

CEDAW 43rd Session – Informal Meeting with NGOs - 27. Jan. 2009

Questions of the Committee to the German NGO delegation & their answers

Question of Mme Pramila Patten

Aren't there laws and policies on EU level and national level protecting intersexual and transsexual people?

**a) HUMAN RIGHTS AND TRANSSEXUALITY
(Christina Schieferdecker and Kim Schicklang)**

No, there are no laws and policies on the EU level or national level for the protection of transsexual women as individuals with specific means and needs: This is due to the ignorance or even denial of them as in their existence as individuals and the misconception of the term “respect of gender identity”.

Existing laws are based on a misconception do not know transsexual women, and openly deny and discriminate them:

What does "respect of gender identity" mean?

If someone wants to protect transsexual women, the question is, where you set a time-stamp for the definition of persons whose gender identity is female. The German Law of Transsexuals says that a transsexual person is someone who feels that *he* is belonging to the "opposite gender" for more than 3 years (TSG §1.1). So one would think that the German Law of Transsexuals respects "gender identity", but in fact it is the opposite - transsexual women, whose gender identity is female, are treated legally as men with psychic disorder (definition of Transsexuality, based on the term "gender identity disorder". TSG § 4.3. and WHO-ICD F64.0 and DSM).

The official papers of these women remain "male" till they have had an operation where their penis was removed. The official recognition as "female" depends on a psychiatric consultation from two experts who will decide over the legal status mostly on gender stereotypes (wearing a skirt, long hair, feminine habitus, and so on) and if the women had undergone medical treatment (of castration and removing the penis). The paradox is:

If you say there are people whose gender identity is female (reason for the existence of the German Law of Transsexuals) on the one hand, how can you force these women to undergo medical treatment (hormones, surgeries - TSG §8.3 § 8.4) and a behavior in a gender stereotypical manner on the other hand as requirement for being legally accepted as women in the papers?

The main failure of this paradox is that in Germany gender identity isn't seen as natural condition but as a product of a medical intervention. The German government believes in theories that you can construct gender identity, either via medical treatment (hormones, sex "reassignment surgeries", aso) or as expression of gender stereotypes (wearing gender typical clothing, acting "female", ...).

This misconception of gender identity isn't in accordance to the realities of transsexual women, whose gender identity is "female" already at the beginning of any legal and medical steps.

To respect someone's "gender identity" is to respect what this person is and not to respect him only after medical treatments.

It seems it depends on religious moral standards that parts of the German society, especially politicians who are influenced from old patriarchal movements, are not willing to accept that girls can be born with penis and gonads.

But, nevertheless, many non-political people in Germany have less problems in accepting the "gender identity" of transsexual women than politicians and self-defined moral apostles.

b) ASSOCIATION OF INTERSEXUAL PEOPLE/ XY-WOMEN (Lucie Veith)

No, there is no effective protection for intersexual people implemented. On the one hand, an ethical commission has been commissioned to draft recommendations, but also in their recommendations, the right of the parents is regarded as higher than the best interest of the child (Monatsschrift Kinderheilkunde 3(2008), page 244), colliding with art. 5 lit. b CEDAW.

In the legal point of view of the shadow rapporteurs, the right of the protection of the identity (art. 8 CRC), which includes the gender identity, is one of the most intimate rights, it is neither at the discretion of the medical professionals, nor of the society, nor of the parents. Medical interventions into the autonomy of the sex always also constitute violence, leading to violations of art. 19 CRC, and a violation of the human dignity (art. 1 UDHR). The federal government leaves the review to the medical professional associations. Nobody feels disturbed by the multiple violations against the association of intersexual people and the violation against the individuals of the targeted group nor does it is a matter of concern of the Government or any other institution that the medical professional association violate actively these individuals human rights.

According to the medical definition, a sexual condition, which is not unequivocally male or female, is defined as an "illness" or a "syndrome", instead for a natural variety, what leads to the idea, that intersexuality needs "early surgical treatment".

This collides with the human right to health, both of art. 12 CEDAW and of art. 12 CESCR, which is defined as the, for the respective person, highest attainable level of physical and mental well-being, not as the earliest possible well-conformity.

The question with regard to the EU law seems to refer to the EU Basic Rights Charter. Especially the following human rights of the charter give us the hope for an effective protection of our minority at the European level: -the human dignity (art. 1) -the physical integrity (art. 3) -the prohibition of inhuman and degrading treatment (art. 4) -the right to the security of the person (art. 6) -the right to protection of personal data (art. 8) -the right to found a family (art. 9) -the equality before the law (art. 20) -the right to non-discrimination with regard to genetic features (art. 21) -the right to equality between women and men (art. 23) -the best interest of the child (art. 24 no. 2) -the right to health care (art. 35)

Nevertheless, the effectiveness of the EU Basic Rights Charter is significantly hindered by the too low rank of the basic rights included by it. They are subordinated by art. 52 par. 2 EU Basic Rights Charter below any prescriptions of the Treaty of the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU, also called Treaty on the European Community (TEC)). This raises the fear that the implementation of our human rights of the EU level might be levered out by being subordinated below the economical competitiveness (art. 136 TEC / TFEU) of the doctors. The second serious limitation of this charter is, that art. 52 par. 5 regards some the rights of the charter as not bind-

binding; this seems to refer to the social human rights (chapter "solidarity", art. 27 to 38), which would collide with the indivisibility according to the preamble of the EU Basic Rights Charter. The third reason for sorrow is, that the wordings of art. 24 no. 2 and of art. 35 EU Basic Rights Charter are less far-reaching than art. 12 CEDAW, art. 12 CESC, and art. 5 lit. b CEDAW. The fourth serious limitation of the scope of the charter is, that some of its rights are under a reservation of the "conditions established by national laws and practices". This narrow limitation, unfortunately, also refers to the EU human right to health care (art. 36).

Question of Mme Pramila Patten

To what extent does the General Equal Treatment Act protect intersexual and transsexual people, especially employees and what are they?

a) HUMAN RIGHTS AND TRANSSEXUALITY (Christina Schieferdecker and Kim Schicklang)

In conjunction to the German Anti Discrimination Law (AGG) the premises for being accepted legally as the member of your gender your identity belongs to, there are huge problems in the way the AGG (Anti Discrimination Law) defines transsexual women.

The Federal Ministry of Family Affairs, Senior Citizens, Women and Youth says:
"The purpose of the General Act on Equal Treatment is to prevent or to stop discrimination on grounds of 'race' or ethnic origin, gender, religion or belief, disability, age or sexual orientation."

(Federal Anti-Discrimination Agency - Grounds for discrimination

<http://en.antidiskriminierungsstelle.de/bmfsfj/generator/ADS-en/root>, did=115102.html)

As you see, the Federal Anti-Discrimination Agency of Germany does not include transsexual and intersex people in this law directly; the term "gender identity" is not part of the AGG. Cause in the AGG transsexuality and intersexuality aren't official listed, there isn't official data if the Antidiscrimination Office accept complaints and if there are any cases filed already.

Furthermore, if a transsexual woman wants to use this law, she has to go to court with male papers and be treated as a man, and this is discrimination in itself.

Recommendation

To resolve these problems we suggest that the German laws should respect gender identity in complete, without medical requirements for the acceptance of "gender identity". To give transsexual women the right to be legally accepted as women without the need of medical treatment (fulfilling gender stereotypes as well) and without the decision of a psychiatric consultant before law (today mostly based on gender-stereotypes) is the fundament of equal treatment and avoids paradox judicial consequences.

Recommendation

Furthermore it would be necessary to broaden the concept of the anti-discrimination law not only for transsexual women but in extending it to other areas of life, such as discrimination via media and discrimination via health-care-systems and medical malpractice.

"Discrimination is a major human rights issue. The Charter of Fundamental Rights clearly prohibits discrimination on various grounds ... Until now Community legislation (Directive 78/2000) prohibits direct and indirect discrimination, as well as harassment ... but only in employment. There is a growing debate regarding the extension of the much more comprehensive protection of the Race Equality Directive (43/2000) to cover other grounds, such as sexual orientation, disability, etc."

(Q & A Homophobia Report, The European Union Agency for Fundamental Rights (FRA))

Gen. Recommendation: to guarantee a legal protection especially for transsexual women

There's a huge amount of misinterpretations about transsexual women, so it would be necessary to guarantee a legal protection especially for transsexual women. Till today transsexuality neither isn't included in the German AGG, nor there special laws that deal with the specific problems that may occur after changing legal gender. Often transsexuality still is seen as immoral in German society and there's no official demonstration that the German government is interested in changing these prejudices. Even such parastatal institutes like the German TÜV Rheinland Group (provider of technical services) seems to have no problems in discarding women because of their transsexuality.

A government who would be interested in equality would accept "gender identity" in complete, and furthermore accept that girls can be born with a penis and gonads. These government would invest in official education, instead of raising gender stereotypes and tell the society that the genitals (in the case of transsexual women: the penis) are more important for the division in male/female as the "gender identity".

"States shall...take all necessary legislative, administrative and other measures to fully respect and legally recognize each person's self-defined gender identity"

(Yogyakarta-Principles 3b)

Medical interventions as requirement for legal acceptance that affect transsexual people and intersex people as well are the opposite of a self-definition.

Money makes the world go round

Further problems are the costs of changing the surname and the sex marker. To change the surname or the sex marker costs (each one) between 1000 and 5400 Euros. To change both, the price will be between 2000 and 10000 Euros.

Many transsexuals don't change their surnames or sex markers, because that's too much money for them. Only the really poor people haven't to pay this money, but all others have to. How much it costs, they don't tell you before. You get once a bill, then you are surprised.

So many transsexual women don't change their sexmarker after SRS (sexual reassignment surgery), because it's too expensive and discriminates again because of the diagnosis of being a psychic ill men without penis and gonads.

b) ASSOCIATION OF INTERSEXUAL PEOPLE/ XY-WOMEN

(Lucie Veith)

Why is there such a problem for intersexual people in Germany? Prof. Dr. John Money has had the theory, that one could reeducate gender identity, if it was just done within a deadline, which he regarded to be between the 6th month and the 2nd year after birth. His so-called "time window" theory has been regarded as a medical standard, although it never has been one because of a lack of successful long-term experiments. Even his famous "John/Joan" case has turned out to be a long-term disaster. Prof. Dr. Money's main

scientific mistake was his inability to differentiate between gender identity and gender role behavior. Then, we urgently need more comprehensive information (art. 2 lit. c CEDAW) to public authorities and especially to the judges in Germany on the legal nature and on the rank of the UN human rights. Medical standards and even more Prof. Dr. Money's only wanting-to-be standard (violating art. 7 s. 2 ICCPR) are not more than "practices" or "customs" (art. 2 lit. f CEDAW), and thus clearly several stages below the human rights, so that the latter constitute unequivocal limits to implementation of medical standards. The EU Court of First Instance has pointed out in the decision on file number T-306/01, that the national courts are responsible for applying the human rights of the UN, because the states have ratified the UN human rights treaties. The EU Court of First Instance has also stated that the human rights of the UN belong to the "ius cogens". A result is that their position in Germany is above the simple laws (art. 25 Basic Law (German Constitution)). In addition to that, art. 28 UDHR shows the high position of the human rights of the UN. It might be very helpful to remind, that human rights, which have been introduced by laws consenting to international treaties, create legally binding obligations that need to be recognized by the courts and the public authorities at Germany (art. 8 UDHR). We set our hopes especially on CEDAW, because it prohibits the discrimination of women, including intersexual women, with regard to all human rights of the UN (preamble, art. 1, and art. 3 CEDAW). It is the strongest legal tool that the UN has for the protection of our minority.

Question of Mme Pramila Patten

Does the Antidiscrimination Office accept complaints and are there any cases filed already?

a) ALLIANCE OF GERMAN WOMEN'S ORGANIZATIONS

(Dr. Katja Rodi)

The Antidiscrimination Office (ADS) does not have the right to file anti-discrimination suits but 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.

We demand that the ADS is 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.

b) ASSOCIATION OF INTERSEXUAL PEOPLE/ XY-WOMEN

(Lucie Veith)

We do not yet know any case, where the General Equal Treatment Act had been used for intersexual people. We set great hopes into the anti-discrimination authority, but do, up to now, neither see clear signs of its actual effectiveness for a sufficient improvement of the situation of intersexual women, nor of its implementation with regard to them. It still remains unclear for the shadow rapporteurs, which legal consequences a violation of this law has.

Question of Mme Ruth Halperin-Kaddari

Is there according to the Registered Partnership Act complete equalization for some sex, intersex and transsexual couples? Is adoption for some sex couples possible? Are assisted reproduction technologies accessible?

a) ALLIANCE OF GERMAN WOMEN'S ORGANIZATIONS

(Dr. Katja Rodi)

There is even according to the Registered Partnership Act no equality of rights in same sex partnerships. There is for example discrimination in tax law. Those partnerships are not able to pool their income as heterosexual partners could. Pooling income reduces the income tax.

Registered partners do not have the same rights as heterosexual married partners when their child is conceived by artificial insemination. Whereas the child in heterosexual partnership is regarded to be child of this pair, in same sex partnerships it is only considered to be child of the mother who gave birth. Her female partner has to adopt the child in order to be also considered as parent.

In respect to adoption there are as well not the same rights for registered same sex partners. Joint adoption is reserved in Germany for married heterosexual partners. Lesbians may only adopt as individuals. And in practice their chances to be accepted for an adoption are very slim.

b) HUMAN RIGHTS AND TRANSSEXUALITY

(Christina Schieferdecker and Kim Schicklang)

Another question is concerning the Registered Partnership Act and the complete equalization for same sex, intersex and transsexual couples. So, cause there's a lack in getting legal papers changed quick and unbureaucratically in Germany. This also leads to many paradoxical situations relating to Registered Partnership and Marriage. For example: A transsexual woman who has male papers can marry a woman - so in fact this is a marriage between two women. To getting her papers changed since 2008 the marriage has no longer to be divorced - in July of 2008 the German High Court decides that this practice of the German Law of Transsexuals violates the German Constitution (http://www.bundesverfassungsgericht.de/entscheidungen/lis20080527_1bv1001005.html). In fact now a transsexual woman who has married another woman with male papers is in a wedlock with "male papers" and after changing her papers to female the marriage between a "man" and a "women" isn't changed (still same-sex-marriage isn't possible in Germany, the transsexual woman will remain "male" in the marriage-papers cause the Registered Partnership Act isn't equal to a marriage between man and woman). So she will have both: "male" and "female" papers. There still is no solution of these problems.

c) ASSOCIATION OF INTERSEXUAL PEOPLE/ XY-WOMEN

(Lucie Veith)

The lower legal status in Germany of same sex partnership in comparison with marriage is a violation art. 16 par. 1 lit. a CEDAW at least in those cases, when intersexual people only can get the lower legal status of partnership, just because they have been announced in their papers to a gender, that does not match with their gender identity. Today, it is only allowed to correct the gender announcement once in a life-time. So the accessibility of such a correction is denied to intersexual women, if the announcement has already

changed, before they have been able to make their own decision. This limitation needs to be cancelled to protect to the identity of the child (art. 8 CRC) and the human dignity (art. 1 UDHR).

**d) WUNSCHKIND e.V.
(Beate Turner-Kien)**

Lesbian woman in Germany have only limited possibilities to get access to reproductive medical treatments. In vitro fertilization for lesbian woman is not possible. Lesbian woman get no services of German spermbanks. The German law is so, that doctors risk to pay maintenance for the child, if they help the lesbian couple to much. For that reason lesbians have to do bring the sperm of a spermbank from another country or from a private donor and to do the insemination themselves. The child is not automatically the child of both parents. It has to be adopted. Married heterosexual couples have in all this points more access and rights.

If a lesbian woman have reproductive problems and need the help of a doctor, often she will not say, she is lesbian, because she afraid to get no help.

Question of Mme Ruth Halperin-Kaddari

Considering de facto unions (nonregistered partners) what is the legal status after separation? Is there any economic redress open for the woman of such a partnership after a break-up?

ALLIANCE OF GERMAN WOMEN'S ORGANIZATIONS

(Dr. Katja Rodi)

Nonregistered partners have no rights after separation. There is no open redress open for women of such a partnership. This applies as well to heterosexual as to same sex partnerships.

Question of Mme Ruth Halperin-Kaddari

What is the opinion of the women's organisations considering the maintenance of women after divorce, especially the assumption that in general women are self sustaining after their children have turned three years old?

ALLIANCE OF GERMAN WOMEN'S ORGANIZATIONS

(Dr. Katja Rodi)

In general most of women's organisations are in favour of the responsibility of women maintaining themselves. But this responsibility has to go hand in hand with improving the conditions which enable women to maintain themselves, especially improving childcare facilities.

In addition German women's organizations claim, that the whole legislation and politics have to follow the model of a self sustaining woman even when married. At the moment this it not the case, since married women are very often not dealt with as individuals but as a unit with their male partner. This is the case in the German social welfare system for example, where women, who live together with a gainfully employed partner, will not obtain financial support (shared household model of Social Code, *Sozialgesetzbuch II*). In consequence they are not registered as recipients and thus vanish from the statistics. In practice they do not receive unemployment assistance.

Question of Mme Ruth Halperin-Kaddari

Since for four years now the German government has apparently taken no more actions as to the implementation of gender mainstreaming, what is their response to your critics at this point?

ALLIANCE OF GERMAN WOMEN'S ORGANIZATIONS (Marion Böker)

We delivered the critic over the years several times. The only response was that they are re-thinking the approach. Since four years there is no result. In June 2007 there was an EU-Conference, better.: Symposium by Germany on the issue. The result was again that The Government is not active but re-thinking the terminology (*see Alternative Report, 2.2., p.6, Ref. 5/ and Fact Sheet "Abundance of the Gender Equality Strategy of Gender Mainstreaming and Budgeting", for the 43rd Session of CEDAW by M. Böker on behalf of the Alliance of German Women's Organisations*).

Since we have provided our Alternative Report to CEDAW, first the Executive Summary in June 2008 to the Committee- and indeed we did send it to the German Government- and now the full report in November 2008 we did not get any response by anyone of the German Government not even from the specific Ministries as the Fed. Ministry for Women, Seniors, Family and Youth (National Machinery of the Advancement of Women) nor the Fed. Ministry of Finances.

The Alliance of German Women's Organizations launched the Alternative Report on December 15th in Berlin in the Heinrich-Boell-Foundation in cooperation with the Gunda-Werner-Institute. We as the co-organisers invited the Minister of the Fed. Ministry for Women, Seniors, Family and Youth Ms. Von-der-Leyen an/or a State Secretary for a panel with all female Members of Parliaments from all party groups within the National Parliament. They did not come. The Head of the Department for gender Equality, Ms. Welskop-Deffaa, came but she did only took the Alternative Reports but did not give us a chance for a dialogue. After 1 hour at least when she was only listening she then left the event. At the event 120 participants and some journalists show up.

There is absolutely no response.

Question of Mr Cornelis Flinterman

**Is your point the informed consent of the intersexual person herself or of the parents?
ASSOCIATION OF INTERSEXUAL PEOPLE/ XY-WOMEN
(Lucie Veith)**

As the general comments no. 24 on CEDAW and no. 14 on the CESCR point out, the human right to health (art. 12 CEDAW, art. 12 CESCR) requires the free informed consent. This free informed consent includes, that the patient herself gets all relevant information on her health situation, on different treatment or non-treatment alternatives, and what the doctor suggests. The decision then has to be done by no one else than by the patient herself. A decision of closest relatives, here of the parents, is only allowed in the case of a medical emergency. A medical emergency is defined as a situation, where a treatment is needed to preserve the life or to preserve a specific organ of the body, and where the affected person cannot be asked. An enlarged clitoris or a micropenis, therefore, are no medical emergencies, thus leaving the power to free informed consent at the intersexual person herself, with no legal transferability to the parents. Also having ovaries and testes at the same time is no medical emergency, does not require an early castration; never scientifically proved or disproved claims about a increased cancer risk require early regular medical checkups, not early castrations. These early castrations only cause endless pain and violations of the human dignity (art. 1 UDHR), of the right to reproductive self-determination (art. 16 par. 1 lit. d CEDAW), and of the right to be protected against unconsented medical experiments (art. 7 s. 2 ICCPR). It needs to be stressed, that the best interest of the child is higher-ranking than the parental right to educate the child (art. 5 lit. b CEDAW). This, from our legal point of view, results also in leaving the decision on the free informed consent with the intersexual girl itself for all situations, which are no medical emergencies, especially if these decisions are irreversible. We hope for the same level of protection for our minority as the CEDAW Committee has granted in the general comments no. 14 (on circumcision), no. 19 (on violence), and 24 (on health).

Question of Mr Cornelis Flinterman

Can you describe examples for the fact, that the concluding observations of 2004 have not been taken serious by the German government?

ALLIANCE OF GERMAN WOMEN'S ORGANIZATIONS

**Evaluation scheme: Concluding Comments
CEDAW /C/2004/I/CPR.3/Add.6/Rev.1
of 30 January 2004**

Concluding Comment No 20 and 21

No consistent concept can be recognized to influence and change the general discourse on gender stereotypes.

The federal government did not act seriously against sex stereotyping in the media and sexist advertising. The government's report of 2004 and also of 2008 noticed that the number of complaints about sexist advertising has fallen, whereas NGOs estimate that the number of complaints sent in by individuals and civil society organizations has continued to rise. The government only takes into account the complaints sent to the German Advertising Council, a self monitoring body set up by the advertising industry. No efforts were made to create a more appropriate instrument to prosecute sexist advertising.

Concluding Comment No 22 and 23

The prevalence study on violence against women launched by the government 2004 does not provide meaningful data on more specific aspects particularly of domestic and sexual violence and violence against migrant women

Concluding Comments No 24 and 25

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.

Germany has one of the biggest gender pay gaps in Europe. This gender pay gap is the result of different factors interacting with each other. Although it is almost impossible to exactly figure out how much each factor contributes to this discrimination, there are very interesting hints out of the statistics. The gender pay gap differs a lot between West Germany with a gap of 24% and East Germany, the former GDR, where the difference between female and male income lies only at 6%. The GDR integrated women and men equally into the labor market whereas in West Germany a model is still prevailing, in which male partners are considered to be the main earner of the family income. The female is supposed to only earn an additional amount of money.

The German government still promotes this old model through its tax system, its social welfare system and the planned payment to mothers taking care of their children at home. The tax system motivates women to stay at home and refrain from looking for a job. The social welfare payments are linked to the earning partner, who is in most cases the man.

Other reasons for the gender pay gap are well known. One of them is the system of evaluating work in the wage in the collective bargaining process between the unions and the employer's organizations.

Concerning the situation of girls in prison, they compared to arrested boys have hardly any offer to go into vocational training.

Concluding Comments No 26 and 27

There have been no tangible measures by the Government to increase the visibility of CEDAW neither on federal nor on Länder-level, which is deplorable especially in the entire field of the judiciary. The brochure the government is referring to in its response to the list of issues and questions from the pre-session though really being very informative had been printed in such a limited edition that it was not available anymore after a short period of time. The information on CEDAW on the web site of the ministry is very well hidden. It is almost impossible to find it by accident.

European Union's directives seem to be more important in the field of anti-discrimination than CEDAW.

Concluding Comments No 28 and 29

The existing evaluation of negative impacts of the agenda 2010 on women has up to now not led to respective changes and amendments. The health reform bill of 2007 like other laws concerning health is not gender sensitive. The gender impact assessment of the reform has not

happened. Therefore it is impossible to determine whether the equal access to health provisions so far guaranteed by law is actually occurring in practice.

Concluding Comments No 30 and 31

Data on forced marriage are not available. We consider the situation of migrant women in particular of those without regular residence permit as alarming in respect of basic needs access to health care, education and labor.

Concluding Comments No 32 and 33

The existing legislation (for example the Act on the Appointment and Secondment of Women and Men to Bodies within the Remit of the Federation (Bundesgremienbesetzungsgesetz)) did not impede the underrepresentation of women on high levels in public life. Above all, very few women are represented in strategically important and decision making areas (e.g. Hartz Commission, Joint Federal Committee for health insurance). We highly recommend the introduction of quota as temporary special measure.

Concluding Comments No 36 and 37

The adoption of the Prostitution Act has neither fundamentally improved working conditions for prostitutes nor contributed much to combat human trafficking. These objectives cannot be achieved by making clients criminally responsible.

We recommend to implement the provisions of the Prostitution Act in other statutes, involving the counseling centers for prostitutes and create good, legally binding standards for prostitutes' working conditions, a nationwide network of good counseling services with appropriate assistance for prostitutes willing to leave the trade.

Concluding Comments No 40

Consultation with NGO's has not taken place.

For further information look in the table attached.

Question of Mr Cornelis Flinterman

General Equal Treatment Act, Anti Discrimination Office, what are the deficits of this law? Does this law refer stronger to the EU framework than to CEDAW?

ALLIANCE OF GERMAN WOMEN'S ORGANIZATIONS

(Dr. Katja Rodi)

For women the General Equal treatment Act (AGG) has brought limited improvements for women compared to the legal provisions before the law has enacted.

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 competences of the ADS are not sufficient. See further answer to question of Mme Paten.

In respect to the burden of proof, the AGG has not brought any improvement compared to the legal situation before enacting the law (§§ 611a and following of the Civil Code). 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.

In the former § 612 sec. 3 BGB gender pay equality has been provided for expressly. In the General Equal Treatment Act gender pay gap equality has become invisible. It is only mentioned in § 8 sec. 2 AGG, which deals with the exceptions of the principle of equal treatment.

The AGG strongly refers to the EU Framework and makes no reference to CEDAW

Question of Mme Victoria Popescu

Since the General Equal Treatment Act provides for the possibility of positive discrimination. To what extent is it used in the practice.

ALLIANCE OF GERMAN WOMEN'S ORGANIZATIONS

(Dr. Katja Rodi)

The possibility of positive discrimination of the General Equal treatment Act (AGG) is - as we know – not yet used in practice. Especially the allocation of quotas for example for female CEOs of DAX or M-DAX companies or for women on supervisory boards of companies is still considered illegal by many German lawyers.

Question of Mme Victoria Popescu

What experience is there with § 8 General Treatment Act?

ALLIANCE OF GERMAN WOMEN'S ORGANIZATIONS

(Dr. Katja Rodi)

There is yet no special experience with § 8 AGG since the law is relatively new. But German women's organisations are criticizing this article in general. The possibilities of exemptions are now wider than before. The former § 611 a sec. 1 Code Civil provided for sex as an indispensable requirement. Now according to § 8 AGG "essential and important requirements of work" are sufficient to justify unequal treatment.

Question of Mme Victoria Popescu

To what extent does the financial crises hit the German women and what is the impact for women's employment?

ALLIANCE OF GERMAN WOMEN'S ORGANIZATIONS

(Marion Böker/Doris Paellmann)

Women will even find less employment and the share of part-time jobs (and low paid and qualified jobs) for only women will increase. More and more such jobs cannot finance a living especially since a woman is a mother of children and /or single mother. So many are forced to have two jobs or are forced to additionally apply for welfare which undermines the rights to work (CEDAW, Art. 11.a., and CESCRR) and the dignity of women, men and their children.

Pupils in primary schools in Berlin (the majority of them migrant girls and boys) describe themselves already as :

"Ich bin Hartz IV" or

"We are Hartz IV." (We= the family)

Mr. Hartz was the family name of the manager of a huge company in Germany who became chief advisor for the German Government on the labor market, economical and social reform in 2000 "agenda 2010". The level 'IV' stands for the fourth reform of the Social Welfare Act. These kids are feeling already deprived by the reform before they have even entered the labor force and do not see any future perspective already. Girls tend to report that they plan to marry a rich man.

Recent jurisdiction and the new Penal Law (Strafvollzugsgesetz) put pressure onto the Laender of the Federal Republic of Germany to improve the situation of girls in prison. Though some Laender have announced such improvements, no concrete action has yet been taken. The current financial crisis gives reason to fear that the marginalized situation of girls in prison and their discriminations will be disregarded.

Question of Mme Yoko Hayashi

To what extent is CEDAW used in law suits concerning gender pay gap? What is the positive function of trade unions in this respect?

ALLIANCE OF GERMAN WOMEN'S ORGANIZATIONS

(Dr. Katja Rodi)

We have no knowledge of law suits concerning gender pay gap, in which CEDAW was used.

There have been several law suits concerning this question based on the General Equal Treatment Act (AGG) but most of them were not successful. It is hard for women to proof a discrimination because they are not allowed an insight neither into the wage system of their company or of the collective wage agreement nor into the background of these systems. Even when winning a law suit, the ruling is only binding to the individual case.

In the moment we unfortunately recognize very little positive function of trade unions in respect to gender pay gap. It is generally accepted that the system of evaluating work in the wage in the collective bargaining process between the unions and the employer's organizations is one of the reasons for gender pay gap. This system based on a factor comparison system is discriminatory for women.

According to German law there exists a fundamental right of autonomy for the bargaining partners. This is always used as an argument by state officials to deny any influence on the bargaining process. But the autonomy of bargaining does not expel the German Governments of their duty to protect employee's especially female employees. Procedural legislation to achieve compliance with the equal pay directive could be drafted and passed in order to ensure non-discriminatory job evaluation and job assignment systems as well as non-discriminatory compensation systems. Proposals already exist. Already in 2002 there has been a report of the German government to the parliament on the results of a scientific research on the reasons of gender pay gap (BT Drucks. 14/8952). Non-discriminatory job evaluation systems have already been described in this report. But no further action has been taken neither by the German state nor by the trade unions.

As to the German Government at least some pressure might be put onto or at least some state information might be given to the partners of the bargaining process about analytical job evaluation systems, which are not discriminating women. None of this is done by the German state. In the moment the German government relies solemnly on the deliberate promises of the partners to end the discriminatory system, which has not lead to any change during many years. What is the recent impact of the recent economic crisis onto women?

Question of Mme Soledad Murillo de la Vega

What progress from has been made by the means of the “Gewaltschutzgesetz”, and the “Opferschutzgesetz” ... could you point out?

a) ALLIANCE OF GERMAN WOMEN’S ORGANIZATIONS

(Dr. Margarethe Wegenast)

What is the impact of the implementation of new laws in the field of violence against women that is domestic as well as sexualized violence?

Welcoming the new laws – the Violence Protection Act, the reformed Crime Victim Protection Act and others – we are however concerned about loopholes, lacks in the implementation and the profound evaluation of their realization. There are no meaningful figures on

- sexual violence, including legal practice
- sexual violence under the influence of sedating substances
- violence against women with disabilities
- domestic violence, particularly femicide in this context, but also court proceeding practice, for example the number of dismissals.

A severe problem for residential as well as non/residential support services for women affected by violence in Germany is the lack of sustainable funding for the respective institutions. The federal government assigns this issue to the Laender as part of their responsibility. Most of the Laender consider the financing of women’s’ support services as a voluntary, not as mandatory task. Thus the institutions are constantly threatened by cut-backs, there have even been closures. Resources are bound to administration – as to maintaining the organization – and thus lost for the original issue of supporting the victims.

b) ASSOCIATION OF INTERSEXUAL PEOPLE/ XY-WOMEN

(Lucie Veith)

Intersexual women, who have been made victims to not correctly consented human experiments (art. 7 s. 2 ICCPR), need the full realization of their human right to health information (art. 10 lit. h CEDAW), which, from our legal point of view, includes also the access to their patient files. Without these files, they are denied to bring the necessary proofs, thus excluding them from the support by these laws. A state program for the compensation to intersexual victims is one of our demands. We need, in the short-term, a moratorium, and after that longer deadlines for the preservation of patient files of intersexual people, so that all intersexual women are enabled to find out about their sexual condition at birth, and about their medical treatment.

Question of Mme Dubravka Šimonovic

More general: How is the dialogue under CEDAW between the German Government and the NGOs? How could you rise your issues to the government, and how especially the intersexual and intersexual people?

a) ALLIANCE OF GERMAN WOMEN'S ORGANIZATIONS (Marion Böker)

Since the Session in January 2004 until now the German Government has not yet initiated, or invited to a dialogue. There is no ongoing dialogue.

There was a rumour in the end of 2006 and until February 2007 that in advance of the new 6th Report the Fed. Ministry for Women, Seniors, Family and Youth might plan to invite NGOs but then this was never realized. In December 2007 the NHRI (German Institute for Human Rights) invited NGOs to an CEDAW Alternative Report and lobbying briefing. They invited the Ministries especially the Fed. Ministry for Women, Seniors, Family and Youth and the Head of the Department of Gender Equality came to speak on a panel.

None of our NGOs who contributed to the Alternative Report or even independent of this were contacted from the Government to any dialogue on the issues under CEDAW or just as an issue of interest. Many have written letters and ask for a dialogue separately or as in the Alliance. As to mention one e.g. the NGO working on Girls in Prison since long tried to get in touch with ministries on behalf of the discriminations of that girls (children). No response for them as for all other NGOs until today.

The first response might be the one of Ms. Konrad of the German Permanent Mission to the UN in Geneva today. She is in the Governmental delegation and offered a bilateral (!) dialogue with the NGO delegation while in Geneva.

b) HUMAN RIGHTS AND TRANSSEXUALITY (Christina Schieferdecker and Kim Schicklang)

It seems that the German Government isn't really interested in improving the legal issues of transsexual people since decades. Our organization "Human Rights And Transsexuality" (Now ATME e.V.) exists since 2006 - in this time we never got any answer to our questions (we wrote letters to many politicians of all parties).

As we know, other organizations in Germany have the same problems, too. There are many claims for getting the Law of Transsexuals changed, especially to simplify the procedures of getting legal papers changed without the need of any medical requirement or psychiatric consultation: Especially consultations based on the discriminating diagnosis "gender identity disorder".

But until today there's no answer from anyone!

c) ASSOCIATION OF INTERSEXUAL PEOPLE/ XY-WOMEN (Lucie Veith)

We don't have any dialogue with the German government. We also have not been contacted with regard to question no. 24. The taboo around intersexuality has not yet been overcome. The power over our minority is still left to the medical professions. According to the preamble of the UDHR, "every organ of the society", thus including medical professionals and their associations, are directly addresses of the human rights of the UN. Nevertheless, the strongest responsibility with regard to the implementation of the human

rights remains at the state, which has ratified the treaties, which has the power to legislate, and which has the executive power to survey and to limit the behavior of private actors.

Question of Mme Dubravka Šimonovic
Are there any temporary special measures?

ALLIANCE OF GERMAN WOMEN'S ORGANIZATIONS
(Marion Böker)

Yes, there are some quotas for women in professorships and decision making positions at universities. These are due to the Laender regulations, e.g. in Berlin where the parliament and administration request a quota of women in universities as for the public expenditures provided to the universities from the budget (gender budgeting). There are additional incentives and sanctions as an increase or decrease of the share of the budget article for Berlin universities.

This example shows how important it would be that State reports to CEDAW (and other HR Treaties) would report about the Laender as well.

The Federal Ministry for Education (including the Higher and University Education, Science) promotes a higher share of women (not the quota itself) and supports financial projects which help to increase the share of women in higher level of university teaching and science.

There are programs and projects and funds for tsm: But these are still in the tradition of the traditional *Frauenpolitik* and not linked to a Gender Mainstreaming approach: Only the Fed. Ministry for Education and Science writes that it sees its gender Equality measures in the framework of the Gender mainstreaming Strategy. The is exceptional and due to the big funds and cooperation from and within the EU framework of the Barcelona process and the criteria of the EU-Commission and at least because this Ministries departments started strongly in 1999 with Gender Mainstreaming and it seems that since 2005 they did not stop it totally because of the EU requirements.

NGOs in Germany wish much more tsm especially to make stronger use of the quota in more areas of life for women, but as well for the groups of migrant women and men. We have such in public services of the Laender e.g. for women but as well in the police services in some of the Laender for migrant women and men. But it should be increased.

We would need a quota in the decision making levels of the boards of big companies and banks, in universities, in private universities.

For public or governmental or parliamentarian ad hoc committees as for the consultation of new drafted legislation there is a regulation in national level in Germany (Bundesgremienbesetzungsgesetz) which says there should be a parity of men and women: But it is not used, better: it is mostly ignored and more men are called in this advisory committees/commissions. This was especially when the labor market, economical and social reforms were drafted but still is the bad practice e.g. when experts are asked as to the financial crises.

Question of Mme Dubravka Šimonovic

Can you give further information on the educational system and its impact on migrant women?

ALLIANCE OF GERMAN WOMEN´S ORGANIZATIONS

(Marion Böker/Dr. Elisabeth Botsch)

Especially the educational system discriminates migrant and minority girls and boys in primary school then in all school and education since the system is highly segregative (see the Report of Special Rapporteur of the HRC on the Right to Education, V. Munoz on Germany).

This has live long consequences and causes multiple discrimination for migrant women as well for men. But as women those women migrants are more multiple discriminated on the labour market etc.

The access to education and to labour market depends on the country of origin. Repatriates and women from the EU and eastern European countries have notably better chances to be integrated than women from Turkey, most Arabian countries or from Africa, as well as asylum seeking women. On the Laender level there are some programs for preschool promoting (German lessons), but additional finances of the government would be necessary to provide this support all over Germany. Recent OEECD studies have proved once again that success in education definitely depends on the social status and background. This problem affects migrant girls and women in particular.