

## Germany

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

In Germany women and men have equal rights to enter into marriage (Civil Code, Sec. 1310). Same-sex partnerships are officially and legally acknowledged under the Registered Life Partnerships Act. Since October 2017, same-sex marriages are legal in Germany.

Forced marriage is considered an offence against personal freedom and punishable to imprisonment from six months to five years (Criminal Code, Sec. 237). The Civil Code also addresses the issue of forced marriage where a contracted marriage may be annulled if a spouse was unlawfully induced to enter into the marriage by duress (Civil Code, Sec. 1314). It may be ordered only by a judicial decision on petition of any of spouses (Civil Code, Sec. 1316). Moreover, there is no obligation established by promising a fee for giving evidence of an opportunity to contract a marriage or for acting as a broker in arranging a marriage (Civil Code, Sec. 656). The Federal Government undertakes measures to combat forced marriages in Germany. Several programmes addressing violence against women concern the problem of forced marriages and girls or women who are at risk or provide services for those at risk of forced marriage (e.g. Violence against Women helpline). There are also some targeted projects such as intercultural online counselling for victims of forced marriage or distribution of booklets and flyers. The topic of forced marriages is now included in integration courses provided for foreigners arriving in Germany (CEDAW, 2015).

There are reports that forced marriage may be a concern for women and girls of immigrant communities, although this does not appear to be the case for boys and men (BMFSFJ, 2011). The study on forced marriage prepared by the Ministry for Family Affairs, Senior Citizens, Women and Youth highlights the link between forced marriage and domestic violence: Interviewed women stated that they were subjected to physical assaults and violent threats to force them into a marriage, threatened with weapons and murder so that the marriage could come into force (BMFSFJ, 2011).

The law in Germany does not provide for official registration of all marriages and partnerships, such as customary and religious marriages or informal or de-facto unions. The principle of civil marriage states that a marriage is entered into only if both contracting parties declare their will before the civil servant (Civil Code, Sec. 1310). The participation of the state aims to ensure the legal clarity and publicity as well as the examination of marital conditions (Bundestag, 2011). This regulation also fulfils one of the basic rights of the special protection of the state for marriage and family expressed in German Constitution (Basic Law, Art. 6).

The family law does not address the informal relationships. However, partial recognition may be found in inheritance law (Civil Code, Sec. 563), social security law (Social Security Act, Sec. 20, 39), tax law (Income Tax Act, Sec. 33a) or as regards housing benefits (Housing Benefits Act, Sec. 5).

## b) Child marriage

In Germany, the legal age of marriage for both women and men is 18 (Civil Code, Sec. 1303). Child marriage is void in Germany and it is a ground for annulment (Civil Code, Sec. 1314). Judicial decisions on marriage annulment is ordered on petition. Persons entitled to petition in case of breach of the provisions on legal age are either spouse or the competent administrative authority (Civil Code, Sec. 1316).

In June 2017, the German Parliament passed a law mandating there are no exceptional reasons for entering into marriage under age of 18. The amendment is driven by the recent increase in brides even younger than 16 arriving in the country (Bundestag, 2017). A marriage will be annulled by a court decision in case a spouse was 16 but not 18 at the time of the entering into marriage. There is no need for a judicial annulment of a marriage in which one of spouses was under 16 at the time of marriage as it is automatically ineffective. These regulations also apply to minors who get married abroad and under foreign law. The law also provides for the rights of the Youth Welfare Office. It is allowed to take minor refugees into care even if s/he was legally married abroad and undertake all necessary protective measures. It may cause separation from the spouse. The new law also put fine for those facilitating a marriage of an underage individual in traditional or religious rather than state ceremonies (BMJV, 2017).

The problem of child marriages in Germany has been found to mainly affect girls from immigrant families from countries where such practice is allowed. Such marriages are either contracted in their home-countries and then requested to be recognised in Germany or organised secretly in local communities (BMFSFJ, 2011). It is required to register a marriage in Germany which is done as a way to generate social support for the enforcement of laws on the legal age of marriage (Civil Code, Sec. 1310).

## c) Household responsibilities

German law does not recognise the institution of the head of household, instead spouses provide for the household management by mutual agreement (Civil Code, Sec. 1356). In case, the management is left to one of the spouses, he acts on his own responsibility. The spouses also share the duty of family maintenance, they appropriately contribute through their work and with their assets (Civil Code, Sec. 1360). It includes everything that is necessary to cover costs of the household, meet personal needs of spouses and all necessities of life of the children (Civil Code, Sec. 1361).

Both parents have equal right and responsibilities to their child during and after marriage (Civil Code, Sec. 1626). In case, parents are not married to each other at the moment of the birth, they may enjoy joint parental custody. It requires declarations of parental custody made by parents, contracting marriage or transfer of joint parental custody ordered by the family court (Civil Code, Sec. 1626). If this is not done, the mother is given automatically granted sole custody. When parents are not married to each other, the mother has the right to claim for maintenance by reason of the birth against the father, for a period of six weeks before and eight weeks after the delivery (Civil Code, Sec. 1615I). This provision also applies to other costs related to pregnancy and delivery outside this period. Under special circumstances, such as incapability of being engaged in gainful employment as a result of pregnancy, illness caused by the pregnancy or the delivery, the father is obliged to pay the mother

maintenance for a period exceeding the period set above. This obligation begins at the earliest four months before the birth and may last up to three years after the delivery. Similarly, the mother or the father who cannot be expected to be engaged in gainful employment by reason of the care or upbringing of the child has a claim against second parent.

In Germany, the overall workloads of women and men are comparable in most age groups (OECD, 2016b). Nonetheless, partnered women devote significantly more time to unpaid work than partnered men. A critical moment for woman's future labour market devotion and task sharing between woman and man occurs with the parenthood. The evidence suggests that the presence of children leads to more traditional sharing of housework. Working mothers mainly works part-time while German fathers are employed full-time. It is reported that long hours affects the time men wish to spend with family. The gender gap in childcare tends to close on weekends and when a child enters school (OECD, 2016b).

#### d) Divorce

In Germany, women and men have the same rights to initiate divorce (Civil Code, Sec. 1564); the same requirements apply to finalise a divorce or annulment. The marriage is dissolved by court ruling on the petition of one or both spouses (Civil Code, Sec. 1564).

The parents have the same duty and the right to care for the minor child and they share the parental custody, even in the event of divorce (Civil Code, Sec. 1626). In the best interest of the child, parents should attempt to seek agreement how to exercise the parental custody, e.g. in terms of place of residence (Civil Code, Sec. 1627). If the parents cannot agree, the family court may transfer the decision to one parent (Civil Code, Sec. 1628). The child has the right to contact with each parent and also each parent preserves the duty and the right to contact with a child. Therefore, the parents must refrain from anything that causes more difficulties the relation between the child and the other parent, or the upbringing (Civil Code, Sec. 1684). In this sense, it is forbidden to bias child against another parent. Parents are also obliged to maintain their child (Civil Code, Sec. 1601). The maintenance include all necessities of life of the child as well as the cost of education and appropriate training for an occupation (Civil Code, Sec. 1610.) The parent who is looking after a child fulfils his duty in the care and upbringing of the child (Civil Code, Sec. 1606).

After divorce, each spouse is responsible for providing for their own maintenance (Civil Code, Sec. 1569). However, if a divorced spouse is not in the position to maintain himself, they are entitled to claim for maintenance against the other spouse. The claim for maintenance is determined under following circumstances: to care or upbringing of a child for at least three years after the birth; by reason of old age; for illness or infirmity; for unemployment and topping-up maintenance; for appropriate gainful employment, for training, further training or retraining; for reasons of equity (Civil Code, Sec. 1570-1576).

Upon divorce, the matrimonial property regime terminates. If spouses lived under the property of community of accrued gains, the accrued gains are equalised as follows: if the accrued gains of one spouse are higher than accrued gains of the other spouse, 50 per cent of the excess is considered to

the other spouse as an equalization claim (IMPOWR Database; Civil Code, Sec. 1363, 1372). In the case of the community of property, spouses partition the marital property (Civil Code, Sec. 1471).

Upon the dissolution of the marriage by divorce, surviving spouse is excluded from the right of intestate succession or any compulsory share. In general, if testamentary disposition includes provisions for the spouse, it is ineffective if the marriage was dissolved before the descendant's death (IMPOWR Database).

### **e) Inheritance**

German law provides daughters and female surviving spouse to inherit land and non-land assets with the same rights as men (Basic Law, Art. 14; Civil Code, Sec. 1924, 1931). Under Civil Code, disinheritance is not prohibited the deceased may exclude by will a relative, his spouse or civil partner from intestate succession (Civil Code, Sec. 1938). Serious reasons have to occur to deprive a descendant of his/her compulsory share (Civil Code, Sec. 2333). Women and men have also equal rights to make a will.

## **2. Restricted Physical integrity**

### **a) Violence against women**

Germany has signed but not yet ratified the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention). The Federal Government adopted a number of legal changes to implement the Convention and bring national legislation into conformity with its standards (CEDAW Alliance, 2016). The Convention as international law takes precedence over domestic legislation (Basic Law, Art. 25).

Apart from the provisions of the Criminal Code, the main legislation addressing violence against women is the Protection against Violence Act. The Act states the protection of victims of violence and improves preventive legal protection. The main measure included is the co-called "stay away" order (UN Women, Global Database on Violence against Women; Protection against Violence Act, Sec. 1). Upon the application of an aggravated person, the civil court may prohibit the offender to enter victim's home, initiating contact or approaching the other party (Protection against Violence Act, Sec 1). Additionally, the victim may demand the perpetrator that he relinquishes the jointly used dwelling for sole use up to six months (Protection against Violence Act, Sec. 2). Certain sanctions are mandated for violation of protective order issued by the court – it is up to one year of imprisonment or a fine.

The German Criminal Code classifies honour killing as a murder from base motives and it is liable to imprisonment for life (Criminal Code, Sec. 211). There are reports of honour killing occurring within ethnic minorities from Turkey, Arabic countries, Albania, states of former Yugoslavia, Pakistan and Afghanistan (Oberwittler, Kasselt, 2011).

The last Action Plan of the Federal Government to combat violence against women was established in 2007. The Plan focuses on mitigating the efficiency of fighting against violence against women and protection of women at risk, the comprehensive approach addresses the issue in various areas. It also addresses the needs of women with immigrant background and women with disabilities as well as the

problem of domestic violence (BMFSFJ, 2014). Recently, the National Action Plan 2.0 of Germany's Federal Government for the UN Convention on the Rights of Persons with Disabilities was presented in which the measures to combat violence against girls and women with disabilities are highlighted (BMAS, 2014). The Federal Government also contributes to the projects "Women's Representative in Sheltered Workshops and in Residential Facilities for People with Disabilities" and "Political Advocacy for Women with Special Needs and Women with Disabilities" (BMFSFJ, 2014).

Given the importance of medical assistance to women who experience violence, the Federal Ministry of Health funded and distributed the translation of WHO clinical handbook "Health care for women subjected to intimate partner violence or sexual violence" (CEDAW, 2016). Moreover, the pilot project "Medical intervention against violence" carried out in five cities in Germany significantly advanced and unified standards in medical intervention model. It helped to develop warning signs to faster recognise the case of violence and increased awareness among medical professionals (EIGE, 2016).

Addressing specific needs of female refugees arriving in the country, the Ministry for Family Affairs, Senior Citizens, Women and Youth in collaboration with UNICEF launched the initiative introducing women-friendly policies in some refugee shelters. Social workers are tasked with detecting violence and abuse in shelters and offer special counselling and support to victims. Moreover, separate rooms for families are provided for women with children (website of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth). The Federal Government also sponsors the "integration women-courses" targeting immigrant women in which the module on violence against women is included (CEDAW, 2015).

The Ministry for Family Affairs, Senior Citizens, Women and Youth launched in 2013 the helpline "Violence against Women". Girls and women, or any relative, acquaintance or neighbour, may call the hotline seeking advice. The hotline is free and operates on 24-hour basis; the telephone counselling is provided in over 15 languages by female, experienced and trained professionals (website of the helpline). The counsellors may also find and refer to an appropriate local support agency across Germany.

## **b) Domestic violence**

In Germany, there is no special regulation addressing exclusively domestic violence, instead it is covered by provisions of the Criminal Code. Therefore, domestic violence is encompassed in the crimes such as: abuse of position of trust (Sec. 174); sexual assault by use of force or threats; rape (Sec. 177); insult (Sec. 185); abandonment (Sec. 221), negligent manslaughter (Sec. 222); causing bodily harm (Sec. 223); stalking (Sec. 238) among others. Victims of domestic violence also benefit from the Protection against Violence Act offering civil measures for protection against psychological violence, threats and stalking by a spouse or a former partner (Working Group for Intervention in Violence Against Women, 2012). In order to cover costs of the court proceedings, the victim may apply for legal aid.

The Federal-Länder Working Group on Domestic Violence, headed by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, provides framework for effective cooperation between the representatives of federal and local level, as well as non-governmental organisations. The main tasks

of the Working Group are: exchange of information on the various activities at the federal and local level as well as in national and international institutions; analyse of problems and challenges in combating violence against women; and preparation of recommendations in this area (website of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth). Notably, all the Länder introduced changes in their respective Police Acts to better protect victims of domestic violence; they have strategies to combat domestic violence and carry out a number of projects in this field (BMFSFJ, 2004).

The German Judicial Academy regularly organises trainings and seminars, for judges from all branches of jurisdiction, on violence against women. In 2017, the Academy prepared the courses addressing, e.g. emergence of domestic violence, violence in Islamic immigrant families, early warning system, victims of violent crime and criminal proceedings (website of the German Judicial Academy).

### **c) Rape**

German Civil Code addresses sexual violence (Criminal Code, Chapter XIII) and recognises rape as a criminal offence liable to imprisonment of no less than two years (Criminal Code, Sec. 177). The law also provides for increased penalties for aggravated forms of rape and sexual assault. For instance, in the event of the death of the victim caused by at least the offender's gross negligence the penalty shall be imprisonment for life or not less than ten years (Criminal Code, Sec. 178). The law on sexual assault and rape mandates the marital rape. In 2016, the German parliament passed an amendment to the Criminal Code adopting "no means no" rule, i.e. any case when a victim of sexual assault or rape withholds consent is punishable as a crime (US State Department, 2016). Previously, the proof of physical resistance or penetration was required.

In Germany, there are three statistical products on sexual offences published by: the Federal Criminal Police Office (reported cases), prosecution (prosecuted cases) and penal system (convictions)(European Women's Lobby, 2013). The statistical report provided by the Federal Criminal Office presents data on the whole group of sexual offences against self-determination reported and do not particularise any type of offences. Statistics on prosecutions and convictions complement the picture of sexual crimes in Germany and; however, they are all produced by separate institutions and are not linked to each other. It is not feasible to follow the case through the whole process or compare data (European Women's Lobby, 2013). Recently, statistics report the increasing number of sexual offences committed by migrants.

It is noticed that the gender-based stereotypes and rape myths are still persistent in Germany among the public and legal practitioners. Therefore, the education and awareness-raising measures are required. Moreover, the judges and prosecutors should be trained to fully apply the legal framework against gender-based violence (CEDAW Display News, 20 February 2017).

### **d) Sexual harassment**

The legal framework in Germany provides legal protection from sexual harassment. It is regulated and defined in the General Act on Equal Treatment. The scope of the Act is limited to employment and certain areas of civil law; it does not apply to domestic and private spheres, such as educational, sporting establishments, public places and cyber-harassment or cyber-stalking. However, it protects

women employed in the domestic sphere. A victim of sexual harassment may seek civil remedies pursuant to the provisions of Civil Code and the Act. Hereby, an unlawfully injured woman may file a complaint with the employer who is obliged to examine the complaint (General Act on Equal Treatment, Sec. 15). Harassment may be also considered with the scope of the law on torts (Civil Code, Sec. 823). In cases of harassment occurred in areas that are not covered by the Act, it is punishable under criminal law as an insult (CEDAW, 2015).

The implementation of the General Act on Equal Treatment is supported by the Federal Anti-Discrimination Agency (General Act on Equal Treatment, Sec. 25, 27). The report of the Agency to the German Bundestag in the subject of “Discrimination in the area of education and work” demonstrated that women frequently face the sexual harassment in the workplace (BMFSFJ, 2014).

### e) Female genital mutilation

In Germany, female genital mutilation (FGM) is considered as a criminal offence and punishable by 1 up to 15 years imprisonment (Criminal Code, Sec. 226a, 38). Making FGM a separate criminal offence enabled greater sentencing in comparison with the offence of dangerous bodily harm as it was categorised before (OHCHR, 2014). This legal provision also applies to acts committed abroad when the offender is German or the victim has its domicile or habitual place of residence in Germany (Criminal Code, Sec. 5). It also concerns cases when parents in Germany send children to a foreign country to undergo FGM (OHCHR, 2014). In addition, the offender may be called to account for a grievous bodily harm (Criminal Code, Sec. 225), for instance, if the victim loses her ability to procreate due to the offence (BMSFJS, 2005).

Parents or any relatives involved may be liable to abetting (Criminal Code, Sec. 26) or aiding a crime (Criminal Code, Sec. 27), or considered as joint principals (Criminal Code, Sec. 25). Moreover, the law provides for criminal penalties for parents pursuant to legal provisions concerning abuse of position of trust (Criminal Code, Sec. 225). Performing FGM constitutes harm to the welfare of the child and may lead to the respective intervention (Ministry for Social Affairs and Integration Baden-Württemberg, 2016). In result, parental custody may be withdrawn (Social Code, Sec. 8a; Civil Code, Sec 1666, 1613). FGM is a criminal offence prosecuted *ex officio* (Criminal Procedure Code, Sec. 152). The victim also has a right to seek compensation (Criminal Code, Sec. 403).

The Federal Government of Germany established the Working Group on FGM that brings together representatives from different backgrounds and delegates from several federal ministries including the German Foreign Office, the Ministry of the Interior, the Ministry of Justice and Consumer Protection, the Ministry for Family Affairs, Senior Citizens, Women and Youth, the Federal Ministry of Health and the Ministry for Economic Co-operation and Development, as well as staff from the Federal Government Commissioner for Migration, Refugees and Integration, the Länder, the German Medical Association and non-governmental organisations (OHCHR, 2014). The European Commission’s Communication towards the elimination of FGM serves as its basis. The key task of the Working Group is to develop strategies to implement various measures, such as provide better understanding of FGM, promote sustainable social change to prevent FGM, enhance more effective prosecution of FGM, ensure protection for potential victims (European Commission, 2013). The Working Group sets its focus on data collection and analysis to make reliable data available (CEDAW, 2015).

Recently, a study on female genital mutilation, funded by the Ministry for Family Affairs, Senior Citizens, Women and Youth was carried out by INTEGRA, the umbrella organisation of NGOs in Germany working on FGM. The study shows that the number of persons affected by FGM increased by almost 30% between 2014 and 2016 (INTEGRA, 2017). It highlights that the most of victims do not have German citizenship and come from Eritrea, Indonesia, Somalia, Egypt and Ethiopia. The study also presents the work of focal points administered jointly with migrants' organisations in the following cities - Berlin, Düsseldorf Hamburg, Frankfurt/Main, Cologne and Munich. The great number of interventions confirms the necessity of providing such services and their effectiveness. The document also provides recommendations for national and local authorities for intervention and preventive measures (CEDAW, 2016).

There is a number of measures undertaken to prevent, protect and support girls and women affected by FGM and potential victims. Girls are protected by the Federal Child Protect Act. The child has its own right for counselling at the Youth Welfare Office and obtains proper support and assistance (OHCHR, 2014). Moreover, the around-o'clock and anonymous counselling is provided by the hotline "Violence against Women".

The important role also plays the Federal Ministry of Health. It primarily focuses on awareness-raising measures and the mobilisation of health care professionals (OHCHR, 2014). For instance, the German Medical Association drafted and published the 'Recommendations on the Management of Patients with a History of Female Genital Mutilation' (Bundes Ärztekammer, 2016). There are also several information brochures and booklets published.

The FGM practices primarily concern refugees, asylum-seekers and immigrants. They are duly informed upon arrival that this practice is considered as a felony in Germany (CEDAW, 2015). Due to the continuous migration flow from countries where FGM is practised in particular from North Africa, the number of girls and women living in Germany at risk of FGM is increasing.

## **f) Abortion**

In Germany, abortion is unlawful (Criminal Code, Sec. 218) but exempt from punishment in certain cases. The law mandates three possibilities when abortion is permitted: at the request of pregnant woman upon counselling; on medical grounds and due to a crime (Pro Familia, 2010).

In the first 12 weeks of pregnancy, abortion may be performed by a physician at the request of a pregnant woman if she demonstrates a certificate confirming that she received a proper counselling at least three days before the operation (Criminal Code, Sec. 218a (1)). The counselling aims to protect unborn life and help woman to make responsible and conscientious decision (Criminal Code, Sec. 219). The law also provides for upper limit of 22 weeks for the termination of pregnancy if the woman had obtained a required counselling, the abortion was performed by a physician and a court orders discharges if the pregnant women was in exceptional distress at the time of the operation (Criminal Code, Sec. 218a (4)).

The legal provisions of an abortion on medical grounds are met when it is medically advisable to carry out the abortion to prevent danger of a pregnant women's life or grave injury to her physical or mental health and if the danger cannot reasonably be averted in another way from her point of view, taking



into consideration the woman's present and future living conditions (Criminal Code, Sec. 218a (2)). This provision also applies to the case of fetal inviability (Pro Familia, 2010).

Abortion due to a crime (e.g. child abuse, sex assault, rape) may be performed with a woman's consent when a medical opinion states that there is strong reason to support the assumption that the pregnancy was caused by the unlawful act (Criminal Code, Sec. 218a (3)). In this case, the termination of pregnancy has to be carried out no later than 12 weeks have after conception.

The services related to confirmation of the pregnancy, counselling and indication for an abortion can be provided to underage women without the consent of her parents/legal guardians. Nevertheless, the consent is required to terminate the pregnancy. In case, when a pregnant underage woman wants to make a decision without this consent, the physician has to confirm she is of reasonable and sound mind (Pro Familia, 2010). It is to be decided on a case-by-case basis but average age for such confirmation is 16. The cost of abortion in the line of counselling has to be covered by a woman unless she is in difficult financial situation; in two other cases it is paid by the health insurance (European Parliament, 2015).

Recently, the number of abortions in Germany appears to be decreasing. Measures for sexual education and family planning have been adopted and developed. There is a considerable number of counselling centres across Germany offering information and support to women who seek advice, medical or psychological assistance. The services are provided in a discreet manner, they are free and easily accessible. The lower abortion rate is considered as one of the outcomes of the adopted measures (BMFSFJ, 2014).

### **3. Restricted Access to productive and financial resources**

#### **a) Secure access to land and assets**

In Germany, unmarried and married women have the same rights as men to own, use, make decisions over land and non-land assets and use as collateral. The general rule of the Basic Law stipulating the rights to property without any gender distinction serves as a basis (Basic Law, Art. 14) and civil law does not distinguish between women and men.

Regarding marital property, there are three possible marital regimes: community of accrued gains: separation of property and community of property. Spouses can choose one of them in the marriage contract (Civil Code, Sec. 1363). The community of accrued gains applies as statutory marital regime. Within this regime, each spouse keeps his/her right to the property acquired before or in the marriage (Civil Code, Sec. 1363) and manages it independently (Civil Code, Sec. 1364). Nevertheless, in the case one spouse intends to dispose of his property as a whole, the second spouse's consent is required (Civil Code, Sec. 1365). It aims to protect the value of the claim for equalisation of accrued gains if the marital regime ever terminates (IMPOWR Database). The same applies in the case of disposition of household objects (Civil Code, Sec. 1369).

Upon the dissolution of the marriage by divorce, the marital regime ends. Each spouse keeps the property he or she owns and pursuant to the special feature of the community of accrued gains a claim for an equalisation of accrued gains is provided.

### **b) Secure access to formal financial resources**

There is no evidence to suggest that equal access to formal financial resources is a concern in Germany. Married and unmarried women have the same right as men to open a bank account at formal institutions or obtain credit (Basic Law, Art. 3). However, there are several initiatives, supported by the Federal Government, to enhance women economic empowerment through entrepreneurship.

There is a wide range of mainstream financing programmes that women can freely access. However, analysis by the OECD (2016) shows that they may indirectly discriminate against women by focussing on business fields where female entrepreneurs are less active (OECD, 2016a). Moreover, there is lack of recognising specific needs of women and those programmes are not tailored accordingly. In response, the government has implemented some targeted initiatives focused on financing opportunities and specific credit programmes for women. For instance, the Federal Ministry of Labour and Social Affairs and the Federal Ministry for Economic Affairs and Technology launched the “Microcredit Fund” which is a new instrument supporting under-represented and disadvantaged social groups in starting-up in business (OECD, 2016a). It is granted by the microfinance institutions whereas some of them are specifically committed to enhance women’s entrepreneurship (EIGE, 2015). Moreover, the Ministry of Economic Affairs and Energy launched a fund to support small businesses and start-ups (Unterberg et al., 2014). It is not considered as a credit but aims to improve credit ratings and facilitate obtaining new loans for small and young enterprises. The fund is available for all, but women and migrants enjoy priority access (OECD, n.a).

Moreover, there is the National Agency for Women Entrepreneurs operating in Germany, which is jointly sponsored by the German Federal Ministry for Education and Research, the Federal Ministry for Family, Senior Citizens, Women and Youth and the Federal Ministry of Economy and Technology (National Agency for Women Entrepreneurs, 2015). The main goal of the Agency is to mobilise the potential female entrepreneurs and provide support. It gathers information, programmes and services targeting women’s entrepreneurship provided by different institutions at the federal and regional level. The wide range of the Agency’s activities, services and initiatives is the following: collecting and publishing information, advisory services and business counselling, trainings, mentoring programmes, networking, facilitating access to financing and political lobbying (OECD, 2016a).

### **c) Workplace rights**

Germany has ratified following ILO Conventions - C100, C111 and C189, whereas it is not a party of Conventions - C156 and C183.

The law in Germany mandates non-discrimination on the ground of sex in employment. The General Act on Equal Treatment covers job advertisement, selection criteria, recruitment, hiring, terms and conditions, promotions, trainings and termination (General Act on Equal Treatment, Sec. 2). Also, the Federal Gender Equality Act refers to non-discrimination on the basis of sex in the federal administration, enterprises and courts (Federal Gender Equality Act, Sec. 6-10). Moreover, the Act

provides for preferential treatment of women when they are under-represented in the specific sectors?(Federal Gender Equality Act, Sec. 8). Women are not prohibited from entering certain professions nor do they need permission from their husband or legal guardian to either choose a profession (Civil Code, Sec. 1356) or register a business (Commercial Code, Sec. 12). The legislation allows women to work the same night hours as men, although there are some limitations with regard to pregnant and nursing mothers (Maternity Protection Act, Sec. 8).

The law mandates for equal remuneration for work of equal value (Transparency of Remuneration Act, Sec. 7). However, the gender pay gap in Germany is estimated to over 20% (European Commission, 2014). There are several initiatives undertaken by the Federal Government and civil society to draw attention to the wage disparities between women and men. The Ministry for Family, Senior Citizens, Women and Youth launched the special software “Logib-D” that facilitates the analysis of company’s remuneration and personnel structures and provides advice on equal pay policy in the company (BMSFJF, 2010). The activity of civil society covers i.e. the annual Equal Pay Day campaign or the on-going research project “Collective Bargaining & Equal Pay”(CEDAW, 2015).

German law mandates paid maternity leave of 14 weeks and woman must not be employed in the last 6 weeks prior and in 8 weeks following delivery (Maternity Protection Act, Sec. 3, 6). The prohibition of employment for women in childbed may be extended up to 12 weeks in case of premature and multiple births (Maternity Protection Act, Sec. 6). Maternity allowance is covered by the health insurance (Maternity Protection Act, Sec. 13). If woman is not a member of the health insurance, maternity leave benefits are paid by the Federal Government; a supplementary allowance may be also paid by the employer (Maternity Protection Act, Sec. 14). Dismissal of a woman during the pregnancy; until four months following the miscarriage of the baby after the 12 weeks of pregnancy; and until four months following the delivery is prohibited (Maternity Protection Act, Sec. 9).

There is no paternity leave in Germany; however officials are entitled, pursuant to the Special Leave Order, to one-day leave on the occasion of the birth of a child (Special Leave Order, Sec. 12).

Both parents have the right to parental leave. The maximum total per child amounts to 36 months (Parental Allowances and Parental Leave, Sec. 15). The parent is entitled to parental leave until the child turns three years old. However, a maximum of 24 months of parental leave may be transferred and taken in the period between the child’s third and eighth birthday (Law on Parental Allowances and Parental Leave, Sec. 15). The period of 36 months may be divided into three blocks providing gives flexibility to the parents (BMFSFJ, 2016). Moreover, parents are allowed to undertake part-time work up to 30 hours per week. (Law on Parental Allowances and Parental Leave, Sec. 15). In this case, the parental allowance is calculated as the basic allowance but is in maximum 50% of the statutory allowance; in result it is paid for twice as long (BMFSFJ 2016).

The parental leave regulations serve the reconciliation policy. The study on Gender Equality in Germany commissioned by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth highlighted the inequalities between women and men in the key events in life cycle, in particular: the birth of the child, starting a family and return to work after child upbringing (BMFSFJ 2013; European Parliament, 2015). The flexible parental leave provisions designed for both parents influences the distribution of responsibilities between mother and father and support women in returning to gainful

employment (European Parliament, 2015). Moreover, the more gender-balanced reconciliation of work and family life is actively promoted in private sector in Germany. There are publicly supported initiatives that bring together various stakeholders, such as memorandum on the “New Reconciliation”. The document identifies areas of progress but also highlights remaining challenges. It acknowledges the greater awareness of flexible working hours and calls for longer paid work hours for mothers. It also provides guidelines for employees and companies how successfully achieve life-work balance (OECD, 2016b).

In Germany, the gender-based segregation in employment remains steady (Busch, 2010). Women and men are unequally distributed across different sectors as well as in management positions. Women are mainly attributed to health and social work, wholesale and retail, education and public administration (European Commission, 2012). The probability of being employed in German public sector appears greater for women than men with the same qualifications (OECD, 2011). In Germany various policies have been adopted to tackle segregations, such as: motivational and educational events; governmental training programmes; regular job evaluations (European Commission, 2009). It aims to encourage female and male employees, promote new roles and redress undervaluation of women’s job. Beyond occupational segregation, women face additional “vertical” factor – in the private sector they are underrepresented in management and its the most senior level (OECD, 2011). In order to enhance women’s participation in economic decision-making positions, German government have introduced obligatory 30% quota in supervisory boards in private companies (Equal Participation of Women and Men in Leadership Positions in the Private and Public Sectors Act, Sec. 4). Some companies (Deutsche Telekom) have voluntarily adopted such measure for women in management (OECD, 2011).

## 4. Restricted Civil liberties

### a) Citizenship rights

The German law provides for married and unmarried women and men equal rights to acquire, change and retain the nationality, as well as confer the nationality to their children (Nationality Act, Sec. 2, 4, 17, 29). Married women and men also have equal rights to confer their nationality to the spouse (Nationality Act, Sec. 9). The birth of the child can be registered by any of parents, regardless their marital status (Civil Status Act, Sec. 19). Under the German law, the proper Registry Office shall be notified about the birth of a child within one week; in case a child is born dead, no later than in the third working day following the birth (Civil Status Act, Sec. 18, 19). Parents who do not register their child’s birth may be subject to a fine (US State Department, 2016).

German law makes explicit mention of multiple/intersectional discrimination in its legislation (European Commission, 2016). The general provision in the constitution (Basic Law, Art. 3) finds its amplification in the German Equal Treatment Act. The Act states that unequal treatment may occur on several grounds and it may only be justified if the justification extends to all the grounds for which the equal treatment occurred (Equal Treatment Act, Sec. 4). It is to assume that claims of multiple discrimination are admissible (European Commission, 2007). Indeed, in Germany cases are referred

to the courts where there is even a suggestion of multiple discrimination (European Commission, 2016). Although, the courts more likely focus on one ground of discrimination rather than consider several grounds and categorise the case as multiple discrimination (European Commission, 2016).

Every German citizen is required to possess an identity card once he/she has reached the age of 16 (Act on Identity Cards and Electronic Identification, Sec. 1). It implies that married and unmarried women and men have equal rights to apply for identity cards. In order to apply for a national identity card, the applicant is required to provide following documents: a valid identity card (if the old ID card is not available – the passport), in case of applicants under 16 - the application of a parent or legal guardian and as general rule, consent of a second parent or legal guardian, and an up-to-date photo. In addition, the submission of the birth certificate/certificate of descent may be necessary in case the applicant does not have any identity card/passport or ID data differs from the entries in the official registry (website of the Federal Ministry of Interior).

The law also does not discriminate against women with regard to apply for a passport; it is issued upon application (Passport Act, Sec. 6). Every German is required to carry valid passport to identify her/himself while leaving or entering the geographical area in which the law applies (Passport Act, Sec. 1). Women also have the same rights as men to acquire passports and other travel documents for the minor children (Passport Act, Sec. 6).

### **b) Voting**

There is no evidence to suggest that equal voting rights is a concern in Germany. Women and men enjoy equal voting rights (Basic Law, Art. 38).

### **c) Political voice**

In Germany, women and man enjoy the same rights to hold public and political offices in the legislature, executive and judiciary. Accordingly to the individual aptitude, qualifications and professional achievements, they are equally eligible for public offices (Basic Law, art. 33). Germany has not adopted legal quotas in order to promote and enhance political participation of women. The quota system is exclusively based on voluntary quotas introduced by the political parties in their internal regulations.

The majority of political parties in Germany have introduced respective measures with regard to gender equality and improvement of the gender balance in politics. The Social Democratic Party (SPD) in its statute and the Party's Electoral Code is committed to minimum 40% quota for representatives of one sex at all organisational levels (e.g. the board of the party, electoral lists) (Quota Project, 2016). The Christian Democratic Union (CDU) has set a female participation rate for women of one third in all decision-making bodies of the party as well as on its electoral lists (Quota Project, 2016). The Green party has opted for the fixed parity (Quota Project, 2016) as well as Die Linke (Chojecka, Lukoschat, 2013). Additionally, Die Linke designs its electoral lists applying the rule the first or the second positions as well as all following odd positions are assigned to women as far as sufficient female candidates are available (European Parliament, 2015).

At the federal level, women are well represented in political offices. There is a high percentage of women sitting in the German Bundestag. As of June 2017, Germany has the female Chancellor since 2005. Moreover, in the government, many of the leading positions are occupied by women (CEDAW, 2015).

There is a lower representation of women at municipal level. In order to address this issue, the Federal Government, Länder governments and women's organisations implemented a number of programmes to increase the political participation of women in municipalities (European Parliament, 2015).

Moreover, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has special support for female politicians at the local level. The Ministry sponsors the Helene Weber Collage – a nationwide, cross-party platform for promoting political participation of women (CEDAW, 2015). The main objectives of the Collage are: recruitment of women in local politics, improvement of chances of entering and succeeding in politics, development of exchange and cooperation between women engaged in municipal politics also in an international context (BMFSFJ, 2014). Outstanding female politicians at the municipal level are awarded with the Helene Weber Prize.

#### **d) Access to justice**

There are no restrictions found to suggest that women have unequal capacity to sue and to be sued. Also, woman's testimony carries the same evidentiary weight in court as man's in all types of court cases – civil, criminal, family court and tribunals. Accordingly to the provisions of the Basic Law, in the courts every person shall be entitled to a hearing (Basic Law, Art. 103). Whereas the Civil Procedure Code stipulates that any person having legal capacity carries the capacity of being a party to the court proceedings (Civil Procedure Code, Sec. 50). The individual capacity to sue and to be sued is kept insofar the person can be obligated by agreements (Civil Procedure Code, Sec. 51).

The law provides for special treatment of witnesses and victims of an unlawful act when the case comes before the court. The public may be excluded due to private reasons of a person (Courts Constitution Act, Sec. 171b). Pursuant to the Criminal Procedure Code, the defendant may be removed from the courtroom during the examination of a witness (Criminal Procedure Code, Sec. 247). Moreover, the victim of specific criminal offences has the right to become the full party of the trial and join it as private accessory prosecutor (Criminal Procedure Code, Sec. 395).

In Germany, at the federal level, the following public bodies are responsible for securing and implementation of gender equality: Committee on Family Affairs, Senior Citizens, Women and Youth of the German Bundestag, Committee on Women and Youth of the Bundesrat, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ, 2014). Since the Federal Cabinet adopted "gender mainstreaming" as a guiding principle of its policies and actions in 1999, the above-mentioned Ministry was responsible for a coordination of its implementation between all federal ministries. Currently, the German government is criticised for lack of coordinated, inter-ministerial equality policies (European Parliament, 2015). Nevertheless, there is the Federal Equality Law in force that mandates implementing the gender equality in the federal public administration, federal courts and federal administrative institutions under public law. It serves as a legal basis for equal opportunities

for women and men in the federal public service. Additionally, the principle of gender mainstreaming is explicitly laid down in the Act.

Moreover, there is the Federal Anti-Discrimination Agency operating under the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. The Ministry provides the Agency with adequate and sufficient resources in its annually budget plan (CEDAW, 2016). The Agency supports people who have faced discrimination on account of racism or ethnic origin, gender, religion or belief, disability, age or sexual orientation (Anti-Discrimination Act, Sec. 1, 25). In particular, the Agency provides information on legal claims, taking legal action within the scope of statutory provisions for the protection against discrimination (CEDAW, 2015). It can also help to mediate and seek friendly settlement between the parties or refer to other agencies providing counselling in relevant area (European Commission, 2015). The services provided are easily accessible – people can contact the Agency by phone, email, letter and fax, also by filling out an electronic form on the website or arrange a personal meeting with counsellors (Federal Anti-Discrimination Agency, 2010).

## Abbreviations

BMAS - Bundesministeriums für Arbeit und Soziales – Federal Ministry of Labour and Social Affairs

BMFSFJ - Bundesministerium für Familie, Senioren, Frauen und Jugend - Federal Ministry for Family Affairs, Senior Citizens, Women and Youth

BMJV - Bundesministeriums der Justiz und für Verbraucherschutz – Federal Ministry of Justice and Consumer Protection

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