same is true for CEDAW, where "state parties (...) agree to pursue (...) a policy of eliminating discrimination against women" [Art.2].

The Constitutional court jurisdiction of Germany is an interesting case in so far as any person alleging that one of his basic rights (...) has been infringed upon by public authority he/she can file a constitutional complaint [Art.93, 4a GG]. Therefore the constitutional court had ample opportunity to discuss the impact and scope of gender equality and non-discrimination. Here we can focus on two areas: family law and legal protections in the work place.

Family Law

In 1953 family law had to be abolished because the legislation violated the principle of equality between men and women. A new family law was introduced, but in one of the famous decisions, the constitutional court rejected regulations that granted the father the right of the final decision in cases of disagreement between the parents. Such a regulation violated equal rights between men and women. After that, the family courts had to decide these cases, although not many appeared.

Problems of formal equality, that is, non-discriminatory laws, were dominant for many years such as having the choice between the husband's and the wife's name as family name. (Imagine you could be the daughters ('binte') of your mothers!) But the court also held that the lawgivers could not prescribe a model, that was men being the breadwinner and women being the housewives, but had to legislate marriage as a partnership of equals. The reason given was that doing housework is not 'biologically' affiliated to women only. The basis for these decisions was a concept of non-interference (by state-law) rather than the promotion of equal rights between spouses. Therefore, the court also insisted that the state has to give equal value to the work of men and women in the family, a concept which then heavily influenced on tax schemes and social entitlements for child care. Basically, all social and tax laws have to treat housework as on par with employment.

Statutes to address unequal living conditions

Within German legislation are some areas that are closely linked to gender equality, they include: protection against violence against women; financial assistance and social services, especially for single mothers; and state intervention in cases of gender-based

violence. Gender-based violence remains one of the major obstacles to achieving gender equality. As long as men dominate over women by physical means, even the most fundamental respect for the other person is denied. Legislation has to address this problem on several different levels:

- Criminal and police laws and their enforcement have to draw the demarcation lines between tolerated and non-tolerated social behaviour. Violence against women is non-tolerable behaviour.
- Only police law can end a violent situation. Criminal law is made to react after a criminal offence has been committed and proven beyond doubt.
- Civil and family laws can empower women to act. In addition, it needs social changes to enforce the "right to exit" a violent relationship. Civil law treats the objects of male violence as legal subjects by law.
- Social laws can provide for victim's individual entitlements to adequate help and necessary support.

Family and Childcare

Germany is a comparatively rich country. It provides a number of social services and financial assistance to families and children, and subsequently to women who are often the sole caretakers. The following services are currently accessible:⁵

- Maternity allowance, paid by the employer for the duration of maternity leave.
- Entitlement to attend kindergarten, nursery school and day care.
- Child raising allowance or parental leave, which allow parents to leave work – and get paid – whilst retaining full protection against dismissal.

- Family allowance, supplementary child allowance, and tax reductions.
- Maintenance payment by spouse/parent, and advance child maintenance payment or social assistance payments in case the other parent/spouse fails to make monthly maintenance payments.
- Assistance for education and vocational training allowance, which grant special treatment for students with children.
- Child rearing periods in the statutory pension insurance and state subsidies for private old-age pension, free family co-insurance in the statutory health insurance, and reduced contribution to the long-term care insurance.

This system has been in place since Bismarck introduced a social insurance system to prevent social uproar. Today, economists tell us that you need as many instruments as you pursue targets. Obviously, Germany has a number of targets; one of them might be to encourage women to have children. But the line between encouragement to have children and encouragement to stay home is thin.

Legal protections in the work place

Some of the more recent decisions have to deal with the ambiguous effects of legal protections. In German laws some explicit provisions existed to protect women at the work place. One was the prohibition on women to work at night, which not only protected them from sickening work conditions but also from higher paid jobs. The court held the prohibition unconstitutional, since a gender biased differentiation was not considered imperative. Just lately it had to consider another tricky argument complaining, that (mandatory) maternal leave does not only function as legal protection for pregnant women, but as employment

obstacles for all women in the first place. The constitutional court ruled that it is the discretionary power of the lawgiver how to pursue equality between men and women. If it does fulfill maternal rights by imposing obligations on employers they must - at the same time - make sure these regulations do not have a discriminatory effect on women. It is possible that this seems to you like a luxurious discussion on our part, but let me stress the fact that protective laws also have the reverse effect of patronizing and victimizing women.

The interpretation of the constitutional court ultimately led away from a merely formal understanding of equality towards a more substantial understanding. In modern management speak we would say, the court is now applying an outcome oriented approach as opposed to the input oriented approach of formal equality. Thus, in one of its decisions the court states that equality has to be "imperative" towards the social reality and allows to "compensating for factual disadvantages, which typically affect women". Even if the law compensates for past disadvantages, and even if not every woman faces these typified obstacles. This is why the constitutional court did not object to regulations that stipulated different pension ages for men and women, which are meant to compensate for what are called "double burdens" (job and family), but called on the lawgiver to adjust them over time. Only afterwards this was included in the constitutional wording by adding that the state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist. This imposed a proactive role on the state to actually promote gender equality, eliminate disadvantages, and to focus on the actual implementation and on disadvantages that now exist.

Moving towards gender equity legislation

This development ultimately encouraged legislation that not only aimed at eliminating discriminatory laws but implemented new legislation to actively promote gender equality. This coincides with a theoretical discussion of fundamental rights as “social rights”, not just civil rights, or – as in the German discussion – the right to participate.⁶ Even a right for special protection and promotion was derived from the very telling example of this new approach on an international level, the *Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities*, made explicit that “In order to secure the right to equality for persons with disabilities, States Parties will undertake all appropriate steps, including by legislation, to provide reasonable accommodation, defined as necessary and appropriate modification and adjustments to guarantee to persons with disabilities the enjoyment or exercise on an equal footing of all human rights and fundamental freedoms, unless such measures would impose a disproportionate burden.” [Art. 7 (4)]

The obligation was to ensure equality between men and women, as long as the protection does not have reverse effects on women. What is important to note here is, that after formal equality was achieved and the law moved into affirmative action, more and more men filed claims alleging that their equal rights were violated. So from being an instrument to promote women’s rights, gender-equality and non-discrimination turned into an instrument to object any special treatment for women. This was especially true, when the legislator started to introduce quotas to overcome existing disadvantages.

Affirmative Action and quotas

Beginning in the 1980’s the German (State) governments began to introduce Civil Service Laws to promote women in the public service and to reduce the under-representation of women, especially in managerial positions. I will focus on the question of quotas before I outline the general scope of these laws by using the respective federal law as an example.

The regulations to address under-representations of women in the public service followed two different logics. One emphasised the priority promotion for women on a case-by-case basis, but with regards to qualification. A typical example is found in Paragraph 25(5) of the law in the Land⁷ (region) of Nordrhein-Westfalen, the westernmost and largest region in Germany, “Where (..) there are fewer women than men in the particular higher grade post in the career bracket, women are to be given priority for promotion in the event of equal suitability, competence and professional performance, unless reasons specific to an individual [male] candidate tilt the balance in his favour.” The second one, promoted by Hessen, a region in central Germany, focused on agreed upon targets that were included in a women’s advancement plan. These targets were binding for the respective public bodies such as ministry, commune, court, university, etc. Each administrative body had full responsibility of how to achieve the targets according to their own two-year plan; if they did not comply they were excluded from appointing any further men [Par 10 (5)]. Like in many other laws, performance was not limited to job performance [Par 10(1)]. “When qualifications are assessed, capabilities and experience which have been acquired by looking after children or persons requiring care in the domestic sector (family work) are to be taken into account, in so far as they are

of importance for the suitability, performance and capability of applicants. That also applies where family work has been performed alongside employment” [Par 10: Selection decisions].

A strict quota only applied to collective bodies such as public commissions, advisory boards, boards of directors, and supervisory boards. In these bodies “at least half the members should be women” [Par. 14]. These provisions were assessed by the German courts and the European Court of Justice⁸ in Luxemburg, any priority treatment of women ultimately “discriminated” against competing male candidates. The court approved provisions that ensured an objective assessment of all candidates. The judgments took into account criteria specific to the candidates and those which allowed overriding the preference of female candidates when one or more of those criteria was tilted in favour of the male candidates. The Court did not approve automatic preference of female candidates, yet it did approve of measures based on the agreed upon targets in the women’s advancement plan.

Equal opportunities between men and women

All state laws contain further provisions to promote gender equality. I will give a short overview on the Federal Act on Equal Opportunities between Women and Men⁹ in order to show what problems are addressed in these laws. The area of application covers the Federal administration, the courts of the Federation and the private law facilities of the Federal administration. In addition, the institutional recipients of Federal benefits are contractually obliged to apply the basic tenets of the Act. Even in the event of privatisation, a contractual obligation has to be striven for to ensure that the equality regulations continue to apply. The Act follows the logic of

the individual case quota (see above) in the fields of training, appointments, recruitment and promotion. One important target is to reconcile family and work, including a right/entitlement to part-time employment or leave for reasons of child-care.¹⁰

The Act also included a planning exercise (called “equality plans”) to form effective tools for modern human resource management and development. Equality commissioners are elected from amongst the staff. Their mandate is regulated in the Act; amongst other things they have the right to object management decisions and even take legal action in order to assess the compliance of a decision with the Act. The policy tool of gender mainstreaming is being anchored in the Federal service as an ongoing guiding principle. Lastly, all communications have to be written in gender-neutral/inclusive language, which can pose quite some problems in German.

Since I was responsible for drafting and implementing one of the state laws, I wanted to share one experience with you. In my state, the percentage of women in higher positions went up, not because they were promoted to these positions but simply by not refilling the positions of the older men who retired. However, this percentage looked good in the report to the Parliament. Advocating, planning, monitoring, and reporting meant a lot of work with little effect: between today and the 1990’s – when affirmative actions were introduced in the civil service – the proportion of women increased from 43% to 52%. The increase before 1990 was higher.¹¹ These numbers are also misleading insofar as they do not aggregate occupational status and positions. If you do so you will find that most women were working as clerks. In Germany there are a number of structures to

address equality issues: there are women's or equality ministries on Federal and State levels which are mirrored by respective commissions in all parliaments; in addition, many parliaments have commissions and commissioners on the rights of persons with disabilities or migrants, and the Federal level has a human rights commission; all public administrations have to appoint or elect women's/equality commissioners and representatives for staff with disabilities; in addition, some communities and some states appoint commissioners (or dedicate staff) for persons with disabilities, gays and lesbians and seniors; and based on the General Equality Act, a new anti-discrimination office will be created. In the private sector, worker's councils are involved in the promotion of equal rights in the work place.

Between 1960 and 1990 the share of women in the civil service increased by more than 12%, whereas from 1990 to 2004 the increase amounted to 8% only and half of these women are in part-time positions. Less than 25% of the managerial positions in Germany are held by women; even less in the private than in the public sector. There is a well known income gap between men and women in Germany which amounts to an average of 25%, despite this high disparity you never know how things would stand without these laws.

Equal opportunity and legislation within the European Union

Equal employment opportunities have been core areas of European policies since the 1970's. The EU-Commission reports on a regular basis on improvements in this area. Since the European Constitution is in a coma, at best, if not dead, I will refer to the treaties, which are actually in force. The Treaty of Amsterdam¹² covers equal rights in several

Articles [Art. 2, 3, 13 and 14]. Based on the treaty, several directives were passed to elaborate on the obligations of the member states.¹³ The one that was contested in the European arena is Article 141 EU [former Art. 119 EC] stating that, each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. The cases which arouse under this regulation were with regards to two phenomena: work classifications, which – in effect, but not in words - aggregated female and male labour; and the treatment of part-time employees as opposed to full time employees. Both questions resulted in the development of the concept of 'indirect discrimination' by the European Court of Justice. According to the Court's case-law, national provisions or rules discriminate indirectly against women where, although worded in neutral terms, they work to the disadvantage of a much higher percentage of women than men, unless they are justified by objective factors unrelated to sex groups.¹⁴ Thus a data based comparison between men and women is required, which must cover enough individuals that does not illustrate purely fortuitous or short-term phenomena, and appears, in general, to be significant.¹⁵ This definition is now integrated in the European Anti-Discrimination directives. Germany implemented a number of labour legislations in order to fulfill its obligations arising from European directives. Direct and indirect discrimination on grounds of sex, also prior to the establishment of an employment contract, have been prohibited by law (Par. 611 a/b Civil Code). A statutory prohibition on sexual harassment is also in place, and the employer is obliged to protect female as well as male employees. If the employer does not take suitable measures, the employee may refuse to work without losing his/her claim to wages (Employees Protection Act).

The Works Council, a gender-balanced representation of employees in private companies, is included in the supervision of equal opportunities. It is given an express right to make proposals, demand to be informed and give advice to promote the implementation of de facto equality and the reconciliation of family and work. Despite the fact that unequal payment was prohibited in the EU since the mid seventies, and despite the fact that a lot of effort is invested to promote the economic and social situation of women, there are still huge gaps between men and women.¹⁶

Across Europe, fewer women participate in the labour market and they hold more part-time positions and lower paid jobs. The pay gap remains stable at about 15%, though it varies across the EU with Germany at the top end reaching 25%. This disparity ultimately results in lower pensions for women, and leads to a higher risk of poverty. Unemployment has slightly increased in 2004 but the gender gap in unemployment remains significant. However, women still outnumber men in education, though not as PhD graduates.

Reconciliation between work and family life remains a challenge for both women and men. Interestingly enough, women with small children continue to show lower unemployment rates than women without children, while men with small children show higher employment rates than men without children. The Commission considers this the result of limited access to childcare and gender stereotyped family patterns. I wonder whether it is not just due to old age, unemployment, and the statistical problem of "average". But women catch up rapidly, a new study suggests that it will only take 150 years until women might earn as much as men

do.¹⁷ Some studies suggest that women do have access to higher positions and better-paid jobs, but do not want them. Whoever works with these statistics is at risk to see the problem in women and not in the way we work, or in the way we balance our life with our work. Again, I would like to emphasise that taking men as a "statistical" standard, and trying to level women up to this standard, is dangerous. Statistical comparisons to prove indirect discrimination are helpful to prove discrimination against women, they are not helpful if they put pressure on women, and are directed against their way of living. This is, as long as it is insured, that the choices women make are actually choices and not coercions.

Directives on discrimination

European institutions are discussing whether to bring together five existing directives in a single text in order to clarify the principle of equal treatment. The directive shall include definitions for direct and indirect discrimination as well as (sexual) harassment regulations on the principles of: equal pay for equal work or work of equal value; equal treatment in occupational social security schemes; and equal treatment for men and women as regards access to employment, vocational training, promotion and working conditions. To do so, the directive will also regulate job classification systems and evaluations; define pay with regard to different forms of benefits; clarify the special protection of pregnant workers; and in addition, regulate procedures and sanctions, establish special monitoring bodies, and encourage social dialogue.

The definitions of discrimination are based on the jurisdiction of the European Court of Justice and subsequently the Anti-discrimination Directives of the European Union.¹⁸ The Directives cover direct and

indirect discriminations, defined as: the Definition of Discrimination held by the European Courts and Directives Direct Discrimination where one person is treated less favourably on grounds of sex than another has been or would be treated in a comparable situation, or that persons of one sex are placed at a particular disadvantage compared with persons of the other sex.

The directive also defines harassment as discrimination. Harassment is unwanted conduct related to the sex of a person with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment [Art. 2 II]. Sexual harassment is any such conduct “of a sexual nature”. The concept that sexual harassment constitutes discrimination was developed by the early feminists, in particular Catharine MacKinnon,¹⁹ in the 1970’s. No (direct or indirect) discrimination on the grounds of sex is allowed in both the public and the private sector in relation to the conditions for access to employment, training, working conditions and membership in professional organizations. Systems to protect workers, provisions for remedies, legal representation and complaint procedures have to be implemented.

Protections against discrimination

An interesting new area is now opening in the field of social security [insurances, welfare laws]. The EU passed another directive to ensure non-discrimination in access to various services and goods; including private insurances, which often discriminate along gender-lines because of the higher life expectancy of women [in Germany] or higher risk behaviour of men (causing more traffic accidents for example).

Based on these directives all European countries must transpose these regulations into national law.²⁰ The German General Equality [Equal Treatment] Act was promulgated on August 18, 2006 after several years of heated debate and political struggles, and after being on the verge of sanctions for non-compliance imposed by the European Court of Justice. The Act transposes several EU directives into one bill, and thus exceeds the minimum standards required. The new bill prohibits discrimination based on race or ethnic origin, gender, religion, disability, age, or sexual identity. Legal provisions against discrimination apply not only in the sphere of labour law, but also of civil law (e.g. access to goods and services).

The protection against discrimination in the workplace is one of the core areas of the law. It builds widely on the regulations that were applicable in the past to ensure equal rights between men and women. Cases of unequal treatment are not tantamount to illegal discrimination; this is with reference to the existing case law of the European Court of Justice. If employees are discriminated against they will have a right to complaint (to the Labour Court), and to demand compensation. There also will be a restructuring of legal relationships in certain areas of life. This will affect contracts with suppliers, service providers, and landlords. The Bill only applies to bulk businesses, i.e. landlords owning more than fifty rental units. The Bill also prohibits discrimination on the part of retail outlets (e.g. supermarkets). It will not – for whatever reasons - apply to private transactions, such as selling a used car. The following EU directives have been implemented: field of application of the principle of equal treatment; equal treatment in the workplace; equal treatment for men and women as regards access to employment,

vocational training and promotion, and working conditions; and equal treatment as regards access to and supply of goods and services.

Private insurance companies were under attack from all sides as they often refused to insure persons with disabilities or HIV/AIDS patients. Their risk assessment is based on gender-disaggregated data, which involve higher fees for women in health and life insurances. These companies will have to adjust their policy conditions, but not too much. Here too, discrimination will be compensated for with a payment for damages by the Civil Courts.

Victims of discrimination will be required to assert their claims within a period of two months and to present proof, that is, circumstantial evidence, to substantiate their claims. The Bill provides for the creation of an independent office of anti-discrimination affairs, where victims of discrimination will be able to obtain advice on their situation and avenues of legal recourse open to them. The office will offer mediation between the parties involved and be able to request position statements from them as well as from federal authorities.

Towards mainstreaming gender

Both the German and European institutions have moved in the direction of gender mainstreaming. The treaty to establish the European Community, as well as the German Constitution state that, "It shall in all activities (...) aim to eliminate inequalities and to promote equality, between men and women" [Article 3 (2) of the Amsterdam Treaty]. Based on this provision, the European Commission adopted a "dual approach", combining gender mainstreaming with specific actions to promote gender equality and women's rights.

It defines the obligation to mainstream gender as the process of assessing the implications for women and men of any planned action including legislation, policies or programmes, in all areas and at all levels.

Interestingly, gender mainstreaming also becomes a means of gender-responsive decision-making in the social laws. The unemployment insurance is obliged to overcome existing disadvantages due to a gender biased labour market [Par. 8 Abs. 1 SGB III]. Another law requests to take the special needs of disabled women into account [Par.1 SGB IX]. The Children and Youth Service must take into account the different life situations of girls and boys, remove disadvantages, and advance equal rights for girls and boys [Par. 9 (3) SGB VIII].

Conclusion

Summarized here are lessons learned from the German and European experience. The laws and regulations on gender equality, and the jurisdiction around them, need encouragement (if not coercion) by women's organizations. After all, law is a dialog between officials and their constituencies.

It remains a question of how much one wants to rely on states and state actors to advance the causes of women. Women and their daily life, not their political aspirations or human rights activism, should be the starting point for any assessment and suggestion. By its pure definition, law is an instrument of dominance, yet don't underestimate that there are many players and many interests in the game. Therefore, law also marks a compromise reached in a power-struggle.

When beginning, and throughout, your journey towards attaining gender equality, it is key to find allies; look for people who

want the same thing, even if not for different reasons. Look for strategic entry points: timing is often everything! Legal changes can move a society towards social change. Changes that come too fast and go too far might face a backlash; often you only realize this in hind sight. This battle over the law of a land is not just about legislation, it is also about interpretation. Since many laws present a compromise, they are necessarily open for interpretation (the best example here is human rights). Sometimes it is easier to fight for changes in the court than in the political arena: there are less people, but a common logic. That is: if you speak the language of the judges.

All of this brings me to the bottom line. Advocacy needs qualified lawyers to take up the case of women's rights and concerns. Enforcing a women's rights perspective is a good thing to do in societies where women are not treated as subjects with rights or a genuine will. But rights of women all too often end in the hands of fathers, states or international agencies – where they are exploited and easily forgotten. Taking formal equality between men and women as a reference point is a challenge to the ideology of the law as being blind towards the social status of the plaintiffs. But, formal equality is not enough to promote social change and to overcome a long history of inequalities and discrimination. Measures to legally protect and promote women, on the other hand, are ambiguous in nature. There is a paternalistic touch to it, and it gives way to victimizing women. Social change should take women as a starting point and reject to accept men as the standard. Legal change has to cater to the needs, concerns, wishes and desires of women; they are the experts of their lives. Listen to their voices. Last but not least: the perspective you take on social issues

might depend on your personality, but your approach also shapes your return. What I mean is: complaining influences your mindset, encouraging and enjoying does too. I personally am not yet ready to surrender. Success is possible, but sometimes it is also a matter of definition.

Endnotes

- 1 Stang Dahl, Tove (1986): "Taking women as a Starting Point: Building Women's Law." *International Journal of the Sociology of Law* 14 (1986): 239-247, and „Women's Law: An Introduction to Feminist Jurisprudence“, Oslo: Norwegian University Press 1987.
- 2 MacKinnon, Catherine: *Towards a Feminist Theory of the State*, Cambridge: Harvard University Press 1989.
- 3 <http://www.ipu.org/wmn-e/suffrage.htm>
- 4 Abdul Aziz Bari: *The Right to Equality under the constitution: The implication of the Federal Court decision in Beatrice Fernandez*, *The law Review* 2005, 373 - 381
- 5 http://kinder-jugendhilfe.org/e_kjhg/downloads/KJHG/KJHG_englisch.pdf
- 6 <http://www.un.org/esa/socdev/enable/rights/ahcwgreportax1.htm>
- 7 Here and below, the term "Land" is used to refer to a region within Germany. It is similar to what one may think of as a province, or a state in the United States.
- 8 For more information please refer to the European Court of Justice online at, <http://curia.europa.eu/>
- 9 Between 1960 and 1990 the share of women in the civil service increased by more than 12%, whereas from 1990 to 2004 the increase amounted to 8% only. <http://www.bmi.bund.de>
- 10 Act on Part-Time Working and Fixed-Term Employment Contracts and Amending and Rescinding Labour Law from 1 January 2001
- 11 Between 1960 and 1990 the share of women in the civil service increased by more than 12%, whereas from 1990 to 2004 the increase amounted to 8% only. <http://www.bmi.bund.de>.
- 12 For more information refer online at, <http://europa.eu/scadplus/leg/en/s50000.htm>
- 13 The most important ones are directives 75/117/EEC (February 19, 1975) on equal payment, directive 76/207/EEC (February 9, 1976) on equal opportunities between men and women in the workplace and directive 79/77/EEC (December 19, 1978) on social security; assisted by several recommendations and declarations.
- 14 <http://www.gender-mainstreaming.net/gm/Wissensnetz/rechtliche-vorgaben.html> [in German only]
- 15 UNIFEM briefing kit. <http://www.unifemesasia.org/resources/others/domesticviolence/PDF/Legal%20>

strategies.pdf

- 16 See Case C-127/92 (Enderby)
- 17 Women will earn the same as men - if they wait 150 years, The Times, July 28, 2006
[<http://www.timesonline.co.uk/article/0,,2-2288680.html>]
- 18 See directive 2002/73/EC on equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.
- 19 Catharine MacKinnon: Sexual Harassment of Working Women 1979.
- 20 See: http://ec.europa.eu/employment_social/fundamental_rights/legis/lgms_en.htm