

V. International Gender Workshop

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Equal Rights for Men and Women in Germany

How a constitutional principle was
transformed into reality

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Art. 3 sec. 2 German Constitution

- **1919 Constitution of Weimar empire:**
 - Right to vote
 - Program sentence: Men and women in principle have the same civic rights and duties
 - **1949 Parliamentary Assembly**
 - **Art. 3 sec. 2 gender equality principle: Men and women shall have equal rights.**
 - **Art. 3 sec. 3 antidiscrimination principle**
 - **Transition period till 1953 for adaptation of law**
 - **Legal norm or program sentence or constitutional aim?**
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Art. 3 sec. 2 German Constitution

- **1953 Federal Constitutional Court:**
 - Art. 3 genuine legal norm which substantiates the general equality clause
 - Since end of transition period men and women have equal rights in marriage and family.
 - Separation of property as general matrimonial property regime instead of husband's rights over his wife's assets
 - **1994 amendment**
 - S. 2: The state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist.
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The mothers of the constitution



Frieda Nadig, Dr. Elisabeth Selbert, Dr. Helene Weber, Helene Wessel

Conservative family image: Man as head of the family

- *1954 Arguments at Federal Supreme Court*
 - *In respect of human and personal dignity man and woman are completely equal but they are different not only in their biology and sex but in the order of family resulting from creation and endowed by God. Therefore man protects to the outside existence, development and future of the family, he represents it, and is its head. The woman consecrates herself to the interior order and organization of the family.*
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Changing the patriarchal model of family law

- **1958 First Equal Rights Act**
 - Before husband could terminate labor contract of wife
 - Till 1978 women could only work if it was compatible with their family duties, but: norm ./ Reality
 - Male breadwinner model as family model kept. (§ 1356 BGB)
 - **1959 end of patria potestas – father´s power over children**
 - **1970 father of an illegitimate child related to the child, child could become legal heir**
 - **1977 reform of matrimonial law in the civil code**
 - Divorce without fault
 - Right to alimony
 - Egalitarian model of marriage
 - **1994 Reform in Name Law**
 - **1997 Child Reforms Act: full equality for legal and children born out of wedlock**
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Agents of change

- **Federal Constitutional Court, EU Court, ECtHR**
 - **Second women's movement**
 - My belly belongs to me (my body my business)
 - From private to public
 - **Good economic situation**
 - **Better education for women**
 - **Birth control by women**
 - **Increase in women jurists**
 - **Increase in women in parliament, non-partisan alliances**
 - **NGOs: German Women's Council**
 - **German Women Jurist's Association djb**
 - **Equal Opportunities officers**
 - **Ministries: Gender check of legislation**
 - **Expert hearings**
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Gender issues/Women Rights and Criminal law

- **1971 Homosexuality legal (§ 175 Criminal Code)**
 - **1976/92/95 decriminalisation of abortion**
 - **1997 connubial rape as a crime**
 - **2002 act on domestic violence**
New definition of role of police – family courts and criminal court
 - **2005 liberal Prostitution Act**
 - **Several change in the age of minors protected against sexual offences**
 - **Discussion on extension of rules against sexual harassment / Council of Europe Istanbul Convention**
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Changes in the interpretation of gender equality

- **Different concepts of gender justice in decisions of the Federal Constitutional Court:**
 - In the 1950s and 1960s: equivalence (equal value) but difference (biological and functional difference)
 - In the 1970s and 1980s: equality through equal treatment
 - Since the early 1990s: legislator's duty to work towards an adaptation of men's and women's living conditions (compensation of disadvantages and active advancement of women – positive discrimination, quotas)
 - **In gender theory from difference theory, distinguishing sex and gender over a deconstruction of gender (and sex) to individualized approaches**
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Hierarchy of Norms - Rule of Law German Rechtsstaat

- European Court of Justice**
 ■ **EU Treaties**
 - Treaty on EU, on Functioning of EU
 - Charter on Fundamental Rights of the EU
- **European law (directives)**
- **Constitution (Grundgesetz) – Federal Constitutional Court**
- **Federal law, international law, ECHR - ECtHR**
- **State law**
- **Local communal law**



German Federal Constitutional Court

- **16 judges, 5 women**
 - **2 senates**
 - **Nominated by parties**
 - **Elected by Parliament and Federal Council $\frac{1}{2}$ - $\frac{1}{2}$**
 - **Election period 12 years**
 - **High judges**
 - **Law professors**
= Liberal intellectuals
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Influence of European law

- **1958 EEC Treaty: Equal pay for equal work.**
 - **1975 Equal Pay Directive**
 - **1976 Equal Treatment Directive, recast in 2002/2006 (Equal Access to Employment, vocational training and promotion and working conditions)**
 - **1986 Social Securities Directives**
 - **1992 Maternity Protection Directive**
 - **1996 Directive on Parental Leave**
 - **1997 Directive on Part-Time Work**
 - **1997 Directive on the Burden of Proof in cases of discrimination based on sex**
 - **1999 Directive on Limited Working Contracts etc.**
 - **Since 2000 four anti-discrimination directives**
 - **Concept of indirect discrimination**
 - **Political Tools: Roadmap, Women´s Charta**
 - **Money: Action Programs, ESF funding**
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Changes in labour and social law

- **1955 wage reductions for women abolished**
 - **Celebacy clause for civil servants abolished**
 - **Since 1985 financial measures for women reentering the labor market**
 - **Since 1986 Educational Allowance**
 - **Since 1992 gradual abolishment of women protection rules in labour law (labour at night, heavy bodily work etc.)**
 - **1994 extension of child care possibilities**
 - **1999 special rules for petty work contracts**
 - **2001 parental leave and compensation, guarantee of workplace for 3 years after birth**
 - **2001 Part-time Act**
 - **2001 Federal Equality Act for the civil service**
 - **2005 Day Care Act**
 - **2006 General Equal Treatment Act AGG**
 - **2008 extended rules on parental leave, 2 father´s months**
 - **Pay for self employed after birth of a child**
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Equal Rights: Status quo

- **Years after 2000:**
 - Shift from women's advancement to gender and antidiscrimination
 - Gender mainstreaming
 - Since 2002 Act on same sex marriage
 - Changes in rules for transsexuals and intersex
 - **Social Change:**
 - High participation rate of women in labor market
 - High rate of part-time work
 - More men take active part in family work
 - Social change result of law? Law result of social change?
 - Role of Media?
 - Importance of money provided?
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