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November 21, 2008

**Supplementary Shadow Report  
by the Deutscher Juristinnenbund  
(German Women Lawyers Association)**

in response to the  
**List of issues and questions**  
from the CEDAW committee's 43rd pre-session  
concerning the  
**6th Periodic Report**  
by the German Government

on the United Nations Convention  
on the Elimination of All Forms of Discrimination against Women  
(CEDAW)

(Translation Marlene Schoof)

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## Introduction

The purpose of this Shadow Report is to supplement the report submitted by the Alliance of German Women's Organizations. The Deutscher Juristinnenbund (German Women Lawyers Association) was formed by women lawyers, economists and business managers to promote the further development of legislation in Germany. Its primary goal is to achieve real equality for women in all areas of society. The Deutscher Juristinnenbund contributed actively to the Shadow Report submitted by the Alliance of German Women's Organizations. However, the Alliance was unable to respond to the questions for the German government from the CEDAW committee's 43rd pre-session, because it lacked the time to obtain approval from its numerous participating associations. This Supplementary Shadow Report does contain statements on those questions posed by the CEDAW committee. Because the German government has not yet responded to these questions, it is unfortunately not possible to address its responses.

This Supplementary Shadow Report is limited to a few questions that in our opinion reflect the most crucial obstacles to implementing CEDAW in Germany. These are questions 5, 6, 8, 9, 13 and 16.

## 1. Visibility of the Convention and the Optional Protocol

### *Question 5*

For women, the General Equal Treatment Act (AGG 2006) has brought only limited improvements over the provisions of §§611 a ff. BGB (Civil Code), and in some areas even changes for the worse, particularly in the field of labor law.

#### *Neither easing nor reversal of the burden of proof in discrimination cases*

The burden of proof as set out in §22 of the General Equal Treatment Act (AGG) requires victims of discrimination to first present and substantiate facts which indicate the occurrence of discrimination. Only then are employers obliged to demonstrate that they have not discriminated. This has been the legal situation since 1980. The AGG has not attempted the least improvement in the assignment of the burden of proof although women's organizations have repeatedly demanded that it be reversed. This demand is legitimate, as it is difficult for those who have suffered discrimination to produce data and evidence for successful legal action whereas it is easy for fair employers to prove that they have not undertaken discriminatory acts.

As the AGG does not permit anti-discrimination associations to take legal action on its behalf – they are only allowed an advisory function at lower court levels – and as the federal Anti-Discrimination Office (ADS) newly established in 2006 does not have the right to sue, women must continue to take legal action themselves and to bear the entire risk of the litigation alone. The AGG's inadequate assignment of the burden of proof is one reason why, in the 25 years that the earlier version was in effect, hardly any anti-discrimination cases were brought by women in the field of labor law. Nothing has changed since the AGG has come into force – if at all, legal action is taken primarily by men. Given this record of women's behavior regarding legal action, the prohibition on discrimination does not address reality: only if those suffering discrimination are relieved of the need to bring evidence via a reversal of the burden of proof, and only if accompanying measures are instituted such as the right of associations to sue, can women be encouraged to insist that their rights be adequately enforced.

### Demands

- The burden of proof in the General Equal Treatment Act (AGG) must be reversed to benefit persons discriminated against.
- This Act must contain provisions for the right of associations to sue.

## 2. National machinery for the advancement of women

### *Question 6*

#### *Inadequate allocation of resources and authority for the Anti-Discrimination Office (ADS)*

With a staff of 20 and a budget of € 2.7 million (2007), the resources of the main federal Anti-Discrimination Office (ADS) – see §§25 ff AGG – are insufficient when one considers that it is responsible for an entire country and all groups of persons requiring protection from possible discrimination (on the basis of race, ethnic background, sex, religion and belief, disability, age and sexual identity). As for the states (Länder), most of them continue to lack comparable institutions. The ADS does not have the right to file anti-discrimination suits but rather only to inform victims of their rights and enforcement options, and to provide advisory and mediation services. The ADS is only authorized to obtain information from federal agencies, whereas from other offices and private firms it may merely "request a statement". Its position vis-à-vis potential discriminators is thus extremely weak, and it cannot successfully combat structural discrimination.

### Demands

- There must be a pronounced improvement in both the funding and staffing of the Anti-Discrimination Office (ADS).
- The Anti-Discrimination Office must be granted comprehensive authority, especially the right to initiate legal proceedings. It must have unlimited right to obtain information from other agencies, and in individual cases from the companies involved.

#### *Staffing of organizations with public influence*

Another problem in this context concerns the staffing of organizations with public influence. The Act on the Appointment and Secondment of Women and Men to Bodies within the Remit of the Federation (Bundesgremienbesetzungsgesetz) took effect in 1994, and was intended to increase participation by women in public bodies. It applies to committees, advisory councils and commissions under the influence of the federal state. According to this Act, both a woman and a man should be nominated (dual nomination) for open positions in these organizations. To date this Act has led to few improvements, with women still gravely underrepresented in these bodies. Above all, very few women are represented in strategically important areas (e.g. the Regulatory Control Council, Rürup Commission or Hartz Commission). This continuing lack of representation in public bodies is due primarily to two factors. The Act allows countless exceptions to the dual-nomination provision, which run contrary to its purpose. Moreover, candidates for public bodies are often recruited from the upper levels of the federal administration, but women are underrepresented there as well. A further problem arises from the increasing tendency to shift public tasks to the private sector where the law does not apply at all.

#### Demands

- Exceptions to the dual-nomination principle contained in the Act on the Appointment and Secondment of Women and Men to Bodies within the Remit of the Federation (Bundesgremienbesetzungsgesetz) must be limited.
- Provisions must ensure that equality considerations are also taken into account when public bodies are privatized. This can be achieved via voluntary commitments by the companies to be founded, which if violated can be replaced by binding legal quotas.

### 3. Reconciliation of work and family life

#### *Question 8*

##### *Division of labor markets into women's and men's domains*

The division of the labor markets into women's and men's domains has continued virtually unchanged. The horizontal segregation into women's and men's industries continues as before, while horizontal sectoral segregation within these industries has become even more entrenched. Women pursue a narrower range of vocations, and they also dominate labor markets that are more poorly compensated, that offer fewer chances for advancement, and that in some cases offer less in the way of future opportunities. Some 82% of women, but only 55% of men, work in the service industry which has lower compensation across the board. Within the service industry, there are women's domains: 69% of people working in public and private services without public administration are women, while men dominate in public administration and particularly in the tenured civil service (Beamten). In the new and highly paid service professions of the information and communication sectors, women are especially poorly represented at only 25%. From 1995 to 2004, their share of the IT sector has even declined by 4%. Women are concentrated much more strongly than men in only a few job groups: office workers, commercial clerks, nurses, physicians' assistants and similar positions, sales personnel, childcare workers, care providers for the elderly, and cleaning personnel.

#### Demands

- An essential part of educational policy must start with the schools already presenting the entire range of vocations and their respective future opportunities to pupils of both genders.
- An Equality Act is needed for the private sector in order to counter the division of labor markets into women's and men's domains.
- Procedural legislation for implementing equal pay is needed that uses non-discriminatory labor evaluation systems to more justly assess and thus upgrade "women's jobs".

##### *High percentage of women in part-time employment*

The percentage of women employed has risen again in recent years, but not to the same degree as that for men. The percentage of women employed, i.e. the number of women with jobs compared to the total number of women 15+ years of age, has now surpassed the "Lisbon mark" (target employment rate in the EU) of 60%, but the percentage of men employed is higher. Of particular note is the fact that this higher percentage of women in the workforce does not translate to an increase for them in the overall volume of hours of gainful employment, but rather to an increase in the number of part-time jobs that they hold, especially in what used to be West Germany. This means that the number of working hours has been redistributed among women, not between men and women.

In 2004, 45% of West German women and 28% of East German women were employed part-time, but only 6.2% of German men. Moreover, women accounted for 68.1% of the lowest official wage category (geringfügig Beschäftigte). If one also considers the lower wage levels in industries and sectors that typically employ women, a large percentage of all women is still not in a position to secure even their own livelihood via their jobs.

### *Women are pushed disproportionately into certain forms of employment*

In recent years, German legislators have created numerous new forms of employment, at a clear cost to women. Although the majority of women – no differently from men – seek secure, long-term employment with hours that ensure adequate compensation, they are pushed more often than men into working relationships of limited duration and/or with so few hours and social benefits that they are dependent on government assistance for their livelihoods.

Temporary jobs are of interest to employers because they are not covered by dismissal protection regulations when their terms expire. Temporary jobs are especially harmful to women because they do not offer any maternity protection in the event of pregnancy. While it is already difficult to near-impossible to live on a half-time position at the low wages for jobs typically performed by women, it is out of the question to do so on a so-called "mini-job". Earnings for "mini-jobs" are restricted by law to a maximum of €400. This form of employment is attractive to employers because they can split large volumes of work into several mini-jobs. They are then required to pay only a relatively low flat benefit rate. For women, however, this is unfortunate because the flat benefit rate does not make them eligible for social security claims.

Furthermore, it has become common practice to replace paid trial periods, especially for young or first-time workers, with unpaid internships or voluntary positions, which in most cases do not lead to the paid position in the end.

### **Demands**

- Legislators must promote a return to viewing jobs as working relationships that secure livelihoods and offer benefits.
- Stimulus packages for the private sector are to be avoided that create ever more precarious forms of employment with grave disadvantages for women.

### *Wage inequality between men and women*

The prohibition on pay discrimination has been anchored in constitutional law since 1949 in Article 3, Paragraph 3 of the Basic Law (Grundgesetz), in EC/EU law since 1958 in Article 141 EG, and in ordinary legislation since 1982 in §612, Paragraph 3 of the Civil Code (BGB), currently codified in §8, Paragraph 2 of the General Equal Treatment Act (AGG). Yet these legal directives, most of which have been in existence for more than 50 years, have not succeeded in closing the considerable gap in income between women and men. Women in Germany earn an average of 23% less than men, which is even lower than the Europe-wide difference of 15%. This discrepancy between the sexes has even increased by 1% in Germany since 1995, while decreasing Europe-wide by 2%. In comparisons among EU states, Germany occupies the third-to-last place in this regard.

Discrimination against women on the labor market is one reason for this discrepancy in pay, but not the only one. Differences in pay also result directly from higher wages paid to men for the same or equal work, as well as indirectly from a devaluation of work performed primarily by women, and thus also a devaluation of their abilities, skills and responsibilities. Other factors include gender-specific disadvantages in job evaluation methods, job assignment systems, and compensation systems.

Compensation systems based on collective wage agreements, which cover the majority of all employment relationships, are not gender neutral. Most current job evaluation systems do not use the same criteria for male and female employees, and are therefore not designed to exclude gender-based discrimination. This problem can only be solved by non-discriminatory job evaluation systems, especially as the basis for compensation covered by collective agreements. Examples exist, such as the ABAKABA process from Switzerland designed by Katz/Baitsch, or the uniform analytical processes used by local British authorities which are transparent and apply the same criteria to all activities. These processes also take into account emotional components of work that are neglected by conventional processes.

Although Germany is obliged as a member of the EU to put the equal pay directive into practice, it is far from doing so in reality. The principle of autonomy in reaching wage agreements (Tarifautonomie), i.e. non-interference by the government, that is guaranteed in the Basic Law (Grundgesetz) is abused here to legitimize inaction on the part of the government. According to German law, collective wage agreements contain legal structures that serve a normative function for the transaction, content and termination of employment relations. They function as law for the jobs in question. As a result of this specifically German notion of wage agreement autonomy, the form and regulation of labor and economic conditions – especially regarding pay – have been left for many years now in large part to the coalitions, i.e. employer associations and trade unions, that negotiate on their own behalf and essentially without government input. Given this background in Germany, government efforts and guidelines toward putting the equal pay directive into practice are invariably countered by arguments that they violate the principle of autonomy in wage agreements. This notion of autonomy has been internalized to a high degree by all those involved (government, courts, parties to collective agreements, the public at large), constituting an unreflected taboo that effectively obstructs efforts to end wage discrimination. Among other things, this means that the German state lags far behind both its potential and its obligations with respect to ending wage discrimination. The parties to collective wage agreements themselves have not yet managed to design non-discriminatory job evaluation systems on their own, although there have been various attempts.

The German legislative body is called upon to promote gender-equitable wage assignment schemes in compensation systems for both the public and private sectors. Procedural legislation that advances equal pay would be reconcilable with the principle of autonomy in wage agreements. Suitable proposals for procedural regulation have already been presented, but are dismissed by the German government with the specious argument that they supposedly violate the principle of autonomy in wage agreements.

#### **Demand**

- **Procedural legislation to achieve compliance with the equal pay directive must be drafted and passed – based on already existing proposals – in order to ensure non-discriminatory job evaluation and job assignment systems as well as non-discriminatory compensation systems.**

#### ***Role stereotypes: Another reason for wage inequality between men and women***

Traditional gender roles, which are still strong especially in Germany, and a hierarchical division of roles within partnerships are further reasons why pay inequality persists unchanged. This is confirmed by a study just published by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. According to these traditional role models, women alone are responsible for running the home and caring for children and elderly or ill family members. By contrast, men are viewed as the sole breadwinners of the family. The German government does not see ways to break down these stereotypical roles, and instead strengthens them via its policies.

One example of the government's policies is its retention of a tax class model that in many ways keeps women from (re)entering gainful employment. This model gives married couples the option of selecting tax class V for the partner who has little or no earnings. This means that the partner who earns more (tax class

III) has a relatively lower tax rate, while the partner who chooses class V, generally the wife, pays proportionately more. Most married couples with different income levels choose this model because their combined tax burden is less than it would be if the two partners had the same tax class. This model especially favors couples in which only one partner is gainfully employed. Because most women earn less than men anyway for the reasons already discussed, this model has the psychological effect of discouraging them from working because the relatively high taxes on their (lower) income make work seem not worthwhile. Many women therefore do not reenter the workforce after leaving their jobs for family-related reasons. As such, this tax class option perpetuates old role models.

Another example of how the German government's policies encourage stereotypical gender roles would be its plans to pay home childcare subsidies (Betreuungsgeld). As of 1 August 2013, this scheme calls for monthly payments to parents who cannot or do not wish to enroll their children at childcare facilities. This will promote a family model in which one parent, generally the mother, decides not to seek employment in order to stay home and care for the children. The funds planned for this policy would be much better spent by expanding existing childcare facilities.

#### **Demands**

- Policies must be designed in such a way to counter traditional hierarchical gender roles. In particular, tax law must be amended so as to eliminate the tax class III/V model for married couples. Current plans to pay subsidies for home childcare must not become law.

#### *Women and pensions*

The 2007 Pension Reform Act raised the age of retirement to 67. In the accompanying documentation for this Act, lawmakers indicate awareness of the fact that "the (45) years of contributing to the pension fund that are required to enter retirement before this age without a loss in benefits ... will tend to be accumulated by men rather than women". In fact the percentages (as of 2007) of those who meet this requirement are 2.48% of women and 27.2% of men. This Act clearly shows that legislators have consciously discriminated against women.

#### **Demand**

- Pension law must be reformed in such a way that equal percentages of women and men meet the requirements for entering retirement without a loss in benefits.

### *Question 9*

#### *Parental leave*

The parental leave allowance introduced in Germany on 1 January 2007 to compensate for wage loss during a child's first year is welcomed as a program that points in the right direction. This model replaces the previous child-raising allowance, which encouraged long absences from work especially on the part of low-earning women and female recipients of welfare. For the first time, fathers are motivated to make use of their right to parental leave (also via the "partner months" provision, i.e. two months of parental leave reserved for the second parent), which might mean sacrificing their job responsibilities in favor of their children. Together with the launch of a comprehensive expansion of childcare facilities for children under 3 years of age, the parental leave allowance represents a progressive strategy for reconciling work and family



life – for both mothers and fathers. However, the percentage of fathers who take any type of parental leave, even the two "partner months", is still far too low.

Another problem concerns the deficiencies in this law for those who earn low wages or receive transfer payments ("basic support for job seekers" in Book II of the Social Code – SGB II). While the previous law paid child-raising allowances for 24 months, parental leave allowances can be drawn for a maximum of 14 months. Because women are disproportionately represented among low-wage earners and transfer payment recipients, they are also disproportionately affected by this retrograde development. This especially affects people in the "new German states" of the former GDR.

Furthermore, a solution must finally be found for the case of both parents wanting to take parental leave who both work part-time. If both parents work 50% and truly want to share child-raising duties, each of them should have the right to half the parental leave subsidy for 12 months. Thus far, the combined parental leave period for two partners with part-time positions has ended after the first 6 months of the child's life.

#### **Demands**

- Greater incentives must be offered to encourage more fathers to make use of parental leave.
- The Parental Leave Act must be changed in such a way that if both parents work part-time, each has a right to half the allowance amount for a period of 12 months.

## **4. Employment**

### *Question 13*

#### *Particular negative impact of the Fourth Law of Modern Services (Hartz legislation)*

Before 2004, designated women's representatives at government labor offices served as contacts for all unemployed women and were responsible for presenting women's concerns internally at their respective institutions. Women's concerns were therefore also represented in unemployment assistance matters (Arbeitslosenhilfe). Since 2004, equal opportunity representatives have been responsible for representing women who receive benefits via SGB III (Social Code Book Three). With the switch to basic support for job seekers (via SGB II, Social Code Book Two), the equal opportunity representatives are no longer responsible. SGB II does not provide the corresponding institutional support for women's affairs. The first negative consequence of the Fourth Law of Modern Services is that the office of women's representative has been eliminated without replacement for those who receive basic support for job seekers.

Moreover, experience with labor market reforms has clearly shown that the solutions contained therein impair women's material independence. Also, due to the greater obligation they place on partners to assume financial responsibility for each other, they discourage people from entering family (or other solidarity-based) structures. Women who live together with gainfully employed partners are especially disadvantaged.

This is due to the "shared household" (Bedarfsgemeinschaft) notion introduced for the first time in the SGB II (Social Code Book II). It presumes that persons who live in shared households "are willing to assume mutual financial responsibility for each other." This can also lead to situations in which persons who do not need government support for themselves then do need it if they belong to a shared household because

their income is not enough to cover the needs of the entire household. The shared household model of SGB II exacerbates the problem already familiar from the unemployment assistance program, namely that women, due to the additional calculation of their partners' incomes, were not registered as recipients and thus vanished from the statistics. True, in contrast to the unemployment assistance model, active benefits (promotional measures) are now available to all members of shared households. But this is a theoretical option that is not applied in practice because the increasingly scarce funding for active employment promotion measures is invested in "easily employed persons" and those whose transfer payments are a burden on labor agency budgets. Despite the reasons for formulating it in the first place, this new legislation does not counter the labor market's discriminatory structures.

A new problem for single parents is that the program providing basic support for job seekers requires members of shared households to be financially responsible for the children of their partners. Partners in shared households are responsible for children up to the age of 25, which makes it considerably more difficult for single parents to start households with new partners. Many couples even decide to live apart on receiving SGB II payments.

#### **Demands**

- The SGB II (Social Code Book II) must reintroduce the office of equal opportunity representative as previously stipulated by SGB III.
- The artificial "shared household" (Bedarfsgemeinschaft) construct must be dropped from SGB II.

#### *Evaluation of the Fourth Law of Modern Services (Hartz legislation)*

In October of 2007, initial results of an observational study to assess SGB II were published, and the final report is to be presented in June of 2009. This preliminary assessment clearly shows that publicly available, gender-differentiated data are largely absent from the official statistics.

Thus – as discussed above – determinations of an individual's need for government assistance take into account the income of another person living in a shared household (Bedarfsgemeinschaft). Because this method of income calculation typically affects women, one would expect that the statistics would be compiled in a differentiated manner with respect to women. The study, however, shows otherwise:

It lacks data on the number of unemployment assistance applications that were rejected due to insufficient need based on calculating partner income. It also lacks gender-differentiated, Germany-wide, job promotional statistics – including statistics on placement activities for low-income jobs with no benefits. Placement for jobs without social benefits, i.e. in the lowest wage category (geringfügige Beschäftigungs), was introduced for the first time as part of the 2004 Reform Act. It is astonishing that this Act makes no provisions to statistically evaluate the effects of these new placement measures in order to facilitate further labor market policy. There continues to be no uniform statistical compilation of additional benefits connected with childcare or home care of elderly/ill relatives which the Act prescribes for those recipients who are capable of working and who are expected to be integrated back into the job market. There are also no figures on mothers who want to be gainfully employed during the first three years of their children's lives and demand the corresponding integration measures, although they are not legally required to be available for the labor market during this time.

One of the reasons for this lack of data has to do with the fact that gender mainstreaming, which is prescribed by the "Joint Standing Orders for Federal Ministries" (Gemeinsamen Geschäftsordnung der Bundesministerien), is not resolutely pursued in the legislative process. When it comes to implementation, individual decision-making powers currently lie entirely decentralized with the 439 basic support offices throughout Germany, which issued decisions on approximately 8 million applications in 2007. The number of lawsuits at social courts has increased drastically. At the largest social court in Berlin, twenty thousand

new cases were entered in 2008 – three times as many as before the reform. Almost all of its 95 judges are dealing with cases involving SGB II (Social Code Book II), and the situation is no different at other social courts in Germany. These cases last for an average of at least three years. Effective legal protection is no longer ensured in such cases, while unacceptable waiting periods arise for those who fall under SGB II and whose daily subsistence is threatened. This amounts to a de facto denial of legal assistance as a result of inadequate legislation. Because the individual states are responsible for the application of justice, federal statistics on this court burden are not compiled.

#### **Demands**

- Gender mainstreaming for the Fourth Law of Modern Services on the Labor Market (Hartz legislation) must be implemented retroactively.
- The lack of gender-differentiated data must be corrected.

### ***Question 16***

#### ***Women in leadership positions***

The labor market also shows a vertical segregation. Women have never been as qualified as they are today. But they are only well represented on the lower three levels of the hierarchy. Only 12% of women, compared to 22% of men, reach the fourth and highest level (upper management personnel and tenured civil servants). Only 15 of the 160 corporations listed on major German stock indices have female members of their boards. The percentage of female board members is barely 2.5%; the percentage of female CEOs of DAX and M-DAX companies is less than 1%. The percentage of women on supervisory boards of companies with participative management is nearly 11%, but only around 3% for companies without participative management. The percentage of women in management positions declines with their number of children, their increasing age, and company size. In order to advance, women have to change companies more often than men. In particular, the principle of seniority, i.e. assignment of positions and privileges based on the amount of time spent at a company, greatly impairs the professional advance of women on account of their more frequent breaks in employment and changes in companies. This extraordinarily poor situation for women has been stagnating for years now. The German government only arrives at its figure of 32% of management positions held by women by counting e.g. simple branch directors of retail chain offices as managers.

Advancement opportunities for women have to be strengthened everywhere, including in women's domains. The only way to achieve significant improvement is to implement equality legislation for the private sector, in order to counter segregation in the labor market and to enable greater access to higher and better paid company positions for well-qualified women – including after periods of unemployment due to family-related or other circumstances. Suitable draft legislation has long been available. Instead of actually passing this legislation, the German government has only made an agreement with economic umbrella organizations that has not achieved any appreciable results due to the lack of binding directives.

Another promising means has been applied in a few German states such as Berlin, namely linking government contracts with affirmative action programs for women. Here, government contracts are only awarded to companies that promote women in a targeted manner, and can also demonstrate that they do so. The Federal Equality Act, which is supposed to use various instruments to promote equal opportunity for women and men in federal government jobs, lacks such a link as does the federal mechanism for awarding outside contracts.

The need to increase the current minimal percentage of women on the supervisory boards of German companies will not succeed as long as policy is restricted to verbal appeals. Results can only be achieved on the basis of legally stipulated quotas. Following the example of Norway, these should lie at 40% for

women and should allow companies sufficient time to fill them on their own before legal requirements become binding and appreciable sanctions loom in the event of non-compliance.

#### **Demands**

- An Equality Act for the private sector is needed to counter unchanged segregation on the labor markets.
- Legal measures must be created that require affirmative action measures for women as a necessary condition for receiving government contracts.
- A quota for supervisory boards must be prescribed by law. Supervisory board terms must be limited to 5 years in order to increase the potential number of new appointments.