

“GENDER ISSUES IN THE LEGAL PROFESSION IN GERMANY”

BY

ULRIKE SCHULTZ *

On 27/06/2016, Ulrike Schultz gave a talk on gender issues in the legal profession in Germany as part of the Comparative Legal Gender Studies-Network Project.

She presented findings of her research on women in the legal profession in Germany. Her work includes research on women in the legal profession in general, in the judiciary and in academia. Since 1980 she has been a member of an international research group on the comparative studies of the legal professions and has founded a working group of Women/Gender in the Legal Profession in 1994.

After giving a short introduction on the history of women in the legal profession she presented data on women in legal education and then focussed her presentation on the question how gender influences the careers in legal academia, in the judiciary and in legal practice as lawyers. The final question of her talk was whether or not women change legal practice, and if so in what way.

When the rules on admission to and practice in the legal professions were established during the 19th century, they only extended to men. It was not until 1908 that women were admitted to law faculties and not until 1922 that they were admitted to the legal profession and the judiciary. Among the arguments brought forward to justify this exclusion was that women were too emotional and therefore not objective enough or too “good” for the hard tasks in the practice of law. They also seemed to be unwanted competitors. During the Nazi time, women were again excluded from legal occupations by an order from Hitler himself which was passed in 1936. After the end of World War II women could be admitted to legal occupations but faced drawbacks: They had to leave the civil service on marriage due to a celibacy clause and for many years they had to stand up against discussions about double income couples.

Ulrike Schultz gave an overview of the structure of **legal education** in the German educational system. Law students have to take a first examination which is basically arranged by the appeal courts, followed by two years of practical training and a second state examination, which is set up by the state Ministries of Justice and which qualifies for most legal occupations including the higher civil service. After WW II the law faculties at universities were male dominated, which did not change until the 1980s. Since the percentage of female law students has been rapidly rising, equaling the number of male law students at the turn of the millennium. Today the number of women in law faculties has stabilized at 57 per cent. Still, it is noticeable that more women than

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men fail in the state part of the first examination. There is also a gender effect concerning grades, showing that men score better in the top grades.

The number of women working in legal occupations has changed drastically since the 1960s. Back then less than 2% of practicing lawyers were women; today 36%. The number of women in the judiciary and prosecution is close to 50 per cent. The number of female professors in law faculties is still extremely low (16%) as well as that of women notaries. The increase in women law students is not reflected in the number of female law professors. Schultz calls the way to becoming a law professor a „leaky pipeline“. Only about half as many women as men write a dissertation and only a minor percentage of them write a habilitation, the second big book which is necessary to qualify as law professor. Only 155 of 983 professors in German law schools are female. Factors diminishing the chances for women to become law professors are the long qualification period with a low income which goes parallel to the so-called rush hour of life in which families are planned, the mobility demanded on the way to a chair in law (a call to a chair at the university where academics qualify is excluded), attractive alternatives in the judiciary and the somehow in Germany still prevailing traditional family culture. Young women in academia lack role models which may also discourage them.

A career in the judiciary is considered to be a good alternative for women, given the high status, good income without gender discrimination, the manageable workload and the guaranteed possibility for maternal and paternal leave without the pressure of producing enough publications. Nevertheless, there also is a “glass ceiling effect” for women in the judiciary. More women hold positions in the lower instances, mainly at local courts which can be called a career trap for women and a limited number of them moves up to leading positions as presiding judges and presidents. Childbirth and the following maternity leave can lead to a career stop. Further career impediments for women include lower self-efficacy, which means that women trust less in their competencies, and lower perceived efficacy which means that women trust less in their success than men and are therefore reluctant to apply for higher positions. It is also noticeable that they only do so when they have had the relevant grade for a longer time than their male colleagues. Women have less networks and connections and also suffer more from time constraints due to family obligations. Therefore mobility which is also in the judiciary needed for higher positions is an obstacle for them. Equal opportunities officers and regulations in the judiciary are more of symbolic value, statutory necessities, but rather nothing to make use of.

When comparing women and men in practice of advocates, several differences can be observed between the two groups. As late comers to the profession female lawyers are on an average younger than men and practice in smaller or big cities and often follow their husband to his place of living. For women having a high income is less important than having security through a fixed employment. More women than men face career breaks. Female lawyers work rather more often as solo practitioners than in big partnerships. Women have more problems to make the way into partnership. In big law firms less than 10% of full partners are women. There is a horizontal segregation between the different fields of specialist lawyers (Fachanwälte): the most popular fields for women are family law, social law and medical malpractice law, while men choose most often tax law, administrative or criminal law. Interestingly enough, more women than men regret to have become an advocate and are not content with their professional situation. In hindsight, fewer female lawyers would again choose to study law.

Finally, Ulrike Schultz asks the question whether women lawyers make a difference. She states that international research has shown that women tend to be more pragmatic and even though

there has been an assimilation process and male and female lawyers are equally qualified and also women primarily identified as professionals and not as „women“, there are several factors that play a role in the work of female lawyers. Women may have different world views and life experience and therefore may make more pluralistic decisions. Research has also shown that women seem to act more ethical as lawyers since they face less disciplinary proceedings. In cases where gender issues are involved (gender coded cases) e.g. in family law, women judges tend to be more caring, which raises the question if women can be better judges for women. From court room observation in some countries it has been reported that women as judges, prosecutors and lawyers tend to listen more attentively and take more time for their clients and cases.

Concluding her presentation, Ulrike Schultz emphasized that it is important to take gender aspects into account in all legal matters. Gender awareness can be created through special gender trainings for lawyers. Most important is to include gender aspects in all subjects of legal teaching.

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The part on women as practitioners (advocates) refers to publications by Matthias Kilian.